

# NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARINGS

IN THE MATTER OF THE CANADIAN DIAMONDS  
CLASS ACTION LITIGATION REGARDING  
SETTLEMENT AGREEMENT WITH  
THE FOLLOWING DEFENDANTS



DE BEERS CANADA INC., DB INVESTMENTS, SOCIÉTÉ ANONYME, DE BEERS S.A., DE BEERS CONSOLIDATED MINES PROPRIETARY, LTD., DE BEERS UK LIMITED (f/k/a THE DIAMOND TRADING COMPANY LIMITED), CSO VALUATIONS A.G., DE BEERS CENTENARY A.G., DE BEERS CANADA HOLDINGS INC., ANGLO AMERICAN PLC, CENTRAL HOLDINGS LIMITED (collectively, the “Defendants”)

## **Read this Notice Carefully as it May Affect Your Rights**

**TO:** All persons resident in Canada who purchased Gem Grade Diamonds (as defined below), between January 1, 1994 and October 14, 2016 (the “Class Period”).

### **Nature of the Lawsuits**

Gem Grade Diamonds are diamonds used in diamond jewellery or for investment purposes (as distinguished from diamonds used for industrial purposes). Gem Grade Diamonds are mined from the earth and, after cutting, polishing and other finishing, are valued based on their beauty, color, cut, clarity, and other characteristics. Gem Grade Diamonds are sold in their polished form to purchasers who incorporate the diamonds into jewellery and other products for resale.

Class action proceedings were initiated in British Columbia in *Fairhurst v. De Beers Canada Inc., et al.*, Supreme Court of British Columbia, Court File No. S-071269 (the “BC Action”), in Ontario in *Brant v De Beers Canada Inc., et al.*, London Superior Court of Justice, Court File No. 1399/10 CP (the “Ontario Action”), in Quebec in *Andrea Sanderson v. De Beers Canada Inc, et al.*, Superior Court of Quebec, File No. 500-06-000571-113 (Montreal Registry) (the “Quebec Action”) (collectively, the “Diamond Proceedings”). A further class proceeding was commenced in Saskatchewan in *Daniel Ammazzini and Olson Goldsmiths Inc. v. Anglo American PLC et al.*, Saskatchewan Court, File No. 877 (Saskatoon Registry) (the “Saskatchewan Action”). The Diamonds Proceedings and the

Saskatchewan Action allege that the Defendants controlled the vast majority of the market for Gem Grade Diamonds in Canada, that they engaged in an international conspiracy to fix the price of Gem Grade Diamonds during the Class Period, and that, as a result, class members paid more for their Gem Grade Diamonds than they would have but for the illegal conduct. The plaintiffs, on behalf of themselves and classes they seek to represent, claimed damages and restitution from the Defendants in respect of the alleged conduct.

The court in British Columbia certified the BC Action on a contested basis and appointed Michelle Fairhurst and Marc Kazimirski as representative plaintiffs. The Ontario Action and the Quebec Action have not yet proceeded to contested certification and authorization hearings. The Saskatchewan Action was conditionally stayed by the Saskatchewan Court, with the order staying the action under appeal. Saskatchewan residents who do not opt out will be included in this case (the national settlement class) and will have the right to make a claim when the settlement funds are distributed. The settlement includes full benefits to and release of all claims by Saskatchewan residents.

## **I. SETTLEMENT**

A settlement has been reached in the Diamonds Proceedings with the Defendants, pursuant to which the Defendants will pay CDN \$9.4 million in exchange for a full release of all claims relating to the Diamonds Proceedings. The settlement amount will be held in an interest bearing trust account for the benefit of the Settlement Class (defined below) until the Courts approve a claims process. This settlement resolves the Diamonds Proceedings for the whole of the Settlement Class as against the Defendants. If the settlement is approved, a full release of all claims in all of the Diamond Proceedings will be granted to the Defendants. The settlement represents a resolution of disputed claims and the Defendants do not admit any wrongdoing or liability.

### **Certification of the Diamond Proceedings for settlement purposes only**

The Courts have certified or authorized the BC Action, Ontario Action, and Quebec Action against the Defendants for the purposes of settlement only (the “Settlement Certification”). The Courts have not taken any position as to the likelihood of recovery on the part of the representative plaintiffs or other members of the classes, or as to the merits of the claims or defences asserted by either side. The allegations against the Defendants have not been proven and the Defendants deny all liability and wrongdoing.

Court approval of the Settlement Agreement is a condition of the Settlement Certification. If the Settlement Agreement is not approved, the Settlement Certification will be revoked. It is also a condition of the Settlement Agreement that the Saskatchewan Action be permanently stayed or dismissed.

By order of the BC Court, the settlement class in the British Columbia Action is:

All persons resident in British Columbia who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons.

(the “BC Settlement Class”)

By order of the Quebec Court, the settlement class in the Quebec Action is:

All persons resident in Quebec who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons.

(the “Quebec Settlement Class”)

By order of the Ontario Court, the settlement class in the Ontario Action, which is the national settlement class, is:

All persons resident in Canada who purchased Gem Grade Diamonds during the Class Period, except Excluded Persons and persons who are included in the BC Settlement Class or the Quebec Settlement Class.

(the “National Settlement Class”) (together with the BC Settlement Class and the Quebec Settlement Class, the “Settlement Class”)

The Defendants and persons related to the Defendants and persons who have validly and timely opted out of the Diamonds Proceedings are excluded from the Settlement Class.

### **Court Approval**

The Settlement Agreement remains subject to approval by the Courts. Motions for approval of the Settlement Agreement will be heard by the British Columbia Court in the City of Vancouver on **November 2, 2017 at 10:00 AM**, and the Ontario Court in the City of London on **October 30, 2017 at 10:00 AM**, and the Quebec Court in the City of Montreal on **December 4, 2017 at 9:00 AM**. At these hearings the Courts will determine whether the settlement is fair, reasonable and in the best interests of the Settlement Class. Following those settlement approval motions, a motion to dismiss or permanently

stay the Saskatchewan Action will be scheduled and the date of the Saskatchewan hearing will be published at [www.cfmlawyers.ca](http://www.cfmlawyers.ca).

### **Questions about the Settlements**

This notice contains only a summary of the Settlement Agreement and Settlement Class members are encouraged to review the complete Settlement Agreement. A copy of the Settlement Agreement can be downloaded here: [www.cfmlawyers.ca](http://www.cfmlawyers.ca). A copy of the Settlement Agreement can also be mailed to you at a cost of \$25, which represents the cost of photocopying and mailing. If you would like a copy of the Settlement Agreement or have questions that are not answered on-line, please contact the appropriate Class Counsel identified below. **INQUIRIES SHOULD NOT BE DIRECTED TO THE COURTS.**

### **Interpretation**

This notice contains a summary of some of the terms of the Settlement Agreement. If there is a conflict between the provisions of this notice and the Settlement Agreement including the schedules to the Settlement Agreement, the terms of the Settlement Agreement and/or the court orders shall prevail.

## **II. OPTIONS AVAILABLE TO SETTLEMENT CLASS MEMBERS**

As more fully outlined above, you are a member of the Settlement Class if you are a resident of Canada who bought a Gem Grade Diamond during the Class Period, unless you are an Excluded Person. You do not need to do anything to continue to be included as a Settlement Class member and you will be entitled to participate in the settlement and you will be legally bound by the result of the Diamonds Proceedings.

Settlement Class members who do not oppose the proposed settlement need not appear at the court approval hearings or take any other action at this time to indicate their desire to participate in the settlement.

### **Commenting on or Objecting to the Settlement**

Settlement Class members are entitled to file written submissions and/or appear and make submissions at the court approval hearings. Settlement Class members who wish to comment on or make an objection to the Settlement Agreement must deliver a written submission by mail or email to the

appropriate Class Counsel at the addresses listed below postmarked no later than October 20, 2017. The written submission must state the nature of any comments or objections and whether the Settlement Class member intends to appear at the appropriate court approval hearing. Class Counsel will forward all such submissions to the appropriate Court. All timely written submissions will be considered by the appropriate Court. If you do not file a written submission by the deadline, you may not be entitled to participate, through oral submissions or otherwise, in the court approval hearings.

### **Opting Out**

The deadline for opting out of (or excluding yourself from) the Diamonds Proceedings is **October 27, 2017**. You may opt out of the Diamonds Proceedings by sending an opt out form to [diamondsclassaction@cfmlawyers.ca](mailto:diamondsclassaction@cfmlawyers.ca) or by mail to Class Counsel at the address provided below. The opt out form is available at [www.cfmlawyers.ca](http://www.cfmlawyers.ca) or may be requested by phone or email. All Settlement Class members (including residents of Saskatchewan) who have not validly opted out by the deadline will be bound by the terms of the Settlement Agreement (if approved by the Courts) and may make a claim when the settlement funds are distributed. Settlement Class members who validly opt out of the Diamonds Proceedings will not be bound by the terms of the Settlement Agreement, and will not be able to participate in the settlement or make a claim when the settlement funds are distributed.

### **Financial Consequences/Distribution of Settlement Funds**

Settlement Class members may receive financial compensation from the settlement, if approved. The settlement funds will be held in trust for the benefit of the Settlement Class members until the Courts approve a claims and distribution process. The Courts will be asked to approve a claims and distribution process at the same time as the hearing seeking approval of the Settlement Agreement. The Distribution Protocol, which will provide detailed information about the distribution process, will be posted on [www.cfmlawyers.ca](http://www.cfmlawyers.ca). Settlement Class members should retain all proofs of purchase of Gem Grade Diamonds purchased between January 1, 1994, and October 14, 2016. If you would like to receive updates on the settlement approval process for the Diamonds Proceedings and the claims process, please email [diamondsclassaction@cfmlawyers.ca](mailto:diamondsclassaction@cfmlawyers.ca).

No individual class member will be liable for costs with respect to the settlement.

**Class Counsel Legal Fees**

Class counsel will be seeking legal fees in the amount of 30% of the settlement amount, plus disbursements and applicable taxes. The applications for court approval of Class Counsel's fee request will be heard at the same time as the applications for court approval of the Settlement Agreement.

**Class Counsel**

The law firms of Camp Fiorante Matthews Mogerman and Siskinds LLP represent the National Settlement Class and the BC Settlement Class. Class Counsel at Camp Fiorante Matthews Mogerman can be reached at:

Telephone: 604-689-7555 or 1-800-689-2322  
Email: diamondsclassaction@cfmlawyers.ca  
Mail: 4th Floor, 856 Homer Street,  
Vancouver, BC V6B 2W5  
Attention: Jen Winstanley

The law firm of the Consumer Law Group represents the Québec Diamonds Settlement Class. Class Counsel at the Consumer Law Group can be reached at:

Telephone: 514-266-7863  
Email: info@clg.org  
Mail: 1030 rue Berri, Suite 102  
Montreal, Quebec, H2L 4C3  
Attention: Jeff Orenstein

**III. ADDITIONAL INFORMATION**

The Settlement Agreement, the opt out form, the Distribution Protocol, and other information is available online at: [www.cfmlawyers.ca](http://www.cfmlawyers.ca). If you have questions that are not answered online, please contact Class Counsel listed above. **INQUIRIES SHOULD NOT BE DIRECTED TO THE COURTS.**

**THIS NOTICE HAS BEEN AUTHORIZED BY THE SUPREME COURT OF BRITISH COLUMBIA, THE SUPERIOR COURT OF JUSTICE FOR ONTARIO, AND THE SUPERIOR COURT OF QUÉBEC**