



COURT FILE NUMBER 2001-05630  
 COURT COURT OF QUEEN'S BENCH OF ALBERTA  
 JUDICIAL CENTRE CALGARY

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 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 and DOMINION FINCO INC.

COM  
Justice Edisvik

APPLICANTS DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP

PARTY FILING THIS DOCUMENT DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP

DOCUMENT **APPLICATION**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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## NOTICE TO RESPONDENTS

This Application is made against you. You are a Respondent.

You have the right to state your side of this matter before the Justice.

To do so, you must be in Court when the Application is heard as shown below:

Date:	May 8, 2020
Where:	Calgary Courts Centre, 601 - 5th Street SW, Calgary (Virtual Courtroom Via Webex)
Before Whom:	The Honourable Madam Justice K.M. Eidsvik

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. Abridging, if necessary, the time for service of this Notice of Application and deeming service good and sufficient.
2. Directing and authorizing Dominion Diamond Mines ULC (“Dominion Diamond” or the “Company”) and its affiliates that are subject to these proceedings under the *Companies’ Creditors Arrangement Act* (“CCAA”) to promptly pay and reimburse the reasonable legal and financial advisory expenses incurred and to be incurred in these proceedings by the ad hoc committee (the “**Note Committee**”) of holders of Dominion Diamond’s 7.125% senior secured second lien notes (the “**Notes**”).
3. Such further and other relief, advice and directions as counsel may advise and this Honourable Court may deem just and appropriate.

**Grounds for making this Application:**

*Notes*

4. The Notes were issued in 2017 to largely fund the acquisition of Dominion Diamond by its current owner, the Washington Diamond Investments LLC (“**Washington Diamond**”), and are governed by a trust indenture dated as of October 23, 2017 (as amended or supplemented, the “**Trust Indenture**”) among Dominion Diamond, as successor to Northwest Acquisition ULC, and Dominion Finco Inc., as co-issuers, and Wilmington Trust, National Association, as trustee.
5. The Notes constitute senior secured second lien obligations of Dominion Diamond and certain of its affiliates, enjoying rights and privileges typically associated with secured debt indebtedness and ranking senior to the rights of various unsecured trade, surety bond and other creditors.
6. To secure the obligations under the Trust Indenture, the holders of Notes enjoy the benefit of security granted by Dominion Diamond, Dominion Diamond Canada ULC, Washington Diamond, Dominion Diamond Holdings, LLC (“**Dominion Holdings**”), and Dominion Finco Inc. (“**Dominion Finco**”) (collectively, the “**Diamond Group**”), including a second ranking security interest in all of the Diamond Group’s present and future personal property pursuant to various general security agreements and trademark and copy right security agreements
7. Washington Diamond is, directly or indirectly, the parent of all the other members of the Diamond Group.
8. On May 1, 2020, following commencement of these CCAA proceedings, the Diamond Group failed to make a semi-annual interest payment due in respect of the Notes. Accordingly, the amount owing to the Note holders is now in excess of the equivalent of CAD\$800,000,000 based on the exchange rate as of May 5, 2020.

*Note Committee*

9. The Note Committee is comprised of DDJ Capital Management, LLC, Barings LLC and Brigade Capital Management, LP. Collectively, the three members of the Note Committee hold or otherwise control more than 50% of the issued and outstanding US\$550,000,000 principal amount of Notes.

10. Quickly following its initial organization, the Note Committee sought to engage experienced Canadian restructuring counsel. It proceeded to interview, select and engage the law firm of Torys LLP and, pursuant to this engagement, has incurred and will continue to incur legal fees.
11. The Note Committee then proceeded to engaged experienced financial advisors. It interviewed, selected and engaged the firm of Houlihan Lokey, Inc. and, pursuant to this engagement, has incurred and will continue to incur financial advisory fees.
12. The Note Committee also engaged with representatives of Dominion Diamond and its affiliates to seek access to information and documents not previously made available to them. As an initial step in this regard, the Note Committee negotiated, settled and executed confidentiality agreements with Dominion Diamond and its representatives for the members of the Note Committee and its advisors.
13. The Note Committee has also, directly and through its advisors, engaged in multiple discussions with representatives of Dominion Diamond, the court-appointed Monitor, their respective advisors, and other major stakeholders in these proceedings.

#### ***Proposed DIP Funding***

14. Dominion Diamond and its affiliates who are subject to these proceedings have advised this Court and interested parties of their intention to seek debtor-in-possession (“**DIP**”) financing to fund its activities during the CCAA proceedings.
15. The Note Committee is of the view that any such DIP funding, and the terms and conditions attached thereto, may critically impact the direction of these proceedings and the ability of all stakeholders to ensure a fair and reasonable process and outcome. Notable preliminary concerns are raised by, among other things, the disclosure by Dominion Diamond of its receipt of a DIP funding proposal from its current equity owner that would be conditional on an agreement to essentially re-sell itself to an affiliate of the owner.
16. The proposed funding and re-purchase by equity owners who, by definition of these insolvency proceedings, no longer hold an economic interest in Dominion Diamond and its affiliates and who are in an advantaged position by virtue of their longstanding privileged access to confidential information, is highly unusual and can lead to abuses and inequities without proper checks and balances.
17. The Note Committee is working diligently to ensure that Dominion Diamond has DIP funding alternatives. In an effort to facilitate this objective, it has engaged with the Company and its advisors and has advised them of its intention to offer its own alternate DIP funding facility. Finalizing the terms of such an alternative DIP funding facility will be a substantial focus of the Note Committee’s activities in the near term before this Court approves any DIP facility for the Company.

#### ***Effective Participation and Substantial Contribution to the Within Proceedings***

18. As the largest creditors in these proceedings, the Note holders may be at risk of being most materially affected by them. Their proper representation is critical not only to their own interests, but to ensuring the fairness and integrity of these proceedings and all activities related to them.
19. These issues are heightened in this situation in view of the disclosure by the current ownership group, which no longer holds an economic interest in Dominion Diamond and its affiliate applicants

in these proceedings, that it intends to tie its proposed DIP funding to its re-purchase of Dominion Diamond and its affiliates on currently undisclosed terms as to the treatment of the Notes and other stakeholders. Particularly in a debtor-in-possession process, in which the very board of directors appointed by the current ownership group will be reviewing, assessing and selecting alternative paths for the Company, serious process and conflict of interest issues are raised.

20. The Note Committee is also starting from a disadvantaged position, not having been notified or consulted in advance about these proceedings and the issues that gave rise to them. Other persons, including the current ownership group, have had access to the Company's confidential information for a far longer period of time.
21. The logistical challenges inherent in the nature of ad hoc committees can also give rise to relative disadvantages. Multi-party groups need to overcome issues of coordination, information flow, and sharing of costs. For investment institutions of the kind represented by the members of the Note Committee, access to funding for the benefit of their managed funds and/or accounts can be a highly complex, administratively burdensome and uncertain task.
22. Dominion Diamond's disclosure reveals sufficient cash-on-hand to fund the Note Committee's reasonable out-of-pocket advisory expenses for the period up to the date on which the proposed DIP facility is approved by the Court.
23. In addition to the matters raised above, the Note Committee would be further disadvantaged if it was denied the requested funding even though a very large provision has been made in Dominion Diamond's cash flow projections for funding the costs of various other professionals.
24. The Note Committee is also well-positioned to make a critically important contribution to these proceedings and to a hopefully successful restructuring outcome. The Note Committee is currently intensively engaged in efforts to develop a DIP funding proposal to Dominion Diamond and is positioned to play a direct role in any potential restructuring or sales process.
25. The members of the Note Committee are sophisticated institutions whose direct engagement in these proceedings will be of extensive benefit to this Court and to all stakeholders.
26. The Note Committee is asking only for payment of its out-of-pocket advisory expenses up to the date on which the proposed DIP facility is approved by this Court, which is a critically important period of time that may determine the direction of these proceedings.
27. It is very important that the Note holders be effectively represented in this critical stage, and the limited time period inherently imposes parameters around the costs burden.
28. The funding of the Note Committee, in the manner requested, will promote the fairness and integrity of this process. Particularly given the uniquely sensitive issues being raised at an early stage in these proceedings, it would be of great benefit and enhance both the fact and appearance of fairness for involved parties and market observers.
29. Such further and other grounds as counsel may advise and this Honourable Court may permit.

**Material or evidence to be relied on:**

30. All pleadings and proceedings filed in the within action.

31. The Affidavit of Eric Hoff sworn May 6, 2020, to be filed.
32. The Affidavit(s) of Service, if any, to be filed.
33. The inherent jurisdiction of this Honourable Court to control its own process.
34. Such further and other material and evidence as counsel may advise and this Honourable Court may permit.

**Applicable rules:**

35. The *Alberta Rules of Court*, Alta Reg 124/2010.

**Applicable Acts and regulations:**

36. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended, and particularly s. 11 and s. 11.52 thereof.
37. Such other Rules, Acts and Regulations as counsel may advise and that this Honourable Court may permit.

**Any irregularity complained of or objection relied on:**

38. None.

**How the Application is proposed to be heard or considered:**

39. By way of oral submissions by counsel at an Application to be heard via Webex before the Honourable Madam Justice K.M. Eidsvik at 9:50 a.m. on May 8, 2020, or so soon thereafter as counsel may be heard.

**AFFIDAVIT EVIDENCE IS REQUIRED IF YOU WISH TO OBJECT.**

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.