

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

ORDER
(EXPANSION OF MONITOR'S POWERS)

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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Barristers and Solicitors
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Fax No.: 604.631.3309

DATE ON WHICH ORDER WAS PRONOUNCED:

January 27, 2021

LOCATION OF HEARING:

Calgary

NAME OF JUDGE WHO MADE THIS ORDER:

The Hon. Madam Justice K.
Eidsvik

UPON THE APPLICATION of Dominion Diamond Mines ULC, Dominion Diamond Holdings, LLC, Dominion Diamond Delaware Company LLC, Dominion Diamond Marketing Corporation, Dominion Diamond Canada ULC, Dominion Finco Inc. and Washington Diamond Investments, LLC (the “**Applicants**”) for an Order, among other things, (i) expanding the powers of FTI Consulting Canada Inc., in its capacity as monitor of the Applicants (the “**Monitor**”); and (ii) granting certain related relief, **AND UPON** having read the Application, the Affidavit of Brendan Bell sworn , December 7, 2020 (the “**Bell Affidavit**”), the Eleventh Report of the Monitor dated December 9, 2020, the Thirteenth Report of the Monitor dated January 25, 2021, and the materials filed in support; **AND UPON** hearing counsel for the Applicants, counsel for the Monitor and those other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. Service of notice of this Application and supporting materials is hereby declared to be good and sufficient, no other Person is required to have been served with notice of this Application and time for service of this Application is abridged to that actually given.

DEFINED TERMS

2. All capitalized terms not defined herein shall have the respective meanings ascribed to them in the Second Amended and Restated Initial Order granted June 19, 2020 in these proceedings (as may be amended, restated or supplemented from time to time, the “**SARIO**”) or the Asset Purchase Agreement dated as of December 6, 2020, by and among certain Applicants, DDJ Capital Management, LLC and Brigade Capital Management, LP (as may be amended, restated or supplemented from time to time, the “**APA**”), as applicable.

TIMING OF EFFECTIVENESS OF ORDER

3. Notwithstanding anything contained herein, this Order shall only take effect upon the delivery of the Monitor’s Certificate as set out in paragraph 4 of the Approval and Vesting Order of this Court dated December 11, 2020.

MONITOR'S EXPANDED POWERS

4. In addition to its prescribed rights pursuant to the CCAA and the powers and duties set out in the SARIO or any other Order granted in these proceedings, and without altering in any way the limitations and obligations of the Applicants as a result of these proceedings, the Monitor is hereby authorized and empowered, but not required, in each case subject to the terms of the APA and the obligations thereunder, to:
- (a) cause the Applicants to take any action permitted pursuant to the SARIO or any other Order granted in these CCAA proceedings;
 - (b) preserve, protect and maintain control of the Property of the Applicants, or any parts thereof;
 - (c) receive, collect and take possession of all monies and accounts now owed or hereafter owing to the Applicants, including proceeds payable pursuant to a sale of Property;
 - (d) execute any agreement, document, instrument or writing in the name of and on behalf of the Applicants as may be necessary or desirable in order to carry out the provisions of this Order, the SARIO or any other Order granted in these proceedings or to facilitate the orderly completion of these proceedings and the administration of the Applicants' estates;
 - (e) take any and all actions and steps in the name of and on behalf of the Applicants to facilitate the administration of the Applicants' Business, Property, operations, affairs and estate as may be necessary, appropriate, or desirable, in the sole opinion of the Monitor;
 - (f) market any or all of the Property, with the consent of Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under the Pre-Filing Credit Agreement (in such capacity, the "**1L Agent**") until the Diavik LCs (as defined below) have been fully cash collateralized in accordance with paragraph 10(h) of this Order;
 - (g) conduct, supervise, and direct the sale, conveyance, transfer, lease, assignment or disposal of any remaining Property of the Applicants or any part or parts

thereof, whether or not outside of the normal course of business, subject to approval of this Court as may be required pursuant to the SARIO, and to sign or execute on behalf of the Applicants any conveyance or other closing documents in relation thereto;

- (h) have access to all books and records that are the Property of the Applicants in the Applicants' possession or control;
- (i) assign, or cause to be assigned, the Applicants into bankruptcy, and the Monitor shall be entitled but not obligated to act as trustee in bankruptcy thereof;
- (j) execute, assign, issue and endorse documents of whatever nature in respect of any of the Applicants' Property, whether in the Monitor's name or in the name of and on behalf of the Applicants or in the place and stead of any directors or officers of the Applicants, for any purpose pursuant to this Order;
- (k) conduct, supervise and direct the continuation or commencement of any process or effort to recover Property or other assets belonging or owing to the Applicants, with the consent of the 1L Agent until the Diavik LCs have been fully cash collateralized in accordance with paragraph 10(h) of this Order;
- (l) engage, deal, communicate, negotiate, agree and settle with any creditor or other stakeholder of the Applicants (including any governmental authority) in the name of and on behalf of the Applicants;
- (m) claim or cause the Applicants to claim any and all insurance refunds or tax refunds, including refunds of goods and services taxes and harmonized sales taxes, to which the Applicants are entitled;
- (n) engage, retain, or terminate the services of, or cause the Applicants to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, all under the supervision and direction of the Monitor, as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of its powers and duties;
- (o) facilitate or assist the Applicants with the accounting, tax and financial reporting functions of the Applicants, including the preparation of cash flow forecasts,

employee-related remittances, T4 statements and records of employment, in each case based solely upon the information provided by the Applicants on the basis that the Monitor shall incur no liability or obligation to any person with respect to such reporting, remittances, statements and records;

- (p) cause the Applicants to perform such other functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with the Property, operations, restructuring, wind-down, liquidation, distribution of proceeds, and any other related activities;
- (q) exercise any shareholder, partnership, joint venture or other rights of the Applicants;
- (r) take and any and all reasonable steps to direct or cause the Applicants to administer the Property and the Business or to perform such other duties as the Monitor considers necessary or desirable to deal with the Property or the Business, including the wind-down, liquidation, disposal of assets, or other activities;
- (s) disclaim, in accordance with the CCAA, any contracts of the Applicants;
- (t) apply to this Court for advice and directions of the Monitor's powers hereunder; and
- (u) take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations;

and in each case where the Monitor takes any such actions or steps, it shall be exclusively, authorized and empowered to do so, to the exclusion of all other Persons, including the Applicants and their past or present directors and officers and shareholders, and without interference from any other Person, provided, however, that the Monitor shall comply with all applicable laws and shall not have any authority or power to elect or to cause the election or removal of directors of the Applicants or to take any action to restrict or to transfer to the Monitor any of their powers, duties or obligations, except in accordance with section 11.5(1) of the CCAA.

5. The Applicants and their consultants, agents, representatives and advisors shall cooperate fully with the Monitor and any directions it may provide pursuant to this Order or the SARIO and shall provide such assistance as the Monitor may reasonably request from time to time to enable the Monitor to carry out its duties and powers pursuant to the CCAA, this Order, the SARIO, and any other Order granted in these proceedings.

6. The Monitor is authorized and empowered to operate and control, on behalf of the Applicants, all of the Applicants' existing accounts at any financial institution (each an "**Account**" and collectively the "**Accounts**", which for the avoidance of doubt shall include the Diavik Realization Account and the Wind-Down Account) in such manner as the Monitor deems necessary or appropriate (subject to the terms of the APA and the Orders in this proceeding), including, without limitation, to:
 - (a) exercise control over the funds credited to or deposited in the Accounts;
 - (b) effect any disbursement from the Accounts permitted by the SARIO or any other Order granted in these proceedings;
 - (c) give instructions from time to time with respect to the Accounts and the funds credited to or deposited therein, including to transfer the funds credited to or deposited in such Accounts to such other account or accounts as the Monitor may direct; and
 - (d) add or remove persons having signing authority with respect to any Account or to direct the closing of any Account,

and the financial institutions maintaining such Accounts shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken in accordance with the instructions of the Monitor as to the use or application of funds transferred, paid, collected or otherwise dealt with in accordance with such instructions, and such financial institutions shall be authorized to act in accordance with and in reliance upon the instructions of the Monitor without any liability in respect thereof to any person.

7. The Monitor is hereby authorized, but not required, to open one or more new accounts in its own name (the "**Monitor's Accounts**") and receive third party funds into the

Monitor's Accounts or transfer into the Monitor's Accounts such funds of the Applicants as the Monitor, in its sole opinion, deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties set out herein, provided that the monies standing to the credit the Monitor's Accounts from time to time shall be held by the Monitor to be dealt with as permitted by this Order, other Orders in this proceeding, the APA, or by further Order of this Court, and further the Monitor is hereby authorized to make use of the funds in the Monitor's Accounts from time to time to make disbursements and pay amounts for and on behalf of the Applicants or in connection with the Monitor's exercise of its powers and duties in these proceedings, as the Monitor may in its sole opinion deem necessary or appropriate from time to time.

8. The Monitor may, from time to time, apply to this Court for advice and directions in respect of the exercise and discharge of its powers and duties hereunder.
9. The Monitor is hereby authorized to take any and all actions and steps as the Monitor may deem appropriate related to the transactions completed pursuant to the APA.
10. The Monitor is hereby authorized to execute a transition services agreement on behalf of the Applicants concurrent with or after the Closing, and to take any and all actions and steps in the name of and on behalf of the Applicants that are necessary to satisfy the obligations thereunder, including, among other things:
 - (a) conducting, supervising and directing the realization and recovery of the Applicants' Property or other assets or interests, including through: (i) the monitoring of such Property, assets and interests; and (ii) monitoring and enforcing applicable rights under the Approval of Monetization Process Order granted November 4, 2020 in these proceedings (as may be amended, restated or supplemented from time to time), the Monetization Process scheduled thereto and all other applicable Orders granted in these proceedings;
 - (b) conducting, supervising and directing the sale of any diamonds received by the Applicants;
 - (c) administering and making payments from the Diavik Realization Account and the Wind-Down Account; and

- (d) subject to payment of, or resolution with, private or government royalty holders, making disbursements of all monetized Diavik Realization Assets to the 1L Agent to cash collateralize the letters of credit issued with respect to the Diavik Diamond Mine ~~(as such letters of credit may be amended with the consent of the Purchaser as part of the transaction contemplated by the APA)~~ (the “**Diavik LCs**”), until such Diavik LCs have been fully cash collateralized, and in accordance with the applicable Orders granted in these proceedings,

in each case, in accordance with the applicable terms of the APA.

MONITOR'S ADDITIONAL PROTECTIONS

11. Upon providing five (5) business days' written notice to the 1L Agent and Purchasers, the Monitor is authorized to resign unilaterally from its role as Monitor, as described in this Order and in any other Order granted in these CCAA proceedings, effective upon the filing of a certificate substantially in the form attached hereto as Schedule "A", if the Monitor is not funded to carry out its role.
12. In addition to the rights and protections afforded the Monitor in the SARIO, under the CCAA, or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment, the carrying out of the provisions of this Order, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, save and except for: (i) any gross negligence or wilful misconduct on its part. ~~Nothing; or~~ (ii) liability for any costs award made in connection with any proceeding joined, continued or commenced by the Monitor on behalf of the Applicants or any of them. Save as aforesaid, nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA, any other Order of this Court in these proceedings, or any applicable legislation.
13. Notwithstanding the enhancement of the Monitor's powers and duties as set forth herein, the exercise by the Monitor of any of its powers, or the performance by the Monitor of any of its duties, the Monitor is not, and shall not be deemed to be, an owner of any of the Property for any purpose including without limitation for purposes of Environmental Legislation (for purposes of this Order, the term "**Environmental Legislation**" shall mean any federal, provincial, territorial or other jurisdictional legislation, statute, regulation or rule of law or equity (whether in effect in Canada or any

other jurisdiction) respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, S.C. 1999, c. 33, the *Fisheries Act*, R.S.C. 1985, c. F-14, the *Environmental Protection Act*, R.S.N.W.T. 1988, c. E-7, and the *Environmental Rights Act*, R.S.N.W.T. 1988, c. 83 (Supp) and regulations thereunder.

14. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition (for purpose of this Order, the term "**Adverse Environmental Condition**" shall include without limitation, any injury, harm, damage, impairment or adverse effect to the environmental condition of the Property and the unlawful storage or disposal of waste or other contamination on or from the Property) with respect to the Property or any part thereof that arose or occurred before the date of the SARIO.
15. The Monitor shall not be liable under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof that arose, occurred, or continued after the date of this Order unless such Adverse Environmental Condition is caused by the gross negligence or wilful misconduct of the Monitor.
16. Notwithstanding the immediately preceding paragraph, the Monitor shall not be liable beyond the net realized cash value received and available to the Monitor from the Property under any Environmental Legislation in respect of any Adverse Environmental Condition with respect to the Property or any part thereof which is caused by the gross negligence or wilful misconduct of the Monitor.
17. Nothing contained in this Order shall vest in the Monitor the care, ownership, control, charge, occupation, possession or management (separately and/or collectively, "**Possession**"), or require the Monitor to take Possession, of any part of the Property which may be a pollutant or contaminant or cause or contribute to a spill, discharge, release or deposit of a substance contrary to any Environmental Legislation.
18. The Monitor shall not be liable for any employee-related liabilities of the Applicants, including any successor employer liabilities as provided for in Section 14.06(1.2) of the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**"), other than amounts the Monitor

may specifically agree in writing to pay. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee related liabilities of the Applicants, including wages, severance pay, termination pay, vacation pay, and pension or benefit amounts.

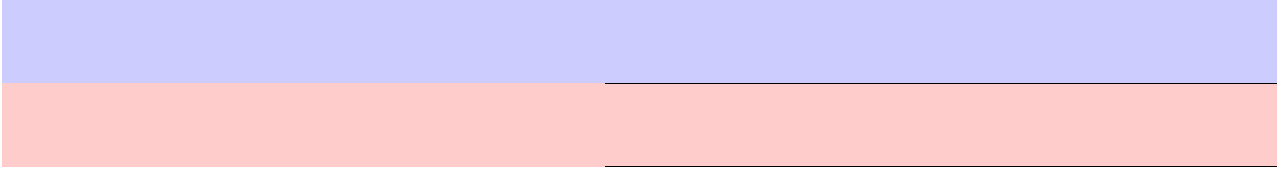
19. The enhancement of the Monitor's powers as set forth herein, the exercise by the Monitor of any of its powers, the performance by the Monitor of any of its duties, or the use or employment by the Applicants of any person under the direction of the Monitor in connection with the Monitor's appointment and the exercise and performance of its powers and duties shall not constitute the Monitor as the employer, successor employer or related employer of the employees of the Applicants within the meaning of any provincial, federal, municipal legislation or common law governing employment or labour standards or any other statute, regulation or rule of law or equity for any purpose whatsoever or expose the Monitor to liability to any individuals arising from or relating to their employment by the Applicants. In particular, the Monitor shall not be liable to any of the employees for any wages, including severance pay, termination pay and vacation pay except for such wages as the Monitor may specifically agree to pay.
20. The Monitor shall continue to have the benefit of all of the indemnities, charges, protections and priorities as set out in the CCAA, the SARIO and any other Order of this Court and all such indemnities, charges, protections and priorities (as ~~may be~~ amended herein) shall apply and extend to the Monitor in the fulfilment of its duties or the carrying out of the provisions of this Order. Nothing in this Order shall derogate from the powers of the Monitor as provided in the CCAA, the SARIO and the other Orders of in this proceeding.
21. The Monitor is not and shall not be deemed to be a director, officer, or employee of the Applicants.
22. Nothing in this Order or any other Order granted in these proceedings shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors or legal representative of the Applicants within the meaning of any relevant legislation, including subsection 159(2) of the *Income Tax Act* (Canada), as amended (the "ITA"), and any distributions to creditors of the Applicants by the Monitor will be deemed to have been made by the Applicants

themselves. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a person subject to subsection 150(3) of the ITA.

GENERAL

23. Except as may be necessary to give effect to this Order, the SARIO and any other Order granted in these proceedings shall remain in full force and effect. In the event of any conflict or inconsistency between this Order, the SARIO, or any other Order in these proceedings, the terms of this Order shall govern.
24. The power and authority granted to the Monitor by virtue of this Order shall, if exercised in any case, be paramount to the power and authority of the Applicants with respect to such matters.
25. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator or similar person of the Applicants, the Business, or the Property.
26. This Honourable Court hereby requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories, in the United States or in any of its states, or in any foreign jurisdiction, to act in aid of and to be complimentary to this Court in carrying out the terms of this Order, to give effect to this Order and to assist the Monitor in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such order and to provide such assistance to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

27. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.



Justice of the Court of Queen's Bench of Alberta

CLERK'S STAMP

SCHEDULE "A"

COURT FILE NUMBER

2001-05630

COURT

COURT OF QUEEN'S BENCH OF ALBERTA

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
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

MONITOR'S DISCHARGE CERTIFICATE

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

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Facsimile: (403) 265-7219
Email: simardc@bennettjones.com /
meyerk@bennettjones.com
File No. 76142-10

DATE ON WHICH ORDER WAS
PRONOUNCED:

Wednesday, January 27, 2021

<u>LOCATION OF HEARING:</u>	<u>Calgary Courts Centre</u>
<u>NAME OF JUSTICE WHO MADE THIS ORDER:</u>	<u>The Honourable Madam Justice K. M. Eidsvik</u>

RECITALS

- A. Pursuant to an Order of the Honourable Madam Justice K. M. Eidsvik of the Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") granted April 23, 2020 (the "**Initial Order**"), FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") in the *Companies' Creditors Arrangement Act* proceedings 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 (the "**CCAA Proceedings**):
- B. Pursuant to Orders of the Honourable Madam Justice K. M. Eidsvik of the Court granted May 1, 2020 (the "**ARIO**") and June 19, 2020 (the "**SARIO**"), the Initial Order was amended:
- C. Pursuant to paragraph 11 of an Order of the Honourable Madam Justice K. M. Eidsvik of the Court granted January 27, 2021 (the "**Enhanced Monitor's Powers Order**"), upon providing five (5) business days' written notice to the purchaser nominated by the Contracting Purchasers and to the IL Agent (as those capitalized terms are defined in the Enhanced Monitor's Powers Order), the Monitor is authorized to resign unilaterally from its role as Monitor, as described in the Enhanced Monitor's Powers Order and in any other Order granted in the CCAA Proceedings, effective upon the filing of a certificate substantially in this form, if the Monitor is not funded to carry out its role;

THE MONITOR CERTIFIES the following:

1. The Monitor is no longer funded to carry out its role, in accordance with the Enhanced Monitor's Powers Order and all other Orders granted in the CCAA Proceedings;
2. The Monitor has provided five (5) business days' written notice to the purchaser nominated by the Contracting Purchasers and to the IL Agent (as those capitalized terms

are defined in the Enhanced Monitor's Powers Order) of its resignation from its role as Monitor;

3. This Certificate was delivered by the Monitor on _____, 202_.

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 Diamond Marketing Corporation

Per: _____

Name:

Title:

Document comparison by Workshare 10.0 on Tuesday, January 26, 2021
9:20:47 AM

Input:	
Document 1 ID	PowerDocs://VANCOUVER/51239402/5
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Document 2 ID	PowerDocs://VANCOUVER/51239402/6
Description	VANCOUVER-#51239402-v6-Enhanced_Monitor's_Powers_Order
Rendering set	Standard

Legend:	
Insertion	
Deletion	
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Padding cell	

Statistics:	
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