

2005 BCSECCOM 108

Settlement Agreement

Donald Nicholson

Securities Act, RSBC 1996, c. 418

- ¶ 1 The Executive Director and Donald Nicholson (Nicholson) have reached the following settlement.

Agreed Statement of Facts

- ¶ 2 As the basis for the undertakings referred to in this settlement, Nicholson acknowledges the following facts as correct:
1. China Diamond Corp. (China Diamond) (formerly known as Pan Asia Mining Corp.) is a reporting issuer in British Columbia. The securities of China Diamond are listed for trading on the TSX Venture Exchange.
 2. Nicholson is a Professional Engineer (P. Eng.) and a member of the Association of Professional Engineers and Geoscientists (P. Geo) of British Columbia.
 3. Nicholson was:
 - (a) a director and interim president of China Diamond from February 6, 1998 to February 27, 1998,
 - (b) a director of China Diamond from February 1, 2000 to March 15, 2001,
 - (c) chief operating officer and chief financial officer of China Diamond from September 27, 2000 to March 15, 2001 and
 - (d) a consultant to the board of directors of China Diamond from March 15, 2001 to January 2003.
 - (e) Nicholson is no longer involved with China Diamond.

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4. In March 1995, Kilborn Engineering Pacific Ltd. (Kilborn) prepared a technical review (the Kilborn Report) of the Changma Diamond Mine in Shandong Province, China (the 701 Mine) for Olds Industries Inc. (Olds).
5. The Kilborn Report:
 - (a) stated that a number of larger diamonds were recovered each year from the 701 Mine and the number of larger diamonds was expected to increase when the processing plant was modified and security was improved,
 - (b) produced an economic analysis based on a case study on instruction from Olds. The Kilborn Report made it clear the assumptions it relied on were never verified. As part of the instruction from Olds, Kilborn estimated a value of \$115 US per carat from the 701 Mine, and
 - (c) did not estimate the internal rate of return or the gross profits but did estimate a positive cash flow during the first year of production from a proposed underground mining operation. It also concluded that converting the 701 Mine to an underground mine appeared to be very sound economically based on the unverified assumptions in the Kilborn Report.
6. In March 1997, Fluor Daniel Wright Ltd. (Fluor Daniel) and Dr. J.G. Strand prepared two reports (together, the Fluor Daniel Report) on the 701 Mine and another mine known as the 702 Mine for Kensington Resources Ltd.
7. The Fluor Daniel Report:
 - (a) stated that there was a proposal to convert the 701 Mine to an underground operation which in conjunction with upgraded processing facilities was expected to provide higher annual production rates and larger diamond recovery but had no hard data to verify the assumptions. The Fluor Daniel Report did not estimate the value of the carats or specify the expected rate of return, and
 - (b) stated that the 702 Mine was a major diamond resource and that a conservative resource estimate was calculated at 5.17 million carats based on the reports of others that Fluor Daniel had not reviewed or verified.

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8. In March 1999, P.H. Cowdery (Cowdery) prepared a report (the Cowdery Report) for the technical sections of the Annual Information Form (AIF), dated November 12, 2000 for the Shandong Mining Joint Ventures.
9. At the time he prepared the Cowdery Report, Cowdery was a director and officer of China Diamond and was not independent of China Diamond.
10. Cowdery has an MBA and is a P. Eng. and had worked in the mining industry for over 45 years at the time he prepared the report.
11. In the two years prior to the Cowdery Report, Cowdery had been exclusively involved with the evaluation of Chinese mines and deposits including the 701 Mine and the Huxian Mine.
12. As part of his duties as a director, chief operating officer and chief financial officer of China Diamond, Nicholson reviewed the AIF.
13. The AIF:
 - (a) stated that China Diamond had conducted in-house engineering on a diamond property known as the 701 Mine and that it was forecasted to mine 1,075 tonnes per day (tpd) and would produce at least 285,000 carats per year with over 45% gem quality,
 - (b) forecast an average selling value of US \$110 per carat for rough diamonds from the 701 Mine,
 - (c) forecast gross profits of US \$20 million per year and a projected internal rate of return on the 701 Mine “in the high 80’s”,
 - (d) stated that a 160 tpd throughput at China Diamond’s Huxian Mine property would net a profit before taxes of US \$420,000 per year,
 - (e) stated that the operation of a 1,100 tpd mine and plant at the Huxian Mine would produce a gross margin of US \$13 million per year, a pay-back of capital invested (after tax) “in a little over 2.4 years”, and a projected internal rate of return of over 30%, and
 - (f) disclosed the company’s intention to conduct underground mining on the 702 Mine, the gross profits of which were forecasted to be US \$40 million per year, with an internal rate of return of 38%.(collectively the AIF Statements).

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14. The AIF Statements were based on information contained in the Cowdery Report. In the Cowdery Report, Cowdery made a number of statements that were not substantiated and were contradicted by independent reports of which Nicholson was aware and was qualified to understand.

Breach of the Act

15. The AIF Statements, in a material respect and at the time and in light of the circumstances under which they were made, omitted information that was necessary to make them not misleading. Therefore, pursuant to section 168.2 of the Act, by acquiescing in the filing of the AIF that contained the AIF Statements, Nicholson breached section 168.1(1)(b) of the Act.

Mitigating Factors

- ¶ 3 The Executive Director has taken into account the following factors as mitigating the sanctions which might otherwise have applied in the public interest:
1. Nicholson does not have a previous disciplinary history with the Commission,
 2. Nicholson actively cooperated with staff of the Commission in the course of this investigation,
 3. Nicholson did not prepare the AIF or the AIF Statements, and
 4. when reviewing the AIF and the AIF Statements, Nicholson relied on the technical analysis and conclusions of another professional. These conclusions had been incorporated in previous AIFs that China Diamond filed with the Commission (before Nicholson was a director of the company).

Undertakings

- ¶ 4 Nicholson undertakes and agrees as follows:
1. to comply fully with the Act, *the Securities Rules B.C. Reg. 194/197*, and any applicable regulations, policies and guidelines, from the date of this agreement,
 2. to pay to the Commission, upon execution of this agreement, the sum of \$15,000.
 3. to not say anything, in writing or orally, which may contradict the terms of this settlement or call those terms into question.

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Waiver

¶ 5 Nicholson waives any right he may have, under the Act or otherwise, to a hearing, hearing and review, judicial review or appeal related to, in connection with, or incidental to this agreement.

¶ 6 December 21, 2004

¶ 7 “Donald Nicholson”)
Donald Nicholson

“Patrick Sullivan”)

Witness Signature

Patrick Sullivan)

Witness Name (please print)

308 – 1040 Hamilton Street)

Address

Lawyer)

Occupation

¶ 8 February 11, 2005

“Brenda M. Leong”

¶ 9 Brenda M. Leong
Executive Director