

CLERK'S STAMP

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN
BANKRUPTCY AND INSOLVENCY

JUDICIAL CENTRE CALGARY

APPLICANTS **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 DOMINION DIAMOND MINES ULC,
DOMINION DIAMOND DELAWARE COMPANY LLC,
DOMINION DIAMOND CANADA ULC, WASHINGTON
DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND
HOLDINGS, LLC, DOMINION FINCO INC., and DOMINION
DIAMOND MARKETING CORPORATION**

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /
Claire Hildebrand / Morgan Crilly
Telephone No.: 604.631.3315 / 604.631.4218 /
604.631.3331 / 403.260.9657
Email: peter.rubin@blakes.com /
peter.bychawski@blakes.com /
claire.hildebrand@blakes.com /
morgan.crilly@blakes.com
Fax No.: 604.631.3309

AFFIDAVIT OF JOHN STARTIN
Sworn on October 5, 2020

JS

I, John Startin, of New York, New York, MAKE OATH AND SAY THAT:

I. INTRODUCTION

1. I am a Senior Managing Director in Evercore Group L.L.C.'s ("**Evercore**") Corporate Advisory business, with responsibility for Evercore's global metals, minerals and mining practice. Prior to joining Evercore, I was most recently a Managing Director, Head of Metals and Mining in the Americas, and a member of the Mergers and Acquisitions Group at Goldman Sachs. I have more than eighteen (18) years of corporate advisory experience.

2. Evercore was engaged by Dominion Mines ULC ("**Dominion Diamond**" and, together with the other entities listed as applicants in these proceedings, "**Dominion**" or the "**Applicants**") to provide investment banking, financial, and restructuring advisory services to Dominion in connection with the Applicants' restructuring efforts including these *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceedings. Evercore's engagement as financial advisor to the Applicants was approved by this Court in the Second Amended and Restated Initial Order granted on June 19, 2020 (the "**SARIO**").

3. I have previously sworn affidavits in these CCAA proceedings on May 21, 2020 (my "**May Affidavit**") and June 12, 2020 (my "**June Affidavit**"). For ease of reference, capitalized terms not otherwise defined in this affidavit have the meanings ascribed to them in my May Affidavit and my June Affidavit, as applicable.

4. I make this affidavit in support of an application by Dominion for an order, among other things, approving the Asset Purchase Agreement (the "**APA**") by and among Dominion Diamond, Dominion Diamond Holdings LLC, and Dominion Diamond Marketing Corporation, as vendors (the "**Dominion Vendors**"), and Canadian Diamond Holdings L.P., CA Canadian Diamond Mines ULC, as purchasers (the "**Washington Purchasers**"), and Washington Diamond Investments, LLC, as parent to the Dominion Vendors. I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

II. OVERVIEW

5. The sale investment solicitation process ("**SISP**"), which Evercore and Dominion were tasked with implementing, with the oversight of the Monitor, was approved by the SARIO granted by this Court on June 19, 2020.

JS

6. The implementation of the SISP over a five (5) month period, from the commencement of these CCAA proceedings on April 22, 2020, to the formal commencement of the SISP on June 19, 2020, through to the announcement of the Stalking Horse Bid as the successful bid under the SISP on September 15, 2020, was a significant undertaking.

7. The Evercore team tasked with implementing the SISP included professionals drawn from Evercore's Metals, Materials & Mining, and Restructuring and Debt Advisory groups. Evercore's team dedicated significant time to implementing the sales process between April 22, 2020 and September 15, 2020, frequently working evenings, weekends, and holidays to ensure that those participating in the process had prompt access to information to prepare their expressions of interest and bids. In addition, significant time, effort, and resources were expended by Dominion and its other advisors.

8. After an approximately five (5) month process of outreach and marketing, undertaken by Dominion with Evercore's assistance both before and after this Court's formal approval of the SISP, Dominion announced on September 16, 2020 that no Phase 2 qualified bids other than the Stalking Horse Bid were submitted as part of the SISP, and that the Stalking Horse Bid submitted by affiliates of The Washington Companies ("**Washington**") had been selected by Dominion as the Successful Bid under the SISP.

9. The Stalking Horse Bid, which is the subject of the APA before this Court for approval, contemplates a purchase of substantially all of Dominion's assets related to the Ekati Mine.

10. Subject to satisfaction of remaining conditions to closing, the Outside Date for the transaction contemplated by the APA will be no later than November 7, 2020.

III. THE SISP

A. Overview of SISP Structure

11. As described in detail in my May Affidavit, the SISP was structured as a two-phase process to be implemented by Evercore and Dominion with the oversight of the Monitor to solicit offers to purchase the assets of, or make a financial investment in, the Applicants.

12. Pursuant to the SISP, interested parties could submit offers for:

JS

- (a) the purchase of (i) all or substantially all of the assets, property, and undertakings of the Applicants and certain of their subsidiaries; (ii) the Diavik Interest (as defined in the SISP); and (iii) the Non-Diavik Assets (as defined in the SISP); or (iv) some other portion of the assets, property, and undertakings of the Applicants; or
- (b) an investment in, restructuring, recapitalization, refinancing, or other form of reorganization of Dominion or its business.

13. The SISP provided for two phases. Phase 1 required interested parties to submit a non-binding letter of intent ("**Phase 1 Bids**") containing critical information about the proposed bid. If no Phase 1 Bids were received, the SISP provided that the Dominion Vendors would seek court approval of the Stalking Horse Bid. Parties that submitted Phase 1 Bids that satisfied certain enumerated criteria (more particularly set out in the SISP) would then have the opportunity to submit a binding offer in the second phase of the SISP ("**Phase 2 Bids**").

14. Binding Offers (as defined in the SISP), which could be in a form of a Sale Proposal or an Investment Proposal, were required to provide for the payment of cash on closing in an amount equal to or greater than the "**Minimum Cash Purchase Price**" being: (a) an amount equal to the cash payable on closing in the Stalking Horse Bid (US \$126,107,000); plus (b) the amount of the Break-Up Fee and the amount of the Expense Reimbursement; plus (c) US \$1 million.

15. The SISP provided the Dominion Vendors with flexibility to aggregate non-overlapping bids that collectively met the Minimum Cash Purchase Price. If one qualified Phase 2 Bid was received in addition to the Stalking Horse Bid (provided that any financing condition contained in the Stalking Horse Bid had been waived or satisfied), the SISP provided that an auction would be held to determine the Successful Bid (as defined in the SISP).

16. The SISP also contemplated a Back-Up Bid (as defined in the SISP) being the second-best offer received in the auction. The SISP also afforded flexibility to the Applicants to select not only the bid that provided the most cash, but to also consider other facts as well, such as levels of conditionality and overall impact on stakeholders.

17. As approved by the SARIO, the SISP contemplated a Phase 1 Bid Deadline (for the delivery of non-binding letters of intent) of July 20, 2020, a Phase 2 Bid Deadline of August 31, 2020 (for delivery of Binding Offers in accordance with the SISP), an auction commencement

JS

date of August 6, 2020 (if needed), and an Outside Date for the closing of a transaction of October 31, 2020.

18. The SISP permitted the Applicants, with the consent of the Monitor, to extend the Phase 2 Bid Deadline and to waive strict compliance with certain bid requirements. As discussed below, such extensions and waivers were granted on two occasions in Phase 2 to allow the Ad Hoc Group (as defined below) additional time to submit a Phase 2 Bid.

B. Evercore's Pre-SARIO Marketing and Outreach Efforts

19. While Phase 1 of the SISP formally commenced upon the granting of the SARIO on June 19, 2020, Evercore took steps to advance the process contemplated by the SISP prior to June 19 to ensure that the SISP was implemented in a timely and effective manner.

20. As of April 22, 2020 (the day these CCAA proceedings were commenced), Dominion had uploaded to a virtual data room ("**VDR**") established for the purpose of the SISP one hundred and sixty two (162) documents that included historical financial information, a draft DIP budget, company earnings reports, a detailed life-of-mine financial forecast model, a lender presentation summarizing Dominion's operations and financial information, detail on Dominion's diamond inventory, corporate documentation, surety documentation, and similar information. Approximately thirty (30) additional documents were uploaded to the VDR prior to the granting of the SARIO.

21. While additional documentation continued to be uploaded to the VDR throughout Phase 1 and Phase 2 of the SISP, such information related for the most part to confirmatory diligence (e.g., contracts, insurance, etc.), regular reporting updates (e.g., bi-weekly DIP reports, monthly internal financial reports, diamond inventory updates, etc.), studies related to alternative approaches to diamond extraction, and specific analyses requested by bidders (e.g., scenario analyses of reclamation spending, Ekati Mine restart timing, etc.). Most of the critical base level information typical for a sales process of the type contemplated by the SISP was uploaded prior to the commencement of Phase 1 and on April 22, 2020 in particular.

22. While it is in the nature of a diligence process that documents are added as questions are asked and answers are provided, the VDR that was opened on April 22, 2020 was furnished with materials that from my experience were more than adequate for an interested party to learn about

JS

Dominion's business, understand its current situation, and begin to contemplate its future prospects.

23. As is customary in a marketing process, it was up to each party participating in the SISP to make whatever use of the documents available in the VDR that they wished and to request additional documents be either uploaded to the VDR or shared with such participating party. The timing of when interested parties accessed the VDR and the number of documents they reviewed varied party-to-party. Many parties did not access all of the documents, while others (including each of the members of the second lien noteholders group (the "**Ad Hoc Group**") and their legal counsel) took several weeks to access all of the documents that had been posted as of April 22, 2020.

24. Evercore also began contacting potential bidders on April 27, 2020, either by phone or e-mail and provided interested parties with a non-disclosure agreement ("**NDA**") and a "teaser" that described the Dominion Vendors' assets, the status of Dominion's restructuring efforts, and instructions for participating in the proposed SISP process.

25. As of June 11, 2020, Evercore had contacted thirty-eight (38) potential bidders including the Stalking Horse Bidder. Excluding the Stalking Horse Bidder and the Ad Hoc Group, two (2) third parties had executed NDAs as of June 12, 2020 with a further six (6) NDAs being in process.

26. Potential bidders were able to access the VDR generally within one (1) business day upon signing NDAs and most did so. For example, the Ad Hoc Group's financial advisor (Houlihan Lokey, Inc.) and legal counsel (Torys LLP) signed NDAs on May 2, 2020 and were granted access to the VDR on May 2, 2020.

27. Evercore's internal tracking of VDR access and download history shows that Houlihan Lokey downloaded substantially all the documents in the VDR on May 2, 2020 and continued to download information as it was uploaded to the VDR throughout the SISP process. The VDR access and download record of the members of the Ad Hoc Group and their counsel shows most downloads occurring in August 2020 after the Phase 1 Bid Deadline and around the time of their request for a Dominion management presentation which was held on August 12, 2020. However, like all potential bidders who had signed NDAs, the members of the Ad Hoc Group were able to access the VDR when and as they deemed fit.

JS

28. In addition to establishing the VDR, Evercore engaged directly with potential bidders to address specific diligence requests prior to the formal commencement of Phase 1 of the SISP on June 19, 2020. Again, using the Ad Hoc Group as an example, Evercore responded to approximately 75 specific due diligence requests from the Ad Hoc Group or its financial advisor between May 1, 2020 and the formal commencement of Phase 1 of the SISP on June 19, 2020 with an average response time of less than two (2) days. These formal responses to diligence requests are in addition to questions answered through informal verbal discussions or any updates, files sent by email, or files uploaded to the VDR that were not explicitly requested by the Ad Hoc Group.

29. On May 5, 2020, Evercore also participated in a financial due diligence call with Dominion's management and the Ad Hoc Group's financial advisor to review Dominion's near and long term financial projections

30. As a result of Evercore's outreach program, the marketing process for the Dominion Vendors' assets had been underway for approximately seven (7) weeks prior to the formal commencement of the SISP on June 19, 2020. While Evercore could not during that time period provide potential bidders with a date by which they were to provide their preliminary indications of interest under the SISP, potential bidders were able to progress their diligence in a manner that was substantially consistent with how Evercore would expect them to progress their diligence if a preliminary bid deadline had been formally set through the SISP.

31. As noted in my May Affidavit, for the reasons noted above, it was Evercore's judgment that the timelines set out in the SISP as initially proposed by Dominion in its application filed on May 22, 2020 (but served on May 21, 2020) provided a reasonable opportunity for all interested parties to submit competing offers for Dominion's assets.

32. However, following discussions with the Ad Hoc Group (among others), Dominion, the Stalking Horse Bidder, and the First Lien Lenders agreed to make certain changes to the SISP and related documents that had the effect of extending the SISP deadlines by approximately two (2) weeks.

33. Among other changes, the adjusted SISP timelines agreed to by the parties on May 29, 2020: (a) extended the proposed Phase 1 Bid Deadline from June 26, 2020 to July 10, 2020; (b) extended the proposed Phase 2 Bid Deadline from August 7, 2020 to August 21, 2020; and (c) changed the proposed Auction commencement date from August 10, 2020 to August 24, 2020.

JS

34. The SISP timelines that were ultimately before this Court at the hearing of Dominion's application for the SARIO on June 19, 2020 were then further adjusted prior to being approved by the Court. Specifically, the SISP timelines that this Court approved on June 19, 2020: (a) extended the proposed Phase 1 Bid Deadline from July 10, 2020 to July 20, 2020; (b) extended the Phase 2 Bid Deadline from August 21, 2020 to August 31, 2020; and (c) changed the proposed Auction commencement date from August 24, 2020 to September 3, 2020.

35. As noted in my June Affidavit, it was Evercore's view that it was not necessary to move the preliminary bid deadlines contemplated by the SISP as initially proposed in Dominion's application to this Court filed on May 22, 2020 to a later date. This was, in part, because the pool of potential purchasers with sufficient resources and expertise to acquire and operate a diamond mine in the Northwest Territories is limited. Viable potential purchasers would have known of a potential transaction opportunity since the commencement of these CCAA proceedings on April 22, 2020 and (as noted above) Evercore had already initiated contact with several potentially interested parties. However, adjusting the deadlines as proposed in Dominion's Amended Application filed on June 16, 2020 did not hurt the process either.

C. Phase 1 of the SISP

36. Phase 1 of the SISP formally commenced with this Court's granting of the SARIO on June 19, 2020.

37. Throughout Phase 1 of the SISP process, which formally ran from June 19, 2020 to the July 20, 2020 deadline for the submission of Phase 1 Bids (i.e., non-binding letters of intent), Evercore, with the assistance of Dominion's management, and with the oversight of the Monitor, continued to work with potentially interested parties to address due diligence and information requests.

38. On June 24, 2020, a confidential information memorandum ("**CIM**") was uploaded to the VDR to assist potential bidders in evaluating the opportunity contemplated by the SISP. The CIM, which was prepared by Evercore with the assistance of Dominion, provided information considered relevant to the transaction contemplated by the SISP, including summaries of Dominion's corporate history, the company's management team, the diamond market, resource and reserve estimates for the Ekati Mine and the Diavik Mine joint venture, Dominion's existing mining operations at the Ekati Mine by pipe, options for mine life extensions of the Ekati Mine, diamond inventory by value and carats, historical diamond sales price information by pipe, life-of-

mine financial forecasts for the Ekati and Diavik Mines, surety bonding arrangements and reclamation liabilities, and pension and employee matters.

39. One hundred and twenty seven (127) documents were uploaded during the last two (2) weeks of June, a significant majority of which were original copies of Dominion's joint venture agreements, labor related documentation, miners' lien documentation, trade vendor contracts, lease agreements, and similar information. As stated above, while additional documentation continued to be uploaded to the VDR throughout Phase 1 and Phase 2 of the SISP, such information related for the most part to confirmatory diligence, regular reporting updates, and specific analyses requested by bidders.

40. Over the course of Phase 1 of the SISP process, Evercore and Dominion management also authorized potential bidders to contact certain third parties who had been placed on a no-contact list with respect to the opportunity provided by the SISP for anti-collusion and competitive reasons due to their being potential bidders. For example, in early July 2020 the Ad Hoc Group requested approval from Dominion to speak to twenty-one (21) third parties on Dominion's no-contact list. Permission to contact nineteen (19) of these parties was granted by Evercore and Dominion within one (1) day of the requests being made and permission to contact one (1) additional party was granted with conditions that were accepted by the Ad Hoc Group.

41. By July 6, 2020, approximately two (2) weeks prior to the Phase 1 Bid Deadline, Evercore had contacted a total of fifty-six (56) potential bidders including the Stalking Horse Bidder and a total of six (6) NDAs were executed with third party bidders. Despite the public nature of this process and Evercore's disclosure as Dominion's financial advisor, only one (1) third party expressed interest in acquiring Dominion's assets without Evercore's solicitation. In addition to the NDAs signed by third parties, a number of NDAs were signed by potential debt and equity financing partners for the Ad Hoc Group and their respective advisors (fourteen (14) between July 13, 2020 and September 3, 2020).

42. Following the July 20, 2020 Phase 1 Bid Deadline for delivery of non-binding Phase 1 Bids, the Ad Hoc Group was confirmed as having submitted a Phase 1 Successful Bid as defined in the SISP and, as such, they were thereby deemed to be a Phase 2 Qualified Bidder for the purpose of Phase 2 of the SISP. Under the terms of the Stalking Horse Bid, the Stalking Horse Bidder was automatically considered a Phase 2 Qualified Bidder. No other Phase 1 Successful

JS

Bids were submitted and, as a result, the Stalking Horse Bidder and the Ad Hoc Group were the only Phase 2 Qualified Bidders.

43. The Ad Hoc Group's non-binding Phase 1 Bid was, like the Stalking Horse Bid, a Sale Proposal rather than an Investment Proposal. It was subject to substantially the same conditions as the Stalking Horse Bid, other than that (a) the Ad Hoc Group advised that, while it had not obtained a financing commitment, financing would not be an open condition in the Ad Hoc Group's definitive asset purchase agreement (the Stalking Horse Bid included a financing condition that was conditional until July 31, 2020); and (b) the Ad Hoc Group's "Rio Condition" would remain conditional until closing (the Stalking Horse Bidder's Rio Condition was conditional until July 31, 2020). A copy of the Ad Hoc Group's Phase 1 non-binding bid is attached as Exhibit "D" to the affidavit of Jennifer Alambre sworn October 4, 2020 (the "**Alambre Affidavit**").

D. Phase 2 of the SISP

i. Ongoing Due Diligence Efforts

44. The Phase 2 Qualified Bidders (being the Stalking Horse Bidder and the Ad Hoc Group) continued to conduct their due diligence, including by reviewing materials and information in the VDR, making additional information requests, and participating in further meetings and discussions with Dominion's management and Evercore.

45. Each of the Phase 2 Qualified Bidders had access to information uploaded to the VDR throughout the Phase 2 process and the Ad Hoc Group's financial advisor, Houlihan Lokey, downloaded almost all items as they were uploaded.

46. On July 15, 2020 Evercore participated in a process discussion with the Monitor and the Ad Hoc Group's financial advisor to discuss diligence protocols, question & answer process and planned subject matter expert calls.

47. On July 17, 2020 Evercore participated in an operations update call with Dominion's management and the Ad Hoc Group's financial advisor to review Dominion's care & maintenance activities and to discuss conditions in the diamond market across India and Belgium.

48. One issue that received particular attention during preparation for Phase 2 of the SISP was the potential for Phase 2 Qualified Bidders to undertake site visits as part of their due diligence.

JS

49. During Phase 1 of the SISP process, with the extension in mid-July of travel restrictions from the United States of Canada that had been in place since May 2020, Evercore considered, and on July 17, 2020 (i.e., prior to the Phase 1 Bid Deadline), suggested by email to potential bidders options for mitigating the impacts of travel restrictions on the ability to conduct site visits. My July 17, 2020 email to representatives of Houlihan Lokey regarding site visit protocols in the context of COVID-19 is attached as Exhibit "C" to the Alambre Affidavit.

50. In a Phase 2 Process letter dated July 24, 2020, sent to the Ad Hoc Group and the Stalking Horse Bidder, Evercore outlined in more detail the process for requesting site visits and providing guidance on quarantine and travel procedures in the Northwest Territories. A copy of Evercore's Phase 2 Process letter addressed to members of the Ad Hoc Group and their financial and legal advisors is attached as Exhibit "E" to the Alambre Affidavit.

51. The suggestions and recommendations for facilitating site visits proposed by Evercore in the Phase 2 Process letter included:

- (a) utilizing Canadian technical consultants, as needed to avoid US/Canada border and transition issues;
- (b) requiring any representatives planning to travel to the Ekati Mine to begin social distancing and self-monitoring procedures in accordance with the Northwest Territories' Chief Public Health Officer's public health orders as soon as possible in order to facilitate site visits the week of August 3rd or August 10th in compliance with current regulations and recommendations;
- (c) limiting the number of representatives travelling to the Ekati Mine to no more than ten (10) people; and
- (d) preparing for site visits at the Ekati Mine to be completed in a single day to limit the exposure of the Ekati Mine workforce to visiting representatives of Phase 2 Qualified Bidders. To facilitate complete site visits in a single day, representatives would be divided into three (3) groups, with each group visiting one of the underground, the processing plant areas, or the camp.

52. Despite these protocols for site visits being put in place, and the potential bidders being advised of them well in advance, neither the Ad Hoc Group nor the Stalking Horse Bidder requested a site visit. To my knowledge, the Ad Hoc Group did not ask for VDR access to be

JS

given to a technical engineer, there was no NDA executed for a technical engineer for the Ad Hoc Group, and a technical engineer for the Ad Hoc Group did not access the VDR at any point. Based on my experience, this is unusual for a transaction of this type.

53. While site visits did not take place, Evercore and Dominion's management participated in five (5) subject matter expert calls with the Ad Hoc Group or their advisors in August and made two (2) presentations to each of the Phase 2 Qualified Bidders and their advisors in August. These meetings and presentations were in addition to the numerous email exchanges and phone conversations between Evercore and representatives of the Phase 2 Qualified Bidders that occurred regularly during this time and throughout the SISF process.

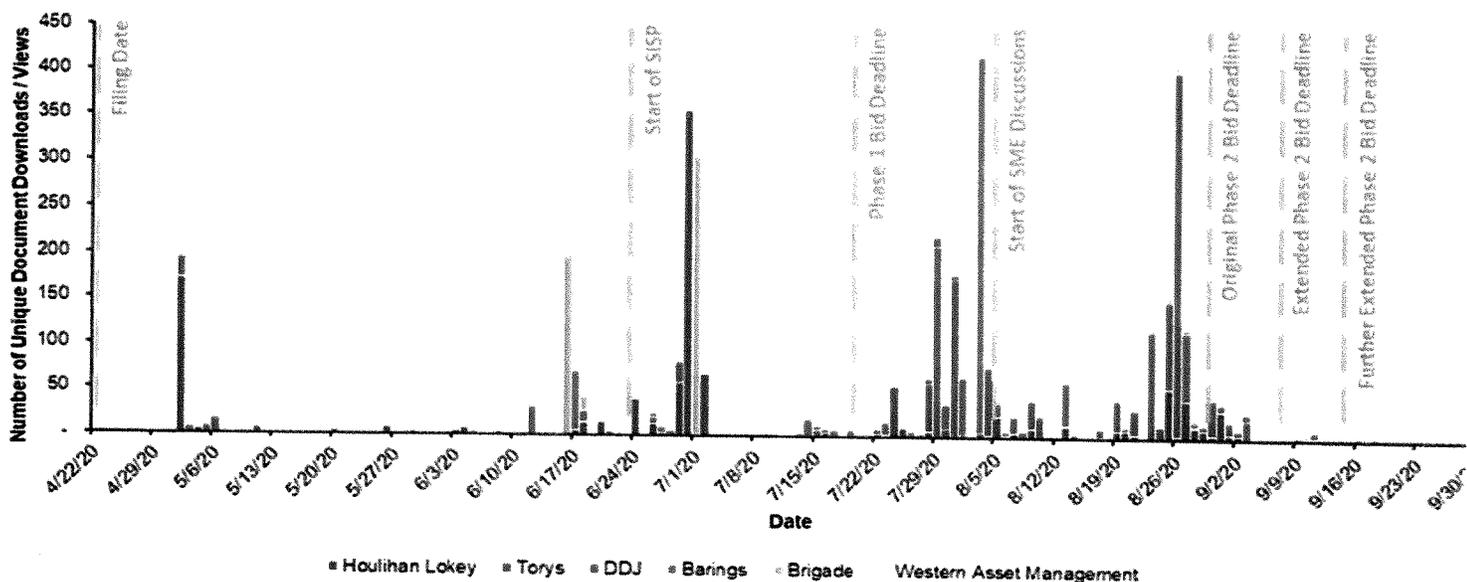
54. Subject matter expert calls with Dominion management and advisors to the Ad Hoc Group took place on August 4, 2020 (regarding alternative mining), August 5, 2020 (regarding general financial diligence and the Diavik joint venture), August 6, 2020 (regarding sales and marketing), August 6, 2020 (regarding supply chain matters), and August 7, 2020 (regarding impact benefit issues). These calls typically led to further follow-ups by email and subsequent correspondence. Requests for these calls were included in the Ad Hoc Group's Phase 1 bid dated July 20, 2020 and were addressed in the Phase 2 Process Letter sent by Evercore on July 24, 2020. Evercore sent an email directly on July 28, 2020 upon the conclusion of the Phase 1 Bid Notification Period to Houlihan Lokey to schedule these sessions. Additionally, Dominion's management made two (2) approximately two-hour presentations to representatives of the Ad Hoc Group and/or their advisors on each of August 12, 2020 and August 24, 2020. Evercore's email to Houlihan Lokey dated July 28, 2020 regarding the scheduling of these sessions is attached as Exhibit "F" to the Alambre Affidavit.

55. On August 21, 2020 (which was ten (10) days before the Phase 2 Bid Deadline), legal counsel to the Ad Hoc Group (Torys) sent to Evercore a list of approximately fifty (50) diligence requests (the "**August 21 Request List**") and separately made other diligence requests of Dominion's legal counsel (Blakes). The August 21 Request List was the first such legal due diligence request and was made approximately sixteen (16) weeks after the Ad Hoc Group's legal counsel (Torys) signed an NDA on May 2, 2020. Between August 21, 2020 and September 1, 2020, relevant information was promptly posted to the VDR in response to these diligence requests.

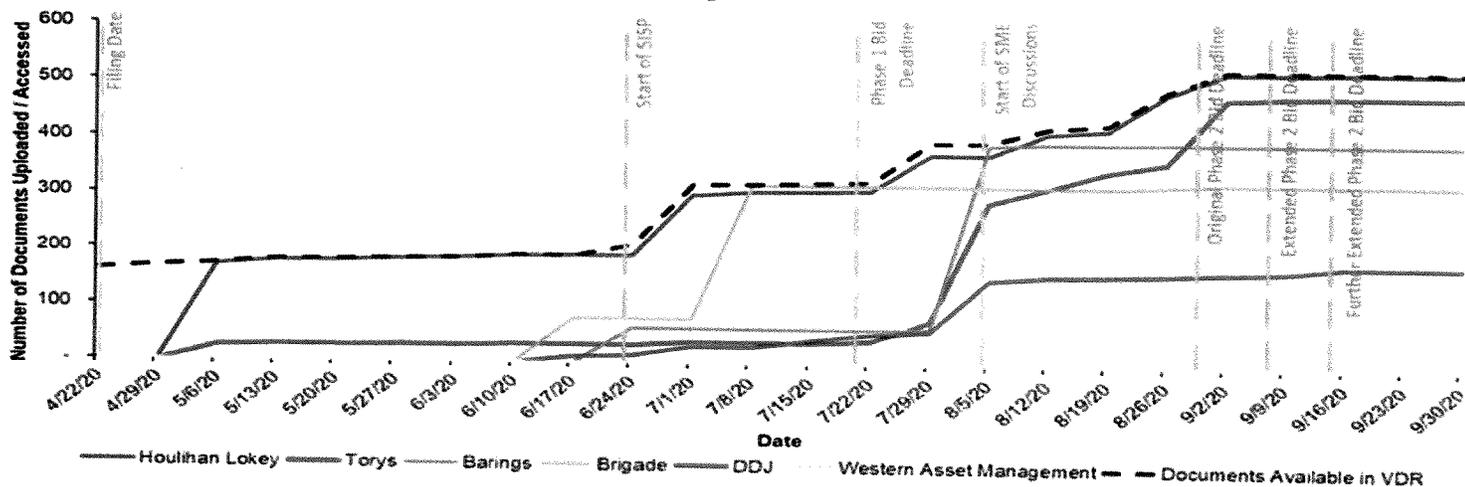
JS

56. The August 21 Request List included requests for information that had been uploaded to the VDR and downloaded by either the Ad Hoc Group's financial advisor (Houlihan Lokey) or legal advisor (Torys) prior to August 21. It also corresponded with the commencement of noticeably increased use of the VDR by the Ad Hoc Group's legal counsel. Houlihan Lokey generally downloaded documents as they were uploaded to the VDR. VDR activity for the members of the Ad Hoc Group varied by entity following their execution of individual NDAs: DDJ Capital Management (June 11, 2020), Barings LLC (June 11, 2020), Brigade Capital Management (June 11, 2020) and Western Asset Management (July 17, 2020).

VDR downloads by party and key SISF dates.



Cumulative VDR downloads by party and key SISF dates.



JS

ii. Adjustment of Phase 2 Requirements and Submission of Ad Hoc Group Bid

57. Pursuant to the SISP, any competing bidders were required to submit their respective Phase 2 binding bids by the Phase 2 Bid Deadline of August 31, 2020, along with a marked version showing edits to the original form of template asset purchase agreement.

58. On August 20, 2020, the Ad Hoc Group formally requested an extension of the August 31, 2020 Phase 2 Bid Deadline.

59. On August 28, 2020, with the consent of the Stalking Horse Bidder, the First Lien Agent, and the lenders under the Interim Financing Facility, and in consultation with the Monitor, Dominion proposed certain adjustments to the SISP process and extensions of the SISP deadlines, including (a) a limited waiver until September 8, 2020 of the requirement that the Ad Hoc Group's bid to identify whether the Ad Hoc Group was purchasing the Diavik Interest and the requirement that the bid not contain financing conditionality; (b) the adjustment of dates for the commencement and conclusion of the Auction from September 3 and 7 to September 9 and 11 (respectively); and (c) the extension of the Outside Date for the purpose of the transaction contemplated by the Stalking Horse Bid from October 31, 2020 to November 7, 2020.

60. The Ad Hoc Group submitted their Phase 2 Bid on August 31, 2020. The Ad Hoc Group's Phase 2 Bid was substantially similar in form to the Stalking Horse Bid, except that the Ad Hoc Group's Phase 2 Bid was conditional on (a) the Ad Hoc Group obtaining financing (the Stalking Horse Bidder had waived the Financing Condition in the Stalking Horse Bid on July 31, 2020); and (b) the Ad Hoc Group reaching agreement with Diavik Diamond Mines (2012) Inc. on amending the terms of the Diavik JVA (the Stalking Horse Bidder had previously advised that it was not purchasing the Diavik Interest). The Ad Hoc Group's Phase 2 Bid, like the Stalking Horse Bid, was also conditional upon the Ad Hoc Group reaching satisfactory arrangements with Dominion's sureties with respect to reclamation security obligations for the Ekati Mine. Signatories of the Ad Hoc Group's Phase 2 bid included DDJ Capital Management, LLC, Brigade Capital Management, LP, and Western Asset Management Company, LLC, but excluded Barings, LLC, who had been listed as a purchaser in the Ad Hoc Group's Phase 1 Bid. A copy of the Ad Hoc Group's Phase 2 bid blacklined to the Template PSA is attached as Exhibit "M" to the Alambre Affidavit.

JS

61. Notwithstanding that there was no extension or waiver of the SISP requirement for the Ad Hoc Group to provide a deposit of 10% of the cash purchase price, the bid submitted by the Ad Hoc Group on August 31, 2020 was not accompanied by any deposit. During the week following August 31, a partial deposit of only approximately US\$7.9 million towards the required deposit of US\$13.2 million was provided to counsel to the Monitor, with such deposit being provided collectively by approximately twenty-five (25) parties. The remaining US\$5.3 million was never provided.

iii. Further Adjustment to Phase 2 Requirements and Withdrawal of Ad Hoc Group Bid

62. On September 2, 2020, Evercore and Blakes received a signed NDA from Houlihan Lokey on behalf of a new potential financing partner to the Ad Hoc Group (the "**September 2, 2020 Financing Partner**"). Based on the strategic nature of the September 2, 2020 Financing Partner, this new party was given access to a separate VDR that excluded competitively sensitive Dominion sales or pricing information on September 4, 2020.

63. On September 2, 2020, in connection with communications among counsel for the Ad Hoc Group and counsel for Dominion, counsel to the Ad Hoc Group advised that the Ad Hoc Group requested a session with Dominion's full mine planning team in order to assist the Ad Hoc Group in settling their mine re-start plans. The call was proposed by counsel to the Ad Hoc Group to take place on September 4, 2020 over the course of the better part of a day. On September 3, 2020, counsel for the Ad Hoc Group sent a proposed agenda for the planned meeting. A copy of the Ad Hoc Group's counsel's email regarding the scheduling of the management session is attached as Exhibit "O" to the Alambre Affidavit.

64. Due to a scheduling miscommunication, the meeting did not take place on September 4, 2020 as planned. Evercore followed up with the Ad Hoc Group's financial advisor later in the day on September 4 about rescheduling this meeting and requested a question list to better prepare for the meeting. However, the Ad Hoc Group's financial advisor informed Evercore at this time that the Ad Hoc Group would like to "push" the call to a future date without specifying when an appropriate date may be.

65. Evercore and Dominion's management team remained available over the Labour Day long weekend (Saturday, September 5 to Monday, September 7) to attend to the requested meeting and to facilitate any due diligence requests the Ad Hoc Group may have. However, the Ad Hoc Group and its advisors did not attempt to reschedule the planned call and did not send any

JS

additional due diligence requests. Based on activity in the VDR, between August 31, 2020 and September 8, 2020 less than 5% of all files were accessed by the Ad Hoc Group, any of its advisors, or any of its financing partners with the exception of the September 2 2020 Financing Partner.

66. On September 8, 2020, less than an hour before the deadline by which the Ad Hoc Group had to withdraw its bid to recover its deposit, counsel for the Ad Hoc Group advised that the Ad Hoc Group was withdrawing their offer and requested the return of the partial deposit paid by the Ad Hoc Group.

67. On September 8, 2020, in an effort to support the Ad Hoc Group in their effort to submit a Phase 2 Qualified Bid, Dominion asked the Ad Hoc Group if it would like an extension of the Phase 2 Bid Deadline, subject to Dominion obtaining applicable consents for the granting of such extension.

68. On September 9, 2020, after subsequent correspondence between representatives of the parties, counsel for Dominion advised counsel for the Ad Hoc Group that Dominion had obtained the applicable consents to an extension of the Phase 2 Bid Deadline, on the following terms:

- (a) Given the Ad Hoc Group withdrew its bid, a new bid would be required to be submitted no later than 3 pm EST on Wednesday September 15, 2020 (the **"Second Extended Phase 2 Deadline"**). That is, a further extension of the Phase 2 Bid Deadline was granted from August 31 to September 15 at 3 pm EST;
- (b) Key dates would be pushed back as set forth in the table below (with adjustments to other dates as required):

SISP Date	Proposed New Date	Description
Sept 3 (Thursday)	Sept 16 (Wednesday)	Auction Start Date
Sept 7 (Monday)	Sept 18 (Friday)	Deadline for selection of winning Bidder
Sept 11 (Friday)	Sept 25 (Friday)	Definitive Documents complete
Sept 14 (Monday)	Sept 21 (Monday)	45-day deadline for submission of (i) transfer documentation; and (ii) Competition Act filing, in necessary, to close by Outside Date

JS

Sept 28 (Monday)	October 12 (Monday)	Court Approval
October 31 (Saturday)	November 7 (Saturday) (Already moved as part of the first extension)	Outside Date

- (c) All other terms of the SISP terms would have to be complied with including providing the full deposit to the Monitor (or its counsel) and advising whether the Ad Hoc Group would be purchasing the Diavik Interest by the Second Extended Phase 2 Bid Deadline. If the Ad Hoc Group elected to keep the partial deposit amounts already deposited with the Monitor, those funds would be returned if no bid was submitted by the Second Extended Phase 2 Deadline.
- (d) The granting of the extension request was conditional on the following:
- (i) the Ad Hoc Group would immediately commence working with Dominion and its counsel to prepare transfer applications for the applicable authorizations so that these could be finalized and submitted to the government or applicable regulatory authorities by September 21;
 - (ii) the Ad Hoc Group would advise as soon as it was aware and no later than the Second Extended Phase 2 Bid Deadline whether it would be required to obtain *Competition Act* (Canada) or other competition or anti-trust approvals based on its investor group and, if this is required, the Ad Hoc Group would work with Dominion to prepare these so that these could be submitted to the applicable regulatory authorities by September 21; and
 - (iii) the Ad Hoc Group would respond to the questions posed on September 2, 2020 related to its intention for re-opening the Ekati Mine and fuel purchases.

69. An email from counsel to Dominion to counsel to the Ad Hoc Group dated September 9, 2020 setting out the terms for the Second Extended Phase 2 Bid Deadline is attached as Exhibit "Q" to the Alambre Affidavit.

JS

70. Notwithstanding the above proposal, the Ad Hoc Group failed to submit a revised bid by the Second Extended Phase 2 Bid Deadline.

71. With the withdrawal of, and subsequent failure to resubmit, the Ad Hoc Group's bid, the Stalking Horse Bid was the only qualified bid submitted in accordance with the SISP.

IV. CONCLUSION

72. The Applicants, with the assistance of Evercore and the oversight of the Monitor and their other professional advisors, have completed a thorough assessment of Dominion's restructuring options as well as a canvassing of the market over the course of approximately five (5) months with the objective of identifying and completing a transaction that would maximize value for the benefit of Dominion's stakeholders.

73. Looking back at the affidavit of Brendan Bell sworn in these proceedings on May 21, 2020, I understand that prior to these CCAA proceedings Dominion had undertaken three strategic review processes to, among other things, solicit the sale of Dominion Diamond to a third-party. Based on Mr. Bell's affidavit, I understand that the first two of these strategic processes were undertaken with the assistance of a bank-owned financial advisor in each of 2015 and 2016 and did not result in a sale. The third strategic process was undertaken in 2017 and resulted in of one formal offer to acquire the company, being the offer made by Washington.

74. On April 22, 2020, upon the commencement of these CCAA proceedings, Dominion Diamond issued a press release advising the public and interested parties of the commencement of these CCAA proceedings. Dominion's press release noted, among other things, that Dominion had received and was considering a proposal from a Washington affiliate to provide debtor-in-possession financing which would help provide sufficient liquidity through the CCAA process and be conditional upon Dominion Diamond agreeing to: (a) a Memorandum of Understanding (MOU) regarding a possible sale of Dominion Diamond's assets to an affiliate of Washington, as a stalking horse bidder; and (b) bidding procedures for the solicitation of competing offers to such asset sale, either to purchase the Dominion Diamond's assets or to make an investment in the company.

75. Notwithstanding the public nature of these CCAA proceedings, and the limited pool of potential purchasers with sufficient resources and expertise to acquire and operate a diamond mine in the Northwest Territories, no third-parties came forward with their own competing offer to

JS

be a stalking horse bidder in the SISP process. Nor did the SISP result in a Qualified Bid other than that of the Stalking Horse Bidder.

76. After six (6) months of working closely with the Applicants, their stakeholders, and potentially interested bidders and their financial advisors, it is Evercore's judgment that the transaction contemplated by the APA that is before this Court for approval is the best executable sale or restructuring alternative available to the Applicants in the circumstances of these CCAA proceedings.

77. Based on the foregoing, and further to my evidence set out in my May and June Affidavits, it is Evercore's judgment that (a) the SISP was run in manner that is consistent with a fair and impartial sales process; (b) the SISP provided a reasonable opportunity for all interested parties to submit competing offers for Dominion's assets; (c) the transaction contemplated by the APA provides material value to Dominion; and (d) the Applicants do not have better viable transaction alternatives to the APA that is the subject of this Application.

V. PROCESS FOR COMMISSIONING OF THIS AFFIDAVIT

78. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

- (a) I have shown the Commissioner the front and back of my current government-issued photo identification ("**ID**") and the Commissioner has compared my video image to the information on my ID;
- (b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;
- (c) the Commissioner and I have a paper copy of this affidavit before us;
- (d) the Commissioner and I have reviewed each page of this affidavit to verify that the pages are identical and have initialed each page in the lower right corner;
- (e) at the conclusion of our review of the affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this affidavit; and

JS

(f) I will send this signed affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video)
conference on October 5, 2020.)

A Commissioner for Oaths in and for the)
Province of Alberta)



John Startin

JS

(f) I will send this signed affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video)
conference on October 5, 2020.)



A Commissioner for Oaths in and for the)
Province of Alberta)

Morgan E. Crilly
Barrister & Solicitor

John Startin

MC

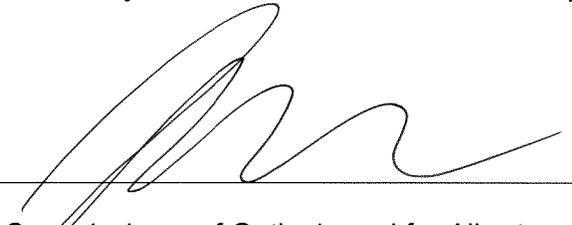
APPENDIX A

Certificate of Commissioning by Videoconference

I, Morgan Crilly, Commissioner of Oaths in and for Alberta, took the Affidavit of John Startin via videoconference on October 5, 2020 (the "**Affidavit**").

The affiant and I followed the process outlined by the Alberta Court of Queen's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was unsafe for the deponent and I to be physically present together.



Commissioner of Oaths in and for Alberta

Morgan E. Crilly
Barrister & Solicitor