

**ENTERED**

1202603



COURT FILE NUMBER 2001-05630  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY

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

COM  
Dec. 11, 2020  
Justice Eidsvik

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 **AFFIDAVIT #6 OF THOMAS CROESE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCarthy Tétrault LLP  
4000, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attention: Sean Collins / Walker W. MacLeod  
Tel: 403-260-3531  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

**AFFIDAVIT #6 OF THOMAS CROESE**  
**Sworn on December 10, 2020**

I, Thomas Croese, of the City of Yellowknife, Northwest Territories, **SWEAR AND SAY THAT:**

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true. Capitalized terms used in this Affidavit and not otherwise defined shall have the same meaning as in the JVA (as defined below) or the Asset Purchase Agreement (the "**Purchase Agreement**"), which is before the Court for approval in the Application presently returnable on December 11, 2020.

2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995

TML

between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "JVA").

3. Pursuant to the JVA, DDMI holds a sixty percent (60%) interest in, and Dominion holds a forty percent (40%) interest in, a diamond mine site and various surrounding exploration properties (collectively, the "Diavik Mine") located approximately 300 kilometers northeast of Yellowknife, Northwest Territories.

4. In connection with Dominion's application returnable December 11, 2020 at 2:00 pm MST for an order (the "SAVO") approving the Purchase Agreement, I note the following:

- (a) I am advised by counsel to DDMI that the Notice of Application was provided at approximately 9:00 pm last Sunday night (December 6). The Affidavit of Brendan Bell was provided at approximately 5:00 pm on Monday (December 6) and Dominion Diamond's Bench Brief was provided at approximately 3:00 p.m. on Wednesday (December 7). The late service of Dominion's materials is a serial and recurring process employed by Dominion in this matter;
- (b) DDMI has a number of individuals involved in the review and assessment of court applications in relation to this matter. Such individuals are spread across time zones with an 11 hour time difference;
- (c) DDMI has endeavoured to review, assimilate, and formulate a position in time for the December 11 application. Following such review, DDMI determined that the formulation of the proposed Purchase Agreement and SAVO is fundamentally flawed inasmuch as it purports to allow a transfer of the Diavik Mine and Products (including diamonds) to the purchaser in contravention of the JVA including, but without limitation, for reasons that include a purported and wrongful conveyance of Products (including diamonds) to the purchaser free and clear of the Cover Payment Security. I am advised by counsel to DDMI that they arranged a call with the Monitor and its counsel that took place on the morning of December 8. I am further advised that, during the call, counsel articulated DDMI's concerns with the Purchase Agreement and the SAVO. The Monitor and its counsel indicated that it understood the concerns, would seek Dominion and the First Lien Lenders advice with respect to the concerns, and would revert with its advice;

- (d) On December 9, 2020, the Monitor provided its advice by way of email to DDMI's counsel. The text of the email is set out below and the email is attached as **Exhibit "A"** to this Affidavit:

"Sean,

As we advised yesterday, we have discussed with counsel for the company, and the 1Ls and 2Ls, the issues you raised yesterday. Here is the consensus view from those parties:

- The APA does not convey any of Dominion's interest in the Diavik JV. Essentially, what is being conveyed by Dominion to the Purchaser is all receivables that Dominion receives out of the Diavik JV
- In other words, it is only Dominion's share of diamonds that are transferred to it by DDMI, that would then be acquired by the Purchaser
- Consistent with that concept:
  - The definition of "Inventory" is not intended to capture any of Dominion's diamonds in the possession of DDMI that are subject to DDMI's cover payment security interests. Inventory would only capture diamonds that have been transferred by DDMI to Dominion;
  - Paras. 11 and 14 of the Vesting Order are not intended to override DDMI's rights to hold diamonds per Eidsvik J's collateral orders and require delivery of diamonds other than as contemplated in that order, nor to somehow derogate from DDMI's cover payment claims
- On all the foregoing points, the company, 1L's and 2L's will work on some revisions to the Vesting Order to make these points clear

Happy to discuss if you'd like. Let me know."

- (e) I am advised by counsel to DDMI that, on December 10, 2020, counsel for DDMI, Dominion and the First Lien Lenders had a conference call and that counsel for the First Lien Lenders advised that a revised form of SAVO would be provided to DDMI. As at the time of swearing this my Affidavit, no revised form of SAVO has been received.

**Process for Commissioning of this Affidavit**

5. I am not physically present before the Commissioner for Oaths (the "Commissioner") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:

- (a) I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on my ID;
- (b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;
- (c) the Commissioner and I have a paper copy of this Affidavit before us;
- (d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;
- (e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and
- (f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video )  
conference on December 10, 2020 )

\_\_\_\_\_)  
A COMMISSIONER FOR OATHS )  
in and for the Province of Alberta )

  
\_\_\_\_\_)  
THOMAS CROESE )

*Tom*

**CERTIFICATE**

CANADA ) *IN THE MATTER OF THE COMPANIES' CREDITORS*  
 ) *ARRANGEMENT ACT, RSC 1985, C c-36, AS AMENDED*  
PROVINCE OF ) *AND IN THE MATTER OF A PLAN OF COMPROMISE OR*  
 ) *ARRANGEMENT OF DOMINION DIAMOND MINES ULC,*  
ALBERTA ) *DOMINION DIAMOND DELAWARE COMPANY LLC, DOMINION*  
 ) *DIAMOND CANADA ULC, WASHINGTON DIAMOND*  
 ) *INVESTMENTS, LLC, DOMINION DIAMOND HOLDINGS, LLC AND*  
 ) *DOMINION FINCO INC.*

I, Colleen Bonnyman, of the City of Calgary, in the Province of Alberta, Student-At-Law,  
**DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated December 10, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.
2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

**IN TESTIMONY WHEREOF** I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 10<sup>th</sup> day of December, 2020.

---

Colleen Bonnyman

A Commissioner for Oaths in  
and for the Province of Alberta

**This is Exhibit "A" referred to in the Affidavit of Thomas Croese  
sworn before me by two-way video conference this 10th day of December, 2020.**

---

**A Commissioner for Oaths in and for the Province of Alberta**

*TM*

## Doran, Katie

---

**From:** Chris Simard <SimardC@bennettjones.com>  
**Sent:** Wednesday, December 09, 2020 11:59 AM  
**To:** Collins, Sean F.; MacLeod, Walker W.; Taylor, Adam  
**Cc:** Helkaa, Deryck; Powell, Tom; Kelsey Meyer  
**Subject:** [EXT] Dominion AVO and APA issues

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**Chris Simard**  
Bennett Jones LLP

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

KINCENTRIC  
Employer



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Clerk's Stamp

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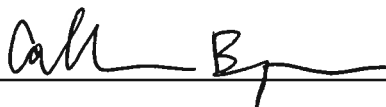
**IN TESTIMONY WHEREOF** I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 10<sup>th</sup> day of December, 2020.

  
\_\_\_\_\_  
Colleen Bonnyman

A Commissioner for Oaths in  
and for the Province of Alberta

Colleen R. Bonnyman  
Student-at-Law

This is Exhibit "A" referred to in the Affidavit of Thomas Croese  
sworn before me by two-way video conference this 10th day of December, 2020.

A handwritten signature in black ink, appearing to read 'Colleen R. Bonnyman', written over a horizontal line.

A Commissioner for Oaths in and for the Province of Alberta

**Colleen R. Bonnyman**  
**Student-at-Law**

CB

## Doran, Katie

---

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**Chris Simard**  
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Employer



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