

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

APPLICANT 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 THE DOMINION
RESIDUAL ASSET TRUST

DOCUMENT SEVENTEENTH REPORT OF FTI CONSULTING CANADA
INC., IN ITS CAPACITY AS MONITOR OF THE DOMINION
RESIDUAL ASSET TRUST

January 24, 2022

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SEVENTEENTH REPORT OF THE MONITOR

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INTRODUCTION

1. On April 22, 2020 (the “**Filing Date**”), Dominion Diamond Mines ULC (“**DDM**”), Dominion Diamond Canada ULC (“**DDCU**”), Dominion Diamond Delaware Company LLC (“**DDC**”), Washington Diamond Investments, LLC (“**WDI**”), Dominion Diamond Holdings, LLC (“**Dominion Holdings**”) and Dominion Finco Inc. (“**Finco**”) were granted an initial order (the “**Initial Order**”) commencing proceedings (the “**CCAA Proceedings**”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (“**CCAA**”). On September 18, 2020, Dominion Diamond Marketing Corporation (“**Dominion Marketing**”) was added as an applicant in the CCAA Proceedings. DDM, DDCU, DDC, WDI, Dominion Holdings, Finco and Dominion Marketing are collectively referred to herein as the “**Initial Applicants**”.
2. On November 24, 2021, DDM, WDI, Dominion Holdings and Dominion Marketing (collectively, the “**Dominion RVO Entities**”) were irrevocably cleansed of certain transferred liabilities and certain transferred property was vested out of the subject entities to be held in trust by the Monitor for the Applicants’ creditors (the “**Dominion Residual Asset Trust**” and, together with the Initial Applicants, the “**Applicants**” or “**Dominion**”).
3. The Initial Order appointed FTI Consulting Canada Inc. as Monitor in the CCAA Proceedings (the “**Monitor**”) and established a stay of proceedings (the “**Stay of Proceedings**”) until May 2, 2020. On November 9, 2021, this Honourable Court most recently granted an order extending the Stay of Proceedings with respect to the Applicants until and including March 4, 2022.
4. On December 11, 2020, this Honourable Court granted a sale approval and vesting order which approved an asset purchase agreement dated December 6, 2020 (the “**Ekati APA**”) in relation to a going concern restructuring transaction (the “**Ekati Transaction**”) between Dominion Holdings, DDM, DDCU, Dominion Marketing, DDC and Finco, as vendor, and DDJ Capital Management, LLC and Brigade Capital Management, LP, as purchasers (collectively, the “**Bidders**”). The Bidders designated Arctic Canadian Diamond Company

Ltd. (“**ACDC**”) as the purchaser under the Ekati Transaction. The Ekati Transaction was closed on February 3, 2021.

5. On January 27, 2021, this Honourable Court granted an order expanding the Monitor’s powers upon the closing of the Ekati Transaction (the “**EMP Order**”).
6. On February 3, 2021, the Monitor entered into a transition services agreement between ACDC, the administrative agent to the 1L Lenders (the “**Agent**”), and Dominion (the “**TSA**”) as contemplated by the EMP Order.
7. On November 16, 2021 this Honourable Court approved two transactions:
 - a) a transaction (the “**AVO Transaction**”) for DDMI to acquire the participating interest (the “**Diavik Joint Venture Interest**”) held by Dominion pursuant to the Diavik Joint Venture Agreement, Dominion’s share of certain diamond production held by DDMI as collateral for cover payments made by DDMI and cash collateral held by the First Lien Lenders as security for certain letters of credit; and
 - b) a reverse vesting order transaction (the “**RVO Transaction**”) for Washington to make a payment of US \$1.5 million to Dominion (the “**RVO Payment**”) and fund process costs of up to US \$250,000 upon the entry of a reverse vesting order (“**RVO**”). Upon closing of the RVO Transaction, the Dominion RVO Entities are irrevocably cleansed of certain transferred liabilities and certain transferred property is vested out of the subject entities to be held in the Dominion Residual Asset Trust.
8. The AVO Transaction closed on November 17, 2021 and the RVO Transaction closed on November 24, 2021. Pursuant to paragraph 13 of the RVO, the style of cause in these proceedings was changed (as is reflected on the cover page of this Seventeenth Report), effective at the time when the RVO Transaction closed.

9. Concurrent with this Seventeenth Report, the Monitor has filed an Application for the following:

a) a Distribution Order (“**Distribution Order**”):

- i. authorizing and directing the Monitor to distribute the proceeds of the estate of Dominion, net of costs to complete the administration of the estate, to Wilmington Trust, National Association, as the notes collateral agent (the “**2L Trustee**”) on behalf of the senior secured second lien noteholders (the “**Second Lien Lenders**”); and
- ii. upon making the distribution to the 2L Trustee, terminating the Dominion Residual Asset Trust; and

b) the CCAA Termination Order (“**Termination Order**”):

- i. approving the Seventeenth Report of the Monitor and the actions of the Monitor reported therein;
- ii. approving the fees and disbursements of the Monitor and its legal counsel;
- iii. terminating these CCAA Proceedings, upon the Monitor filing a certificate confirming that all remaining steps required to complete these CCAA Proceedings have been completed (the “**Monitor’s Termination Certificate**”);
- iv. upon filing of the Monitor’s Termination Certificate, discharging FTI as Monitor in the CCAA Proceedings and as Trustee of the Creditor Trust;
- v. providing certain releases in favour of the Monitor; and

- vi. authorizing the Monitor to destroy the Applicants' books and records no earlier than 30 days after filing the Monitor's Termination Certificate.

PURPOSE

10. The purpose of this Seventeenth Report of the Monitor is to provide this Honourable Court and the Applicants' stakeholders with information and the Monitor's comments with respect to:

- a) the activities of the Monitor since the Monitor's Sixteenth Report filed on October 6, 2021 (the "**Sixteenth Report**");
- b) post-closing matters with respect to the AVO Transaction;
- c) the Monitor's statement of receipts and disbursements from the date of the EMP Order to December 31, 2021;
- d) a summary of the Monitor's and its legal counsel's professional fees and disbursements during the CCAA Proceedings;
- e) the Monitor's application for the Distribution Order;
- f) the Monitor's application for the Termination Order; and
- g) the Monitor's conclusions and recommendations.

TERMS OF REFERENCE

11. In preparing this report, the Monitor has relied upon certain information (the "**Information**") including Dominion's unaudited financial information, books and records and discussions with senior management ("**Management**").

12. Except as described in this report, the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
13. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
14. Future oriented financial information reported to be relied on in preparing this report is based on Management's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
15. All capitalized terms that are used in this Seventeenth Report but not defined herein are intended to bear their meanings as defined in the Monitor's prior Reports.
16. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

ACTIVITIES OF THE MONITOR

17. The activities of the Monitor since the date of the Sixteenth Report have included:
 - a) preparing three Supplemental Reports to the Sixteenth Report with respect to the AVO Transaction and RVO Transaction and related matters;
 - b) closing the AVO Transaction on November 17, 2021;
 - c) closing the RVO Transaction on November 24, 2021;
 - d) attending to post-closing matters with respect to the AVO Transaction and the RVO Transaction;

- e) preparing updated cash flow forecasts and estimated net distributions;
- f) responding to information requests from counsel to the Second Lien Lenders;
- g) responding to information and documentation requests from DDMI;
- h) administering the Diavik Realization Assets and, subsequently, the Dominion Residual Asset Trust;
- i) administering payments in respect of estate costs;
- j) assigning Dominion Trademarks to ACDC; and
- k) preparing this Seventeenth Report.

AVO TRANSACTION POST-CLOSING MATTERS

18. The AVO Transaction was approved by this Honourable Court on November 16, 2021 and closed on November 17, 2021.
19. Upon closing, DDMI requested that the Applicants deliver to DDMI, among other things, the following:
- a) all books and records relating to the Acquired Assets (as defined in the AVO APA);
and
 - b) support for any Cumulative Canadian Development Expenses and Cumulative Canadian Exploration Expenses related to the Diavik Joint Venture Interest for the year ended December 31, 2020.

Books and Records

20. The Monitor and its counsel have reviewed the applicable sections of the Ekati APA and AVO APA and note the following:

- a) ACDC bought all of Dominion's "Documents" (including those of DDM, the operating entity that had interests in both the Ekati and Diavik mines) as part of the Ekati Transaction. "Documents" was broadly defined in the Ekati APA to include all books, records and other information regarding both the Ekati and Diavik mines. The Monitor is therefore of the view that ACDC bought all of Dominion's records relating to both the Ekati and Diavik mines existing prior to the Ekati Transaction, including the records that DDMI requested from the Monitor, after the AVO Transaction closed. ACDC has retained custody of all those records after the closing of the Ekati Transaction;
- b) the Acquired Assets as defined in the AVO APA do not include the books and records of Dominion. As such, it is the Monitor's view that there is no obligation under the AVO APA to deliver any records to DDMI; and
- c) the Monitor's obligations under the AVO APA with respect to its records are to:
 - i. provide DDMI with reasonable access to its records to facilitate DDMI's post-closing tax filings and royalty filings; and
 - ii. preserve all records held by the Monitor with respect to the Acquired Assets until an orderly wind-down of Dominion's operations has occurred. When the Monitor is of the view that such an orderly wind-down has occurred, it is required to give DDMI 20 days' written notice. By this Seventeenth Report and the accompanying application, the Monitor is giving DDMI and all stakeholders notice that it seeks authority to destroy the Applicants' books and records no earlier than 30 days after filing the Monitor's Termination Certificate.

21. Certain books and records in the possession of ACDC which contain confidential and commercially sensitive sales information may be required by the Government of the Northwest Territories (“GNWT”) when conducting its royalty audits of DDMI. The Monitor is working with ACDC and DDMI to establish a protocol whereby ACDC will send the confidential information directly to GNWT in order to facilitate the completion of its audit of DDMI, while preserving confidentiality over those ACDC records. As at the date of this report, the negotiation of that protocol is not complete, and the Monitor will update the Court on further progress, as appropriate.

Tax Pools

22. Section 11.6(g) of the AVO APA provides that, if requested by DDMI:

- a) the Applicants and DDMI shall jointly file an election described in para 66.7(e) of the Income Tax Act and corresponding provincial/territorial legislation, in the prescribed manner, and within the time limits set out in that section, in respect of the “Canadian resource property” acquired by DDMI under the AVO Transaction; and
- b) the Applicants shall execute and file the designation contemplated by subsection 66.7(12.1) of the Income Tax Act so as to designate in favour of DDMI the maximum amount of successor pools reasonably available pursuant to the Income Tax Act, provided that such filings would not give rise to any tax liability to the Applicants.

23. DDMI has requested support for any Cumulative Canadian Development Expenses and Cumulative Canadian Exploration Expenses related to the Diavik Joint Venture Interest for the year ended December 31, 2020 in order to assist with such an election.

24. The Monitor, where available and appropriate, has been providing information to DDMI to assist with royalty and tax filings, but its records are limited as the Applicants sold all of their records to ACDC. The Monitor has had to rely upon ACDC’s cooperation to access

many of the records requested by DDMI, including those requested with respect to the Cumulative Canadian Development Expenses and Cumulative Canadian Exploration Expenses related to the Diavik Joint Venture Interest for the year ended December 31, 2020. ACDC, having ownership over these requested documents, has declined to provide them to the Monitor for delivery to DDMI, because of confidentiality and the commercial sensitivity of the records. As such, the Monitor has not provided the requested records to DDMI.

25. The Monitor notes that section 13.14(h) of the Ekati APA provides that, if requested by ACDC, in its sole discretion, (i) one or more of DDM and DDCU and Purchaser shall jointly execute and file an election described in paragraph 66.7(7)(e) of the Tax Act and the corresponding provisions of any applicable provincial/territorial legislation, in the prescribed manner and within the time limits set out in that section, in respect of the “Canadian resource property” (as that term is defined in subsection 66(15) of the Tax Act) acquired by Purchaser from DDM or DDCU, as applicable, under this Agreement and (ii) DDM or DDCU, as applicable, shall execute and file the designation contemplated by subsection 66.7(12.1) of the Tax Act (within the time and in the manner prescribed therefor by the Tax Act) so as to designate in favour of Purchaser the maximum amount of successored pools reasonably available pursuant to the Tax Act, provided that any such filings would not give rise to any Tax Liability to DDM or DDCU, as applicable. The Monitor and its legal counsel have reviewed the Ekati APA and have concluded that ACDC purchased all of Dominion’s Cumulative Canadian Development Expenses and Cumulative Canadian Exploration Expenses, which includes the resource expenses incurred with respect to both the Ekati mine and the Diavik mine.

26. ACDC has requested that the Monitor jointly file such an election on behalf of the Applicants and, accordingly, the Monitor plans to file such an election.

STATEMENT OF RECEIPTS AND DISBURSEMENTS

27. The Applicants’ actual cash flows from the date of the EMP Order to December 31, 2021 are summarized as follows:

Statement of Receipts and Disbursements
For the Forty-Eight Week Period Ended December 31, 2021
(CAD thousands)

Receipts	
Sales Proceeds	\$ 376
RVO Process Cost Payment	317
RVO Payment	1,902
Total Receipts	2,595
Disbursements	
Professional Fees	2,083
Other	80
Total Disbursements	2,162
Net Change in Cash	433
Opening Cash	1,598
Ending Cash	\$ 2,031

- a) Sales Proceeds relate to amounts held back by the Monitor from diamond sales proceeds distributed to the Agent in order to fund the CCAA Proceedings pending the completion of the AVO Transaction;
- b) the RVO Process Cost Payment was made by Washington to the Applicants upon the close of the RVO Transaction, to fund reasonable and documented professional fees relating to the execution of the RVO Transaction;
- c) the RVO Payment (US \$1.5 million) was made by Washington to Dominion upon close of the RVO Transaction; and
- d) Professional Fees include expenses incurred with respect to legal counsel to the First Lien Lenders, the Monitor and legal counsel to the Monitor.

28. As at December 31, 2021, the ending cash balance was approximately \$2.0 million.

SUMMARY OF PROFESSIONAL FEES

29. The professional fees and disbursements of the Monitor and its legal counsel for the period April 22, 2020 to December 31, 2021 are set out in the table below:

Summary of Professional Fees for the Monitor and its Legal Counsel For the period April 22, 2020 to December 31, 2021 (CAD thousands)					
Firm	Fees	Disbursements	GST	Total	
FTI Consulting Canada Inc.	\$2,764	\$ 126	\$145	\$3,035	
Bennett Jones LLP	873	7	44	923	
Vinson & Elkins LLP	43	-	2	45	
McLennan Ross LLP	2	1	-	3	
Total Professional Fees	\$3,681	\$ 134	\$191	\$4,005	

30. The Monitor considers that the fees and disbursements charged by its legal counsel have been necessarily incurred and that the hours and rates charged are fair and reasonable in the circumstances.

31. Copies of the invoices of FTI and its legal counsel are available to this Honourable Court upon request.

32. The Monitor has accrued fees of approximately \$50,000 and Bennett Jones LLP has accrued fees of approximately \$50,000 as at January 17, 2022 and each anticipate having additional fees and disbursements of up to \$100,000 to complete the administration of the CCAA Proceedings.

DISTRIBUTION ORDER

33. As of January 17, 2022, the remaining property of the Applicants is limited to the cash held in the Dominion Residual Asset Trust totalling approximately \$2.0 million. By the time the estate is wound up, the Monitor will have expended all the funds in the Diavik

Realization Account and the Wind-up Account (as provided for in the Ekati APA and made available to the Monitor when the Ekati Transaction closed).

34. The Monitor’s legal counsel has completed an independent review of the security held by the Second Lien Lenders over the property of the Applicants and has determined it to be valid and enforceable, subject to standard qualifications.
35. The Monitor is seeking the Distribution Order to obtain authorization and direction to distribute the cash, net of costs to complete the administration of the estate, to the 2L Trustee, as the notes collateral agent for the Second Lien Lenders.
36. The estimated net proceeds available for distribution to the Second Lien Lenders are set out in the table below:

Estimated Net Distribution <i>(CAD thousands)</i>	
Net Cash on Hand	\$ 2,031
Less:	
Repayment of RVO Process Costs	106
TSA Payment to ACDC	115
Post-filing Accounts Payable	101
Accrued Professional Fees and Estimated Fees to Completion	300
Estimated Net Cash Available for Distribution to the Second Lien Lenders	\$ 1,409

- a) the RVO Term Sheet provided that any unused portion of the RVO Process Costs (which could only be spent to analyze, negotiate and obtain Court approval for the RVO Transaction) would be returned to Washington. The Monitor and its legal counsel did not require the full amount of the RVO Process Costs for these tasks, and the Monitor will be returning \$106,000 of the RVO Process Costs to Washington;
- b) pursuant to the TSA, Dominion was required to pay reasonable, agreed upon amounts to ACDC with respect to services required by the Monitor and provided

by ACDC with respect to the administration of Dominion's estate, after the closing of the Ekati Transaction. ACDC has estimated that the cost of such services is \$115,000. The Monitor and ACDC are in discussions to determine the final, agreed upon amount. For illustrative purposes, the Monitor has included the full estimated amount of \$115,000 in its calculation; and

c) the Post-filing Accounts Payable include unpaid professional fee invoices.

37. ACDC has advised the Monitor that it is entitled to certain additional claims against the estate, including claims to reimbursement of its legal counsel's post-closing fees, pursuant to provisions of the Ekati APA. The Monitor is in discussions with ACDC respecting these additional claims, and will report on the outcome of those discussion in due course as necessary. The estimated net distribution presented above does not provide for any payment in respect of these claims and any amount paid to ACDC would result in a corresponding reduction to the net distribution to the Second Lien Lenders.

COMPLETION OF THE CCAA PROCEEDINGS

38. The remaining steps for the Monitor to complete in these CCAA Proceedings include, among other things:

- a) settling all remaining post-filing liabilities and estate costs;
- b) administering one or more distributions to the Second Lien Lenders pursuant to the Distribution Order, should it be granted. The Monitor intends to make one distribution immediately and a possible second distribution after paying all costs to conclude the wind-up of the estate;
- c) attending to any outstanding post-closing matters with respect to the Ekati Transaction, AVO Transaction and RVO Transaction, including making the joint tax election with ACDC;

- d) completing any remaining administrative or statutory requirements;
- e) filing the Monitor's Termination Certificate; and
- f) destroying the Applicants' books and records no earlier than 30 days after filing the Monitor's Termination Certificate, subject to preserving any records as required by statute.

CONCLUSIONS AND RECOMMENDATIONS

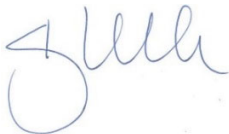
39. The distribution of the Applicants' remaining net cash to the Second Lien Lenders will complete the Monitor's administration of the Dominion Residual Asset Trust and bring the CCAA Proceedings to a conclusion.

40. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court grant the following orders:

- a) the Distribution Order; and
- b) the Termination Order.

All of which is respectfully submitted this 24th day of January, 2022.

FTI Consulting Canada Inc.
in its capacity as Monitor of the Applicants



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Senior Managing Director



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