



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

JS  
Jan. 27, 2021  
Justice Eidsvik

AND IN THE MATTER OF A PLAN OF 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  
MARKETING CORPORATION

DOCUMENT THIRTEENTH REPORT OF FTI CONSULTING CANADA  
INC., IN ITS CAPACITY AS MONITOR 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  
MARKETING CORPORATION

**January 25, 2021**

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**THIRTEENTH REPORT OF THE MONITOR**

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## INTRODUCTION

1. On April 22, 2020, Dominion Diamond Mines ULC (“**Dominion Diamond**”), Dominion Diamond Canada ULC (“**DDCU**”), Dominion Diamond Delaware Company LLC (“**DDC**”), Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC (“**Holdings**”) and Dominion Finco Inc. (“**Finco**” and, collectively, “**Dominion**” or the “**Applicants**”) 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. On September 18, 2020, Dominion Diamond Marketing Corporation was added as an applicant in the CCAA Proceedings.
2. 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**”) in favour of the Applicants until May 2, 2020. On December 11, 2020, this Honourable Court granted an order extending the Stay of Proceedings to March 1, 2021.
3. On November 4, 2020 this Honourable Court granted an order (the “**Monetization Order**”) approving a process for Diavik Diamond Mines (2012) Inc. (“**DDMI**”) to monetize certain diamond production held by DDMI as collateral for cover payments made by DDMI pursuant to the Diavik Joint Venture Agreement.
4. On December 6, 2020 Dominion Holdings, Dominion Diamond, DDC, Dominion Marketing, DDCU and Finco (collectively, the “**Sellers**”) reached an agreement with DDJ Capital Management, LLC (“**DDJ**”) and Brigade Capital Management, LP (together with DDJ, the “**Bidders**”) for the purchase and sale of certain of the Sellers’ assets pursuant to an asset purchase agreement (the “**APA**”). Also, on December 6, 2020, the Bidders, Western Asset Management Company, LLC and the senior secured first lien lenders (the “**First Lien Lenders**”) entered into a Mutual Support Agreement (the “**MSA**”) with respect to the transaction contemplated by the APA (the “**Transaction**”).
5. On December 11, 2020, this Honourable Court granted a sale approval and vesting order (the “**Approval and Vesting Order**”) approving the Transaction and vesting the purchased

assets in one or more entities duly designated by the Bidders. The Monitor is advised that Arctic Canadian Diamond Company Ltd. is the purchaser designated by the Bidders (the “**Purchaser**”).

6. On January 20, 2021, the Applicants filed Notices of Application for the following orders:
  - a. an order (the “**Assignment Order**”) assigning the rights and obligations of the Applicants under certain agreements which contain provisions restricting their assignment to the Purchaser, subject to the payment of applicable monetary defaults (“**Cure Amounts**”); and
  - b. an order (the “**Enhanced Monitor’s Powers Order**”) expanding the powers of the Monitor upon closing of the Transaction.
7. On January 21, 2021, the Applicants filed a Notice of Application for an order (the “**Royalties Order**”) directing the payment or entitlement to payment of royalty amounts claimed by Sandstorm Gold Ltd. (“**Sandstorm**”) and Christopher Jennings (“**Jennings**”) pursuant to the Royalty Agreements, respectively, and as defined below, to be paid from the Diavik Realization Assets (as defined in the APA).
8. The purpose of this Thirteenth 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 Applicants’ request for the Assignment Order;
  - b. the Applicants’ request for the Enhanced Monitor’s Powers Order;
  - c. the Applicants’ request for the Royalties Order; and
  - d. the Monitor’s conclusions and recommendations.

## TERMS OF REFERENCE

9. 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**”).
10. 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.
11. 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.
12. 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.
13. All capitalized terms that are used in this Thirteenth Report but not defined herein are intended to bear their meanings as defined in the Monitor's prior Reports.
14. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

## ASSIGNMENT ORDER

15. The Applicants are seeking the Assignment Order to assign the rights and obligations of the Sellers under certain contracts that require counterparty consent for assignment to the Purchaser (the “**Restricted Assigned Contracts**”) and any additional restricted contracts that are not specifically set out in the order (the “**Additional Restricted Assigned Contracts**”), notwithstanding the restrictions on assignment contained in such contracts.

16. The Assignment Order allows the Applicants to provide parties to Additional Restricted Assigned Contracts with notice of the assignment of their contract and the related Cure Amounts, including following the Transaction closing date. The counterparties will then have up to seven days to object to the assignment (the “**Objection Deadline**”) or the applicable Cure Amounts by providing written notice to the Monitor, the Applicants and the Purchaser (an “**Objection Notice**”).
17. If the counterparty to an Additional Restricted Assigned Contract does not provide an Objection Notice by the Objection Deadline, the Sellers shall be authorized to assign such Additional Restricted Assigned Contract to the Purchaser, subject to payment of the applicable Cure Amount.
18. If a counterparty does file an Objection Notice by the Objection Deadline, the Sellers are authorized to bring an application before this Court for the resolution of such objection.
19. The Restricted Contracts are summarized in the table below:

Agreement Counterparty	Agreement Description	Agreement Date	Cure Amount
1012986 B.C. Ltd	Core Zone Joint Venture Agreement	17-Apr-97	\$ -
1012986 B.C. Ltd	Reclamation Liability Agreement	28-Oct-19	\$ -
1012986 B.C. Ltd	Sales Representation Agreement	21-Dec-02	\$ -
NorthwesTel	Tariffed Services Agreement - Enterprise Performance	31-May-17	\$ -
Livingston International Inc.	Corporate Brokerage Agreement	1-Jan-19	\$ -
Bradley Air Services Limited (D/B/A/ First Air)	Agreement for the Supply of Aircraft Services	13-Jul-15	\$ -
Caterpillar Financial Services	Financing Lease Agreement	19-Jan-18	\$ -
Somerset Equipment Finance Ltd	Capital Lease Agreement	18-Jun-18	\$ -

20. With respect to the Corporate Brokerage Agreement dated January 1, 2019 between Dominion and Livingston International Inc. (“**Livingston**”), the Monitor understands that Livingston is not objecting to the assignment of that contract. Livingston has advised that regulatory requirements of the Canada Border Services Agency (“**CBSA**”) require that the Purchaser (as the entity for whom Livingston would be acting in connection with customs

import entry pursuant to the terms of the Customs Brokerage Agreement) must sign a new general agency agreement in the form prescribed by the CBSA, failing which, Livingston could not legally comply with the terms of the Corporate Brokerage Agreement under the relevant customs laws or regulations). The Monitor understands that Livingston and the Purchaser are in direct communication regarding the Customs Brokerage Agreement.

21. Based on the Monitor's understanding of discussions that have occurred with the counterparties to the Restricted Assigned Contracts since Dominion filed and served its application for the Assignment Order, the Monitor is not aware of any objections by any of the counterparties to the assignment of the Restricted Assigned Contracts.

22. The Monitor's comments with respect to the Applicants' application for the Assignment Order are as follows:

- a. the assignments of the Restricted Assigned Contracts and any Additional Restricted Assigned Contracts are required to complete the Transaction;
- b. the Applicants report no Cure Amounts owing in respect of any of the Restricted Assigned Contracts and any Additional Restricted Assigned Contracts will only be assigned subject to payment of any Cure Amounts;
- c. the objection provisions provide counterparties to any Additional Restricted Assigned Contracts with a reasonable process and period of time to object to the assignment of their contract or related Cure Amounts if the assignment or Cure Amount are in dispute;
- d. the US\$70 million of new money to be provided to the Purchaser under the Transaction is expected to provide the Purchaser with the financial ability to perform the obligations under the Restricted Assigned Contracts and any Additional Restricted Assigned Contracts following the closing of the Transaction;

- e. the parties to the Restricted Assigned Contracts and any Additional Restricted Assigned Contracts will not be materially prejudiced; and
- f. none of the Restricted Assigned Contracts have been entered into after the commencement of the CCAA Proceedings, are eligible financial contracts or are collective agreements.

### **ENHANCED MONITOR'S POWERS ORDER**

- 23. Upon closing of the Transaction, the Applicants will have sold substantially all of their operating business and will have assigned all of their rights and interests in relation to recoveries from their Diavik Joint Venture Interest. The Applicants have advised the Monitor that the officers and directors of the Applicants are planning to resign at that time.
- 24. The enhanced powers and protections proposed to be afforded to the Monitor pursuant to the proposed form of Enhanced Monitor's Powers Order will allow for the estate of the Applicants to be wound down and the Applicants to meet their remaining obligations under the Transaction, the Approval and Vesting Order and the Monetization Order.
- 25. The Monitor has held preliminary meetings with Management and discussions with stakeholders to discuss the expanded role, including with the First Lien Lenders and the Purchasers, who are each supportive of the Application for the Enhanced Monitor's Powers Order.

### **ROYALTIES ORDER**

- 26. The Royalties Order relates to the following royalty agreements:
  - a. the Repadre Royalty Agreement among Dominion Diamond, DDMI, and Sandstorm, each as successors in interest, dated as of September 30, 2003 (the "**Sandstorm Royalty Agreement**"); and

- b. the Jennings Royalty Agreement among Dominion Diamond, DDMI and Jennings, dated as of September 30, 2003 (the "**Jennings Royalty Agreement**").

27. The proposed form of Royalties Order provides that:

- a. the Approval and Vesting Order, the Transaction, and the Transaction Documents (as defined in the Approval and Vesting Order) shall not discharge either the Sandstorm Royalty Agreement or the Jennings Royalty Agreement (collectively, the "**Royalty Agreements**");
- b. each of the Royalty Agreements, including Dominion Diamond's obligations thereunder, shall remain in full force and effect as against Dominion Diamond and DDMI;
- c. the assignment of the Diavik Realization Assets (as defined in the APA) pursuant to the Approval and Vesting Order and the Transaction Documents shall be subject to and net of the royalties payable under each of the Royalty Agreements;
- d. the royalties payable under each of the Royalty Agreements (in each case as calculated in accordance with the terms thereof) shall be paid in full to each of Sandstorm and Jennings, respectively, by or on behalf of Dominion Diamond, including from the Diavik Realization Assets. For greater certainty, the Purchaser and the First Lien Lenders shall not be entitled to receive any Diavik Realization Assets without prior payment of the royalties in favour of each of Sandstorm and Jennings in accordance with the respective Royalty Agreements.

28. The Royalty Order is a result of a consensual agreement between Sandstorm, Jennings, the First Lien Lenders, and the Bidders (collectively, the "**Affected Parties**"), with respect to payment or entitlement to payment of the royalty amounts to each of Sandstorm and Jennings from the Diavik Realization Assets.

## MONITOR'S CONCLUSIONS AND RECOMMENDATIONS

29. The Assignment Order is required to facilitate the completion of the Transaction for the benefit of the Applicants and their stakeholders.
30. The Enhanced Monitor's Powers Order is appropriate in the circumstances and will provide a sufficient level of oversight over the Applicants' remaining interests and obligations.
31. The Royalties Order has been agreed upon among the Affected Parties.
32. Based on the forgoing, the Monitor respectfully recommends that this Honourable Court grant the following orders:
- a. the Assignment Order;
  - b. the Enhanced Monitor's Powers Order; and
  - c. the Royalties Order.

\*\*\*\*\*

All of which is respectfully submitted this 25<sup>th</sup> day of January, 2021.

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



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Senior Managing Director



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