

ENTERED

101119

Justice Eidsvik  
JS  
Oct 15, 2021



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 THE 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

**BENCH BRIEF OF THE MONITOR**

ADDRESS FOR SERVICE AND

BENNETT JONES LLP

CONTACT INFORMATION OF

Barristers and Solicitors

PARTY FILING THIS

4500 Bankers Hall East

855-2nd Street SW

Calgary, AB T2P 4K7

DOCUMENT

Attention: Chris Simard / Kelsey Meyer

Telephone No.: 403-298-4485 / 403-298-3323

Fax No.: 403-265-7219

Client File No.: 76142-10

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	FACTS .....	3
	A.    The Stay of Proceedings .....	3
	B.    The Sales and Marketing Processes and Efforts .....	3
	C.    Development of the Proposed Transactions .....	5
	D.    The Market for the Dominion Entities' Tax Attributes .....	5
	E.    The AVO Transaction.....	6
	F.    The RVO Transaction .....	7
	G.    The Transaction Approval and Reverse Vesting Order .....	7
III.	ISSUES .....	8
IV.	ARGUMENT .....	8
	A.    Advice and Directions.....	8
	B.    Factors for Approval of a Sale Transaction .....	8
	C.    Authority to Approve Reverse Vesting Transactions .....	10
	D.    The Proposed Transactions Meet the Criteria for Approval .....	11
	E.    The Reorganization Steps in the RVO Should be Approved.....	16
	F.    The Stay of Proceedings Should be Extended .....	18
V.	CONCLUSION.....	19

## **I. INTRODUCTION**

1. The Monitor files this Bench Brief in support of its application for:
  - (a) advice and directions as to whether the Monitor, on behalf of Dominion Diamond Mines ULC ("**DDM**"), can provide a discontinuance and release of the claim (the "**BC Civil Claim**") filed in the Supreme Court of British Columbia, Vancouver Registry, No. S206419 by DDM as against Diavik Diamond Mines (2012) Inc. ("**DDMI**"), as is contemplated in a transaction (the "**AVO Transaction**") for the sale of certain of the assets, undertakings and properties of DDM regarding its 40% joint venture interest in the Diavik Diamond Mine (the "**AVO Assets**") pursuant to an Asset Purchase Agreement proposed to be entered into between the Monitor in its capacity as the court-appointed Monitor of DDM, and not in its personal capacity, as seller, and DDMI as purchaser (the "**AVO Agreement**");
  - (b) approval of a transaction (the "**RVO Transaction**") contemplated by the Definitive Term Sheet for RVO Transaction (as it may be amended in accordance with the Order, the "**RVO Agreement**") proposed to be entered into between the Monitor on behalf of the Applicants<sup>1</sup> and Washington Investments Holdings II, LLC ("**Washington**"); and
  - (c) an extension of the stay of proceedings to March 4, 2022.
2. Should this Honourable Court see fit to approve the AVO Transaction and the AVO Agreement, the Monitor seeks a Transaction Approval and Vesting Order ("**AVO**"), among other things:
  - (a) approving the AVO Transaction;
  - (b) authorizing the Monitor to execute the AVO Agreement; and
  - (c) vesting title to the AVO Assets in DDMI, free and clear of all Claims (as defined in the proposed form of AVO) with such further and other updates to the Encumbrances to be listed in Schedule "C" of the AVO as may be agreed upon between the Monitor and DDMI in advance of the hearing of this application.
3. The Monitor also seeks a Transaction Approval and Reverse Vesting Order ("**RVO**"). Capitalized terms not otherwise defined herein shall bear the meanings given them in the RVO. The Monitor applies for an RVO, among other things:
  - (a) approving the RVO Transaction;
  - (b) authorizing the Monitor to execute the RVO Agreement;

---

<sup>1</sup> The Applicants are Dominion Diamond Mines ULC ("**DDM**"), 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.

- (c) ordering that, upon the delivery of a Monitor’s certificate substantially in the form attached to the RVO (the “**Monitor’s Certificate**”) confirming the completion of the RVO Transaction, the following shall be deemed to occur commencing at the time of delivery of the Monitor’s Certificate (the “**Effective Time**”) in the following sequence:
- (i) all right, title and interest of Washington Diamond Investments, LLC, Dominion Diamond Holdings, LLC, Dominion Diamond Mines ULC, and Dominion Diamond Marketing Corporation (each a “**Dominion Entity**” and collectively, the “**Dominion Entities**”) in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively without recourse in a trust for the benefit of the Applicants' creditors (the “**Creditor Trust**”);
  - (ii) all Claims and Encumbrances in respect of the Dominion Entities other than the Retained Claims shall be transferred to and shall vest absolutely and exclusively without recourse in the Creditor Trust, and such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time;
  - (iii) all Claims and Encumbrances other than the Retained Claims shall be forever expunged, released and discharged as against the Dominion Entities and the Retained Assets; and
  - (iv) the Dominion Entities shall cease to be applicants in the CCAA Proceedings and shall be released from the purview of all orders of the Court granted in the CCAA Proceedings;
- (d) from and after the Effective Time, permanently enjoining all persons from exercising any rights or remedies as against the Dominion Entities or the Retained Assets arising from the completion of the RVO Transaction and related steps, the insolvency of the Dominion Entities prior to the Effective Time, and the commencement or existence of the CCAA Proceedings;
- (e) ordering that the administration of the Creditor Trust shall remain subject to the Court’s oversight and the CCAA Proceedings, and that the Initial Order granted in the CCAA Proceedings as amended and restated from time to time and the EMP Order as defined below shall apply *mutatis mutandis* to the Creditor Trust, the Transferred Assets and the Monitor; and
- (f) ordering that at the Effective Time, the style of cause for these proceedings shall be changed to:

IN THE MATTER OF THE COMPANIES’ CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF THE ADMINISTRATION OF THE DOMINION  
RESIDUAL ASSET TRUST

4. For the reasons set out herein, the Monitor respectfully submits that approval of the AVO Transaction (if the Court directs the Monitor to deliver the discontinuance and release of the BC Civil Claim), approval of the RVO Transaction, the granting of the AVO and the granting of the RVO is fair, reasonable and appropriate in the circumstances and in the best interests of the creditors of the Dominion Entities. Further, the Monitor submits that extension of the stay to March 4, 2022 is appropriate in the circumstances where the Applicants have acted and are acting in good faith and in due diligence.

## II. FACTS

### A. The Stay of Proceedings

5. The Initial Order granted in these proceedings pursuant to the *Companies' Creditors Arrangement Act* on April 22, 2020 established a stay of proceedings in favour of the Applicants until May 2, 2020 (the "**Stay Period**").
6. On September 18, 2020, Dominion Diamond Marketing Corporation was added as an applicant in the CCAA Proceedings.
7. The Stay Period was subsequently extended by further Orders of the Court, and was most recently extended until December 15, 2021.

### B. THE SALES AND MARKETING PROCESSES AND EFFORTS

8. On June 19, 2020, this Court granted the Second Amended and Restated Initial Order ("**SARIO**") that, among other things, approved a comprehensive sale and investment solicitation process ("**SISP**") to be implemented by the Applicants' financial advisor, Evercore, with the oversight of the Monitor.
9. The SISP had been preceded by three strategic review processes aimed at, among other things, soliciting the sale of the Applicants' assets to a third party. The first two of these strategic processes were undertaken by the Applicants with the assistance of a bank-owned financial advisor in each of 2015 and 2016 and did not result in a sale. The third strategic process was undertaken in 2017 and resulted in one formal offer to acquire the company, being the offer made by Washington, which thereby became the equity owner of the Applicants.
10. The SISP, which represented the fourth strategic process aimed at the sale of the Applicants' assets, was implemented by Evercore, with the oversight of the Monitor, over a five month period, from the commencement of these CCAA proceedings on April 22, 2020 to the formal commencement of the SISP on June 19, 2020, through to the expiry of the Second Extended Phase 2 Deadline under the SISP on September 15, 2020.
11. The SISP did not result in a qualified bid, other than that of Washington as a stalking horse bidder.

12. On October 9, 2020, the Applicants announced that their court application scheduled for October 14, 2020 for approval of the transaction contemplated by the stalking horse bid would not be proceeding due to an impasse between Washington and Dominion's surety bond issuers regarding an agreement relating to a material closing condition with respect to the stalking horse bid.
13. The Applicants worked diligently with the assistance of their legal counsel and Evercore, and in consultation with the Monitor, to assess all available options. The Applicants' efforts in this regard involved discussions with numerous stakeholders, including Credit Suisse AG, Cayman Islands Branch, in its capacity as administrative agent under the Pre-Filing Credit Agreement (in such capacity, the "**1L Agent**"), the members of the second lien noteholders group (the "**Ad Hoc Group**"), the Government of the Northwest Territories ("**GNWT**"), Dominion's surety bond issuers, and others.
14. As a result of those efforts, on December 11, 2020, this Court granted an approval and vesting order which approved an asset purchase agreement dated as of December 6, 2020 (the "**Purchase Agreement**") in relation to a going-concern sale transaction (the "**Sale Transaction**") between certain of the Applicants, as vendors, and DDJ Capital Management, LLC and Brigade Capital Management, LP, being members of the Ad Hoc Group, as purchasers (collectively, the "**Bidders**"). The Sale Transaction between certain of the Applicants and Arctic Canadian Diamond Company Ltd., the entity designated by the Bidders in accordance with the Purchase Agreement ("**ACDC**"), closed on February 3, 2021.
15. Certain assets of the Applicants were not included in the Sale Transaction. In particular (and among other things), the Sale Transaction did not result in the sale of the right, title or interests of DDM in relation to its 40% working interest in the Diavik Diamond Mine pursuant to the Joint Venture Agreement dated March 23, 1995 originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time, with the current parties thereto being DDM and DDMI (the "**JVA**"), or the Participating Interest (as defined in the JVA) held by DDM pursuant to the JVA (the "**Diavik Joint Venture Interest**").
16. On January 27, 2021, this Court granted the Order (Expansion of Monitor's Powers) (the "**EMP Order**") authorizing the Monitor to take actions in the name of the Dominion Entities to facilitate the administration of the Dominion Entities' business, property, operations, affairs and estate. The EMP Order authorized the Monitor to, among other things:
  - (a) market the Dominion Entities' Property (as defined in the Initial Order), with the consent of the 1L Agent;
  - (b) supervise and direct the sale of any Property, whether or not outside the normal course of business, subject to approval of the Court as may be required pursuant to the Initial Order; and
  - (c) execute documents of whatever nature in respect of the Property.

17. Since the completion of the Sale Transaction, the Monitor has engaged in discussions with stakeholders regarding strategies to maximize the value of the Dominion Entities and the remaining assets that were not sold under the Sale Transaction.
18. These discussions identified two transactions:
  - (a) the AVO Transaction for, *inter alia*, the sale of DDM's 40% joint venture interest in the Diavik Diamond Mine and in the JVA; and
  - (b) the RVO Transaction, being a potential transaction under which Washington would make a cash payment, for the benefit of the creditors of the Dominion Entities, as part of a restructuring that would cleanse the Dominion Entities of their legacy obligations and enable the preservation of the tax attributes of the Dominion Entities.

### **C. DEVELOPMENT OF THE PROPOSED TRANSACTIONS**

19. In the past month the Monitor engaged in further discussions with the 1L Agent, DDMI and Washington, to advance the terms and structure of the potential AVO Transaction and the AVO Agreement, and the potential RVO Transaction and the RVO Agreement.
20. During the negotiation of the AVO Transaction and of the RVO Transaction, the Monitor engaged in discussions with counsel to the 1L Agent and counsel to ACDC to obtain their views and input on the potential AVO Transaction and the potential RVO Transaction. The Monitor understands that the 1L Agent supports the completion of the AVO Transaction and the RVO Transaction, and that ACDC objects to both the AVO Transaction and the RVO Transaction.
21. ACDC did not acquire the Diavik Joint Venture Interest, DDM's interest in the JVA, or the Dominion Entities' tax attributes as part of the Sale Transaction, nor did the Applicants receive any bids for any of those assets (other than the failed stalking horse bid of Washington) as a result of the three strategic processes predating the CCAA proceedings or the SISF. The Applicants' interests in all of those assets have been marketed through those four processes.

### **D. THE MARKET FOR THE DOMINION ENTITIES' TAX ATTRIBUTES**

22. The RVO Agreement permits the Monitor to market the RVO Transaction to other potentially interested parties who may be interested in a similar transaction if the Monitor determined that such a marketing period was required.
23. The Monitor understands that, given applicable tax legislation, the universe of parties that would be interested in completing a similar transaction – the primary purpose of which is to preserve and ultimately utilize the Dominion Entities' existing tax attributes – is very small. Based on its review, the Monitor believes that Washington and ACDC are likely the only parties that would have a potential interest in preserving or obtaining the tax attributes of the Dominion Entities, and in completing such a transaction in the near term.

24. Where ACDC did not acquire the Dominion Entities' tax attributes as part of the Sale Transaction, Washington is the only realistic party with an economic interest in preserving the Dominion Entities' tax attributes.
25. The Monitor has determined that the RVO Transaction is the only realistic path to maximize the value of the Dominion Entities' tax attributes. The Monitor is of the view that a formal marketing process is unlikely to result in a higher value transaction for the Dominion Entities. Furthermore, any such additional process would jeopardize the completion of the RVO Transaction (which must close before a November 15, 2021 outside date) and deplete the Dominion Entities' remaining cash resources to the detriment of their creditors. Accordingly, the Monitor supports approval of the RVO Transaction at this time.

#### **E. THE AVO TRANSACTION**

26. The AVO Agreement contemplates that the AVO Transaction is conditional upon the granting of the AVO.
27. The key terms of the AVO Transaction include the following (capitalized terms in this paragraph shall bear the meanings given them in the AVO Agreement):
  - (a) DDMI is purchasing the Acquired Assets, including but not limited to all of DDM's right, title and interest in the Diavik Joint Venture Interest, the Diavik Joint Venture, the Diavik Diamond Mine, the Dominion Production, the Royalty Agreements, the Assigned Contracts, and the Cash Collateral, free and clear of all Claims and Encumbrances other than Permitted Encumbrances on an "as is, where is" basis;
  - (b) the purchase price for the Acquired Assets is the aggregate of the amount of the Assuming Liabilities, which includes the Diavik JVA Cover Payment Liabilities and the LC Obligations;
  - (c) on closing, DDMI shall cancel and return all LCs issued by any of the First Lien Lenders to the applicable First Lien Lender without any further obligation;
  - (d) no later than 30 days following the Closing Date, DDMI shall make payment to each of the respective royalty holders under the Royalty Agreements of all royalty amounts due and owing thereunder for the period commencing on the Filing Date and ending on August 31, 2021;
  - (e) DDMI and DDM agree that effective as of the Closing, the Diavik Joint Venture Agreement will be automatically terminated and of no further force and effect; and
  - (f) the AVO Transaction is subject to court approval.
28. The AVO Agreement also requires the delivery of a discontinuance and the release of the BC Civil Claim. The Monitor seeks advice and direction from this Court as to whether the Monitor, on behalf of DDM, can provide that discontinuance and release. The Monitor understands that there is a dispute between ACDC and DDMI and the 1L Agent as to



whether ACDC acquired the BC Civil Claim in the Sale Transaction. The Monitor will not be taking a position in this dispute.

#### **F. THE RVO TRANSACTION**

29. The RVO Agreement contemplates that the RVO Transaction will be completed through a “reverse vesting” structure under which certain assets, obligations and liabilities of the Dominion Entities will be transferred to the Creditor Trust to be administered by the Monitor for the benefit of the Dominion Entities’ creditors. Washington will make a cash payment for the benefit of the creditors of the Dominion Entities and retain its equity interest in the restructured Dominion Entities.
30. The key terms of the RVO Transaction include the following:
  - (a) on execution of the RVO Agreement, Washington will pay to the Monitor or to one of the Dominion Entities US \$250,000 to fund the professional fees and expenses incurred by the Monitor and the 1L Agent in analyzing and obtaining Court approval of the RVO Transaction (the “**Process Costs**”), with any unused portion of the Process Costs to be refunded to Washington on closing of the RVO Transaction;
  - (b) on completion of the RVO Transaction, Washington shall pay US \$1,500,000 to the Monitor (or alternatively to one or more of the Applicants, at the discretion of Washington) for the benefit of creditors of the Dominion Entities;
  - (c) subject to Court approval, Washington and the Monitor shall use commercially reasonable efforts to satisfy applicable conditions and complete the RVO Transaction by November 15, 2021 (the “**Outside Date**”); and
  - (d) completion of the RVO Transaction is subject to certain limited conditions, including the granting of the RVO, the RVO becoming a final order not subject to appeal by the Outside Date, and the consummation of the RVO Transaction on or prior to the Outside Date.

#### **G. THE TRANSACTION APPROVAL AND REVERSE VESTING ORDER**

31. The proposed RVO approves the RVO Transaction and effects the transfer and vesting steps that are necessary to complete a restructuring of the Dominion Entities in a manner that preserves their tax attributes.
32. The proposed RVO transfers the Transferred Assets to the Creditor Trust on the closing of the RVO Transaction. The Transferred Assets consist of substantially all of the remaining assets, properties and interests of the Dominion Entities other than a limited subset of assets that are designated as Retained Assets under the RVO Agreement and will continue to be held by the Dominion Entities following completion of the RVO Transaction.
33. To accomplish the cleansing of the Dominion Entities, the RVO provides for the release and discharge of all Claims and Encumbrances other than the Retained Claims as against

the Dominion Entities and the Retained Assets. The RVO provides that such Claims and Encumbrances shall be transferred to and shall vest in the Creditor Trust and shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the completion of the RVO Transaction.

34. The RVO provides that, on completion of the RVO Transaction, the Dominion Entities will be released from the application of the Initial Order and all other orders issued in the CCAA proceedings. At that time, the Dominion Entities will no longer be subject to the CCAA proceedings.
35. Following the completion of the RVO Transaction, the Monitor will administer the Creditor Trust for the benefit of creditors, subject to the Court's oversight in the CCAA proceedings.

### **III. ISSUES**

36. The issues to be considered in this application are whether the Court should authorize the Monitor to grant the discontinuance and release of the BC Civil Claim, approve the AVO Transaction and the RVO Transaction, authorize the Monitor to execute the AVO Agreement and the RVO Agreement, grant the proposed AVO and RVO, and extend the stay of proceedings to March 4, 2022.

### **IV. ARGUMENT**

#### **A. ADVICE AND DIRECTIONS**

37. As noted, there is a dispute between ACDC on one hand, and the 1L Agent and DDMI on the other hand, as to whether ACDC purchased the BC Civil Claim in the Sale Transaction. The Monitor expects those parties will also dispute whether the Court should direct the Monitor to deliver to DDMI a discontinuance and release of the BC Civil Claim. The Monitor expects those parties to fully brief and argue these issues, and the Monitor will not be taking a position in this inter-creditor dispute.

#### **B. FACTORS FOR APPROVAL OF A SALE TRANSACTION**

38. Subsection 36(3) of the CCAA sets out the following list of non-exhaustive factors for the Court to consider in determining whether to approve a debtor's sale or disposition of assets outside the ordinary course:
  - (a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;
  - (b) whether the monitor approved the process leading to the proposed sale or disposition;
  - (c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

- (d) the extent to which the creditors were consulted;
- (e) the effects of the proposed sale or disposition on the creditors and other interested parties; and
- (f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

[CCAA](#), subsection [36\(3\)](#); Table of Authorities, Tab 19.

*Re Sanjel Corp.*, 2016 ABQB 257 at para 54 [*Sanjel*]; Table of Authorities, Tab 1.

39. In *Re Sanjel Corp*, Romaine, J noted that in *Re AbitibiBowater, Inc*, Gascon, J suggested that a court should give due consideration to two further factors:

- (a) the business judgment rule, in that a court will not lightly interfere with the exercise of the commercial and business judgment of the debtor company and the monitor in the context of an asset sale where the marketing and sale process was fair, reasonable, transparent and efficient; and
- (b) the weight to be given to the recommendation of the monitor.

*Sanjel*, *supra*, at para 57, citing *Re AbitibiBowater, Inc*, 2010 QCCS 1742 at paras 70-72; Table of Authorities, Tab 1.

40. The following factors developed by the Ontario Court of Appeal in *Royal Bank v. Soundair Corp* for the approval of a sale or disposition by a court-appointed receiver overlap with the factors in subsection 36(3) of the CCAA and are frequently considered by CCAA courts when considering the statutory test:

- (a) whether sufficient effort has been made to obtain the best price and that the receiver or debtor (as applicable) has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.

*Royal Bank v. Soundair Corp.*, (1991), 4 OR (3d) 1 (CA) at para 16 [*Soundair*]; Table of Authorities, Tab 2.

*Sanjel*, *supra*, at para 56; Table of Authorities, Tab 1.

41. In *Soundair*, the Ontario Court of Appeal cautioned that the court must exercise extreme caution before it interferes with the process adopted by a receiver to sell an unusual asset. The appropriateness of a particular process is dependent on the nature of the asset being sold and the pool of potential purchasers. Where it is highly unlikely that a commercially viable sale can be made to anyone other than a very limited number of purchasers, the receiver acts wisely and reasonably when it negotiates only with such limited number of

purchasers. In *Soundair*, Galligan J.A. said the following with respect to the receiver's determination to market the debtor's business to only two potential purchasers:

Having regard to the fact that it was highly unlikely that a commercially viable sale could be made to anyone but two national airlines, or to someone supported by either of them, it is my view that the receiver acted wisely and reasonably when it negotiated only with Air Canada and Canadian Airlines International. Furthermore, when Air Canada said it would submit no further offers and gave the impression that it would not participate further in the receiver's efforts to sell, the only course reasonably open to the receiver was to negotiate with Canadian Airlines International. Realistically, there was nowhere else to go but to Canadian Airlines International. In doing so, it is my opinion that the receiver made sufficient efforts to sell the airline.

*Soundair*, *supra*, at paras 18 and 46; Table of Authorities, Tab 2.

### C. AUTHORITY TO APPROVE REVERSE VESTING TRANSACTIONS

42. The Court has jurisdiction under sections 11 and 36 of the CCAA to approve reverse vesting transactions in appropriate circumstances.

*Arrangement relatif à Nemaska Lithium Inc*, 2020 QCCS 3218 [*Nemaska*] at paras [52](#) and [71](#), Tab 3; leave to appeal to QC CA refused, *Arrangement relatif à Nemaska Lithium Inc*, 2020 QCCA 1488 at para [19](#) [*Nemaska Leave Decision*], Table of Authorities, Tab 4; leave to appeal to SCC refused, *Arrangement relatif à Nemaska Lithium Inc*, 2021 CarswellQue 4589, Table of Authorities, Tab 5.

*Quest University Canada., Re*, 2020 BCSC 1883 [*Quest University*] at paras [127](#) and [157](#), Table of Authorities, Tab 6; leave to appeal to BC CA refused, *Quest University Canada., Re*, 2020 BCCA 364; Table of Authorities, Tab 7.

43. In the *Nemaska* CCAA proceedings, the Quebec Superior Court approved a reverse vesting transaction despite creditor opposition. Leave to appeal the decision was refused by the Quebec Court of Appeal and the Supreme Court of Canada. In refusing leave to appeal, the Quebec Court of Appeal noted the CCAA judge's determination that "the terms 'sell or otherwise dispose of assets outside the ordinary course of business' under subsection 36(1) of the CCAA should be broadly interpreted to allow a CCAA judge to grant innovative solutions such as RVOs [reverse vesting orders] on a case by case basis, in accordance with the wide discretionary powers afforded the supervising judge pursuant to section 11 CCAA, as recognized by the Supreme Court in *Callidus*."

*Nemaska Leave Decision*, *supra*, at para [18](#), Table of Authorities, Tab 4.

*9354-9186 Québec inc. v. Callidus Capital Corp.*, 2020 SCC 10 at paras. [67](#) and [70](#), Table of Authorities, Tab 8.

44. CCAA judges overseeing restructurings should exercise their discretion to approve reverse vesting transactions where the section 36 factors are met and the benefits of the transaction

are clear, including where the reverse vesting structure preserves tax attributes that generate value and a higher recovery for creditors.

*Nemaska*, *supra*, at paras [71-76](#), Table of Authorities, Tab 3.

*Nemaska Leave Decision*, *supra*, at para [20](#), Table of Authorities, Tab 4.

45. Similarly in *Quest University*, Justice Fitzpatrick of the Supreme Court of British Columbia issued a decision approving a reverse vesting transaction after extensive analysis of reverse vesting transactions previously approved by CCAA courts. The Court concluded that it had the authority to grant a reverse vesting order under its general statutory authority in section 11 of the CCAA. The Court determined that it was appropriate to exercise its discretion to grant the reverse vesting order in the circumstances of that case because doing so advanced the remedial purposes of the CCAA.

*Quest University*, *supra*, at paras [127](#) and [170](#), Table of Authorities, Tab 6.

46. CCAA courts, including this Court, have previously approved reverse vesting transactions in which debtor companies were restructured by transferring unwanted assets and liabilities to a “newco” or other residual entity.

*Plasco Energy Group Inc.*, Settlement Approval Order granted July 17, 2015, Court File No. CV-15-10869-00CL [*Plasco Settlement Approval Order*]; Table of Authorities, Tab 9.

*JMB Crushing Systems Inc.*, Amended Reverse Vesting Order granted March 31, 2021, Court File No. 2001-05482 (ABQB) [*JMB Crushing Approval and Vesting Order*]; Table of Authorities, Tab 10.

*Bellatrix Exploration Ltd.*, Approval and Vesting Order granted June 22, 2021, Court File No. 1901-13767 (ABQB) [*Bellatrix Approval and Vesting Order*]; Table of Authorities, Tab 11.

*Nemaska Lithium Inc.*, Approval and Vesting Order granted October 15, 2020, Court File No. 500-11-057716-199 (QCSC [Commercial Division]) [*Nemaska Approval and Vesting Order*]; Table of Authorities, Tab 12.

*Wayland Group Corp.*, Approval and Vesting Order granted April 21, 2020, Court File No: CV-19-00632079-00CL (ONSC [Commercial List]) [*Wayland Approval and Vesting Order*]; Table of Authorities, Tab 13.

*ILTA Grain Inc.*, Approval and Vesting Order granted August 25, 2020, Court File No. S-197582 (BCSC) [*ILTA Grain Approval and Vesting Order*]; Table of Authorities, Tab 14.

#### **D. THE PROPOSED TRANSACTIONS MEET THE CRITERIA FOR APPROVAL**

47. The Monitor submits that the proposed AVO Transaction (if the Court directs the Monitor to deliver the discontinuance and release of the BC Civil Claim) and the proposed RVO Transaction (collectively, the "**Proposed Transactions**") satisfy applicable statutory criteria for the approval of asset sale transactions, including section 36 of the CCAA, and the common law factors to be considered, and that the completion of the Proposed Transactions is consistent with the remedial purposes of the CCAA. Accordingly, the

Monitor submits that the Proposed Transactions should be approved pursuant to this Court's authority under section 36 and, with respect to the RVO Transaction, section 11 of the CCAA.

(a) The Process was Reasonable in the Circumstances

48. The process undertaken to develop the Proposed Transactions was reasonable and appropriate having regard to the authority provided to the Monitor in the EMP Order, the nature of the AVO Transaction, the nature of the RVO Transaction, the comprehensive SISP and strategic processes previously undertaken and the lack of offers received through those processes for purchase of the assets that are subject to the Proposed Transactions, and the very limited number of parties that could potentially have an economic interest in completing a transaction to preserve the tax attributes of the Dominion Entities.
49. Under the Sale Transaction, which resulted from a court-approved SISP following three previous strategic processes, ACDC acquired substantially all of the business and assets of the Dominion Entities. Accordingly, the Proposed Transactions were developed in the context of the Monitor's efforts to maximize the remaining value of the Dominion Entities' estate following the completion of the Sale Transaction in February 2021.
50. The Monitor understands that a main purpose of the proposed RVO Transaction is to preserve the existing tax attributes of the Dominion Entities. Given applicable tax legislation, the Monitor understands that Washington and ACDC are likely the only parties that would have a potential economic interest in preserving or obtaining the Dominion Entities' tax attributes, and in completing such a transaction in the near term.
51. In the course of advancing the Proposed Transactions with DDMI and with Washington, respectively, the Monitor consulted with counsel to ACDC to obtain feedback on the Proposed Transactions and to ascertain ACDC's interest in completing a transaction similar to the RVO Transaction to obtain the Dominion Entities' tax losses. Following a series of discussions, the Monitor was informed by counsel to ACDC that ACDC is not prepared to consent to the Proposed Transactions.
52. As part of the RVO Agreement, the Monitor negotiated the right to market the proposed RVO Transaction to other potentially interested parties who may be interested in a similar transaction. Given that ACDC is the only party besides Washington with a potential economic interest in preserving the Dominion Entities' tax attributes, and did not purchase the Dominion Entities' tax attributes as part of the Sale Transaction, the Monitor does not believe that any further marketing efforts are warranted in the circumstances. Further marketing efforts would diminish the remaining cash resources of the Dominion Entities and impair the Monitor's ability to complete the proposed RVO Transaction by November 15, 2021, which is a condition under the RVO Agreement.
53. In accordance with the EMP Order, the Monitor advanced and negotiated the Proposed Transactions in consultation with the 1L Agent. The 1L Agent supports the approval of the Proposed Transactions and does not require or support any further marketing efforts, which would only have the effect of expending further estate resources and could potentially put

the proposed RVO Transaction with Washington at risk due to the Outside Date of November 15, 2021.

54. Accordingly, the Monitor submits that the process to develop the Proposed Transactions was reasonable and appropriate in the circumstances.
- (b) The Monitor Approved the Process Leading to the Proposed RVO Transaction
55. The EMP Order authorized the Monitor to, among other things:
- (a) market the Dominion Entities' Property, with the consent of the 1L Agent;
- (b) conduct and direct the sale or transfer of any Property, whether or not outside the normal course of business, subject to approval of the Court as may be required under the Initial Order; and
- (c) execute documents of whatever nature in respect of the Property.
56. The Monitor developed and negotiated the Proposed Transactions in accordance with its authority under the EMP Order and with a view to maximizing the remaining value of the Dominion Entities' estate. The Monitor played a central role in the process to develop the Proposed Transactions, including engaging in discussions with counsel to the 1L Agent, counsel to ACDC, and other key stakeholders of the Dominion Entities.
57. The proposed RVO Transaction was negotiated in the context where the assets of the Applicants had been widely marketed through the SISP and the preceding strategic processes, and had generated no offers for the sale of those assets that are the subject of the proposed RVO Transaction (other than the failed Washington stalking horse bid).
- (c) The Proposed Transactions are Beneficial to Creditors
58. In the Monitor's opinion the Proposed Transactions would be more beneficial to creditors than a sale or disposition under a bankruptcy:
- (a) the consideration for the proposed AVO Transaction is the aggregate of the Assumed Liabilities, including the Diavik JVA Cover Payment Liabilities and the LC Obligations as defined in the AVO Agreement; and
- (b) the proposed RVO Transaction provides for cash consideration of US \$1,500,000, resulting in additional value from the limited remaining assets of the Dominion Entities for the benefit of their creditors with an economic interest, and no prejudice to other stakeholders.
59. In addition, Washington has agreed under the terms of the RVO Agreement to fund up to US \$250,000 of professional fees and expenses of the Monitor and the 1L Agent, and other professionals that may be required by the Monitor and its counsel, in connection with the proposed RVO Transaction. Accordingly, the gross proceeds from the proposed RVO

Transaction will not be offset by costs incurred by the Monitor to complete the RVO Transaction.

60. It is a condition of the RVO Transaction that the 21-day appeal period in respect of the proposed RVO shall have expired and the RVO Transaction shall have been completed by November 15, 2021. The Monitor understands that it is critical to Washington that the RVO Transaction be completed by that date to enable Washington and its affiliates to complete related structuring matters before the end of calendar year 2021. Accordingly, the Monitor is of the view that it is necessary to complete the proposed RVO Transaction within the CCAA proceedings on an expedited basis.

(d) Key Creditors were Consulted

61. The Monitor seeks approval of the Proposed Transactions with a view to maximizing the value of the Applicants' estate for the benefit of their creditors with a remaining economic interest. The Monitor has consulted with key creditors in connection with the development of the AVO Transaction and the RVO Transaction and the terms and structure of the AVO Agreement and the RVO Agreement.
62. The Proposed Transactions were each developed in consultation with the 1L Agent, as required pursuant to the EMP Order, and in consultation with ACDC, which the Monitor understands is also a significant holder of 2L Notes. The 1L Agent supports the approval of the Proposed Transactions and the granting of the AVO and the RVO.
63. The Monitor understands ACDC does not support the Proposed Transactions.

(e) The Consideration is Fair and Reasonable in the Circumstances

64. The Proposed Transactions are the best and only offers received by the Monitor to obtain additional value for the limited remaining assets in the Applicants' estates. The Monitor believes that the consideration is fair and reasonable having regard to the nature of the remaining assets and the limited market for such assets.
65. For the reasons set out above, the Monitor respectfully submits that the Proposed Transactions satisfy the requirements for approval under subsection 36(3) of the CCAA.

(ii) *Compliance with Subsection 36(4) of the CCAA*

66. Washington and its affiliates have or have had, directly or indirectly, control of the Dominion Entities. Accordingly, Washington is a person related to the Dominion Entities for purposes of subsection 36(4) of the CCAA.

[CCAA](#), subsection [36\(4\)](#); Table of Authorities, Tab 19.

67. Pursuant to subsection 36(4) of the CCAA, the Court may only approve a sale to a person who is related to the debtor company if the Court is satisfied that (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and (b) the consideration to be received is superior to the consideration that



would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

[CCAA](#), subsection [36\(4\)](#); Table of Authorities, Tab 19.

68. In *Target*, Regional Senior Justice Morawetz (as he then was) approved a sale to a related party in circumstances where the related party was the only logical purchaser for the purchased assets due to their unique nature. In considering subsection 36(4) of the CCAA, Regional Senior Justice Morawetz stated that “the Court must be satisfied, overall, that sufficient safeguards are adopted to ensure that a related party transaction is in the best interests of the stakeholders of the Applicants and that the risk to the estate associated with a related party transaction have been mitigated.”

[Target Canada Co., Re](#), 2015 ONSC 2066 at paras 13 and 15-17; Table of Authorities, Tab 15.

69. In the BIA proposal proceedings of *OEL Projects*, this Court approved a sale transaction with a related party purchaser in circumstances where the debtor had not conducted any bid or other sale process. The Court was satisfied that approval of the transaction was appropriate on the particular facts of the case. In interpreting subsection 65.13(5) of the BIA (the analogous provision to subsection 36(4) of the CCAA), Justice Grosse stated:

The question is whether the Court can approve a sale under section 65.13(5), where there has been no actual sale process. While I am of the view that the Court should be cautious in so doing, I am persuaded that the Court may do so where the particular circumstances warrant. While section 65.13(5) refers to good faith efforts being made to sell, it does not actually mandate a particular sales process, or for that matter, any sales process at all. For instance, it does not say that the Court must be satisfied that there was a good faith sale process. Rather, the wording of the provisions focuses on the efforts that were made. In most cases, I expect that the efforts would have to involve some actual approaches to other purchasers. However, I am not convinced that these are strictly required in every case in a proper interpretation of the provision.

[OEL Projects Ltd., Re](#), 2020 ABQB 365 at paras. [22](#), [27](#) and [29](#); Table of Authorities, Tab 16.

70. The Monitor submits that the requirements of subsection 36(4) of the CCAA are satisfied in the circumstances of this case with respect to the RVO Transaction because:
- (a) the Applicants conducted a comprehensive, Court-approved SISP during the CCAA proceedings, which was preceded by multiple strategic processes undertaken by the Dominion Entities prior to the commencement of the CCAA proceedings. The SISP was broad and extensive and interested parties were invited to submit proposals for any kind of sale or investment proposal that might be of interest to them. The SISP did not generate any offers to acquire the tax attributes of the Dominion Entities;

- (b) in light of the Sale Transaction, ACDC is now the only party other than Washington with a potential economic interest in the Dominion Entities' tax attributes;
- (c) ACDC chose not to structure the Sale Transaction in a manner that would have enabled it to obtain the benefit of the Dominion Entities' tax attributes;
- (d) good faith efforts have therefore been made to sell the applicable assets to the only two persons with a potential economic interest in the Dominion Entities' corporate tax attributes, including ACDC which is not related to the Dominion Entities;
- (e) corporate tax attributes are inherently more valuable to related persons who are able to obtain the benefit of such attributes under applicable tax legislation; and
- (f) in the unique circumstances of this case and having regard to the Monitor's efforts to date, no other higher-value transaction has emerged or is likely to emerge from a person that is not related to the Dominion Entities, and no such offer was ever obtained or made during the SISP.

**E. THE REORGANIZATION STEPS IN THE RVO SHOULD BE APPROVED**

*(iii) The Vesting of the Transferred Assets and Claims and Encumbrances*

71. The proposed RVO includes certain reorganization steps that are necessary to implement the RVO Transaction on a "free and clear" basis, including:
- (a) the Dominion Entities' interest in and to the Transferred Assets shall be transferred to and shall vest exclusively in the Creditor Trust;
  - (b) all Claims and Encumbrances in respect of the Dominion Entities other than Retained Claims shall be transferred to and shall vest absolutely and without recourse in the Creditor Trust, and such Claims and Encumbrances shall continue to attach to the Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time; and
  - (c) all Claims and Encumbrances other than the Retained Claims shall be expunged, release and discharged as against the Dominion Entities and the Retained Assets.
72. The transfer of unwanted assets and liabilities to a residual entity by court order is a central element of reverse vesting transactions approved by courts pursuant to their jurisdiction under sections 11 and 36 of the CCAA.

*[Plasco Settlement Approval Order](#), supra, at para 11; Table of Authorities, Tab 9.*

*[JMB Crushing Approval and Vesting Order](#), supra, at para 4; Table of Authorities, Tab 10.*

*[Bellatrix Approval and Vesting Order](#), supra, at para 10; Table of Authorities, Tab 11.*

73. No creditor of the Dominion Entities will suffer prejudice as a result of the transfer of the Transferred Assets and Claims and Encumbrances to the Creditor Trust. The proposed RVO provides that the Claims and Encumbrances shall continue to attach to the Transferred Assets (which includes the cash payment made by Washington under the RVO Transaction) with the same attributes, rights, security, nature and priority as they had immediately prior to the completion of the RVO Transaction. As a result, creditor entitlements to the RVO Transaction proceeds and the other assets not retained by the Dominion Entities will be preserved in accordance with their existing priorities.

(iv) *The Use of a Creditor Trust*

74. The proposed RVO provides that the Transferred Assets and Claims and Encumbrances will be transferred to the Creditor Trust to be administered by the Monitor.
75. While reverse vesting transactions have typically transferred assets to an existing debtor company or a “newco” incorporated by a debtor company, the use of a creditor trust administered by a Court-appointed receiver was recently approved by the Ontario Superior Court of Justice in the *Vert Infrastructure Ltd.* receivership proceedings.

[\*Re Vert Infrastructure Ltd.\*](#), Approval and Vesting Order granted June 8, 2021, Court File No. CV-20-00642256-00CL at paras. 4, 7 and 9; Table of Authorities, Tab 17.

76. The Court said the following in approving the reverse vesting order and the use of a creditor trust in *Vert Infrastructure*:

The transaction has been designed in a practical manner that uses judicial tools available to this court – a vesting order, channeling claims, and creation of a common law trust. I am satisfied that I can grant the order. Ultimately, KSV, who is the Receiver of Vert, will be holding these same assets in trust for the very same creditors of Vert – it mirrors the structure and rights/obligations that are in place under the receivership.

[\*Re Vert Infrastructure Ltd.\*](#), Endorsement of Madam Justice Conway dated June 8, 2021, Court File No. CV-20-00642256-00CL; Table of Authorities, Tab 18.

77. The use of a creditor trust administered by the Monitor is necessary and appropriate in the circumstances of this case. As the proposed RVO Transaction is premised on each of the Dominion Entities being restructured and exiting CCAA proceedings, it is necessary for the shares of the remaining CCAA applicants to be transferred to the Creditor Trust as Transferred Assets. Accordingly, none of the existing applicants in the CCAA proceedings are available to act as the residual entity of the corporate group or to incorporate a “newco” subsidiary to serve that purpose. The use of the Creditor Trust will fulfil the same purpose and will facilitate the completion of the RVO Transaction.
78. The Monitor will administer the Creditor Trust for the benefit of creditors, subject to the continued oversight of the Court in the CCAA proceedings. Accordingly, the Monitor submits that the use of the Creditor Trust to channel Claims and Encumbrances and achieve a necessary restructuring of the Dominion Entities is appropriate in the circumstances.

(v) *Injunctions in Favour of the Dominion Entities and the Retained Assets*

79. The proposed RVO provides that, following the completion of the RVO Transaction at the Effective Time, all persons are forever barred, estopped and enjoined from exercising or enforcing any rights or remedies in respect of or against the Dominion Entities or the Retained Assets arising from or in respect of (a) the Transferred Assets, (b) any Claims and Encumbrances against or relating to the Dominion Entities, the Transferred Assets or the Retained Assets existing immediately prior to the Effective Time, (c) the insolvency of the Dominion Entities prior to the Effective Time, (d) the commencement or existence of the CCAA proceedings, and (e) the completion of the RVO Transaction (the “**Injunction Provision**”).
80. Injunction provisions are frequently included in reverse vesting orders to ensure that the restructured debtor companies have a “fresh start” and that transactions are not subject to collateral attack after they are implemented.

[Wayland Approval and Vesting Order](#), *supra*, at para 12; Table of Authorities, Tab 13.

[ILTA Grain Approval and Vesting Order](#), *supra*, at para 5; Table of Authorities, Tab 14.

[Nemaska Approval and Vesting Order](#), *supra*, at para 26; Table of Authorities, Tab 12.

81. The Court has authority pursuant to section 11 of the CCAA to grant the Injunction Provision. The Injunction Provision is ancillary to the vesting and transfer provisions in the proposed RVO and is necessary to ensure that no person can exercise rights or remedies against the Dominion Entities as a result of the implementation of the RVO Transaction or the fact that the Dominion Entities were insolvent and subject to the CCAA proceedings. The Monitor submits that the Injunction Provision is reasonable and appropriate in the circumstances to facilitate the completion of the RVO Transaction.

**F. THE STAY OF PROCEEDINGS SHOULD BE EXTENDED**

82. Since the granting of the Order on September 8, 2021 extending the Stay Period to December 15, 2021, the Monitor, on behalf of the Applicants, has:
- (a) communicated with various stakeholder groups and/or their advisors and considered strategies to maximize the remaining assets of the Applicants;
  - (b) acted in accordance with the EMP Order, including taking all actions and steps pursuant to the Transition Services Agreement dated February 3, 2021 with ACDC and the 1L Agent which was executed by the Monitor on behalf of the Applicants in accordance with the EMP Order;
  - (c) communicated regularly with DDMI regarding DDM's ongoing interest in the Diavik Diamond Mine and the Diavik Joint Venture Interest and issues in relation to the Monetization Order;

- (d) engaged in discussions regarding and negotiated the Proposed Transactions, including the AVO and the RVO, and brought this application for approval of the same.
83. A further extension of the Stay Period to March 4, 2021 is appropriate in that:
- (a) it will provide the Applicants with sufficient time to complete the Proposed Transactions and address any remaining restructuring matters in the CCAA Proceedings;
  - (b) the Ninth Cash Flow Statement included in the Sixteenth Report of the Monitor projects that the Applicants will have sufficient funds to cover the costs of the CCAA Proceedings during the period of the proposed extension;
  - (c) the Applicants will be under the expanded oversight of the Monitor during the period of the extension pursuant to the EMP Order;
  - (d) the Applicants are acting in good faith and with due diligence; and
  - (e) an extension of the Stay of Proceedings is in the best interests of the Applicants' stakeholders.
84. Based on the foregoing, the Monitor respectfully submits that:
- (a) circumstances exist that make the extension of the Stay Period to March 4, 2022 appropriate; and
  - (b) the Applicants have acted and are acting in good faith and with due diligence.
85. The Monitor respectfully recommends that this Honourable Court grant an Order extending the Stay Period to March 4, 2022.

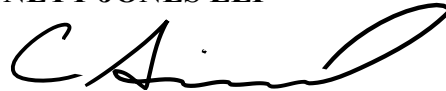
**V. CONCLUSION**

86. The process to develop and negotiate the Proposed Transactions was overseen by the Monitor, in consultation with key stakeholders, and was reasonable and appropriate having regard to the nature of the Applicants' remaining assets.
87. The Proposed Transactions will enable the Applicants to maximize the value of their estate, and the RVO Transaction will provide an additional cash recovery to creditors with a remaining economic interest.
88. The IL Agent supports the approval of the RVO Transaction.
89. The approval of the Proposed Transactions and the other relief sought in the proposed AVO and RVO is within the jurisdiction of the Court and is necessary to facilitate the restructuring of the Dominion Entities and the completion of the Proposed Transactions.

90. For the reasons set out above, the Monitor respectfully requests that this Court grant the proposed AVO (if the Court directs the Monitor to deliver the discontinuance and release of the BC Civil Claim) and grant the RVO.
91. The Applicants have acted and are acting in good faith and due diligence, and circumstances exist that make it appropriate to extend the Stay Period to March 4, 2022.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, this 7<sup>th</sup> day of October, 2021.

**BENNETT JONES LLP**



---

Chris Simard / Kelsey Meyer  
Counsel to the Monitor, FTI Consulting Canada Inc.

**TABLE OF AUTHORITIES**

TAB	AUTHORITY
1.	<i>Re <a href="#">Sanjel Corp</a></i> , 2016 ABQB 257
2.	<i><a href="#">Royal Bank v. Soundair Corp.</a></i> , (1991), 4 OR (3d) 1 (CA) 2 p9
3.	<i><a href="#">Arrangement relatif à Nemaska Lithium Inc</a></i> , 2020 QCCS 3218
4.	Leave to appeal to QC CA refused, <i><a href="#">Arrangement relatif à Nemaska Lithium Inc</a></i> , 2020 QCCA 1488
5.	Leave to appeal to SCC refused, <i><a href="#">Arrangement relatif à Nemaska Lithium Inc</a></i> , 2021 CarswellQue 4589
6.	<i><a href="#">Quest University Canada., Re</a></i> , 2020 BCSC 1883
7.	Leave to appeal to BC CA refused, <i><a href="#">Quest University Canada., Re</a></i> , 2020 BCCA 364
8.	<i><a href="#">9354-9186 Québec inc. v. Callidus Capital Corp.</a></i> , 2020 SCC 10
9.	<i><a href="#">Plasco Energy Group Inc</a></i> , Settlement Approval Order granted July 17, 2015, Court File No. CV-15-10869-00CL
10.	<i><a href="#">JMB Crushing Systems Inc</a></i> , Amended Reverse Vesting Order granted March 31, 2021, Court File No. 2001-05482 (ABQB)
11.	<i><a href="#">Bellatrix Exploration Ltd.</a></i> Approval and Vesting Order granted June 22, 2021, Court File No. 1901-13767 (ABQB)
12.	<i><a href="#">Nemaska Lithium Inc</a></i> , Approval and Vesting Order granted October 15, 2020, Court File No. 500-11-057716-199 (QCSC [Commercial Division])
13.	<i><a href="#">Wayland Group Corp</a></i> , Approval and Vesting Order granted April 21, 2020, Court File No: CV-19-00632079-00CL (ONSC [Commercial List])
14.	<i><a href="#">ILTA Grain Inc.</a></i> , Approval and Vesting Order granted August 25, 2020, Court File No. S-197582 (BCSC)
15.	<i><a href="#">Target Canada Co., Re</a></i> , 2015 ONSC 2066
16.	<i><a href="#">OEL Projects Ltd., Re</a></i> , 2020 ABQB 365
17.	<i><a href="#">Re Vert Infrastructure Ltd.</a></i> , Approval and Vesting Order granted June 8, 2021, Court File No. CV-20-00642256-00CL

18.	<a href="#"><i>Re Vert Infrastructure Ltd.</i></a> , Endorsement of Madam Justice Conway dated June 8, 2021, Court File No. CV-20-00642256-00CL
<b>TAB</b>	<b>STATUTE</b>
19.	<a href="#"><i>Companies' Creditors Arrangement Act</i></a> , RSC 1985, c C-36.