

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Commercial Division



2006

COM/com/00010

**IN THE MATTER OF Dominion Investments (Nassau) Ltd.  
(In Liquidation)**

**AND IN THE MATTER OF the Companies Act, 1992**

**AFFIDAVIT OF GEORGE CLIFFORD CULMER**

I, **GEORGE CLIFFORD CULMER** of the Eastern District of the island of New Providence, one of the Islands of the Commonwealth of the Bahamas, Chartered Accountant, make oath and say as follows:-

1. I am the Liquidator of Dominion Investments (Nassau) Ltd. (In Liquidation), a company incorporated under the Companies Act, 1992 ("**Dominion**"), and I am duly authorized to make this Affidavit.
2. This Affidavit is made for the purpose of exhibiting my Tenth Report in the liquidation of Dominion, and the facts set out therein are true and correct to the best of my knowledge and belief.

3. Now produced and shown to me marked **Exhibit "GCC.1"** is a full and true copy  
of the Tenth Report of the Liquidator of Dominion.

SWORN to at Nassau, New )

Providence this 29 day of )

June, A.D., 2012 )

..... *H. B. Gilmer* .....

Before me,

*Patrick Ryan*  
NOTARY PUBLIC

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**CERTIFICATE**

This is the Exhibit marked “GCC.1” referred to in the Affidavit of **GEORGE**

**CLIFFORD CULMER** sworn on this 29<sup>TH</sup> day of JUNE A.D., 2012.



**NOTARY PUBLIC**

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**DOMINION INVESTMENTS (NASSAU) LTD**  
**(IN VOLUNTARY LIQUIDATION)**

**TENTH REPORT OF THE LIQUIDATOR**

**TO THE SUPREME COURT**

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(In Voluntary Liquidation)  
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[info@bdobahamas.com](mailto:info@bdobahamas.com)**

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**BY HAND**

Supreme Court of the Commonwealth of the Bahamas  
Nassau, Bahamas

**Dominion Investments (Nassau) LTD (In Voluntary Liquidation) ("Dominion")  
Tenth Report of the Liquidator to the Supreme Court**

**1.    INTRODUCTION, BACKGROUND & TIMELINE OF EVENTS**

- 1.1    Dominion was incorporated on the 23<sup>rd</sup> day of July, 1999, and has nominal capital of five hundred thousand dollars (B\$500,000), divided into five hundred thousand ordinary shares with a par value of one dollar (B\$ 1.00) per share.
- 1.2    On the 11<sup>th</sup> day of December, 2001, Dominion was licensed as a Broker - Dealer Class II by the Securities Commission of The Bahamas and hence authorized to carry on securities activities in and from the Bahamas.
- 1.3    On the 13<sup>th</sup> December, 2002, Dominion entered into an agreement with Ferrier Lullin, now Julius Baer, to act as an independent portfolio manager and to be paid commissions on funds managed by the company at the bank.
- 1.4    On the 15<sup>th</sup> February, 2005 Dominion's unconditional Financial Service Providers License was renewed to 31 December 2005, granting it the authority to conduct or carry on financial services in or from the Bahamas and, inter alia, to register or manage and administer international business companies (IBC's) incorporated under the International Business Companies Act, 2000.
- 1.5    On the 20<sup>th</sup> January 2006 the President and Director of Dominion, Martin Tremblay, was indicted on charges of money laundering contrary to the United States Penal Code and subsequently incarcerated in The United States. It was alleged that the accounts of Dominion and other accounts were used by Mr. Tremblay in carrying out the offences. The staff of Dominion abandoned their posts and apparently various files and records



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were removed by customers, before all the remaining files; records and computer equipment were seized by The Royal Bahamas Police Force.

- 1.6 On the 31<sup>st</sup> January, 2006 and on the 2<sup>nd</sup> of May, 2006 at the request of the United States Department of Justice, the Attorney-General of the Bahamas applied to the Supreme Court, and was granted a Restraint Order freezing accounts of Dominion and any accounts over which Mr. Tremblay had control. Moreover, around the same time in Canada the Ontario Securities Commission and the Autorite des Marche Financiers, Quebec sought and obtained Freeze Orders over various bank and brokerage accounts held by Dominion.
- 1.7 In November 2006, Martin Tremblay entered into a plea bargain agreement whereby he plead guilty to one count on the indictment and the other counts were not to be pursued by the US Prosecutor. On the 14<sup>th</sup> of March 2007, Mr. Tremblay was sentenced to four years in prison and ordered to pay a forfeiture money judgment in the amount of \$220,000.

## **2. STEPS TAKEN IN THE LIQUIDATION PROCESS**

- 2.1 On the 2<sup>nd</sup> February 2006 by resolution of the members, the Company was put into voluntary liquidation and George Clifford Culmer was appointed Liquidator of the company.
- 2.2 By Court Order made 10 March 2006, the Royal Bahamas Police Force was compelled to deliver up to the Liquidator the books, records and computer equipment of the company. Upon receipt thereof, it was noted they were in a considerable state of disarray.
- 2.3 On the 4<sup>th</sup> April 2006 the Liquidator's Petition, which had been lodged on the 28<sup>th</sup> February 2006, was granted. It was deemed appropriate that the liquidation should continue but be under the supervision of the Court.

## **3. RESTRAINT & PRODUCTION ORDERS, FREEZE ORDERS AND FORFEITURE ORDER**

- 3.1 In Canada the Regulatory Authorities froze all the accounts held by Dominion in Ontario and Quebec. While those in Ontario were subsequently released, the Autorite des Marche Financiers (AMF) secured the renewal of the e Freeze Orders over the assets held in Quebec. The Liquidator instituted proceedings to secure his recognition as Liquidator in Canada and the authorization of the Canadian Courts to pursue proceedings to secure the discharge of the Freeze orders. Following his recognition by the e Superior Court of Quebec on the 2<sup>nd</sup> November 2006 the Liquidator applied for the discharge of the Freeze Order and pursued these proceedings before the Bureau de Decision et de Revision en Valeurs Mobilières (BDRVM) and before the Court of Appeal.

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- 3.2 In the Bahamas the Liquidator filed applications seeking the discharge and or variation of the Restraint & Production Orders granted by the Bahamian Court. These were set to be heard on the 23<sup>rd</sup> November 2006. However, as a consequence of the plea bargain agreement (see paragraph 1.7 above), the Liquidator's application for the discharge of the Bahamian Restraint & Production Order was adjourned to a date to be fixed, so that the parties could assess the ramifications. In the interim, the Restraint Order was varied so that the costs of the liquidation could be paid from the restrained funds.
- 3.3 On the 10<sup>th</sup> April 2008, the Liquidator, through his Canadian Attorney successfully appealed the decision of the BDRVM to maintain the Freeze Order and secured the discharge of the Freeze Order over the assets held in Canada ("the Canadian assets") which had been in place since February 2006.
- 3.4 On the 11<sup>th</sup> August 2008 the United States' Court issued an Order of Forfeiture of Specific Assets. This order provided that all of Martin Tremblay's right, title and interest in the accounts of Dominion which had been frozen in the Bahamas up to the amount of \$220,000 be forfeited and vest in the United States Government.
- 3.5 On the 22<sup>nd</sup> August 2008, the United States government received an affidavit by Martin Tremblay in support of his challenge to the specific assets order, on the grounds that the assets belonged to the customers of Dominion and not to him. This objection was dismissed by the Court on the basis that a defendant had "*no standing to object to the forfeiture on the grounds that the property is owned by a third party*" but that third parties who claimed an interest in specific assets could petition the United States government to have their rights to the subject property determined. The Memorandum Opinion & Order dated 10 October 2008 issued by Justice John Keenan, United States District Judge was faxed to the Liquidator on the 27<sup>th</sup> of October 2008.
- 3.6 On the 9<sup>th</sup> of January 2009, the Liquidator received a copy of the Order of Forfeiture of Specific Assets under cover of a letter from Mr. Jeff Alberts, the Assistant United States Attorney, Southern District of New York. The Liquidator's Bahamian Counsel advised the Liquidator that, in light of the fact that his applications to discharge the Restraint Orders affecting the assets held by Dominion in the Bahamas were part heard and pending determination by the Bahamian Court, that there was no need for him to take any steps in the US proceedings. The amount of the assets belonging to Martin Tremblay to be confiscated as proceeds of crime was set at \$220,000.
- 3.7 On the 6<sup>th</sup> February 2009, the Liquidator through his Bahamian Attorneys, made a proposal to the US Government (through the Attorney General of The Bahamas) to secure the discharge of the Bahamian Restraint Orders



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by consent, so that the Bahamian assets could be released. Failing an agreement on the proposal, the Liquidator intended to resume his application to discharge the Restraint & Production Orders in their entirety.

- 3.8 Due to lack of progress in negotiations with the Attorney-General of the Bahamas to secure the lifting of the Restraint Orders by consent, the Liquidator's outstanding application to discharge and or vary the same was set for hearing before the Supreme Court of the Bahamas on the 14<sup>th</sup> August 2009. A further application was also made by the Liquidator and set for hearing on the 14<sup>th</sup> August 2009 seeking an Order setting aside the entire proceedings in which the ex parte Restraint Orders against the assets held by Dominion were obtained.
- 3.9 Prior to the 14<sup>th</sup> August, 2009 hearing and following further negotiations, the Liquidator succeeded in securing the Attorney-General's consent to the Liquidator's proposal that the Restraint and Production Orders be discharged and that in lieu thereof there simply be a restraint order up to the amount of \$220,000 against the assets held by the Liquidator for Martin Tremblay and against such residual assets of Dominion to which Martin Tremblay may be entitled, as a contributory, at the conclusion of the liquidation. A Consent Order in this regard was granted by the Court on the 14<sup>th</sup> August 2009.
- 3.10 The discharge of the Restraint & Production Orders and the imposition in its stead of the Consent Order prescribing that the residual estate of Dominion would be applied so far as necessary to the satisfaction of the Forfeiture Order meant that there was no longer any restriction on the ability of the Liquidator to release the trust assets held in the Bahamas to the beneficial owners thereof, nor any question of a possible need for any disclosure of the customer's financial information or records and no question of there being any settlement from the customers' assets of the \$220,000 Forfeiture Order made against Martin Tremblay.
- 3.11 However, on the 1<sup>st</sup> June 2010, Martin Tremblay filed an application seeking an Order that the Consent Order described in 3.9 above be dismissed on the grounds that he was not informed of the proceedings, and that Dominion should pay his costs of such application. As there was a possibility that the discharge of the Consent Order could negatively impact the trust assets in the Bahamas, the Liquidator instructed Counsel to oppose the application. Martin Tremblay's application was set down for hearing on the 1<sup>st</sup> of March 2011.
- 3.12 On the 16<sup>th</sup> June 2010 the Attorney-General commenced proceedings for the registration in the Bahamas of the US Forfeiture Order that had been made against Martin Tremblay, and for an Order enabling the same to be enforced against the accounts of Dominion. Having regard to the possible impact of such an application, the Liquidator instructed Counsel to take all



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measures to oppose the proceedings. On 23<sup>rd</sup> July 2010 an application was made by the Liquidator for an Order dismissing the proceedings by the Attorney General for the registration of the Forfeiture Order. At a hearing of those applications on the 27<sup>th</sup> July 2010 the Attorney General applied for and was granted leave to wholly withdraw and discontinue the proceedings that had been commenced for the registration of the Forfeiture Order.

- 3.13 On the 1<sup>st</sup> March 2011 Martin Tremblay's application to dismiss the Consent Order was heard. The Court discharged the 14<sup>th</sup> August 2009 Consent Order insofar as it prohibited the release by the Liquidator of the assets held for Martin Tremblay or the distribution of any residual assets that, as a contributory, the Court may determine Martin Tremblay to be entitled to. In the meantime the withdrawal on the 27<sup>th</sup> July 2010 by the Attorney-General of the application to register the Forfeiture Order (See 3.12 above) had alleviated the Liquidator's concerns in relation to the discharge of the Consent Order. Martin Tremblay withdrew his application for costs against Dominion. A copy of the Order is attached hereto as Exhibit 4.

#### **4. TRUST ASSETS & LIQUIDATION COSTS**

- 4.1 On the 28<sup>th</sup> July 2008 the Bahamian Court ordered that the Liquidator was justified and at liberty to treat those assets which he had determined were not beneficially owned by Dominion as trust assets. The Court further ordered that the Liquidator was to deduct from each of the trust assets the taxed costs of the liquidation on a pro rata basis in the proportion which each of the assets bore to aggregate and that the separate costs pertaining solely to the assets held in Canada ("the Canadian assets") and solely to the assets held in the Bahamas ("the Bahamian assets") be similarly borne by those assets respectively.
- 4.2 As a consequence of the Order made on the 28<sup>th</sup> July 2008 the assets held in trust by Dominion have each borne their proportionate share of the costs incurred by the Liquidator in relation to matters addressed for their benefit. For example the Canadian trust assets all shared proportionately the costs incurred in relation to securing the release of the Canadian freeze orders. Accordingly this meant that the Estate of Dominion did not have to bear costs which were incurred for the benefit of the trust assets.
- 4.3 Although the July 28, 2008 Order prescribed that the proportionate costs due in respect of each of the trust assets were to be debited therefrom, in response to a request from a customer, the Liquidator agreed to accept direct payment instead of liquidating the subject trust assets for this purpose. The direct payment arranged in December 2010 was received in January 2011 in the amount of \$471,282 and the trust asset was released.

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- 4.4 The Liquidator has had to pursue a claim and to intervene in proceedings in Canada to recover outstanding liquidation costs due, amounting to approximately \$357,737, to the estate of Dominion from a trust asset over which the Canadian Revenue Authorities (CRA) obtained a provisional garnishee order to secure alleged tax liabilities of that customer, now deceased. Negotiations are continuing with the authorities there to secure payment of the costs due in accordance with the 28<sup>th</sup> July 2008 Order.

**5. CLAIMS & RELEASE OF TRUST ASSETS**

- 5.1 As stated in paragraph 3.3 above, on the 10<sup>th</sup> of April 2008 the Liquidator secured the discharge of the Restraint & Production of Information Orders over the assets held by Dominion in Canada without any disclosure of the identity of those beneficial owners or the source of their funds. During the months of September and October 2008 the Liquidator and his Bahamian Counsel completed the requisite verification of the claims that had been received in respect of the majority of these Canadian assets. An application was then made to the Bahamian Court to obtain the Court's determination as to the findings of the Liquidator in relation to the beneficial ownership of those assets and its order approving their release. Such order was granted on the 10<sup>th</sup> of November, 2008.
- 5.2 Thereafter, the majority of the Canadian assets were released to their beneficial owners less the costs which, pursuant to the July 2008 Court Order were required to be paid there-from. The asset against which the CRA obtained a provisional garnishee order have been un-able to be released, and the costs due to be paid there-from remain outstanding.
- 5.3 As stated in paragraph 3.9, a Consent Order was obtained on the 14<sup>th</sup> August 2009 discharging the Restraint & Production Orders over the assets held in the Bahamas without any disclosure of the identity of those beneficial owners or the source of their funds. The Liquidator has attended to the formal verification of the ownership of the assets held in the Bahamas. To this end, affidavits were prepared by the Liquidator's Attorneys and provided to the beneficial owners for the purpose of assisting them in setting out their respective claims and exhibiting the requisite evidence in verification thereof.
- 5.4 By the end of December 2010 the Liquidator's verification of the ownership of the trust assets located in the Bahamas was complete. Commencing in January 2011 the Liquidator proceeded to release the first tranche of trust assets.
- 5.5 The Liquidator reiterates his invitation to those customers who have not made a claim and believe that there are assets held for them, to contact him promptly and to indicate whether or not they wish to pursue a claim.



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**6. FINANCIAL POSITION**

- 6.1 A Balance Sheet, Income Statement and Statement of the Liquidator's Receipts & Payments for the period commencing the 1<sup>st</sup> January 2011 through 31<sup>st</sup> May 2011 is attached hereto, and comprises EXHIBITS 1, 2, and 3 respectively.
- 6.2 As detailed in paragraph 4.4, the Liquidator and his attorneys continue in their discussions with the Minister of National Revenue in Quebec to secure payment of the liquidation costs due in accordance with the 28<sup>th</sup> July 2008 Order.

**7. OUTSTANDING MATTERS**

- 7.1 The remaining matters to be addressed by the Liquidator include the collection of the Accounts Receivable customer accounts as at Liquidation date; the recovery of the outstanding liquidation costs due under the 28 July 2008 Order from the Canadian trust asset that is subject to the Canadian Tax Authorities' provisional garnishee order; and the resolution of outstanding claims to trust assets.

**8. CONCLUSION**

The Liquidator will continue to take the requisite steps to obtain the outstanding accounts receivable balances, the costs due under the 28<sup>th</sup> July 2008 Remuneration Order, to resolve the issues with regard to the remaining trust assets, to address the claims made by Dominion's trade creditors, and to bring the Liquidation of Dominion to a close as soon as possible.

The Liquidator will continue to keep all customers and creditors apprised of the progress of the liquidation and all requisite steps will continue to be taken to ensure the confidentiality of all client information under the Liquidator's control.

Respectfully submitted as at the 31<sup>st</sup> day of May, 2011



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G C Culmer  
Liquidator



**DOMINION INVESTMENTS (NASSAU) LTD.**  
**(IN VOLUNTARY LIQUIDATION)**

**EXHIBIT 1**  
**(UN-AUDITED)**

**BALANCE SHEET**

**AS AT 31 MAY 2011**

**(Expressed in US Dollars)**

**ASSETS**

**31-May-11**

Due from banks and brokers:

Total Due from banks – Demand

925,694

Costs Recoverable from Clients

379,295

Equity Securities (Off Balance Sheet )

291,656 \*\*

\$ 1,596,645

**LIABILITIES**

Due to Trust Clients

983,480

Equity Securities (Off Balance Sheet )

171,749 \*\*

Legal Fees Payable

159,583

Trade Creditors

109,331

Accounts Payable

31,710

1,455,853

**EQUITY**

Share capital

500,000

Retained earnings

(547,810)

Net Income for the Period

188,602

140,792

\$ 1,596,645

\*\* Off Balance Sheet costs recoverable are secured by the assets held in trust

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**EXHIBIT 2**  
**(UN-AUDITED)**

**DOMINION INVESTMENTS (NASSAU) LTD.**  
**(IN VOLUNTARY LIQUIDATION)**

**INCOME STATEMENT FOR THE PERIOD 01 JANUARY 2011 TO 31 MAY 2011**

**(Expressed in US Dollars)**

<b><u>INCOME</u></b>	<b>5 Months Ending <u>31-May-11</u></b>
Interest Income (USD)	715
Interest Income (EUR)	11
Unrealized Gain on Foreign Currency	17,233
Reversal of provision for doubtful accounts	197,106
	<hr/> 215,065
 <b><u>EXPENSES</u></b>	
Storage	2,225
Management Fees	2,923
Realized loss on foreign currency	2,136
Bank Charges	1,163
Liquidation Expense	18,016
	<hr/> 26,463
 <b>NET INCOME (LOSS) FOR THE PERIOD</b>	 <b><u>\$ 188,602</u></b>

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**EXHIBIT 3****DOMINION INVESTMENTS (NASSAU) LTD.****(UN-AUDITED)****(IN VOLUNTARY LIQUIDATION)****RECEIPTS & PAYMENTS FOR THE PERIOD 01 JANUARY 2011 TO 31 MAY 2011****(Expressed in US Dollars)**

	<b>5 Months Ending <u>31-MAY-11</u></b>
<b><u>RECEIPTS</u></b>	
Interest Income (USD)	715
Interest Income (EUR)	11
	<u>726</u>
 <b><u>PAYMENTS</u></b>	
Storage	2,225
Management Fees	2,923
Realized foreign currency loss	2,136
Bank Charges	1,163
Liquidation Expenses	<u>241,922</u>
	250,369
 <b>NET DISBURSEMENTS</b>	 <u><u>\$ (249,643)</u></u>



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**AFFIDAVIT**

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**2006**

**COM /com / 00010**

  
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