

**Court File No. 08-CL-7355**

**TAHERA DIAMOND CORPORATION  
AND BENACHEE RESOURCES INC.**

**NEW MONITOR'S SECOND REPORT TO THE COURT**

**February 23, 2009**

ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

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

TAHERA DIAMOND CORPORATION  
BENACHEE RESOURCES INC.

**NEW MONITOR'S SECOND REPORT TO THE COURT SUBMITTED BY  
A. FARBER & PARTNERS INC.  
IN ITS CAPACITY AS MONITOR**

**INTRODUCTION**

1. On January 16, 2008, Tahera Diamond Corporation ("**Tahera**") and its wholly owned subsidiary, Benachee Resources Inc. ("**Benachee**") (collectively, referred to herein as the "**Applicants**" or the "**Company**"), made an application under the *Companies' Creditors Arrangement Act* (the "CCAA") and an initial order (the "Initial Order") was granted by the Honourable Mr. Justice Spence of the Ontario Superior Court of Justice (Commercial List) (the "Court") providing for, *inter alia*, a stay of proceedings against the Company until February 14, 2008 (the "**Stay Period**") and appointing PricewaterhouseCoopers Inc. ("**PWC**") as monitor (the "**Monitor**"). The proceedings commenced by the Company under the CCAA will be referred to herein as the "CCAA Proceedings".
2. The Stay Period has been extended on a number of occasions since the date of the Initial Order. Most recently, pursuant to the extension provided for in the Order of the Honourable Mr. Justice Morawetz granted on December 12, 2008 (the "**December 12 Order**"), the Stay Period expires on January 23, 2009 and for the appointment of A. Farber & Partners Inc. ("**Farber**") as Monitor in place of PWC.

3. The former Monitor, PWC, filed its seventh report (the “**Seventh Report**”) with this Honourable Court on September 26, 2008, which, among other things, described the Company’s progress with respect to the development of a plan of arrangement pursuant to the CCAA.
4. The former Monitor, PWC, filed its eighth report (the “**Eighth Report**”) with this Honourable Court on November 26, 2008, which, among other things, informed the Court of the termination of the Plan Sponsorship Agreement by the Plan Sponsor (both as defined in the Monitor’s Seventh Report), the Company’s consequent inability to complete a plan of arrangement under the CCAA Proceedings (the “**Plan**”) and the Company’s diminishing cash reserves. These developments resulted in the Company and the Monitor engaging in discussions with Department of Indian and Northern Affairs Canada (“**INAC**”) regarding the possibility of INAC’s Intervention (as defined in the Eighth Report) at the Company’s Jericho mine site (the “**Jericho Mine**”).
5. The December 12 Order among other matters provides: (i) that commencing December 13, 2008 at 12:01 a.m. the Crown, represented by INAC and its agent Deloitte & Touche Inc., are authorized, pursuant to an Intervention for the ongoing care and maintenance of the Jericho Mine site, to utilize any of the Applicants’ supplies, chattels, machinery or equipment including all fuel or supplies at no cost, pending further Order of the Court; (ii) for the appointment of Farber as Monitor in place of PWC; (iii) for the appointment of 2192640 Ontario Inc. (Mr. Andrew Gottwald) as Chief Restructuring Officer (“**CRO**”); (iv) the Applicant’s retention of Champeco Capital Corp. (“**Champeco**”) as advisor for the purpose of assisting the CRO and the Applicants in the performance of their duties and the consideration of any plan of arrangement, to the extent needed; and (v) for the extension of the Stay Period to January 23, 2009.
6. On January 23, 2009, the Court granted an Order (the “**January 23 Order**”) for the extension of the Stay Period to February 27, 2009 while the Companies and its advisors explore strategic alternatives not explored to date with respect to formulating a plan of arrangement, including dealing with proposals to utilize the

tax losses of the Company. A Copy of the January 23 Order is attached as Appendix A.

## **PURPOSE OF REPORT**

7. The purpose of this, the New Monitor's Second Report (the "**Second Report**"), is to inform the Court of the following:
- The activities of Farber in its capacity as the New Monitor;
  - The Company's receipts and disbursements for the period from January 11, 2009 to February 14, 2009;
  - The Company's cash flow forecast for the period from February 15 to March 6, 2009;
  - The Company and its advisors efforts to canvass the market and secure offers with respect to a potential sale of the Jericho Mine and/or the Companies tax attributes; and
  - The Company's request to for a short extension of the Stay Period to March 6, 2009 and the Monitor's recommendation on same.

## **TERMS OF REFERENCE**

8. In preparing this Second Report, the Monitor has relied upon unaudited, internally prepared financial information, the Applicant's records and discussions with management of the Applicant. The Monitor has not performed an audit, review or other verification of such other information. An examination of the financial forecast as outlined in the Canadian Institute of Chartered Accountants Handbook has not been performed. Future oriented financial information relied upon in this report is based on the Company's assumptions regarding future events and actual results achieved will vary from this information and the variations may be material. Unless otherwise stated, dollars referenced in these materials are in Canadian funds.

**ACTIVITIES OF FARBER AS MONITOR**

9. Since its appointment as New Monitor, Farber has: monitored the current cash flow of the Company; reviewed updated cash flow forecasts; dealt with return of deposit to the Company, which had been held by the Monitor to secure payments for goods and services provided by certain vendors post CCAA filing; and monitored the Company and its advisors efforts to canvass the market and work with multiple expressions of interest regarding utilization of the Companies tax losses and/or restart the Jericho Mine. These matters are reported on more fully below.

**RECEIPTS & DISBURSEMENTS FOR THE PERIOD FROM JANUARY 11, 2009 TO FEBRUARY 14, 2009**

10. The Company's actual cash flows for the period from January 11, 2009 to February 14, 2009 (the "Period") compared to the January 11, 2009 Forecast (the "January 11 Forecast") (per Appendix B to the New Monitor's First Report to the Court) are summarized as follows (all amounts in Canadian Dollars unless otherwise noted):

Cumulative for the Period from January 11, 2009 to February 14, 2009			
	Actual	Forecast	Variance
<b>Receipts</b>			
Diamond Sales	-	-	-
Other	127,110	408,204	(281,094)
<b>Total Receipts</b>	<b>127,110</b>	<b>408,204</b>	<b>(281,094)</b>
<b>Disbursements</b>			
Overhead	21,604	439,342	417,738
<b>Total Jericho Operation</b>	<b>21,604</b>	<b>439,342</b>	<b>417,738</b>
Corporate Costs and Other	40,183	160,421	120,237
Legal and Professional Fees	78,554	173,583	95,029
<b>Total Disbursements</b>	<b>140,342</b>	<b>773,346</b>	<b>633,003</b>
Net Cash Flow	(13,232)	(365,142)	351,909
Cash Segregated for Lien Holders	2,018,749	2,018,749	-
Opening Cash	621,733	621,733	-
<b>Ending Cash</b>	<b>2,627,250</b>	<b>2,275,340</b>	<b>351,909</b>
Add: Cash on Deposit in Monitor's Trust Account	13,204	-	13,204
Add: Cash Held for Benefit of Lien Holders (Including Interest)	(2,018,749)	(2,018,749)	-

Adjusted Ending Cash	621,704	256,591	365,113
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11. Effective February 14, 2009 cash proceeds held by the Company and Monitor totaled \$621,704 compared to forecast of \$256,591. This variance of approximately \$365,113 was primarily due to a delay in payment of certain accrued post-filing obligations as follows:

- The January 11 Forecast contemplated the payment by February 14, 2009 of accrued post-filing obligations totaling \$421,000 comprising property taxes (\$270,000), claim lease fees (\$91,000) and payroll taxes (\$60,000). However, those amount have not yet been paid for the following reasons: (i) With respect to the property taxes due of \$270,000, the Company estimates \$88,000 in fuel rebates have accrued since March 1, 2008, which would represent a potential set off; the Company is liaising with the Government of Nunavut on same. However, this amount continues to be fully reserved for. (ii) With respect to claim leases fees owing of \$91,000, the Company has worked through certain claim rights it wishes to preserve for 2009 and has determined that \$70,000 is payable to the Federal Government. (iii) The Company is close to completing and filing of payroll returns and based on such analysis has determined that \$85,000 in payroll taxes are owed. The Company has fully provided for these accrued post-filing obligations in its updated cash flow forecast, which is further detailed in paragraphs 14 to 20.
- Partly off setting this favourable timing difference was the fact that a \$250,000 deposit from a prospective purchase was assumed collected in this forecast Period. However as negotiations with interested parties continued through February, no acceptable letter of intent and deposit was received by February 14, 2009. Had a letter of intent and deposit been provided, that would have triggered the commencement of the financial statement audit, on which \$100,000 of audit fees and costs was assumed funded by February 14, 2009. As a result, there is a net unfavourable timing difference of \$150,000.

- In addition to the above items, legal and professional fees funded in the period are lower than forecast to date by \$95,029. However based on review with the Company, the New Monitor understands that there are further professional fees accrued but unpaid effective February 14, 2009 approximating \$100,000. These fees are fully provided for in the Company's updated forecast.
12. With respect to deposits held by the Monitor for certain vendors providing post filing goods and services, it can be confirmed that three vendors, American Express (\$30,000), TD Visa (\$25,000) and Kitikmeot Caterers (\$70,000) acknowledged that all their post CCAA filing invoices and accounts had been paid and deposits held by the Monitor could be released back to the Company. On January 26, 2009 the Monitor paid over \$125,000 in funds, which are included in the above reported cash position. Further, subsequent to the forecast Period referenced above, on February 18, 2009 Farber received acknowledgment from a final vendor, Mainstream Aquatics, that all its post filing invoices have been paid, and that the Monitor can release the \$10,000 deposit to the Company. Those funds were paid over to the Company on February 20, 2009 together with interest net of charges accrued on the deposit proceeds of \$3,240.
  13. The Monitor confirms that pursuant to a Court Order dated July 18, 2008 \$2 million in funds continue to be held at TD Canada Trust in a separate account for the benefit of Lien Claimants. Effective February 14, 2009 inclusive of interest these funds total \$2,018,749.

#### **FORECAST CASH FLOW AND CASH RESERVES**

14. The status of the present marketing process is discussed further below and in the Affidavit of Andrew Gottwald dated February 23, 2009, filed.

15. The Company has prepared a revised cash flow forecast for the period February 15 to March 6, 2009 (the “**February 15 Forecast**”) which is attached hereto as Appendix B.
16. The February 15 Forecast, which has an opening cash position of \$608,500 shows that the Company expects cash reserves to last until March 6, 2009 after fully providing for \$542,458 of accrued post-filing obligations along with ongoing costs and fees for the period from February 15, 2009. The forecast cash balance at March 6, 2009 is \$1,213.
17. Accrued post-filing obligations effective February 14, 2009 as reported by the Company are summarized as follows

	\$
Payroll, taxes	85,000
Professional fees	100,458
Property Taxes	270,000
Claim lease fees,	70,000
Other Expenses	17,000
Total	542,458

18. As reported above in paragraph 11 the Company intends to assert a claim for set-off of an estimated \$88,000 in fuel/rebates against the \$270,000 property tax amount. Subject to resolving any objection that may be received from the Government of Nunavut the set-off would result in additional cash available to the Company.
19. Not included in the cash flow forecast is an estimated \$32,500 plus GST in proceeds of sale related to office furniture and fixtures held at the Company’s Toronto premises, which has been negotiated with the landlord. This sale is currently scheduled to be finalized in April 2009.
20. Based upon the February 15 Forecast and the foregoing, current cash flow reserves are very limited and provide scope for only a short extension to the Stay Period. From review of LOI’s received todate, and from discussions with the Company and its advisors, it appears that additional funding is being sought in

conjunction with finalizing an LOI with a bidder over the next week or so. An update on the marketing and sales process is further reported on a below.

#### **MARKETING AND SALES PROCESS UPDATE**

21. As part of these motion materials, an Affidavit of Andrew Gottwald dated February 23, 2009 in his capacity sole director and officer of 2192640 Ontario Inc, the CRO, (hereinafter the “**CRO Affidavit dated February 23**”) provides an update on marketing and sales efforts as part of what is defined at the **Current Marketing Process** which commenced around December 12, 2008. Farber in its capacity as Monitor has liaised regularly with the Company, its CRO and Champco regarding efforts to seek offers to sell the tax attributes and/or the Jericho Mine.
22. The Monitor has reviewed the level of interest with the Company, CRO and Champco and can confirm 15 parties were contacted, 12 of those parties signed confidentiality agreements, a number of which have completed extensive due diligence to date. Effective February 20, 2009 three parties had provided LOIs or proposals with respect to utilization of the tax attributes. Based on review of these LOIs, two are from publicly traded Canadian income trusts. The Company and the CRO continue to negotiate with bidders in good faith.
23. It appears to the Monitor a short extension to the Stay Period will provide time to firm up an LOI with a bidder concurrent with arranging additional financing to allow for further due diligence and closing of a transaction.

#### **REQUEST FOR EXTENSION OF STAY OF PROCEEDINGS**

24. Based on the results of the Current Marketing Process to date, the Monitor is of the view that circumstances exist that make a short extension of the Stay Period to March 6, 2009 appropriate in order to enable the Company to arrange additional funding in conjunction with firming up terms and conditions of an LOI with a bidder. The Monitor believes that the Applicants have acted and are acting in

good faith and with due diligence regarding efforts to identify a party with whom a transaction can ultimately be closed for the benefit of creditors.

## **OTHER MATTERS**

25. On February 6, 2009, the Company announced via press release that it has made application for the voluntary suspension of the trading of its common shares on the Toronto Stock Exchange (“TSX”). The Company has determined that any plan of restructuring or liquidation of the Company would not result in any return for holders of Tahera’s common shares. Accordingly, on behalf of the Company, the CRO, after consultation with the Monitor, determined that Tahera’s common shares should be suspended from trading on the TSX for the time being.
26. The Monitor can report that at the hearing on January 23, 2009 that a motion related to Caterpillar Financial Services Limited (“Caterpillar”) has been settled by agreement between the parties, in a manner that defers the issue raised in Caterpillar’s motion to be dealt with in the context of a plan of arrangement is one is ultimately presented.

## **CONCLUSION AND RECOMMENDATIONS**

27. Having regard to the above, the Monitor recommends this Honourable Court approve:
  - The Monitor’s activities as set out in the New Monitor’s Second Report.
  - Extension of the Stay Period to March 6, 2009.

The Monitor respectfully submits to the Court this, its Second Report.

Dated this 23rd day of February, 2009.

**A. Farber & Partners Inc.**  
**in its capacity as Monitor of**  
**Tahera Diamond Corporation**  
**and Benachee Resources Inc.**

A. Farber & Partners Inc.

# **Appendix A**

ONTARIO SUPERIOR COURT OF JUSTICE  
(Commercial List)

THE HONOURABLE MR. )  
JUSTICE MORAWETZ )  
FRIDAY, the 23<sup>RD</sup>  
DAY OF JANUARY, 2009



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

IN THE MATTER OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C-43, AS AMENDED;

AND IN THE MATTER OF A PROPOSED COMPROMISE AND ARRANGEMENT IN RESPECT OF TAHERA DIAMOND CORPORATION and BENACHEE RESOURCES INC.

**ORDER**

**THIS MOTION**, made by Tahera Diamond Corporation and Benachee Resources Inc. (collectively, "Tahera"), was heard this day at the Court House, 330 University Avenue, Toronto, Ontario.

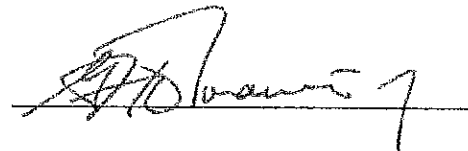
**ON READING** the notice of motion and motion record, including the First Report of A. Farber & Partners Inc., the court-appointed Monitor of Tahera ("New Monitor") dated January 19, 2009 ("First Report of New Monitor"), and upon hearing the submissions of counsel for Tahera, the New Monitor, and Caz Petroleum Inc.,

1. **THIS COURT ORDERS** that the time for service is hereby abridged, the service of this motion has been properly effected and this motion is properly made returnable today.

2. **THIS COURT ORDERS** that the "Stay Period" referred to in the Initial Order of the Honourable Mr. Justice Spence dated January 16, 2008 be and is hereby extended to February 27, 2009.

3. **THIS COURT ORDERS** that the powers of the CRO, which are set forth in paragraphs 21 and 22 of the Order of this Honourable Court dated December 12, 2008, are hereby expanded, *nunc pro tunc*, to include the power to execute confidentiality agreements and letters of intent with third parties on behalf of the Applicants in furtherance of a potential transaction, provided that the performance of any letters of intent by Tahera shall be subject to further approval of the Court.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:



JAN 23 2009

PER/PAR: TV

AND IN THE MATTER OF A PROPOSED COMPROMISE AND ARRANGEMENT  
IN RESPECT OF TAHERA DIAMOND CORPORATION and BENACHEE  
RESOURCES INC.

Court File No: 08-CL-7355

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(COMMERCIAL LIST)

Proceeding commenced at Toronto

**ORDER**

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Solicitors for the Applicants

# **Appendix B**

**TAHERA CARE & MAINTENANCE WEEKLY BUDGET**  
**CASH FLOW FORECAST - February 15 to March 7, 2009**

Account Description	Total	15-Feb-09	22-Feb-09	1-Mar-09
		21-Feb-09	28-Feb-09	7-Mar-09
<b>CASH INFLOWS</b>				
Cash Flow from Diamond Production	-	-	-	-
Other Cash Flow	-	-	-	-
<b>TOTAL CASH OUTFLOW</b>	<b>607,316</b>	<b>17,588</b>	<b>568,266</b>	<b>21,463</b>
<b>CORPORATE COSTS</b>	<b>56,250</b>	<b>4,250</b>	<b>40,250</b>	<b>11,750</b>
Labour	14,500	-	14,500	-
Salaries	14,500	-	14,500	-
Office & General	22,250	1,250	19,750	1,250
Rent	18,500	-	18,500	-
IT	750	250	250	250
Storage	-	-	-	-
Other	3,000	1,000	1,000	1,000
Audit, Legal, Consulting	-	-	-	-
Regulatory	1,750	-	-	1,750
Travel (Corporate)	-	-	-	-
Other Expenses	17,750	3,000	6,000	8,750
Vancouver Rent	7,750	-	-	7,750
Insurance	-	-	-	-
Jericho Project Review	5,000	-	5,000	-
Other	5,000	3,000	1,000	1,000
<b>INTEREST (INCOME) / EXPENSE</b>	<b>(44,000)</b>	<b>-</b>	<b>(40,000)</b>	<b>(4,000)</b>
<b>LEASES PAYMENTS</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>PROFESSIONAL FEES</b>	<b>60,000</b>	<b>12,500</b>	<b>35,000</b>	<b>12,500</b>
Monitor Costs	15,000	2,500	10,000	2,500
Legal Costs	30,000	5,000	20,000	5,000
Advisors	15,000	5,000	5,000	5,000
<b>KERP PAYMENTS</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>GST</b>	<b>5,813</b>	<b>838</b>	<b>3,763</b>	<b>1,213</b>
<b>Accruals</b>	<b>542,458</b>	<b>-</b>	<b>542,458</b>	<b>-</b>
<b>Return of Cash Balance with Monitor</b>	<b>(13,204)</b>	<b>-</b>	<b>(13,204)</b>	<b>-</b>
<b>NET CASH FLOW</b>	<b>(607,316)</b>	<b>(17,588)</b>	<b>(568,266)</b>	<b>(21,463)</b>
<b>OPENING CASH</b>	<b>608,500</b>	<b>608,500</b>	<b>590,913</b>	<b>22,646</b>
<b>CASH ON HAND WITH BANK</b>	<b>1,184</b>	<b>590,913</b>	<b>22,646</b>	<b>1,184</b>
<b>CASH BALANCE WITH MONITOR</b>	<b>-</b>	<b>13,204</b>	<b>-</b>	<b>-</b>
<b>ENDING CASH</b>	<b>1,184</b>	<b>604,117</b>	<b>22,646</b>	<b>1,184</b>
<b>CUMULATIVE CASH FLOW</b>	<b>(607,316)</b>	<b>(17,588)</b>	<b>(585,854)</b>	<b>(607,316)</b>