

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.

May 29/20
J. Eidsvik

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 **BENCH BRIEF**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
Torys LLP
4600 Eighth Avenue Place East
525 - Eighth Ave SW
Calgary, AB T2P 1G1
Attention: Kyle Kashuba
Telephone: + 1 403.776.3744
Fax: +1 403.776.3800
Email: kkashuba@torys.com
File No. 41349-0001

PART I – OVERVIEW

1. The ad hoc committee (the “**Note Committee**”) comprised of DDJ Capital Management, LLC, Barings LLC, and Brigade Capital Management, LP, holds more than 50% of the 7.125% secured second lien notes (the “**Notes**”) of Dominion Diamond Mines ULC (“**Dominion Diamond**” or the “**Company**”) and is representing the interests of Note holders collectively owed the equivalent of approximately C\$800,000,000, being by far the largest creditor group in these proceedings under the *Companies’ Creditors Arrangement Act* (“**CCAA**”).¹
2. The Notes were issued in 2017 to largely fund the US\$1.2 billion (approximately C\$1.68 billion at current exchange rates) acquisition of the Company by the current ownership group. The Company has been impacted by highly adverse, but temporary, events. These include unprecedented worldwide health measures which have shut down the international diamond sales market and the concurrent decision by the Company’s joint venture partner to maintain full operations at the Diavik Mine while numerous other companies were shutting down mining operations.²
3. These extraordinary short-term events have adversely affected countless businesses but do not alter the true long-term value of the Company’s property and assets. As is the case across the spectrum of other businesses impacted by these extraordinary times, it is inappropriate to embark on “fire sales” that severely prejudice some stakeholders while enriching others.
4. The Company’s early announcement at the outset of these CCAA proceedings that it was assessing a related party offer from its current ownership group raised profound concerns regarding conflicts of interest and potential manipulation of these proceedings. The current ownership group was offering interim funding on the condition that the Company agree to re-sell its property and assets to the same ownership group. On the Company side of things, this offer was being assessed by directors and representatives who had been hand-picked by the current ownership group looking to benefit from the transaction.

¹ Affidavit of Eric Hoff sworn May 6 (“**Hoff Affidavit**”), at para 4.

² Affidavit of Kristal Kaye sworn April 21, 2020 (“**Kaye Affidavit**”), at paras 12-16.

5. This scenario also raised the prospect that the current ownership group would be tempted to exploit the CCAA proceedings by orchestrating a transaction that, in the end analysis, would result in the out-of-the-money equity owner retaining full ownership of the same property and assets while selectively shedding itself of the Note holders' debt interests.
6. In order to address these concerns, the Note Committee worked judiciously to develop and deliver a US\$60 million interim funding offer on highly favourable terms to the Company. Among other things, the Note Committee's offer was not conditional on the Company having to make any collateral transactional commitments, whether to sell its property and assets or otherwise. The Note Committee's funding proposal allowed the Company and all stakeholders the time and opportunity to get past the current challenging times and explore all alternatives in an orderly and constructive manner. It stood on its own merits.
7. The Note Committee delivered its interim funding offer to the Company and communicated its willingness to be responsive to questions or issues. The Note Committee was not notified of any such deficiencies regarding its funding offer. It was minimally engaged by the Company team before the Company's announcement that it was preferring the highly conditional offer of its ownership group.
8. It appears that, rather than engaging the Note Committee and its representatives in fulsome discussion on the Note Committee's interim funding offer, the Company team dedicated its time and resources to finalizing arrangements with the current ownership group and co-opting the support and participation of the Company's first lien lenders and other stakeholders so as to isolate the Note holders and create the impression of consensus support for a highly flawed series of transactions. The Note Committee was not consulted about those arrangements, and its interests are nowhere reflected in their end product.
9. It is inequitable and unfair to undertake a "fire sale" process in these extraordinarily adverse but transient times. Deferring a sales process would be much more likely to result either in the realization of true value on the Company's property and assets and could avert the necessity of a sale altogether. Already, there are early signs of improving market conditions. In the case of the Company, dramatically positive impacts would be experienced simply by the re-opening of the international diamond sales market, which appears imminent.

10. Beyond this, the terms of the stalking horse bid for which the Company is seeking approval validate the warnings and concerns which the Note Committee has been strongly expressing. The proposal would leave virtually all of the Company's stakeholders other than the Note holders substantially uncompromised. Conversely, the Note holders are facing the potential wholesale eradication of their C\$800,000,000 debt investment. Meanwhile, the current ownership group, rather than losing their equity interests as is almost always the case in insolvency proceedings, would be enriched by retaining ownership of the Company's property and assets while reaping the bonanza of shedding a very large amount of debt.
11. While it would be most appropriate to defer approval of any potential sales process and stalking horse bid, if they are to be entered into it is essential to the fairness and integrity of these proceedings that the Court intervene to ensure that their terms and conditions are just, fair and equitable. The many warning signs of the present circumstances warrant close judicial oversight and limited deference to the Company team.
12. The Notes are now facing a situation, under the Company's proposed sale and investment solicitation process (the "SISP"), Interim Financing Term Sheet ("DIP Term Sheet"), and stalking horse bid (the "Stalking Horse Bid") that could potentially see their interests in the Company eliminated. The purchase price consideration in the Stalking Horse Bid is set at a level which precisely leaves other stakeholders whole but wipes out the Note holder interests.
13. Although the Company is arguing that the Stalking Horse Bid sets a "floor price", it also communicates publicly a perceived value threshold that serves to set an artificially low "ceiling price". In any case, true value can emerge from the Company's proposed SISP only if it is conducted in a fair, effective and transparent manner conducive to the realization of the best value for the Company and its property and assets.
14. The Note Committee is therefore, at a minimum, seeking specific revisions to the proposed SISP and DIP Term Sheet that would bring more transparency and integrity to the process and would serve to somewhat level the playing field that is now heavily tilted in favour of the current ownership group.

15. The proposed addenda and changes³ to the SISP and DIP Term Sheet put forward by the Note Committee will also serve to provide certain checks and balances on the process, and will add much needed oversight to the process.
16. Capitalized terms used but not otherwise defined in this Bench Brief shall have the meaning given to such terms in the materials previously filed by the Note Committee, the Diamond Group and the Monitor in these proceedings.

PART II - FACTS

17. The Notes were issued in 2017 to largely fund the acquisition of Dominion Diamond by its current owner, Washington Diamond Investments LLC, 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. Their C\$800,000,000 was used to fund a US\$1,200,000,000 purchase of Dominion Diamond and its affiliates less than 3 years ago.
18. Since the 2017 acquisition, there have been no fundamental changes to the Company, its property and assets, and, other than the current short-term worldwide events precipitated by pandemic measures, to the Company’s industry. Even so, when the value figures reflected in the 2017 acquisition are compared to those reflected in the Stalking Horse Bid, the deficiencies of the Stalking Horse Bid become patently evident. This is further reflected simply by comparing the value of the Company’s current diamond inventory⁴, let alone the value of its interests in the Ekati and Diavik mines, to the proposed purchase price in the Stalking Horse Bid.
19. The Notes constitute 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, bond and other creditors.⁵

³ See Appendix “A”.

⁴ Kaye Affidavit, at para 125.

⁵ Hoff Affidavit at paras 7-8.

20. To secure the obligations under the Trust Indenture, the Note holders enjoy the benefit of security granted by Dominion Diamond and various of their affiliated companies (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 copyright security agreements.⁶
21. As is well known to the stakeholders in these proceedings, Washington Diamond is, directly or indirectly, the parent of all the other members of the Diamond Group.⁷
22. Dominion Diamond and its affiliates who are subject to these proceedings advised this Court and interested parties of their intention to seek debtor-in-possession (“**DIP**”) financing to fund its activities during these proceedings. The Note Committee’s DIP proposal was not accepted, and the DIP proposal of Washington Diamond is now before the Court for its approval.
23. From its initial involvement in these CCAA proceedings, the Note Committee has cautioned this Court that any DIP funding, and the terms and conditions attached thereto, could critically impact the direction of these proceedings and the ability of all stakeholders to ensure a fair and reasonable process and outcome. It has also cautioned that “red flags” were raised by, among other things, the disclosure by Dominion Diamond that it was assessing a DIP funding proposal received from its current ownership group that would be conditional on the Company agreeing to essentially re-sell its property and assets to the same ownership group.
24. Having now seen the Company’s proposed Stalking Horse Bid, DIP Term Sheet and SISP, it is evident that the direction of these proceedings, as unfortunately predicted by the Note Committee, is being manipulated towards the eradication of the C\$800,000,000 Note holder interests if the agenda of the current ownership group is allowed to play out without the Court’s intervention to foster fairness and equity.

PART III - ARGUMENT

⁶ *Ibid.*

⁷ Kaye Affidavit at para 34 and at Exhibit A.

25. The Note Committee repeatedly advised this Court and other stakeholders of its serious concerns with respect to the proposed related party transactions from the outset of its involvement in these proceedings. These concerns are now glaringly validated in the Company's proposed SISP, Stalking Horse Bid and DIP when viewed as a whole.
26. In these unprecedented economic times, amidst the backdrop of the COVID-19 pandemic, Dominion Diamond is putting forward an extremely expedited SISP that seems orchestrated to facilitate the surgical removal of the interests of the Note Committee and all Note holders.
27. The Note Committee's proposed addendum and revisions to the SISP are designed to address deficiencies and oversights in the proposed process, in a minimal fashion. These proposed addendums and revisions are summarized as follows:

i. Paragraph 41(a)-(g) of the SISP

28. Paragraph 41(a) is needed to impose a level of reasonable obligation on the Company and its advisors to foster a competitive bidding process with a view to achieving the highest and best offer for the Company's assets. This provision simply expressly confirms that the taking of steps that would always be customary and expected in a sales process of this kind, and a reasonable measure of transparency on these efforts.
29. Without the express requirement to actively seek out and facilitate the participation of potential bidders, there are no assurances whatsoever that the Company team will take these proper steps. Among other things, there is no current incentive on the part of the SISP Advisor to work towards maximization of value because the SISP Advisor's compensation is not tied to value realization and is simply triggered by the occurrence of any transaction, however inadequate and improvident it might be.
30. Paragraph 41(b) is intended to minimally address the patent conflicts inherent in the proposed process. The Stalking Horse Bidder, Washington Diamond, is directly or indirectly the parent of all the other members of the Diamond Group. The Washington Group is indirectly controlling these proceedings through its various appointees and hirings at the Company.

31. The integrity of these CCAA proceedings could be seriously undermined by not addressing these patent conflicts. Currently, the SISP contemplates carriage by the Company and its advisors and only consultation obligations with respect to the Monitor..
32. The Note Committee is seeking basic checks and balances in paragraph 41(b). As a starting point, any exercise of decision-making authority on the part of the Company should be made by a person or persons who certify to the Monitor that they have no conflicts of interest in the subject matter or relationships with the Stalking Horse Bidder, other bidders, or associated entities. Second, the Monitor should be afforded not only “consultation” privileges but the authority and obligation to “consent” to the exercise of any decision-making authority so that the process has appropriate independent control and oversight.
33. It is a fundamental hallmark of fair and balanced sales processes that all bidders are allowed the opportunity to compete on a level playing field. To achieve that goal, all bidders must be granted the same level, timeliness and quality of information and access. The combination of the Stalking Horse Bid and the DIP Term Sheet grant to the current ownership group a wide array of preferential information and access from the moment that the Court approves these arrangements. The Note Committee submits that it is only fundamentally fair and equitable that all interested purchasers and investors be provided with equal information and access on the basis set out in paragraph 41(c).
34. The Stalking Horse Bidder has been afforded a variety of channels of access to information, including access to third parties, in the proposed agreements. Aside from these currently proposed arrangements, the Stalking Horse Bidder has also had the benefit of having been closely involved in controlling the activities of the Company since 2017. It is imperative that these proceedings go forward with a simple and unassailable principle that all other bidders must be afforded information and access which is no less complete and timely than that which is given to the Stalking Horse Bidder.
35. If this simple principle is not recognized, the result may be that any person who submits a bid will be required to make it conditional on a variety of matters, including appropriate arrangements with government authorities, business partners, and employee representatives. Meanwhile, the Stalking Horse Bidder would be diligently working towards skewing the playing field by engaging with all such parties and locking up

arrangements. The competing other bids would then face the double penalty of possibly being branded as inferior because of their relative conditionality.

36. With respect to paragraph 41(d) proposed by the Note Committee, there is currently a requirement that bidders in the SISP meet the Minimum Bid Price, but there is lack of clarity going forward as to what that price is. This provision is intended to provide clear communication regarding the Stalking Horse Bid's cash and credit bid offering so that competing bidders do not face the risk of being branded as non-qualified simply due to not having the information necessary to meet the qualifications.
37. Paragraph 41(d) also ensures that there is some requirement on the part of the Stalking Horse Bid, which is currently non-binding, to become definitive and binding in a manner similar to the obligation imposed on all other competing bidders. There is also currently in the SISP only an obligation to disclose the non-redacted Stalking Horse Bid, but not the eventual definitive documents.
38. Paragraph 41(f) reflects a basic requirement that the Stalking Horse Bidder should not be permitted to exercise any undue influence on the SISP. This is necessary and appropriate given the inherent conflicts and imbalances, and a check post should be established for a retrospective review if and when the Stalking Horse Bid becomes a Successful Bid.
39. Paragraph 41(g) proposed by the Note Committee simply proposes a straightforward principle that all persons can return to the Court for relief associated with the SISP, and that the Court retains discretion to revisit the SISP in light of further information, events and developments. Judicial oversight is always important in processes of this kind, but especially so in the peculiar facts of this case.

ii. Paragraph 38 of the SISP

40. With respect paragraph 38 of the SISP, there is a notable absence of any express reference to the credit bidding rights of the Note holders. Credit bidding is a judicially recognized and substantiated right on the part of secured creditors. In the current circumstances, it may prove essential to the protection of the Note holders' interests. Clarity is also required in paragraph 38 to ensure that any requirement to pay out senior liens is limited to the property

which is the subject matter of the bid and that the threshold requirement be no greater than is contemplated for the Stalking Horse Bidder.

iii. Dates Included in the SISP

41. With respect to the requested changes to dates, the Note Committee maintains that we should not be embarking on a sales process at this time given the extraordinary but temporary surrounding circumstances but, if one is to be initiated, it should afford as much time and opportunity as is possible to realize true long-term value. To that end, an extension of 2 weeks is sought to all material deadlines.
42. This limited extension may prove critical to having a healthy, vigorous process in what is already a compacted time frame. All information put forward by the Company suggests that it will have sufficient funding and capability to abide by these new timelines. Importantly, the back end deadline for completing a transaction, being October 31, 2020, is not being extended.

iv. Second Paragraph of the SISP

43. The revision to the second paragraph of the SISP simply provides that, if its members are not active bidders in the SISP at the time, the Note Committee should be given the basic right of consultation in the SISP process. Given that the Notes have been put in a position of being by far most dramatically impacted by the results of the SISP, and that they are secured creditors, this is a necessary and appropriate request.

v. Paragraph 22(f) of the DIP Term Sheet

44. Incorporating "Except as may be otherwise ordered by the Court," at the opening of this paragraph simply preserves the right of, among others, the Note Committee to apply for payment of its fees and expenses without encountering the artificial barrier of prohibition under the DIP Term Sheet. This Court's May 15, 2020 Order granted leave to the Note Committee to reapply in order to establish the necessity element of its claim to have its fees and disbursements paid by the Company. The spirit and intent of this ruling should not be frustrated by the back door of a prohibition imposed in the DIP Term Sheet.

vi. Restructuring Fee

45. The Restructuring Fee included in the Financial Advisor Agreement for which the Company is seeking approval is a very substantial US\$6,500,000. Equally notable is that it is earned on the completion of any sale or restructuring whatsoever, regardless of value accretion. In other words, it matters not to the financial advisor's compensation whether the Company's property and assets are sold for \$1 or \$1 billion.
46. The requested condition that the Note Committee proposes be attached to the approval of the Financial Advisor Agreement serves to ensure some measure of incentive for the SISP Advisor, who is on the front line of many aspects of the SISP, to work towards maximization of value for the benefit of the Company's stakeholders.

PART IV - CONCLUSION

47. The Note Committee submits that the relief sought is necessary for the effective conducting of the SISP and the integrity of these proceedings, particularly in light of the patent potential for conflicts, manipulation and abuses. The relief sought will promote the fairness and integrity of this restructuring process and reflect the intentions underlying the CCAA. Particularly given the uniquely sensitive issues being raised in these proceedings, it would and enhance both the fact and appearance of fairness in the eyes of involved parties and market observers.

PART V – RELIEF SOUGHT

48. For all the foregoing reasons, the Note Committee is seeking the proposed changes to the SISP and DIP Term Sheet, and requests that this Court only grant the Company's requested Order on the condition that the addenda and changes reflected in the document attached as Appendix "A" are made.

ALL OF WHICH IS RESPECTFULLY SUBMITTED on May 27, 2020 at Calgary, Alberta.

TORYS LLP



Per: Kyle Kashuba
Counsel for DDJ Capital Management, LLC,
Barings LLC, and Brigade Capital Management,
LP

Appendix "A"**Ad Hoc Committee of Note Holders
Proposed Addenda and Changes to Procedures for Sale and Investment Solicitation
Process ("SISP") and Interim Financing Term Sheet ("DIP Term Sheet")**

- (1) The following is added to the SISP as paragraph 41.

Additional Terms

41. In addition to any other requirement of this SISP:
- (a) The SISP Advisor and the Applicants, in consultation with the Monitor, shall at all times prior to the selection of a Successful Bid use commercially reasonable efforts to facilitate a competitive bidding process in the SISP including, without limitation, by actively soliciting participation by all persons who would be customarily identified as high potential bidders in a process of this kind or who may be reasonably proposed by the Applicants' creditors as a high potential bidder. The SISP Advisor shall respond confidentially to reasonable enquiries made from time to time by the Applicants' creditors regarding the identity of potential bidders contacted and solicited by it for participation in the SISP.
 - (b) The exercise of any right or discretion given to the Applicants or the SISP Advisor by the SISP shall: (i) in the case of the Applicants, be exercised on their behalf solely by a special committee of DDM's directors comprised of one or more persons who have certified to the Monitor that they do not have any conflict of interest in the subject matter or any material personal or business relationship of any kind with a SISP bidder or a person related to a SISP bidder (including, without limitation, the Stalking Horse Bidder); and (ii) require the express consent of the Monitor. For greater certainty, this provision shall apply to, among other things, the form of satisfactory NDAs contemplated by paragraph 9, the determination of Phase 1 Qualified Bids and Phase 2 Qualified Bids, the selection of Successful Bids, and any discretion afforded by paragraphs 27(e) and 27(h).
 - (c) All Phase 1 Qualified Bidders and Phase 2 Qualified Bidders shall at all times be granted information, access and facilitation which is no less complete and timely than is granted to the Stalking Horse Bidder (whether in the capacity held by it or any related person as the Stalking Horse Bidder or as a lender under the Interim Facility approved by the Court). This shall include, without limitation, access to Rio Tinto plc, The Government of the Northwest Territories and sureties on the basis contemplated by the section titled "Commercially Reasonable Efforts" in the Stalking Horse Bid and access to books, records, financial information, management and advisors on the basis contemplated by paragraph 21(f) of the Interim Facility.

- (d) With respect to the Stalking Horse Bid, the Applicants and the Stalking Horse Bidder shall: (i) by no later than June 15, 2020 notify all Qualified Phase 1 Bidders whether and what portion of the purchase price proposed under the Stalking Horse Bid is comprised of a credit bid in order to, among other things, clarify the requirements of the Minimum Bid Price; and (ii) by no later than August 7, 2020, enter into a definitive binding purchase and sale agreement on the terms contemplated by the Stalking Horse Bid, copies of which shall be promptly provided in unredacted form to all Phase 2 Qualified Bidders.
- (e) Copies of all Qualified Phase 1 Bids, Qualified Phase 2 Bids and written offers made during the Auction shall be delivered confidentially to all Qualified Phase 1 Bidders and Qualified Phase 2 Bidders concurrently with filing of the Applicants' materials in respect of the Approval Motion referred to in paragraph 30. The SISP Advisor, the Applicants and the Monitor shall promptly respond to all reasonable enquiries from interested parties regarding bids submitted during the SISP and the reasons for not selecting or qualifying any such bids.
- (f) If the Stalking Horse Bid is the Successful Bid, as a condition to the granting of the Approval Order and on application of the Applicants in conjunction with the Approval Motion, the Court shall have designated the Stalking Horse Bidder a "good faith purchaser" in the CCAA proceedings, which designation shall be made only in the absence of evidence that the Stalking Horse Bidder or a related person has acted improperly to bias the SISP by influencing the actions of the Applicants or any of their directors, employees, representatives or advisors in connection with the SISP.
- (g) Nothing in this SISP shall create the presumption or inference that a Successful Bid, Backup Bid or any other bid should or must be approved by the Court. The Court at all times retains the discretion to direct the clarification, termination, extension or modification of the SISP on application of any interested party. At any time during or following the SISP, any person may apply to the Court for relief on the grounds that the SISP has not been carried out in a fair and balanced manner in accordance with the provisions hereof, that any right or discretion has been exercised for an improper purpose, or that surrounding conditions or circumstances have materially changed.

(2) Paragraph 38 of the SISP is revised as follows.

38. Any other party or parties holding a valid, enforceable, and properly perfected security interest in the Property, including the Agent on behalf of the First Lien Lenders under the Existing Credit Agreement, or any lender party thereto, and the holders of the Applicants' 7.125% secured second lien notes, may, subject in all respects to such party's compliance with the SISP and the terms thereof, credit bid the amount of debt secured by such lien as part of any transaction contemplated by the SISP; provided, however, that such transaction shall also provide for the indefeasible and irrevocable repayment in full in cash on the date of closing of

any such transaction of any and all obligations secured by a security interest in the Property that is to be acquired under such transaction that is senior to the security interest held in such Property by the party submitting such credit bid unless the holder of any such senior security interest otherwise agrees (it being understood and agreed that, (a) with respect to the Property the Interim Lender holds a super-priority security interest, senior to all other security interests in the Property, except as expressly set forth in the DIP Term Sheet and with respect to the court-ordered charges created in favour of the Interim Lender under the Second Amended and Restated Initial Order, and (b) any obligations of the Applicants with respect to any cover payments made pursuant to, or reclamation obligations associated with, the Diavik Interest must be either assumed, refinanced, or collateralized in a manner similar to that contemplated by the Stalking Horse Bid or indefeasibly and irrevocably repaid in full in cash on the date of closing of any such transaction) to the extent any credit bid pertains to the Diavik Interest. Any credit bid by the Agent under the Existing Credit Agreement, or any lender party thereto shall provide for the indefensible and irrevocable repayment in full in cash on the date of closing of any such transaction of all Interim Financing Obligations (as defined in the DIP), including those Interim Financing Obligations attributable to October Advances (as defined in the DIP).

- (3) The following changes are made to the dates stipulated in the SISP:
- (i) the Phase 1 Bid Deadline in paragraph 13 is changed from June 26, 2020 to July 10, 2020;
 - (ii) the Phase 2 Bid Deadline referred to in paragraph 21 is changed from August 7, 2020 to August 21, 2020;
 - (iii) the date referred to in paragraph 22(j) is changed from September 9, 2020 to September 30, 2020;
 - (iv) the Auction commencement date referred to in paragraph 27(a) is changed from August 10, 2020 to August 24, 2020;
 - (v) the dates for selection and execution of the Successful Bid and Back-up Bid referred to in paragraph 28 are changed, respectively, from August 14, 2020 to August 28, 2020 and from August 18, 2020 to September 1, 2020; and
 - (vi) the Approval Motion hearing date referred to in paragraph 30 is changed from August 31, 2020 to September 14, 2020.
- (4) The second paragraph of the SISP is modified to add the following words at the end of that paragraph's first sentence: "and, if its members are not at that time active bidders in the SISP, the ad hoc committee of the Company's 7.125% secured second lien notes in the CCAA Proceedings.
- (5) Paragraph 22(f) of the DIP Term Sheet is revised to add the following opening words: "Except as may be otherwise ordered by the Court,".
- (6) Payment of a portion of the Restructuring Fee provided for in the Financial Advisor Agreement, equal to US\$1,500,000, shall be contingent on completion of a Successful Bid in the SISP that provides for the payment of a total purchase price which is at least US\$50,000,000 more than that which is contemplated by the Stalking Horse Bid.