

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

AND IN THE MATTER OF A PLAN OF ARRANGEMENT OF  
DOMINION DIAMOND MINES ULC, DOMINION DIAMOND  
DELAWARE COMPANY LLC, DOMINION DIAMOND CANADA  
ULC, WASHINGTON DIAMOND INVESTMENTS, LLC,  
DOMINION DIAMOND HOLDINGS, LLC, DOMINION FINCO  
INC. AND DOMINION MARKETING CORPORATION

DOCUMENT SECOND SUPPLEMENTAL REPORT TO THE SIXTEENTH  
REPORT OF FTI CONSULTING CANADA INC., IN ITS  
CAPACITY AS MONITOR OF DOMINION DIAMOND MINES  
ULC, DOMINION DIAMOND DELAWARE COMPANY LLC,  
DOMINION DIAMOND CANADA ULC, WASHINGTON  
DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND  
HOLDINGS, LLC, DOMINION FINCO INC. AND DOMINION  
MARKETING CORPORATION

**November 1, 2021**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT

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**SECOND SUPPLEMENTAL REPORT TO THE  
SIXTEENTH REPORT OF THE MONITOR**

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## INTRODUCTION

1. The purpose of this Second Supplemental Report to the Sixteenth Report (the “**Second Supplemental Report**”) is to supplement the Sixteenth Report of the Monitor dated October 6, 2021 (the “**Sixteenth Report**”) and the Supplemental Report to the Sixteenth Report dated October 19, 2021 (the “**Supplemental Report**”) by providing this Honourable Court with information with respect to:
  - a. the activities of the Monitor in respect of the Diavik Realization Assets since the granting of the EMP Order;
  - b. the involvement of ACDC’s management and the Bidders in the ACDC Transaction;
  - c. the costs of the SISP and the Monitor’s understanding of its mandate since the granting of the EMP Order;
  - d. details regarding diamond sales since the granting of the EMP Order; and
  - e. correspondence with ACDC and the Bidders with respect to the Monitor’s activities under the EMP Order, the AVO Transaction and the RVO Transaction.
2. This Second Supplemental Report should be read in conjunction with the Sixteenth Report and the Supplemental Report and all capitalized terms not otherwise defined herein are as defined in the Sixteenth Report and the Supplemental Report.

## TERMS OF REFERENCE

3. In preparing this Second Supplemental Report, the Monitor has relied upon certain information (the “**Information**”) including Dominion’s unaudited financial information, books and records and discussions with members of Dominion’s former senior management team.

4. Except as described in this Second Supplemental Report, the Monitor has not audited, reviewed, or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
5. The Monitor has not examined or reviewed financial forecasts and projections referred to in this report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook.
6. Future oriented financial information reported to be relied on in preparing this report is based on the Monitor's assumptions regarding future events. Actual results may vary from forecast and such variations may be material.
7. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

#### **MONITOR'S ADMINISTRATION OF THE DIAVIK REALIZATION ASSETS**

8. On January 27, 2021, this Honourable Court granted the EMP Order which authorized the Monitor to, among other things, execute a transition services agreement between ACDC, the Agent and Dominion ("TSA") on behalf of the Applicants concurrent with or after closing of the ACDC Transaction, and to take any and all actions and steps in the name of and on behalf of the Applicants necessary to satisfy the obligations thereunder. On February 3, 2021, the Monitor entered into the TSA.
9. When the ACDC Transaction closed, future funding for the Dominion estate was provided via a US \$1,000,000 Diavik Realization Account and a US \$250,000 Wind-down Account. As agreed in sections 7.1(a)(iii) and (iv) of the ACDC APA, these amounts were funded from Dominion's cash on hand at the time.

10. Since the EMP Order was granted on January 27, 2021, the Monitor has conducted itself in accordance with the EMP Order and undertaken activities that have included, among other things, the following:

- a. overseeing the sale by ACDC of diamonds delivered by DDMI for net proceeds of approximately \$33.7 million which were then distributed to and are being held by the Agent as cash collateral in respect of its LCs. The sales are described in further detail in paragraph 22;
- b. attending to post-closing matters with respect to the ACDC Transaction;
- c. attending weekly meetings with the Agent and its legal counsel;
- d. preparing bi-weekly cash flow variance reporting for the Agent as required under Dominion's Amended Credit Agreement;
- e. preparing financial projections with respect to the Diavik JVA including projected diamond collateral held by DDMI, cover payments made by DDMI for cash calls under the Diavik JVA, dispositions of DDMI diamond collateral pursuant to the Monetization Order, projected DDMI diamond collateral surplus or shortfall, projected diamond deliveries to Dominion and the illustrative net realizations from the Diavik JVA interest;
- f. attending quarterly Diavik JVA Committee meetings;
- g. reviewing the Diavik Mine Life of Mine Plan prepared by DDMI;
- h. participating in video conferences and evaluating proposals from various environmental consulting firms to act as technical consultants in respect of the Diavik JVA;

- i. arranging and coordinating the filing of Dominion's corporate tax returns by ACDC employees, pursuant to the TSA;
- j. coordinating with ACDC to address accounting matters, corporate filings and other regulatory and statutory requirements pursuant to the TSA;
- k. instructing ACDC to remit GNWT Royalty Installment filings and royalty payments pursuant to the Monetization Order and TSA;
- l. preparing the Seventh Cash Flow Statement, Eighth Cash Flow Statement and Ninth Cash Flow Statement, each of which were summarized in previous Court reports and each of which disclosed the forecast professional fee disbursements for the legal counsel to the Agent, the Monitor and the Monitor's legal counsel;
- m. administering payments in respect of estate costs;
- n. administering corporate name changes as required under the ACDC Transaction;
- o. entering into amendments to Dominion's first lien Credit Agreement;
- p. reviewing monthly cash calls received from DDMI and corresponding cover payment notices;
- q. attending calls with the Agent, First Lien Lender syndicate members, second lien noteholders and other stakeholders to discuss the status of the estate;
- r. considering strategies to maximize value from Dominion's remaining assets;
- s. reviewing and commenting on the AVO Agreement, RVO Term Sheet and related documents; and

- t. preparing the Fourteenth Report (dated March 4, 2021), Fifteenth Report (dated August 30, 2021), Sixteenth Report (dated October 6, 2021), Supplemental Report (dated October 19, 2021) and this Second Supplemental Report.

## **ACDC PERSONNEL AND THE BIDDERS' INVOLVEMENT IN THE ACDC TRANSACTION AND SUBSEQUENT ACTIVITIES**

### **Management and the ACDC Transaction**

11. The current senior financial management team of ACDC is made up of a number of individuals who were senior management personnel and executives of Dominion prior to the ACDC Transaction, some of whom were also involved in negotiating the ACDC Transaction on behalf of Dominion. These management individuals (collectively, “**ACDC Management**”) include, among others:
  - a. Ms. Kristal Kaye, Chief Financial Officer of ACDC (and former Chief Financial Officer of Dominion);
  - b. Ms. Huili Li, Corporate Controller of ACDC (and former Corporate Controller of Dominion);
  - c. Mr. Andrew Petch, Manager, Strategic Planning of ACDC (and former Manager, Strategic Planning of Dominion); and
  - d. Ms. Tammy Taylor, Senior Tax Advisor of ACDC (and former Senior Tax Advisor of Dominion).
12. Representatives of the Bidders DDJ and Brigade, the equity owners of ACDC, were also involved in negotiating the ACDC Transaction. The Monitor understands that the two Bidders manage substantial holdings of Dominion’s senior secured second lien notes, although less than a majority. They were part of the Ad Hoc Group of secured second lien

note holders who were active during the CCAA proceedings prior to the ACDC Transaction closing.

### **Costs of the SISP and the Monitor’s Mandate after the Granting of the EMP Order**

13. Prior to the closing of the ACDC Transaction and the granting of the EMP Order, the primary focus of these CCAA Proceedings was the structuring and conduct of the SISP. The professional fees incurred by Dominion and paid with estate funds, from the commencement date of the CCAA Proceedings to the closing of the ACDC Transaction are set out in the table below:

<b>Professional Fee Summary</b>		
<b>For the Forty Two Week Period Ended February 3, 2021</b>		
<i>(\$ thousands)</i>		
<b>Professional Fees - by advisor</b>		
Evercore	Financial Advisor	\$ 12,139
Blake, Cassels & Graydon LLP & McDermott Will & Emery LLP	Legal Counsel to Applicants & US Legal Counsel to Applicants	7,814
FTI Consulting Canada Inc.	Monitor	1,988
Bennett Jones LLP	Legal Counsel to Monitor	524
Vinson & Elkins LLP	US Legal Counsel to Monitor	45
TWC Legal Advisors	Legal Counsel to The Washington Companies	4,444
Osler, Hoskin & Harcourt LLP	Legal Counsel to the Existing Credit Facility Lenders	2,944
Cahill Gordon & Reindel LLP	US Legal Counsel to the Existing Credit Facility Lenders	2,675
Restructuring Partners & Associates	Agent Advisor	2,505
Torys LLP	Legal Counsel to the 2Ls	4,248
Houlihan Lokey	Advisors to the 2Ls	5,184
Other	Other	393
<b>Total Professional Fees</b>		<b>\$ 44,901</b>

14. The above summary only includes disbursements paid directly by Dominion and does not include the fees of other key stakeholders with an interest in the outcome of the SISP including, among others, counsel for DDMI, counsel for Wilmington Trust as agent for the second lien notes, counsel for GNWT, counsel for the private royalty holders and the financial advisors to Washington, the primary DIP lender.

15. While the Monitor has not precisely isolated the professional fees specifically related to the SISP, as opposed to all other restructuring matters during this period, the fees of



Evercore as sales agent of \$12.1 million are directly attributable only to the SISP, and it is understood that a significant portion of the other professional fees were also incurred in respect of the SISP (perhaps as high as 50% of the total fees).

16. Many of the ACDC Management named above administered the SISP in their previous roles with Dominion and are therefore aware of the complexities and costs of running the SISP.

17. In the Monitor's view, the funds provided for in the Diavik Realization Account and the Wind-up Account are clearly insufficient to run a sales process for Dominion's 40% interest in the Diavik Joint Venture and Dominion's other remaining assets, and the Monitor never understood its mandate under the EMP Order to include conducting such a sales process. The Monitor's conduct and administration of Dominion's estate after the granting of the EMP Order was consistent with this understanding, as it reported. Subsequent to the granting of the EMP Order, the Monitor reported to the Court and to all stakeholders (including ACDC), as follows:

- a. on March 4, 2021, the Monitor reported on its activities (which did not include running a sales process) in the Fourteenth Report, and reported specifically that it forecasted the expenditure of total professional fees and expenses of \$750,000 between February 4, 2021 and September 17, 2021 (\$300,000 to the First Lien Lenders' counsel, \$300,000 to the Monitor and \$150,000 to the Monitor's counsel) to "wind-down Dominion's estate and administer the Diavik Realization Assets"; and
- b. on August 30, 2021, the Monitor reported further on its activities (which did not include running a sales process) in the Fifteenth Report, and reported specifically that:
  - i. professional fees and expenses since February 4, 2021 had totaled \$857,000, thus exceeding the previous forecast of \$750,000 (\$243,000 had been incurred by the First Lien Lenders' counsel, \$498,000 had been

incurred by the Monitor and \$117,000 had been incurred by counsel to the Monitor);

- ii. forecasted the expenditure of professional fees and expenses of \$1,146,000 from August 14, 2021 to December 17, 2021 (\$596,000 to the First Lien Lenders' counsel, \$300,000 to the Monitor and \$250,000 to the Monitor's counsel) to "administer the Diavik Realization Assets and [for] the wind-down Dominion's estate"; and
- iii. a further advance would be required from the First Lien Lenders to cover the anticipated expenses of the estate during this forecast period, in the approximate amount of \$469,000.

18. Prior to ACDC recently alleging that it expected the Monitor to conduct a sales process after the EMP Order was granted, no stakeholder (including ACDC) ever requested that the Monitor undertake a renewed sales process.

19. The SISP was comprehensive and thorough, and resulted in no offers for the Diavik Joint Venture Interest including none from ACDC which, in conjunction with its financial advisor, had performed due diligence on the asset.

20. The Monitor remains of the view that there is limited benefit to a further marketing process for these assets, especially given the cost of running such a process (which the Monitor very conservatively estimates would exceed \$5 million).

### **Diamond Sales**

21. As described above, the focus of the Monitor's efforts since the granting of the EMP Order has been to administer the Diavik Joint Venture Interest, collect and realize on the diamonds to be delivered to Dominion pursuant to paragraph 16 of the SARIO and otherwise attend to the general administration of the Diavik Joint Venture Interest, as opposed to running a sales or marketing process.

22. To date, the Monitor has received two shipments of diamonds from DDMI which relate to Dominion Production from November and December 2020 which Dominion had been unable to collect and realize on prior to the closing of the ACDC Transaction. ACDC is fully apprised of and has been centrally involved in these activities, as it acted as agent to sell the diamonds on behalf of Dominion for a 1% fee pursuant to the TSA. The two sales conducted by ACDC as reflected in the sales statements dated April 28, 2021 and October 1, 2021, and the net proceeds made available to the Agent as collateral for its LCs are summarized below:

<b>Sale Statement Date (\$ thousands)</b>	<b>28-Apr-21</b>	<b>1-Oct-21</b>	<b>Total</b>
Total Carats Sold	262,963	178,827	<b>441,790</b>
Gross Sales Value	\$ 19,619	\$ 16,910	<b>\$ 36,529</b>
Less Cost to Sell:			
1% Sales Fee paid to ACDC	196	169	<b>365</b>
Shipping Costs	39	18	<b>57</b>
Sorting Costs	99	73	<b>172</b>
GNWT Royalties	-	135	<b>135</b>
Private Royalties	186	325	<b>511</b>
Pre-filing Private Royalties	190	998	<b>1,189</b>
Proceeds withheld for Dominion Estate Expenses	-	376	<b>376</b>
<b>Net Proceeds from Diamond Sales</b>	<b>\$ 18,907</b>	<b>\$ 14,816</b>	<b>\$ 33,723</b>

23. As the party who actively sold Dominion’s Diamond Production from Diavik for the Monitor, ACDC had direct, immediate and accurate knowledge of the results of the Monitor’s Diavik Realization Activities. The Monitor notes that while ACDC, as the “Purchaser” under the TSA, received approximately \$365,000 in compensation for its sale of Dominion’s diamonds, it incurred no costs with respect to the Realization Assets for which it was compensated from the Diavik Realization Account (or if it did incur such costs, it did not seek reimbursement for those costs from the Monitor as contemplated in section 3.01 of the TSA).

## **CORRESPONDENCE WITH ACDC SINCE THE GRANTING OF THE EMP ORDER**

24. While the Monitor has not issued formal reports to ACDC, it has had regular correspondence with ACDC Management in which, among other things, the following matters have been discussed:

- a. ACDC acting as the primary interface with Dominion's tax advisors and preparing Dominion's 2020 corporate tax returns;
- b. ACDC acting as agent to monetize diamonds for net proceeds of approximately \$33.7 million, net of costs, including fees of approximately \$365,000 earned by ACDC;
- c. ACDC assisting the Monitor with accessing certain books and records of Dominion which remain in the custody of ACDC;
- d. ACDC preparing royalty returns and administering royalty payments from the diamond sales proceeds;
- e. ACDC assisting the Monitor with key assumptions used in the Monitor's financial projections;
- f. ACDC providing advice with respect to the selection of environmental engineering consultants; and
- g. various other services provide by ACDC to Dominion pursuant to the TSA.

25. The Monitor attended a video conference requested by Mr. Eric Hoff of DDJ on August 31, 2021, in which the following matters were discussed:

- a. the status of the CCAA Proceedings;
- b. the current activities of the Monitor;

- c. the fact that Monitor was aware that representatives of DDMI and the Agent were engaged in confidential discussions (as discussed below); and
  - d. the Fifteenth Report in respect of the Monitor's application for an extension of the Stay of Proceedings.
26. Mr. Hoff took no issue with the approach being taken by the Monitor and accepted our suggestion of a recurring monthly update call.
27. There were no requests for additional reporting or information until ACDC was advised of the proposed transactions.

### **DDJ Information Requests**

28. As reported at paragraph 45 of the Sixteenth Report, on September 28, 2021, representatives of the Ad Hoc Group and current owners of ACDC had a scheduled call with the Monitor confirming that they had been advised by the First Lien Lenders on or around September 27, 2021 of the proposed AVO Transaction and RVO Transaction and advising that they would require sufficient time to perform diligence and consider their positions with respect to the two transactions. Following the call, representatives of DDJ provided the Monitor with a detailed list of information requests with respect to the AVO Transaction (the "**DDJ Information Requests**"). A copy of the email received with the DDJ Information Requests is attached at Appendix "A".
29. The Monitor established a confidential virtual data room (the "**ACDC VDR**") on September 30, 2021 and on the same day, posted to the ACDC VDR the document that responded to item six of the DDJ Information Requests. ACDC and DDMI are direct competitors and no longer joint venture partners. DDMI considered the remaining DDJ Information Requests to be for confidential, commercially sensitive information of DDMI, and refused to agree to their disclosure without satisfactory confidentiality requirements being put in place.

30. As detailed at paragraphs 46 – 49 of the Sixteenth Report, counsel for the Monitor, DDMI and ACDC held discussions and exchanged correspondence between September 29 and October 3, 2021 regarding the remaining DDJ Information Requests. At the conclusion of those discussions, the Monitor’s counsel informed ACDC’s counsel of the terms on which DDMI would agree to disclose the remaining DDJ Information Requests, in an email sent at 8:31 a.m. Mountain Time on Sunday, October 3, 2021. A copy of the email is attached at Appendix “B”.
31. As counsel to the Monitor advised, DDMI would only agree to allow the additional disclosures if satisfactory confidentiality agreements were put in place in advance. For that reason, the Monitor requested counsel to ACDC to confirm that the Monitor could send the Non-Disclosure Agreements (“NDAs”) entered into during the SISF by Brigade, DDJ and ACDC’s counsel (who at the time was counsel to Brigade and DDJ), to DDMI. The parties could then work with those NDAs as a starting point and seek to negotiate new NDAs to facilitate the provision of the additional requested information.
32. Counsel to ACDC advised counsel to the Monitor on both October 3 and October 4, 2021, that they were seeking their client’s instructions regarding the disclosure of the NDAs.
33. After these communications on October 3 and 4, 2021, ACDC did not communicate with the Monitor regarding the DDJ Information Requests. On October 18, 2021, the Monitor’s counsel sent a letter to ACDC’s counsel, reiterating the necessary next steps (ACDC confirming that the NDAs could be disclosed to DDMI) (refer to Appendix “F” to the Supplemental Report). ACDC never responded to that letter. At paragraph 16 of the Supplemental Report, the Monitor reported that ACDC had not, as of October 19, 2021, provided permission to the Monitor to disclose the NDAs to DDMI.
34. ACDC’s next communication with the Monitor regarding the DDJ Information Requests was 14 days later, when its counsel sent an email to the Monitor’s counsel at 4:40 p.m. Mountain Time on Thursday, October 21, 2021. The Monitor’s counsel and ACDC’s counsel exchanged emails on that topic, culminating in an email from ACDC’s counsel to the Monitor’s counsel at 1:13 p.m. Mountain Time on Saturday, October 23, 2021, in which

ACDC's counsel confirmed that ACDC agreed that the NDAs could be disclosed to DDMI, as requested by the Monitor on October 3. Copies of the email correspondence are attached at Appendix "C".

35. The Monitor is of the view that the content of the parties' negotiations regarding the NDAs is privileged and confidential, and therefore will not be disclosed. However, the Monitor can summarize the series of events that occurred on this topic:

- a. on Saturday, October 23, 2021, after receiving ACDC's consent to disclose the NDAs, the Monitor sent the NDAs to DDMI;
- b. on Tuesday, October 26, 2021, DDMI sent to the Monitor a draft proposed NDA for ACDC to enter into, to allow for the provision of the requested information as proposed in the Monitor's October 3 email;
- c. the Monitor revised that draft proposed NDA and sent it to ACDC at 10:02 a.m. on Wednesday, October 26, 2021; and
- d. as of the date of this Second Supplemental Report (Monday, November 1, 2021), ACDC has not replied to the Monitor with respect to the proposed NDA.

36. The Monitor will continue to work in good faith with ACDC to facilitate the disclosure of this information.

#### **ACDC's Letters Requesting Information**

37. As detailed in the Supplemental Report, ACDC sent two letters to the Monitor requesting information regarding the AVO Transaction and the RVO Transaction. ACDC sent the first letter on October 11, 2021 (refer to Appendix "B" to the Supplemental Report) and the Monitor replied two days later, on October 13, 2021 (refer to Appendix "C" to the Supplemental Report). ACDC sent the second letter on October 19, 2021 (refer to

Appendix “G” to the Supplemental Report) and the Monitor responded on the same day (refer to Appendix “H” to the Supplemental Report).

### **Confidential Appendix “I”**

38. As detailed in paragraphs 20 – 22 of the Supplemental Report:

- a. In paragraph 36 of Ms. Kaye’s Affidavit, she stated that “[a] report provided in the data room set up by the Monitor does not provide details to reconcile each production cycle against its DICAN valuation, thereby making it impossible to show whether DDMI was over collateralized at any point in time”; and
- b. the Monitor created the requested document and produced it as Confidential Appendix “I”. On Tuesday, October 19, 2021, the Monitor offered to produce Confidential Appendix “I” to DDMI, the Agent and ACDC, if they agreed to keep it confidential. DDMI requested Confidential Appendix “I” on the evening of Tuesday, October 19, 2021 and was provided with it on the morning of Wednesday, October 20, 2021. ACDC requested Confidential Appendix “I” on Sunday, October 24, 2021 and was provided with it on the same day.

### **Disclosure of Information Regarding the AVO Transaction**

39. The Monitor has noted that in its Brief of Argument, ACDC stated that, in respect of the AVO Transaction, “it should be inferred that the Monitor was actively aware of the negotiations and their progress since June 29, 2021.” That is incorrect. Direct discussions amongst stakeholders are common in restructuring proceedings and the Monitor is not privy to all such communications.

40. As the Monitor has advised ACDC, it is of the view that the contents of negotiations of the documents in respect of the AVO Transaction are privileged and confidential. However, the timeline of the Monitor’s involvement in the AVO Transaction is not privileged and can be summarized as follows:



- a. the Monitor was advised on or around June 29, 2021 that there had been or would be commercial discussions between the Agent and DDMI. The Monitor was not privy to the nature of the discussions or negotiating positions of either party;
- b. the Monitor was first provided with confidential indicative non-binding terms for discussion regarding the acquisition of the Diavik Joint Venture Interest on August 6, 2021;
- c. on August 19, 2021, the Monitor was first provided with a draft of the confidential Support Agreement;
- d. the Monitor disclosed to DDJ during an update call on August 31, 2021 that the Agent had engaged in confidential discussions with DDMI;
- e. the Monitor was provided with a Support Agreement signed by the Agent and DDMI on September 16, 2021;
- f. the Monitor was first provided with a draft of the AVO APA on September 19, 2021;
- g. the Monitor was advised by counsel for the Agent that it had spoken to counsel for ACDC to advise them of the AVO Transaction on September 27, 2021;
- h. the Monitor discussed the AVO Transaction and the RVO Transaction with DDJ and Brigade on September 28, 2021; and
- i. the Monitor filed its materials for the Monitor's Application on October 6, 2021.

## **RVO TRANSACTION**

41. As described in the Sixteenth Report, the Applicants, in conjunction with Evercore, marketed the business and assets of Dominion, including the shares of the Dominion RVO Entities, extensively and in a fair and transparent manner during the SISP. All participants

were treated consistently and with equal access to information. The SISP did not result in any offers for the shares of the Dominion RVO Entities.

42. As reported in the Supplemental Report, the Monitor's legal counsel sent a letter to ACDC's counsel on October 15, 2021 (the "**Auction Letter**"), advising that should ACDC intend to make any bid under the RVO Transaction, then the Monitor requires ACDC to submit a bid for the RVO Transaction in writing by 5:00 p.m. Mountain time on Friday, October 22, 2021 (the "**Auction Deadline**"), and also describing further parameters and processes to complete the Auction by October 27, 2021 (refer to Appendix "**E**" to the Supplemental Report).
43. ACDC did not submit a competing bid to the Monitor by the Auction Deadline or otherwise respond to the Auction Letter.
44. On October 21, 2021, counsel to the Monitor sent a letter to this Honourable Court, copying the Service List in the CCAA Proceedings, advising of additional changes to the form of RVO as requested by DDMI (the "**October 21 Letter**"). The October 21 Letter is attached at Appendix "**D**".

\*\*\*\*\*

All of which is respectfully submitted this 1<sup>st</sup> day of November, 2021.

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



Deryck Helkaa  
Senior Managing Director



Tom Powell  
Senior Managing Director

# APPENDIX “A”

DDJ Information Requests

**From:** [Hoff, Eric](#)  
**To:** [Powell, Tom](#); [Helkaa, Deryck](#)  
**Cc:** [Shierman, Lindsay](#); [Kristal Kaye](#); [Andrew Petitjean](#); [DeMarinis, Tony](#); [Rory Moore](#)  
**Subject:** [EXTERNAL] DDMI/Diavik Diligence List  
**Date:** Wednesday, September 29, 2021 7:10:09 AM  
**Attachments:** [image001.png](#)

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FTI Team – as discussed yesterday, we would request that you provide us the following information, as a starting list, for us to complete our diligence on the remaining 40% stake in Diavik to consider whether we can provide an offer for the assets that are superior to that which is apparently currently on the table. As I'm sure timing is a consideration for all parties involved, we would request those to be provided ASAP. Please let us know of any questions.

- Updated financials for the last 2 years. Monthly, if possible.
- Updated forecast for 2021 & 2022, again with as much detail as possible.
- Full exploration program results from the 2019 study they undertook. (This was supposed to be delivered to Ekati mgmt. previously, but never was).
- Updated long range plan with executed approval of such plan (are there signed minutes from said meetings to confirm what was presented)? We need to understand full mine life?
- Updated reclamation / final closure study. This should be updated and verified to justify the reclamation funding increases for the cover payments?
- Reconciliation of current diamonds withheld for cover payments and what (if any) they have sold. Specifically any detail regarding specials/fancies mined in the past 12-18months.

Thanks,  
Eric



**Eric Hoff, CFA** *Senior Research Analyst*

**DDJ CAPITAL MANAGEMENT, LLC**

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# APPENDIX “B”

October 3, 2021 Email to ACDC's Counsel

**From:** [Chris Simard](#)  
**To:** [DeMarinis, Tony](#)  
**Cc:** [Helkaa, Deryck](#); [Powell, Tom](#); [Shierman, Lindsay](#); [Kelsey Meyer](#)  
**Subject:** [EXTERNAL] FW: [EXT] ACDC Diligence Requests [BJ-WSLegal.FID5197478]  
**Date:** Sunday, October 3, 2021 8:31:47 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)

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Tony,

Following up on my email from yesterday, I confirm that DDMI has agreed that certain of the requested documents, but not all, can go to Kristal, Andrew and Huili (the "ACDC Group"). Here is a summary of DDMI's position with respect to the requested documents:

- Updated financials for the last 2 years. Monthly, if possible.
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**Chris Simard**  
**Bennett Jones LLP**

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# APPENDIX “C”

Email Correspondence between ACDC's Counsel and the  
Monitor's Counsel between October 21st and 23rd, 2021



## Shierman, Lindsay

---

**Subject:** FW: Diavik Information

---

**From:** DeMarinis, Tony <[tdemarinis@torys.com](mailto:tdemarinis@torys.com)>  
**Sent:** Thursday, October 21, 2021 4:41 PM  
**To:** Chris Simard <[SimardC@bennettjones.com](mailto:SimardC@bennettjones.com)>  
**Cc:** Bomhof, Scott <[sbomhof@torys.com](mailto:sbomhof@torys.com)>; Opolsky, Jeremy <[jopolsky@torys.com](mailto:jopolsky@torys.com)>  
**Subject:** Diavik Information

Chris,

The Monitor's materials indicate that you are waiting to hear back from us in connection with NDA requirements for the release of Diavik information to our client. To confirm, our client on this matter is Arctic Canadian Diamond Company ("ACDC") and we would like to arrange for the release of information to ACDC.

Please clarify what is being asked of ACDC as opposed to any other persons. Has DDMI told you what it wants from ACDC? Were you wanting to propose to DDMI that it enter into a new NDA with ACDC on substantially the same terms as last year's NDAs between Dominion and 2L noteholders?

Please confirm what DDMI has and has not said about its pre-conditions to releasing Diavik information to ACDC.

Thanks.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679  
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**From:** [Chris Simard](#)  
**To:** [DeMarinis, Tony](#); [Opolsky, Jeremy](#); [Bomhof, Scott](#)  
**Cc:** [Kelsey Meyer](#); [Helkaa, Deryck](#); [Powell, Tom](#); [Shierman, Lindsay](#)  
**Subject:** [EXTERNAL] Dominion - ACDC Diligence Requests  
**Date:** Thursday, October 21, 2021 8:39:45 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[RE EXT ACDC Diligence Requests BJ-WSLegal.FID5197478.msg](#)  
[FW EXT ACDC Diligence Requests BJ-WSLegal.FID5197478.msg](#)  
[RE Diligence Requests BJ-WSLegal.FID5197478.msg](#)  
[RE Diligence Requests.msg](#)  
[RE Diligence Requests.msg](#)  
[Diligence Requests.msg](#)  
[DDMI Diavik Diligence List BJ-WSLegal.FID5197478.msg](#)

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Tony,

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- We need your consent to disclose to DDMI the NDAs signed during the SISP by DDJ, Brigade and Torys (as defined in our discussions, the "Limited Group")
- Once we receive that confirmation, we will send those NDAs to DDMI
- We, you and DDMI can then collectively determine whether those agreements are sufficient, or whether they must be revised. Once DDMI is satisfied with those NDA's, the disclosures that DDMI agreed on October 2 to make to the Limited Group, can be made via the data room established by the Monitor for that purpose
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We await your confirmation. Thanks



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**From:** Chris Simard <[SimardC@bennettjones.com](mailto:SimardC@bennettjones.com)>

**Sent:** Sunday, October 3, 2021 8:32 AM

**To:** DeMarinis, Tony <[tdemarinis@torys.com](mailto:tdemarinis@torys.com)>

**Cc:** Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>; Powell, Tom <[Tom.Powell@fticonsulting.com](mailto:Tom.Powell@fticonsulting.com)>; Shierman, Lindsay <[Lindsay.Shierman@fticonsulting.com](mailto:Lindsay.Shierman@fticonsulting.com)>; Kelsey Meyer <[MEYERK@bennettjones.com](mailto:MEYERK@bennettjones.com)>

**Subject:** FW: [EXT] ACDC Diligence Requests [BJ-WSLegal.FID5197478]

Tony,

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**To:** [Chris Simard](#)  
**Cc:** [Kelsey Meyer](#); [Helkaa, Deryck](#); [Powell, Tom](#); [Shierman, Lindsay](#); [Bomhof, Scott](#); [Opolsky, Jeremy](#)  
**Subject:** [EXTERNAL] RE: Dominion - ACDC Diligence Requests  
**Date:** Thursday, October 21, 2021 9:07:43 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image402969.png](#)

---

Chris,

Thanks for your reply. For clarity, as ACDC's counsel we are interested in knowing only: (1) what information DDMI is and is not prepared to provide to ACDC; and (2) what are DDMI's conditions for providing any such information to ACDC (i.e. will it require an NDA and, if yes, on what terms).

This remains unclear from the email you re-forwarded, although that email did suggest that DDMI is unwilling to provide at least some of the pertinent information to ACDC.

May I ask that you please make an updated request to DDMI for clear responses to the above questions and let me know?

Thanks.

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**From:** Chris Simard <SimardC@bennettjones.com>  
**Sent:** Thursday, October 21, 2021 10:39 PM  
**To:** DeMarinis, Tony <tdemarinis@torys.com>; Opolsky, Jeremy <jopolsky@torys.com>; Bomhof, Scott <sbomhof@torys.com>  
**Cc:** Kelsey Meyer <MEYERK@bennettjones.com>; Helkaa, Deryck <Deryck.Helkaa@fticonsulting.com>; Powell, Tom <Tom.Powell@fticonsulting.com>; Shierman, Lindsay <Lindsay.Shierman@fticonsulting.com>  
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**Sent:** Sunday, October 3, 2021 8:32 AM

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**Cc:** Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>; Powell, Tom <[Tom.Powell@fticonsulting.com](mailto:Tom.Powell@fticonsulting.com)>; Shierman, Lindsay <[Lindsay.Shierman@fticonsulting.com](mailto:Lindsay.Shierman@fticonsulting.com)>; Kelsey Meyer <[MEYERK@bennettjones.com](mailto:MEYERK@bennettjones.com)>

**Subject:** FW: [EXT] ACDC Diligence Requests [BJ-WSLegal.FID5197478]

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**To:** [DeMarinis, Tony](#)  
**Cc:** [Kelsey Meyer](#); [Helkaa, Deryck](#); [Powell, Tom](#); [Shierman, Lindsay](#); [Bomhof, Scott](#); [Opolsky, Jeremy](#)  
**Subject:** [EXTERNAL] RE: Dominion - ACDC Diligence Requests [BJ-WSLegal.FID5197478]  
**Date:** Friday, October 22, 2021 12:19:48 PM  
**Attachments:** [image003.png](#)  
[image001.png](#)  
[image002.png](#)

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Tony,

I have spoken to counsel for DDMI who has confirmed DDMI's unchanged commitment to disclose the requested information, as conveyed to you in my email sent at 8:32 a.m. Mountain time on October 3. The Monitor's and DDMI's respective positions on this issue have been clear and unchanged since October 3, but I will recap the salient pieces of the history leading up to October 3, in light of the questions posed in your two emails yesterday, to make sure we are all on the same page:

- On September 29, Eric Hoff of DDJ made requests directly to the Monitor for certain diligence items.
- You and I commenced discussing these requests on September 30, and I also did the same with DDMI, given their confidentiality concerns around most of the requests.
- On October 1, you advised me in an email that the individuals at ACDC whom you wanted to have access to the requested items were Kristal Kaye, Andrew Petch and Huili Li. You also stated that "ACDC would also need the right to share the information with advisors and with its principal owners, DDJ Capital Management and Brigade Capital Management".
- Our discussions with you and with DDMI therefore focused on the parameters under which disclosure could be made to two separate groups: the "ACDC Group" (the three ACDC employees you had identified) and the "Limited Group" (Brigade, DDJ and legal or other advisors). This discussion culminated in my October 3 email referenced above and attached below, in which I identified which of Mr. Hoff's requested disclosures DDMI was agreeing to make to each group, subject to satisfactory confidentiality agreements being in place. I also set out the next step proposed by the Monitor: you confirming that I could disclose to DDMI the NDA's signed during the SISF by Torys, DDJ and Brigade. That would then allow all of us to work together to reach consensus on the forms of NDAs to be entered into by each of the ACDC Group and the Limited Group, so that we could make the disclosures.

What I take from your two emails yesterday, is that ACDC no longer wishes to include DDJ and Brigade in the Limited Group. That is fine with the Monitor and DDMI has confirmed that its position on the disclosure of the requested items, as outlined in my October 3 email, remains unchanged if you wish to remove DDJ and Brigade from the Limited Group.

Therefore, the "clear responses" that you have requested to your two questions are:

- (1) DDMI is prepared to provide to the ACDC Group and the Limited Group (less DDJ and Brigade, as you wish) the information requested by Mr. Hoff, as detailed in my October 3 email; and
- (2) DDMI's conditions for providing that information are that satisfactory confidentiality agreements be in place. I can't tell you exactly what the terms of those confidentiality agreements will be, because that requires the three-way dialogue that we have been asking you to allow us to facilitate since October 3.

As such, we continue to await your confirmation that we can disclose the Torys, DDJ and Brigade NDA's to DDMI, so that we can then all work to reach consensus on the necessary terms for NDA's to be entered into between the Monitor and the ACDC Group, and between the Monitor and the (now advisors only) Limited Group.

Thanks.



**Chris Simard**  
**Bennett Jones LLP**

4500 Bankers Hall East, 855 - 2nd Street SW, Calgary, AB, T2P 4K7  
T. [403 298 4485](tel:4032984485) | F. [403 265 7219](tel:4032657219)  
E. [simardc@bennettjones.com](mailto:simardc@bennettjones.com)



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**From:** DeMarinis, Tony <[tdemarinis@torys.com](mailto:tdemarinis@torys.com)>  
**Sent:** Thursday, October 21, 2021 9:07 PM  
**To:** Chris Simard <[SimardC@bennettjones.com](mailto:SimardC@bennettjones.com)>  
**Cc:** Kelsey Meyer <[MEYERK@bennettjones.com](mailto:MEYERK@bennettjones.com)>; Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>; Powell, Tom <[Tom.Powell@fticonsulting.com](mailto:Tom.Powell@fticonsulting.com)>; Shierman, Lindsay <[Lindsay.Shierman@fticonsulting.com](mailto:Lindsay.Shierman@fticonsulting.com)>; Bomhof, Scott <[sbomhof@torys.com](mailto:sbomhof@torys.com)>; Opolsky, Jeremy <[jopolsky@torys.com](mailto:jopolsky@torys.com)>  
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May I ask that you please make an updated request to DDMI for clear responses to the above questions and let me know?

Thanks.

Tony DeMarinis

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**Sent:** Thursday, October 21, 2021 10:39 PM  
**To:** DeMarinis, Tony <[tdemarinis@torys.com](mailto:tdemarinis@torys.com)>; Opolsky, Jeremy <[jopolsky@torys.com](mailto:jopolsky@torys.com)>; Bomhof, Scott <[sbomhof@torys.com](mailto:sbomhof@torys.com)>  
**Cc:** Kelsey Meyer <[MEYERK@bennettjones.com](mailto:MEYERK@bennettjones.com)>; Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>; Powell, Tom <[Tom.Powell@fticonsulting.com](mailto:Tom.Powell@fticonsulting.com)>; Shierman, Lindsay <[Lindsay.Shierman@fticonsulting.com](mailto:Lindsay.Shierman@fticonsulting.com)>  
**Subject:** Dominion - ACDC Diligence Requests

Tony,

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- We need your consent to disclose to DDMI the NDAs signed during the SISF by DDJ, Brigade and Torys (as defined in our discussions, the "Limited Group")
- Once we receive that confirmation, we will send those NDAs to DDMI
- We, you and DDMI can then collectively determine whether those agreements are sufficient, or whether they must be revised. Once DDMI is satisfied with those NDA's, the disclosures that DDMI agreed on October 2 to make to the Limited Group, can be made via the data room established by the Monitor for that purpose
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For reference, I have also attached our earlier emails on this topic, following DDJ's diligence request on September 29.

We await your confirmation. Thanks



**Chris Simard**  
**Bennett Jones LLP**

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T. 403 298 4485 | F. 403 265 7219  
E. [simardc@bennettjones.com](mailto:simardc@bennettjones.com)



---

**From:** Chris Simard <[SimardC@bennettjones.com](mailto:SimardC@bennettjones.com)>  
**Sent:** Sunday, October 3, 2021 8:32 AM  
**To:** DeMarinis, Tony <[tdemarinis@torys.com](mailto:tdemarinis@torys.com)>  
**Cc:** Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>; Powell, Tom <[Tom.Powell@fticonsulting.com](mailto:Tom.Powell@fticonsulting.com)>; Shierman, Lindsay <[Lindsay.Shierman@fticonsulting.com](mailto:Lindsay.Shierman@fticonsulting.com)>; Kelsey Meyer <[MEYERK@bennettjones.com](mailto:MEYERK@bennettjones.com)>  
**Subject:** FW: [EXT] ACDC Diligence Requests [BJ-WSLegal.FID5197478]

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  - o Under the TSA, ACDC has access to the historical financial information up to the close of the Ekati transaction. **OK for ACDC Group to access**
  - o Diavik JV 2020 Financial Statements. ACDC already has these, as it helped prepare them. **OK for ACDC Group to access**
  - o Diavik JV monthly Trial Balances from February – August 2021. **OK for ACDC Group to access**
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  - o Diavik Closure Prefeasibility Study Report. This is one of the confidential documents that we propose only be disclosed to the Limited Group. **DDMI is not prepared to allow the ACDC Group to access the report. DDMI is prepared to allow both the current Present Closure Obligation (PCO) and Total Projected Costs (TPC) to be**

**disclosed by the Monitor to the ACDC Group.**

- Reconciliation of current diamonds withheld for cover payments and what (if any) they have sold. Specifically any detail regarding specials/fancies mined in the past 12-18months.
  - o **August Monetization Waterfall Calc included (as prepared by DDMI and provided to FTI after sales) – reconciles results from DDMI monthly sales net of waterfall expenses and repayment of outstanding cover payments. This can be made available in the data room. OK for ACDC Group to access – Already placed in data room**

As I advised yesterday, to allow these disclosures to happen, we need to share the Brigade and DDJ (and then Torys, when we receive it from Blakes) NDA's with DDMI. Please confirm we can do that. We'll also have to prepare NDAs for the ACDC Group. Thanks



**Chris Simard**  
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**From:** [DeMarinis, Tony](#)  
**To:** [Chris Simard](#)  
**Cc:** [Kelsey Meyer](#); [Helkaa, Deryck](#); [Powell, Tom](#); [Shierman, Lindsay](#); [Bomhof, Scott](#); [Opolsky, Jeremy](#)  
**Subject:** [EXTERNAL] RE: Dominion - ACDC Diligence Requests [BJ-WSLegal.FID5197478]  
**Date:** Saturday, October 23, 2021 1:13:17 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

---

Chris,

Thank you for confirming DDMI's position on what it will and will not permit to be disclosed to ACDC. We will proceed on that basis, unless we hear otherwise.

If I am understanding correctly, DDMI has not yet specified to you its NDA requirements for the limited disclosure it is willing to provide to ACDC. You would like to send to DDMI copies of last year's Dominion/Brigade/DDJ NDAs in order to determine whether DDMI is prepared to disclose information to ACDC on substantially the same terms as are in those NDAs. If this is correct, we can confirm that we have obtained consent from Brigade Capital and DDJ Capital for you to do so. You may also share with DDMI a copy of last year's Dominion/Torys NDA.

I repeat that we are focused on the provision of material Diavik information to our client ACDC, as this is of central importance given that it is ACDC which holds the relevant interests.

We would appreciate the Monitor's facilitation of meaningful disclosure by DDMI.

Thank you.

Tony DeMarinis

P. 416.865.8162 | F. 416.865.7380 | 1.800.505.8679

---

**From:** Chris Simard <SimardC@bennettjones.com>

**Sent:** Friday, October 22, 2021 2:20 PM

**To:** DeMarinis, Tony <tdemarinis@torys.com>

**Cc:** Kelsey Meyer <MEYERK@bennettjones.com>; Helkaa, Deryck <Deryck.Helkaa@fticonsulting.com>; Powell, Tom <Tom.Powell@fticonsulting.com>; Shierman, Lindsay <Lindsay.Shierman@fticonsulting.com>; Bomhof, Scott <sbomhof@torys.com>; Opolsky, Jeremy <jopolsky@torys.com>

**Subject:** RE: Dominion - ACDC Diligence Requests [BJ-WSLegal.FID5197478]

Tony,

I have spoken to counsel for DDMI who has confirmed DDMI's unchanged commitment to disclose the requested information, as conveyed to you in my email sent at 8:32 a.m. Mountain time on October 3. The Monitor's and DDMI's respective positions on this issue have been clear and unchanged since October 3, but I will recap the salient pieces of the history leading up to October 3, in light of the questions posed in your two emails yesterday, to make sure we are all on the same



page:

- On September 29, Eric Hoff of DDJ made requests directly to the Monitor for certain diligence items.
- You and I commenced discussing these requests on September 30, and I also did the same with DDMI, given their confidentiality concerns around most of the requests.
- On October 1, you advised me in an email that the individuals at ACDC whom you wanted to have access to the requested items were Kristal Kaye, Andrew Petch and Huili Li. You also stated that "ACDC would also need the right to share the information with advisors and with its principal owners, DDJ Capital Management and Brigade Capital Management".
- Our discussions with you and with DDMI therefore focused on the parameters under which disclosure could be made to two separate groups: the "ACDC Group" (the three ACDC employees you had identified) and the "Limited Group" (Brigade, DDJ and legal or other advisors). This discussion culminated in my October 3 email referenced above and attached below, in which I identified which of Mr. Hoff's requested disclosures DDMI was agreeing to make to each group, subject to satisfactory confidentiality agreements being in place. I also set out the next step proposed by the Monitor: you confirming that I could disclose to DDMI the NDA's signed during the SISF by Torys, DDJ and Brigade. That would then allow all of us to work together to reach consensus on the forms of NDAs to be entered into by each of the ACDC Group and the Limited Group, so that we could make the disclosures.

What I take from your two emails yesterday, is that ACDC no longer wishes to include DDJ and Brigade in the Limited Group. That is fine with the Monitor and DDMI has confirmed that its position on the disclosure of the requested items, as outlined in my October 3 email, remains unchanged if you wish to remove DDJ and Brigade from the Limited Group.

Therefore, the "clear responses" that you have requested to your two questions are:

1. DDMI is prepared to provide to the ACDC Group and the Limited Group (less DDJ and Brigade, as you wish) the information requested by Mr. Hoff, as detailed in my October 3 email; and
2. DDMI's conditions for providing that information are that satisfactory confidentiality agreements be in place. I can't tell you exactly what the terms of those confidentiality agreements will be, because that requires the three-way dialogue that we have been asking you to allow us to facilitate since October 3.

As such, we continue to await your confirmation that we can disclose the Torys, DDJ and Brigade NDA's to DDMI, so that we can then all work to reach consensus on the necessary terms for NDA's to be entered into between the Monitor and the ACDC Group, and between the Monitor and the (now advisors only) Limited Group.

Thanks.



**Chris Simard**  
**Bennett Jones LLP**

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T. [403 298 4485](tel:4032984485) | F. [403 265 7219](tel:4032657219)  
E. [simardc@bennettjones.com](mailto:simardc@bennettjones.com)



---

**From:** DeMarinis, Tony <[tdemarinis@torys.com](mailto:tdemarinis@torys.com)>  
**Sent:** Thursday, October 21, 2021 9:07 PM  
**To:** Chris Simard <[SimardC@bennettjones.com](mailto:SimardC@bennettjones.com)>  
**Cc:** Kelsey Meyer <[MEYERK@bennettjones.com](mailto:MEYERK@bennettjones.com)>; Helkaa, Deryck <[Deryck.Helkaa@fticonsulting.com](mailto:Deryck.Helkaa@fticonsulting.com)>; Powell, Tom <[Tom.Powell@fticonsulting.com](mailto:Tom.Powell@fticonsulting.com)>; Shierman, Lindsay <[Lindsay.Shierman@fticonsulting.com](mailto:Lindsay.Shierman@fticonsulting.com)>; Bomhof, Scott <[sbomhof@torys.com](mailto:sbomhof@torys.com)>; Opolsky, Jeremy <[jopolsky@torys.com](mailto:jopolsky@torys.com)>  
**Subject:** RE: Dominion - ACDC Diligence Requests

Chris,

Thanks for your reply. For clarity, as ACDC's counsel we are interested in knowing only: (1) what information DDMI is and is not prepared to provide to ACDC; and (2) what are DDMI's conditions for providing any such information to ACDC (i.e. will it require an NDA and, if yes, on what terms).

This remains unclear from the email you re-forwarded, although that email did suggest that DDMI is unwilling to provide at least some of the pertinent information to ACDC.

May I ask that you please make an updated request to DDMI for clear responses to the above questions and let me know?

Thanks.

Tony DeMarinis

P. [416.865.8162](tel:4168658162) | F. [416.865.7380](tel:4168657380) | [1.800.505.8679](tel:18005058679)  
79 Wellington St. W., 30th Floor, Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada | [www.torys.com](http://www.torys.com)



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**Subject:** FW: [EXT] ACDC Diligence Requests [BJ-WSLegal.FID5197478]

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# APPENDIX “D”

October 21 Letter



Bennett Jones

Bennett Jones LLP

4500 Bankers Hall East, 855 - 2nd Street SW

Calgary, Alberta, Canada T2P 4K7

Tel: 403.298.3100 Fax: 403.265.7219

**Chris Simard**

Direct Line: 403.298.4485

e-mail: simardc@bennettjones.com

Our File No.: 76142.10

October 21, 2021

**Via Email**

The Honourable Madam Justice K. M. Eidsvik  
Court of Queen's Bench of Alberta  
Suite 2301-N, 601 - 5 Street SW  
Calgary AB T2P 5P7

Dear Madam Justice Eidsvik:

**Re: CCAA Proceedings of Dominion Diamond Mines ULC, et al. – Action No. 2001-05630**

After the Monitor filed and served its October 19, 2021 Supplement to the Sixteenth Report, DDMI requested some additional changes to the form of RVO. These changes are acceptable to the Monitor and Washington and are identified in the attached blackline. Thank you.

Yours truly,

Chris Simard

Enclosure

cc: Service List (via email)



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 **TRANSACTION APPROVAL AND REVERSE  
VESTING ORDER**

ADDRESS FOR SERVICE AND CONTACT  
AND CONTACT INFORMATION OF  
PARTY FILING THIS DOCUMENT **BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7  
  
Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219

**DATE ON WHICH ORDER WAS  
PRONOUNCED:** TUESDAY, NOVEMBER 9, 2021

**LOCATION OF HEARING OR TRIAL** CALGARY COURTS CENTRE

**NAME OF JUDGE WHO MADE THIS ORDER:** THE HONOURABLE MADAM JUSTICE K.M. EIDSVIK

UPON THE APPLICATION of FTI Consulting Canada Inc. in its capacity as the Court-appointed monitor (the “**Monitor**”) in these proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) for an order (this “**Order**”), *inter alia*, approving the transaction (the “**Transaction**”) contemplated by the Definitive Term Sheet for RVO Transaction (as it may be amended in accordance with this Order, the “**Agreement**”) between the Monitor and Washington Diamond Investments Holdings II, LLC (“**Washington**”), a copy of which is attached as Appendix “**N**” to the ~~Supplement~~ October 19, 2021 Supplemental Report to the ~~Sixteenth Report of the Monitor dated October 9, 2021~~, filed (the “**Monitor’s Report**”) and vesting the Transferred Assets, subject to the Claims and Encumbrances, to the Monitor in trust for the benefit of the creditors of the Dominion Entities (the “**Creditor Trust**”);

AND UPON READING the Monitor’s Report; AND UPON hearing the submissions of counsel for the Monitor, Washington and such other counsel as were present;

**IT IS ORDERED AND DECLARED THAT:**

**SERVICE**

1. Service of notice of the application for this Order and the Monitor’s Report is hereby abridged and deemed good and sufficient, no other Person is required to have been served with notice of this application, and this application is properly returnable today.

**DEFINED TERMS**

2. The following capitalized terms used in this Order shall have the following meanings:
  - (a) “**Applicants**” means the applicant debtor companies in these proceedings;
  - (b) “**Claims**” means all claims, liabilities, indebtedness, actions, causes of action, demands, judgments, executions, assessments or reassessments, damages, losses, expenses, commitments and obligations of any kind or nature whatsoever (whether direct or indirect, known or unknown, absolute or contingent, accrued or

unaccrued, liquidated or unliquidated, matured or unmatured, due or not yet due, in law or equity and whether based in statute or otherwise) whether or not they have attached or been perfected, registered or filed and whether secured, unsecured, or otherwise;

(c) “**Closing Payment**” means a cash payment of US\$1,500,000 made by Washington to the Monitor on closing of the Transaction;

(d) “**DDM**” means Dominion Diamond Mines ULC;

(e) “**Diavik APA**” has the meaning given to it in the Agreement;

(f) ~~(e)~~ “**Diavik Assets**” has the meaning given to it in the Agreement;

(g) ~~(f)~~ “**Diavik Joint Venture**” means the unincorporated joint venture arrangement established pursuant to the Diavik Joint Venture Agreement in relation to the diamond mine located approximately 300 kilometres from Yellowknife in the Northwest Territories, Canada, and known as the “Diavik Diamond Mine”;

(h) ~~(g)~~ “**Diavik Joint Venture Agreement**” means the joint venture agreement dated March 23, 1995 between DDM and Diavik Diamond Mines (2012), Inc. originally entered into between Aber Resources Limited and Kennecott Canada Inc. as of March 23, 1995, as amended from time to time;

(i) ~~(h)~~ “**Diavik Liabilities**” has the meaning given to it in the Agreement;

(j) ~~(i)~~ “**Dominion Entities**” means, collectively, (i) Washington Diamond Investments, LLC, (ii) Dominion Diamond Holdings, LLC, (iii) DDM, and (iv) Dominion Diamond Marketing Corporation, each of which is a “**Dominion Entity**”;

(k) ~~(j)~~ “**Encumbrances**” means all security interests or similar interests, hypothecations, pledges, mortgages, deeds, deeds of trust, liens, encumbrances, trusts (including statutory, constructive or deemed trusts), reservations of

ownership, royalties, leases, options, rights including rights of pre-emption or first refusal, privileges, interests, assignments, easements, rights of way, encroachments, restrictive covenants, actions, demands, judgments, executions, levies, taxes, writs of enforcement, proxies, voting trusts or agreements, transfer restrictions under any shareholder agreement or similar agreement, charges, conditional sales or other title retention agreements or other impositions, restrictions on transfer or use of any nature whatsoever or other claims, whether contractual, statutory, financial, monetary or otherwise, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing:

- (i) any encumbrances or charges created by the Initial Order or any other orders granted in the within CCAA Proceedings;
- (ii) any charges, security interests or claims evidenced by registration, filing or publication pursuant to the *Personal Property Security Act*, SNWT 1994, c. 8 (NWT); the *Personal Property Security Act*, RSO 1990, c. P.10 (Ontario); the *Personal Property Security Act*, RSA 2000, c. P-7 (Alberta); the *Personal Property Security Act*, RSBC 1996, c. 359 (British Columbia); the Uniform Commercial Code (U.C.C.); the *Land Titles Act*, RSNWT 1988, c. 8; the *Northwest Territories Mining Regulation*, SOR/2014-68; and any other personal or real property registry system in any jurisdiction (collectively, “**Security Registrations**”); and
- (iii) any liens or claims of lien under the *Miners Lien Act*, RSNWT 1988, c. M-12 (NWT) or the *Garage Keepers’ Lien Act*, RSA 2000, c. G-2 (Alberta);

(l) ~~(k)~~ “**Equity Interest**” means, with respect to a Person, all shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person, or securities convertible into, exchangeable or exercisable for any

such shares of capital stock, partnership interests, joint venture interests or other equity interests in respect of such Person;

(m) ~~(h)~~ “**First Lien Agreements**” has the meaning given to it in the Agreement;

(n) ~~(m)~~ “**First Lien Liabilities**” has the meaning given to it in the Agreement;

(o) ~~(n)~~ “**Initial Order**” means the Initial Order of the Honourable Madam Justice K. Eidsvik dated April 22, 2020, as amended and restated on May 1, 2020, further amended on May 15, 2020, further amended and restated on June 19, 2020, and further amended on March 4, 2021, as it may be further amended, restated or supplemented from time to time;

(p) ~~(o)~~ “**Intercompany Claim**” means any Claim that is owed by one Dominion Entity to another Dominion Entity, and, for greater certainty, Intercompany Claim does not include the approximately \$92.8 million intercompany indebtedness formerly owing by DDM to Dominion Diamond Canada ULC;

(q) ~~(p)~~ “**Person**” means any corporation, partnership, joint venture, limited liability company, unlimited liability company, organization, entity, authority (including any Governmental Authority), or natural person;

(r) ~~(q)~~ “**Retained Assets**” means the right, title and interest of any Dominion Entity in and to the following:

- (i) the organizational documents, corporate books and records, minute books, income tax returns, and corporate seal of such Dominion Entity;
- (ii) any records that are required by applicable law to be retained by such Dominion Entity;
- (iii) the tax attributes, including all operating, non-operating, and capital loss balances or carry forwards, of such Dominion Entity;

- (iv) any Equity Interest in any other Dominion Entity;
- (v) any Intercompany Claim owing to such Dominion Entity by another Dominion Entity;
- (vi) all current or former director and officer insurance policies, including all rights, coverage and entitlements thereunder, of such Dominion Entity or pursuant to which such Dominion Entity had any rights, coverage or entitlements;
- (vii) the Agreement or this Order with respect to the Transaction; and
- (viii) subject to paragraph 10 of this Order, any other asset, property or undertaking designated as a Retained Asset by Washington in writing to the Monitor prior to the Effective Time;

(s) ~~(s)~~ “**Retained Claims**” means, in respect of a Dominion Entity, the following Claims and any related Encumbrances:

- (i) any Intercompany Claim owing by such Dominion Entity to another Dominion Entity; and
- (ii) subject to paragraph 10 of this Order, any other Claim designated as a Retained Claim by Washington in writing to the Monitor prior to the Effective Time;

(t) ~~(s)~~ “**Transferred Assets**” means all assets, properties, interests and undertakings of the Dominion Entities of any kind or nature whatsoever other than the Retained Assets, which Transferred Assets shall include, without limitation:

- (i) the Closing Payment (in the event that it has been paid to one of the Applicants (and not the Monitor));

- (ii) all right, title and interest of the Dominion Entities in and to the Diavik Assets, including, without limitation, the Diavik Joint Venture Agreement and the Diavik Joint Venture;
  - (iii) the First Lien Agreements; and
  - (iv) all Equity Interests in any Person other than a Dominion Entity, including, without limitation, all Equity Interests in the Transferred Subsidiaries; and
- (u) ~~(t)~~ **“Transferred Subsidiaries”** means (i) Dominion Finco Inc., (ii) Dominion Diamond Delaware Company LLC, (iii) Dominion Diamond Canada ULC, and (iv) Dominion Diamond (Luxembourg) S.a.r.l.

#### **APPROVAL OF THE TRANSACTION**

3. The Agreement and the Transaction are hereby approved. The execution of the Agreement by the Monitor, on its own behalf and on behalf of the Applicants, is hereby authorized, ratified, confirmed and approved, with such amendments as the Monitor and Washington may deem necessary or desirable. The Monitor and the Applicants are hereby authorized and directed to complete the Transaction subject to the terms of the Agreement, to perform their obligations under the Agreement and any ancillary documents related thereto, and to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction. In the event of any conflict between the terms of the Agreement and this Order, this Order shall govern.
4. This Order shall constitute the only authorization required in respect of the Applicants to proceed with and complete the Transaction, and no shareholder, director or other approval in respect of the Dominion Entities shall be required in connection therewith.

## VESTING OF TRANSFERRED ASSETS AND CLAIMS AND ENCUMBRANCES

5. Upon delivery of a Monitor's certificate to Washington substantially in the form set out in Schedule "A" hereto (the "**Monitor's Certificate**"), the following shall occur and be deemed to occur commencing at the time of delivery of the Monitor's Certificate (the "**Effective Time**") in the following sequence:
- (a) all right, title and interest of the Dominion Entities in and to the Transferred Assets shall be transferred to and shall vest absolutely and exclusively without recourse in the Creditor Trust;
  - (b) all Claims and Encumbrances in respect of the Dominion Entities other than the Retained Claims shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in the Creditor Trust, and (i) 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, (ii) such Claims and Encumbrances equal to the fair market value of the Transferred Assets shall be transferred to and assumed by the Creditor Trust in consideration of the Transferred Assets, and (iii) the remaining Claims and Encumbrances shall be transferred to and assumed by the Creditor Trust for no consideration as part of, and to facilitate, the implementation of the Transaction and the conclusion of these CCAA proceedings;
  - (c) all Claims and Encumbrances other than the Retained Claims shall be irrevocably and forever expunged, released and discharged as against the Dominion Entities and the Retained Assets;
  - (d) without limiting subparagraph 5(c), any and all Security Registrations against any Dominion Entity (other than any Security Registrations in respect of a Retained Claim) shall be and are hereby forever released and discharged as against such Dominion Entity, and all such Security Registrations shall attach to the Transferred Assets vested in the Creditor Trust and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the



Effective Time, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by the Creditor Trust of such Security Registrations; and

- (e) the Dominion Entities shall cease to be Applicants in the CCAA Proceedings and shall be released from the purview of the Initial Order and all other orders of this Court granted in these CCAA Proceedings.

6. As of the Effective Time:

- (a) the Dominion Entities shall continue to hold all right, title and interest in and to the Retained Assets, free and clear of all Claims and Encumbrances other than the Retained Claims; and
- (b) the Dominion Entities shall be deemed to have disposed of the Transferred Assets and shall have no right, title or interest in or to the Transferred Assets. Without limiting this Order, from and after the Effective Time the Dominion Entities shall not have any right or interest of any kind or nature whatsoever, including any equity or ownership interest, in or with respect to the Diavik Joint Venture, the Diavik Joint Venture Agreement or the Creditor Trust.

7. For greater certainty, any Person that, prior to the Effective Time, had a Claim or Encumbrance other than a Retained Claim against the Dominion Entities or their assets, properties or undertakings shall, as of the Effective Time, no longer have any such Claim or Encumbrance against or in respect of the Dominion Entities or the Retained Assets, but shall have an equivalent Claim or Encumbrance, as applicable, against the Transferred Assets to be administered by the Creditor Trust from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Claim or Encumbrance had immediately prior to its transfer to the Creditor Trust, and nothing in this Order limits, lessens, modifies (other than by change in debtor) or extinguishes the Claim or Encumbrance of any Person as against the Transferred Assets to be administered by the Creditor Trust.

8. From and after the Effective Time, the Dominion Entities shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Dominion Entities and the Retained Assets of the Claims and Encumbrances that are transferred to and vested in the Creditor Trust pursuant to this Order, including the Security Registrations.
9. Upon the delivery of the Monitor's Certificate, and upon filing of a certified copy of this Order, together with any applicable registration fees, all governmental authorities and any other applicable registrar or government ministries or authorities exercising jurisdiction with respect to the Dominion Entities, the Retained Assets or the Transferred Assets (collectively, "**Governmental Authorities**") are hereby authorized, requested and directed to accept delivery of such Monitor's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and discharge statements of conveyance as may be required to give effect to the terms of this Order and the completion of the Transaction and to discharge and release all Claims and Encumbrances other than Retained Claims against or in respect of the Dominion Entities and the Retained Assets, and presentment of this Order and the Monitor's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.
10. Washington shall have the right, at any time prior to the Effective Time, by notice in writing to the Monitor and without any adjustment to the Closing Payment, to deem, for all purposes of this Order and the Agreement, (a) any asset, property or undertaking of the Dominion Entities other than the Closing Payment to be a Retained Asset (including any asset, property or undertaking that is otherwise identified herein as a Transferred Asset), (b) any asset, property or undertaking of the Dominion Entities to be a Transferred Asset (including any asset, property or undertaking that is otherwise identified herein as a Retained Asset), and (c) any Retained Claim to be a Claim and Encumbrance that is transferred to and vested in the Creditor Trust and released and discharged as against the Dominion Entities and the Retained Assets. Notwithstanding anything to the contrary in this Order or the Agreement, no First Lien Agreements or

Diavik Assets may be designated as Retained Assets and no First Lien Liabilities or Diavik Liabilities may be designated as Retained Claims.

## INJUNCTIONS

11. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Dominion Entities or the Retained Assets, in any way relating to, arising from or in respect of:
  - (a) the Transferred Assets;
  - (b) any and all Claims or Encumbrances other than the Retained Claims 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; or
  - (e) the completion of the Transaction.

## CREDITOR TRUST

12. The Creditor Trust created pursuant to this Order shall be named the “Dominion Residual Asset Trust”. The Creditor Trust shall be instituted and administered in accordance with the Trust Settlement attached as **Schedule "B"** hereto.
13. 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

14. The administration of the Creditor Trust shall remain subject to the Court's oversight and these proceedings. The Initial Order and the Order (Expansion of Monitor's Powers) of this Court dated January 27, 2021 (the "**Expanded Powers Order**") shall apply *mutatis mutandis* to the Creditor Trust, the Transferred Assets and the Monitor.
15. In addition to and without limiting the rights and protections afforded to the Monitor pursuant to the CCAA, the Initial Order and the Expanded Powers Order, the Monitor and its employees and representatives shall not incur any liability as a result of acting in accordance with this Order or administering the Creditor Trust, save and except for any gross negligence or wilful misconduct on the part of any such parties.

#### MISCELLANEOUS

16. The Monitor is directed to file with the Court a copy of the Monitor's Certificate forthwith after delivery thereof to Washington provided, however that, subject to further Court order, the Monitor shall not execute, deliver or file the Monitor's Certificate until after the completion of the transactions contemplated by the Diavik APA.

17. Notwithstanding:

- (a) the pendency of these proceedings;
- (b) any application for a bankruptcy order or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c.B-3, as amended (the "**BIA**") or otherwise and any bankruptcy or receivership order issued pursuant to any such application; or
- (c) the provisions of any federal or provincial statute,

the execution of the Agreement and the implementation of the Transaction shall be binding on any trustee or other administrator in respect of the Creditor Trust and any trustee in bankruptcy or receiver that may be appointed in respect of any Dominion Entity and shall not be void or voidable by creditors of the Creditor Trust or the Dominion

Entities, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation or at common law, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

18. The Monitor, Washington and any other interested party shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order and to assist and aid the parties in completing the Transaction.
19. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Agreement and all amendments thereto, in connection with any dispute involving the Dominion Entities or the Creditor Trust, and to adjudicate, if necessary, any disputes concerning the Dominion Entities or the Creditor Trust related in any way to the Transaction.
20. This Court hereby requests the aid and recognition of any court, tribunal, or regulatory or administrative body having jurisdiction in Canada or in any of its provinces or territories 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 and the Dominion Entities and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Dominion Entities and to the Monitor, as an officer of the Court, as may be necessary or desirable to give effect to this Order.
21. 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.

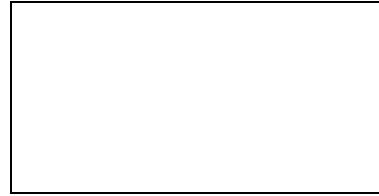
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Justice of the Court of Queen's Bench of  
Alberta

**SCHEDULE A**

**FORM OF MONITOR'S CERTIFICATE**

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, AND  
DOMINION FINCO INC.

DOCUMENT MONITOR'S CERTIFICATE

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT **BENNETT JONES LLP**  
Barristers and Solicitors  
4500 Bankers Hall East  
855 – 2<sup>nd</sup> Street SW  
Calgary, AB T2P 4K7

Attention: Chris Simard / Kelsey Meyer  
Telephone No.: 403-298-4485 / 403-298-3323  
Fax No.: 403-265-7219

**RECITALS**

- A. Pursuant to an Order of the Honourable Madam Justice K. Eidsvik of Court of Queen's Bench of Alberta, Judicial District of Calgary (the "**Court**") dated April 22, 2020, FTI Consulting Canada Inc. was appointed as the monitor (the "**Monitor**") of the Applicants

in proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended.

- B. On November 9, 2021, the Court granted a Transaction Approval and Reverse Vesting Order approving a Definitive Term Sheet for RVO Transaction (the “**Agreement**”) between the Monitor and Washington Diamond Investments Holdings II, LLC (“**Washington**”) and the transaction completed thereby (the “**Transaction**”).
- C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Agreement.

**THE MONITOR CERTIFIES** the following:

- 1. The Monitor has received the Cash Payment from or on behalf of Washington and the Closing Conditions have been satisfied or waived;
- 2. The Transaction has been completed to the satisfaction of the Monitor; and
- 3. This Certificate was delivered by the Monitor at [TIME] on [DATE].

**FTI CONSULTING CANADA INC., in its capacity as Monitor and not in its personal or corporate capacity**

Per: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE B**  
**CREDITOR TRUST SETTLEMENT**



Document comparison by Workshare 10.0 on Thursday, October 21, 2021  
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