JS
June 19, 2020
Justice Eidsvik

COURT FILE NUMBER	2001-05630
COURT	**COURT OF QUEEN'S BENCH OF ALBERTA**
JUDICIAL CENTRE	**CALGARY**
	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 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 OF MATTHEW QUINLAN**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Field LLP 400, 444 – 7 Avenue S.W. Calgary AB T2P 0X8 Lawyer: Douglas S. Nishimura Phone Number: (403) 260-8548 Fax Number: (403) 264-7084 Email Address: dnishimura@fieldlaw.com File No. 71052-1

AFFIDAVIT OF MATTHEW QUINLAN
(Sworn June 16, 2020)

I, MATTHEW QUINLAN of the City of Vancouver, in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am a creditor in the within the CCAA proceedings by virtue of a settlement agreement with Dominion Diamond Mines ULC ("**Dominion**") dated March 6, 2020 in the amount of $1.25 million. I believe the history of my claim is relevant and therefore I set out a summary of the events leading to the settlement.

2. I was the Chief Financial Officer of Dominion from September 8, 2016 through December 28, 2017. My employment was governed by an employment agreement dated September 2, 2016 (the "**Employment Agreement**"). Attached hereto and marked as **Exhibit "A"** is a copy the Employment Agreement.

3. Following the acquisition of Dominion by the Washington Companies on November 1, 2017, a process in which I was praised by the then board of directors of Dominion and the acquiror for my contributions, I was abruptly terminated on December 28, 2017, without notice. Dominion purported to terminate me for cause, however, this was untrue.

4. On January 30, 2018, I, through my counsel, demanded payment of severance pursuant to the Employment Agreement. On February 23, 2018, Dominion's counsel rejected my demand.

5. On June 12, 2018, I filed a Statement of Claim in Ontario for damages. A draft of the claim had been provided to Dominion at an earlier date in an attempt to reach a settlement. Attached hereto and marked as **Exhibit "B"**, is a copy of the Statement of Claim.

6. Dominion filed a Statement of Defence on July 13, 2018, to which I replied on October 29, 2018.

7. In its defence, Dominion claimed not only to have had cause to terminate me based on a single email request to me by Dominion's then Chief Executive Officer (which I had actually complied with) but also "after-the-fact" discoveries. These allegations, including that Dominion's projections of future diamond prices were "inaccurate", which Dominion alleged constituted a negligent misrepresentation of material facts were tantamount to an allegation of fraud or misrepresentation against me.

8. Dominion also alleged in their defence that I had a fiduciary duty that contractually extended to the Washington Corporations, despite the Washington Corporations not being a party to the litigation. Dominion also pleaded in their defence that their allegation of negligent misrepresentation constituted grounds for possible legal action by the Washington Corporations.

9. On December 18, 2018, Dominion advised me that it was preparing a counterclaim against me. On February 27, 2019, Dominion provided me with a proposed Amended Statement of Defence and Counterclaim and sought my consent to have it to have it filed, which I did not provide. Attached hereto and marked as **Exhibits "C" through "E"**, respectively, is a copy of the Statement of Defence, Reply and Dominion's proposed Amended Statement of Defence and Counterclaim.

10. In late August 2019, Dominion's new counsel, Blake Cassels & Graydon LLP ("**Dominion's Counsel**"), contacted my counsel to inquire about potential mediation, to which I responded positively. On December 3, 2019, Dominion's Counsel finally advised that mediation would be acceptable to Dominion. Mediation did not take place until March, 2020 and resulted in a settlement in the amount of $1.25 million on March 6, 2020. The Minutes of Settlement dated March 6, 2020 ("**Minutes of Settlement**") are, by their terms, confidential but are available to the Court if necessary. As part of the settlement, Dominion confirmed my termination was not for cause and that no counterclaim was or would ever be filed. In total, I have spent $215,000 on legal fees resulting from my wrongful termination and defending the draft counterclaim, when my claim should have been paid when I was dismissed.

11. Between the closing of pleadings in October 2018 and the mediation of Dominion did not make any significant steps to settle or advance the litigation.

12. On April 6, 2020, I inquired about the timing of payment, having provided a Direction to Pay dated March 6, 2020 (the "**Direction to Pay**"), and banking information to Dominion's Counsel. I was advised by Dominion that it was going to wait until April 22 or 23, 2020 to pay. Dominion's General Counsel stated "I wouldn't read much into that, just the new reality of a mine in C and M". Attached hereto and marked as **Exhibits "F" and "G"** is a copy of the Direction to Pay and the email exchange between myself and the General Counsel of Dominion.

13. On April 8, 2020, as evidenced in its filings, Dominion executed an engagement letter with Evercore Group LLC ("**Evercore**") as its financial advisor. A primary service of Evercore is to advise and assist Dominion in implementing a Restructuring or sale under the CCAA process.

14. On April 22 2020, Dominion was granted the Initial Order of the within proceedings.

15. Based on the materials which have been filed previously in within Action, I am aware that Dominion actually had knowledge that it was in financial distress in March 2020 when it signed the Minutes of Settlement.

16. For example, one of the reasons given for the proceedings under CCAA, according to Brendan Bell, dated as far back as the beginning of 2020 as "the cost of funding cash calls made by

Dominion Diamond's joint venture partner at the Diavik Mine from January to April 2020 totalling approximately $86 million, and associated liquidity challenges"

17. On March 4, 2020, Dominion's revolving credit facility was reduced by its senior lenders by US$50 million to US$150 million at a critical time of year. Cash expenditures of Dominion are seasonally the highest at this time of year given the need to pay vendors for consumables transported across the seasonal ice road in the months of February and March.

18. Dominion's audited financial statements for 2019, which are dated March 18, 2020 and would have been drafted and provided to the company's external auditors well in advance, state that "the Company anticipates that an alternative financing arrangement or equity injection from non-controlling interest partner or the Parent will be required in 2020".

19. The Ekati Diamond Mine was put into "care and maintenance status" on March 19, 2020, a move which would have had to have been planned well in advance given the remote and complex nature of the operations.

20. Accordingly, there is evidence to suggest that, after protracted and costly litigation (in which Dominion denied all liability, and in fact, made allegations of misrepresentations and fiduciary breach that could lead to legal action by the Washington Corporations), the Minutes of Settlement was suddenly entered into at a time when Dominion new that it was unlikely to make the payments required pursuant to the Minutes of Settlement.

Stalking Horse Bid and SISP

21. My analysis of the Stalking Horse Bid and SISP indicates that while certain parties will benefit greatly, namely the Washington Companies and ongoing trading partners, certain creditors will be singled out for greatly disparate treatment, and left with no recourse and no recovery. This is so despite my understanding that Dominion's evidence, upon entry into CCAA, that its assets are significant and that a large part of its financial difficulties are temporary. Given this initial evidence of the Company's prospects and the lack of any valuation to support the bid, it is inappropriate to crystallize a process which has this effect.

22. As suggested above, in its initial filings, Dominion claimed that its financial difficulties were caused in large part by the COVID-19 pandemic. While this is admittedly a very disruptive event,

it is also undoubtedly temporary. For example, on June 9, 2020 Tiffany stated that "while sales in key markets like the United States and Japan were down significantly during the first quarter, our business performance in Mainland China, which was the first market impacted by the virus, is indicative that a robust recovery is underway". According to industry reports, DeBeers is holding a regularly scheduled sale of rough diamonds for its customers between June 15, 2020 and June 19, 2020.

23. Dominion was profitable enough for the Washington Companies to take over the business in late 2017 and, aside from COVID-19, nothing appears to have fundamentally changed about the business. Indeed, in 2019, according to Dominion, revenues were US$527.6 million and cash flows from operating activities were US$96.7 million. The proposed Stalking Horse Bid does not, therefore, provide a restructuring to benefit all creditors given the temporary nature of the crisis.

24. The proposed Stalking Horse Bid creates a significant split in its creditors. Particularly with respect to unsecured creditors, it is unfair that many will receive full payment while others receive nothing for past debts which rank equally at law. In fact, reviewing the estimated cure costs of $20 million (US) as they relate to the total unsecured creditors of $31.2 million (Cdn.) (which includes the Washington Group), and the $5 million (Cdn.) in payments of pre-filing amounts in the DIP Budget, almost all unsecured creditors will be getting close to 100%, and I will be paid nothing.

25. In my view, more effort needs to be taken to develop a Plan of Arrangement which benefits all parties in some fashion, reflects the Company's value and provides unsecured creditors something upon which to vote as opposed to singling out certain creditors to bear the entire burden of the Washington Group's repurchase of its own Company at a significant discount.

SWORN BEFORE ME at the City of Vancouver, in the Province of British Columbia, this 16 day of June, 2020.

A Commissioner for Oaths in and for British Columbia

Steven Molnar
Barrister & Solicitor

MATTHEW QUINLAN

THIS IS EXHIBIT "A" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 16th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia

Steven Molnar
Barrister & Solicitor

EMPLOYMENT AGREEMENT

THIS AGREEMENT made as of the 2nd day of September, 2016.

BETWEEN:

MATTHEW QUINLAN
(hereinafter referred to as the "Executive")

- and -

DOMINION DIAMOND CORPORATION, a corporation amalgamated under the *Canada Business Corporations Act*
(hereinafter referred to as the "Corporation")

WHEREAS the Corporation wishes to employ the Executive as an executive of the Corporation;

AND WHEREAS the Executive and the Corporation have agreed that the employment of the Executive shall be subject to the terms and conditions set forth herein;

NOW THEREFORE in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties, the parties hereto agree as follows:

ARTICLE 1 - INTERPRETATION

1.1 Certain Definitions

For the purposes of this Agreement, the following terms have the meanings indicated:

(a) "**Board**" means the board of directors of the Corporation;

(b) "**Business Combination**" means any amalgamation, merger, financing or other similar business combination or similar transaction;

(c) "**Cause**" shall include, but not be limited to, the following:

(i) breach by the Executive of any of the terms of this Agreement;

(ii) the Executive's misconduct or gross negligence in the performance of his duties hereunder (other than resulting from the Executive's physical or mental incapacity);

(iii) the Executive's conviction of, or pleas of not guilty or no contest to, any offence under the Criminal Code of Canada and/or other applicable legislation, or similar legislation in another country;

(iv) the Executive's failure to follow any lawful directive of the Chief Executive Officer of the Corporation or the Board;

(v) the Executive's commission at any time of any act of fraud, embezzlement, or misappropriation against the Corporation; or

(vi) breach by the Executive of any of the Corporation's policies and guidelines.

(d) "**Change in Control**" means the occurrence at any time hereafter of any of the following events:

(i) any change in the holding, direct or indirect, of Voting Shares as a result of which a Person, or group of Persons acting jointly or in concert, together with any associate or affiliate of any such Person or Persons, who were not previously in a position to exercise control of the Corporation are in a position to exercise effective control of the Corporation and for the purposes of this Agreement a Person, or group of Persons acting jointly or in concert, together with any associate or affiliate of any such Person or Persons, will be deemed to be in a position to exercise effective control of the Corporation if such Person, or group of Persons acting jointly or in concert, together with any associate or affiliate of any such Person or Persons, holds Voting Shares and/or other securities in excess of the number which, directly or following conversion thereof, would entitle the holders thereof to cast 30% of the votes attaching to all Voting Shares;

(ii) the members of the Board as of the date hereof (or their respective successors whose elections were acceptable to the then remaining members of the Board) cease to constitute a majority of the Board or of the board of directors of any successor to the Corporation, except as a result of the death, disability or normal retirement from such board;

(iii) a transaction or series of transactions (other than any such transaction or series of transactions to which the Executive has consented in writing) in which, directly or indirectly, the Corporation sells or otherwise transfers to any Person, other than an affiliate or affiliates of the Corporation, assets:

A. having an aggregate fair market value of more than 50% of the aggregate fair market value of all of the assets of the Corporation, or

B. that generated during the Corporation's last completed fiscal year or are expected to generate in the Corporation's then current fiscal year more than 50% of its operating income or cash flow,

where "Corporation" means the Corporation and its subsidiaries taken as a whole,

but excluding any Business Combination which is initiated by the Corporation; or

(iv) the Board adopts a resolution to the effect that, for purposes of this Agreement, a Change in Control has occurred.

(e) "**Committee**" means the Human Resources & Compensation Committee of the Corporation;

(f) "**Good Reason**" means, after a Change in Control, regardless of whether or not it is initiated by the Corporation, any circumstance in which the Executive is induced by the actions of the Corporation to terminate his employment other than on a purely voluntary basis, and without limiting the generality of the foregoing, shall include:

(i) a reduction or diminution in the level of responsibility, title or office of the Executive;

(ii) a reduction in the compensation level of the Executive, taken as a whole;

(iii) a forced relocation to another geographic location; or

(iv) any constructive dismissal action recognized at common law;

(g) "**Intellectual Property**" has the meaning given to it in Section 4.8.

(h) "**Person**" includes any individual, firm, partnership, trust, trustee, executor, administrator, legal personal representative, government, governmental body or authority, corporation or other incorporated or unincorporated organization;

(i) "**Start Date**" means the date on which the Executive commences full time employment with the Corporation, which shall be on or before September 2, 2016, or as otherwise agreed in writing;

(k) "**Vested Amounts**" means (i) accrued salary and benefits, and (ii) any unpaid bonus which has been determined by the Committee; and

(l) "**Voting Shares**" means any shares of capital stock of the Corporation entitled to vote generally in the election of directors.

1.2 Number and Gender

Wherever the context so requires, terms used herein importing the singular number only will include the plural and vice versa and words importing any one gender will include all others.

1.3 Sections and Headings

The division of this Agreement into articles, sections, subsections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "hereunder" and similar expressions refer to this Agreement and not to any particular article, section or other subdivision hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles, Sections and Subsections are to articles, sections and subsections of this Agreement.

1.4 Subsidiaries/Associates/Affiliates/Acting Jointly or in Concert

For the purposes of this Agreement, a Person will be deemed to be a subsidiary, associate or affiliate of, or to be acting jointly or in concert with, another Person if such Person would be deemed to be a subsidiary, associate or affiliate of, or to be acting jointly or in concert with, such Person for the purpose of the *Securities Act*, Ontario and the regulations and rules made thereunder, as now in effect or as the same may from time to time be amended, re-enacted or replaced.

1.5 Currency

All references herein to salary, dollars or the use of the symbol "$" shall be deemed to refer to Canadian dollars unless otherwise specified.

ARTICLE 2 - EMPLOYMENT

2.1 Employment

Subject to the terms and conditions hereof, the Executive shall be employed by the Corporation commencing on the Start Date as Chief Financial Officer of the Corporation reporting to the Chief Executive Officer of the Corporation, and to undertake such duties as may from time to time be assigned to or vested in the Executive by the Chief Executive Officer of the Corporation, subject always to the control and direction of the Board.

2.2 Place of Employment

(a) The Executive's primary location of employment will initially be in the Executive's home office in Vancouver, British Columbia, Canada. The Executive agrees to relocate to Calgary, Alberta, in 2017, with relocation expenses as stipulated in Article 3. The Executive acknowledges that due to the nature of the Corporation's operations and business, the Executive will be required to travel in the course of performing his duties from time to time. Without limiting the generality of the foregoing, such travel shall include travel to the Corporation's offices, currently in Yellowknife and Toronto. The parties agree that the Executive's travel expenses in this regard shall be payable by the Corporation in accordance with Article 3.4 of this Agreement.

(b) The Executive acknowledges being advised by the Corporation that, as a company engaged in mining and in business activities extending or potentially extending globally, the Executive may be requested to relocate for a purpose related to the Corporation's business. In such event, the Corporation agrees that it will be responsible for the Executive's relocation expenses, and for any reasonably required adjustments in remuneration, including premium for residing in a remote location, adjustments due to differential costs of living, and adjustments due to income tax differences in the new location. Should the Executive be relocated under such circumstances, the Executive hereby acknowledges that such relocation shall not constitute a constructive dismissal. The parties acknowledge that this provision does not apply in the event of a Change in Control.

2.3 Relationship of Trust

By accepting this offer of employment, the Executive acknowledges and accepts that the nature of the Corporation's business demands that an extraordinary level of trust exist between the Corporation and its employees, and that the Corporation will implement and maintain a heightened level of security in the workplace. These security measures may include, but not be limited to, ongoing credit reference checks, ongoing surveillance including video surveillance and, where reasonably necessary, searches of the Executive's person and/or property.

By accepting this offer of employment, the Executive acknowledges and accepts an ongoing duty and obligation to advise the Corporation if and when the Executive becomes aware of any breaches of the Corporation's security procedures.

Further, by accepting this offer of employment, the Executive acknowledges that the Executive is not bound by any prior contract of employment or non-competition/non-solicitation agreement with a previous employer that may prevent the Executive from being employed by the Corporation, except such agreement or agreements as are disclosed in Schedule "A" to this Agreement.

2.4 Share Ownership Guidelines

The Executive shall be required to hold 1.5 times his annual base salary through (a) the ownership of shares of the Corporation outright (by the Executive and immediately family members residing in the same household), (b) Restricted Share Units ("RSUs") settled in shares of the Corporation issued as part of his long-term compensation (whether vested or not) at 100% of face value; and (c) Performance Share Units ("PSUs") issued as part of an executive's long-term compensation at 75% of face value, in accordance with the share ownership guidelines of the Corporation. The Executive is required to achieve such guidelines within five years of his Start Date.

The Committee regularly reviews share ownership guidelines and, with advice from its independent consultant, ensures that its practices meet appropriate governance standards. The Committee may, in its sole discretion, impose such conditions, restrictions or limitations on any executive as it determines appropriate in order to achieve the underlying purposes of these guidelines.

ARTICLE 3 - REMUNERATION

3.1 Base Salary

Commencing on the Start Date, the Corporation shall pay the Executive a gross annual base salary of $400,000.00. Such base salary shall be reviewed by the Corporation and the Executive at the end of each fiscal period commencing with the fiscal period ending January 31, 2017, and any changes in such base salary shall be as agreed upon in writing between the parties.

3.2 Benefits

The Executive shall be entitled during the term of his employment to participate in all of the Corporation's medical, dental, life insurance, retirement and other benefit plans generally available to its employees and officers from time to time in accordance with the terms thereof, augmented, if necessary, to provide a reasonable overall package of benefits for a position of the nature of the Executive hereunder.

3.3 Vacation

During the term of his employment the Executive shall be entitled to four (4) weeks' vacation per annum. Such vacation must be taken at a time or times reasonably acceptable to the Corporation having regard to its operations.

3.4 Expenses

The Executive shall be reimbursed for all reasonable travelling, entertainment and other out-of-pocket expenses actually and properly incurred by him in connection with his duties hereunder. For all such expenses, the Executive must furnish to the Corporation statements as and when required by the Corporation.

3.5 Relocation Expenses

The Corporation shall reimburse the Executive for his reasonably incurred relocation expenses from his current residence to his new residence in Calgary, Alberta, upon provision by the Executive of receipts.

3.5 Annual Incentive Bonus

The Executive shall be entitled to participate in any bonus system implemented from time to time by the Committee. The bonus system so implemented contemplates a target bonus to the Executive of 65% of the Executive's annual base salary. The amount of the Executive's bonus, if any, will be determined by the Committee, based on metrics selected on the basis that the Executive has influence over the Corporation's achievement of such metrics.

3.6 Long Term Incentives

The Executive shall be entitled to participate in such long-term incentive plans ("LTI Plans") as may be in force from time to time. The Corporation's LTI Plans, currently in force, are:

(a) the Amended Stock Option Plan (the "Option Plan"), which empowers the Committee to grant stock options to purchase shares of the Corporation pursuant to the Option Plan ("Options");

(b) the Amended and Restated 2010 Restricted Share Unit Plan (the "RSU Plan") which empowers the Committee to grant RSUs settled in either cash or in shares of the Corporation pursuant to the RSU Plan; and

(c) the 2016 Performance and Restricted Share Unit Plan (the "PSU Plan") which empowers the Committee to grant PSUs pursuant to the PSU Plan.

The initial grant shall be equal to 1.6 times the Executive's gross annual base salary, comprised of 50% PSUs, 25% RSUs and 25% Options (being an aggregate amount of $640,000.00), and shall be granted as soon as practicable.

The Executive's entitlement to future long-term incentive awards shall solely be at the discretion, from time to time, of the Committee.

ARTICLE 4 - EXECUTIVE'S COVENANTS

4.1 Definitions

In Article 4 of this Agreement:

(a) "Business" means:

(i) the mining of diamonds;

(ii) the mining of any other precious or semi-precious gems, should the Corporation be carrying out such operations at the time of cessation of employment of the Executive;

(iii) the business of selling diamonds in wholesale markets;

(iv) the business of polishing and selling special stones; and

(v) the business of sorting mined diamonds.

(b) "Client" means any entity with whom the Corporation has had business dealings at any time during the one-year period immediately prior to the cessation of the Executive's employment.

(c) "Corporation" shall include the Corporation and any of its direct or indirect subsidiaries, affiliates and parent companies.

4.2 Service

The Executive shall devote the whole of his time, attention and ability to the business of the Corporation and shall well and faithfully serve the Corporation, using his best efforts to promote the interests of the Corporation. Without limiting the generality of the foregoing, the Executive must not engage in any activities where there may be a conflict of interest with the Corporation provided that the Executive shall be entitled to serve as a director and officer of affiliates of the Corporation (within the meanings of that term in the *Canada Business Corporations Act*) at the Corporation's request.

4.3 Non-Disclosure

The Executive shall not, either during his employment with the Corporation (unless for corporate purposes) or at any time thereafter, copy, use or disclose to any person any information relating to the private or confidential affairs of the Corporation, its affiliates, suppliers, clients and/or prospective clients, or relating to any secrets of the Corporation, its affiliates, suppliers, clients and/or prospective clients, or relating to the business of the Corporation, its affiliates, suppliers, clients and/or prospective clients including, but not limited to, security operating procedures, daily operating procedures, diamond sorting methodology, personal information regarding fellow employees, scheduling information, training procedures and techniques, product specifications, business and promotion concepts, trade secrets, marketing information, product pricing, client information or operating techniques of the Corporation and its affiliates, and he shall not, for his own purposes or for any purposes other than those of the Corporation, use any such confidential or proprietary information he may acquire in relation to the business of the Corporation, its affiliates, suppliers, clients and/or prospective clients.

4.4 Non-Competition

The Executive shall not, either directly or indirectly, at any time during his employment with the Corporation, without the express prior written consent of the Corporation, be involved as an agent, employee, contractor, consultant, officer or director, or in any other capacity whatsoever, with any other business and, for a period of twelve (12) months following the cessation of the Executive's employment, regardless how the cessation should occur and with or without Cause, directly or indirectly, be involved as an agent, employee, contractor, officer or

director, or in any capacity whatsoever with any Business within a 500 km. radius of any location where the Corporation carries on business as at the date of the cessation of the Executive's employment.

4.5 Non-Solicitation – Business

For a period of twelve (12) months following the cessation of the Executive's employment, regardless how the cessation should occur and with or without Cause, he shall not without the express prior written consent of the Corporation, directly or indirectly, contact, solicit, canvass, interfere with, or endeavour to entice from the Corporation or any Client if such soliciting, canvassing, interference or enticement assists or is for the purpose of taking any or interfering with the Business.

4.6 Non-Solicitation – Employees

For a period of twelve (12) months following the cessation of the Executive's employment, regardless how the cessation should occur and with or without Cause, he shall not without the express prior written consent of the Corporation, directly or indirectly, contact, solicit, canvass, interfere with, or endeavour to entice any employees of the Corporation to leave their employment with the Corporation.

4.7 No Disparagement

The Executive shall not disparage the Corporation or any of its affiliates, any of their products or practices, or any of its directors, officers, agents, representatives, or employees, either orally or in writing, at any time. Notwithstanding the foregoing, nothing in this Section 4.7 shall limit the ability of the Corporation or the Executive, as applicable, to provide truthful testimony as required by law or any judicial or administrative process.

4.8 Intellectual Property Owned by Corporation

(a) The Executive agrees that all strategies, methods, processes, techniques, marketing plans, merchandising schemes, themes, layouts, mechanicals, trade secrets, copyrights, trademarks, patents, ideas, specifications and other material or work product ("Intellectual Property") that the Executive creates, develops or assembles in connection with his employment by the Corporation hereunder shall become the permanent and exclusive property of the Corporation to be used in any manner it sees fit, in its sole discretion. The Executive shall not communicate to the Corporation any ideas, concepts, or other intellectual property of any kind (other than in his capacity as an employee of the Corporation) which (i) were earlier communicated to the Executive in confidence by any third party as proprietary information, or (ii) the Executive knows or has reason to know is the proprietary information of any third party.

(b) All Intellectual Property created or assembled in connection with the Executive's employment by the Corporation hereunder shall be the permanent and exclusive property of the Corporation. The Corporation and the Executive mutually agree that all

Intellectual Property and work product created in connection with this Agreement, which is subject to copyright, shall be deemed to be "work made for hire," and that all rights to copyrights shall be vested in the Corporation. If for any reason the Corporation cannot be deemed to have commissioned "work made for hire," and its rights to copyright are thereby in doubt, then the Executive agrees not to claim to be the proprietor of the work prepared for the Corporation and to irrevocably assign to the Corporation at the Corporation's expense, all rights in the copyright of the work prepared for the Corporation.

(c) In the event that prior to execution of this Agreement, the Executive already has ownership of intellectual property, the Executive shall retain such ownership, but only to the extent the Executive has set out such intellectual property in Schedule "B" to this Agreement.

4.9 Scope of Restrictive Covenants

The Corporation and the Executive expressly acknowledge and agree that the agreements and covenants contained in this Article 4 are reasonable. In the event, however, that any agreement or covenant contained in this Article 4 shall be determined by any court of competent jurisdiction to be potentially unenforceable by reason of its extending for too great a period of time or over too great a geographical area or by reason of ambiguity or excessive scope, the impugned covenant is to be interpreted in as restrictive manner as reasonably possible to avoid any covenant being declared to be void.

4.10 Corporation's Policies and Guidelines

The Executive shall abide by the Corporation's policies and guidelines instituted by the Corporation from time to time, including, without limiting the generality of the foregoing, the Corporate Disclosure, Confidentiality and Employee Trading Policy and the Code of Ethics and Business Conduct.

4.11 Injunctive Relief for Breach of Article Four

By accepting the Corporation's offer of employment, the Executive acknowledges, agrees and understands that, without prejudice to any and all remedies available to the Corporation, an injunction is the only effective remedy for any breach of his covenants contained in Article 4 of this Agreement and that the Corporation would suffer irreparable harm and injury in the event of any such breach. Accordingly, the Executive hereby agrees that the Corporation may apply for and have injunctive relief, including an interim or interlocutory injunction, in any court of competent jurisdiction, to enforce any of the provisions of Article 4 of this Agreement upon the breach or threatened breach by the Executive thereof. The Executive further agrees that the Corporation may apply for and is entitled to said injunctive relief without having to prove damages, and is entitled to all costs and expenses, including reasonable legal costs. The Executive also hereby acknowledges and agrees that the restrictions and covenants contained in Article 4 of this Agreement constitute a material inducement to the Corporation to enter into this Agreement and to employ the Executive, and that the Corporation would not enter into this

Agreement without such inducement. The Executive agrees that the restrictions and covenants contained in Article 4 of this Agreement shall be construed independent of any other provision of this Agreement, and the existence of any claim or cause of action by the Executive against the Corporation, whether predicated under this Agreement or otherwise, shall not constitute a defence to the enforcement by the Corporation of these restrictions and covenants. Furthermore, any clause or provision of Article 4 of this Agreement that may be found unenforceable shall be considered to be severable from the remainder of such section and the remaining portions shall continue in full force and effect in accordance with the terms of the section and the Agreement.

ARTICLE 5 - TERMINATION OF EMPLOYMENT

5.1 Termination by Corporation for Cause

The Corporation may at any time terminate this Agreement and the Executive's employment at any time for Cause upon notice to the Executive, without payment of any compensation either by way of anticipated earnings or damages of any kind, but the Executive shall nonetheless be entitled to receive Vested Amounts payable to the date of termination.

The Executive acknowledges that, in relation to the Executive's hiring, the Corporation will investigate the Executive including, without limitation, background, financial, police and other security checks (the "Investigation"). If for any reason whatsoever, the Corporation is not satisfied with the results of the Investigation or the information learned as a result of the Investigation, the Corporation may at any time terminate this Agreement and the Executive's employment, without payment of any compensation either by way of anticipated earnings or damages of any kind.

5.2 Termination by Corporation Without Cause

In the event the Corporation terminates this Agreement and the Executive's employment, either without Cause upon notice to the Executive or as a result of a constructive dismissal action recognized at common law (subject to any alterations of common law as are set out in this Agreement), the Executive shall be entitled to the termination benefits pursuant to Section 6.3.

5.3 Termination Upon Death of Executive

This Agreement and the Executive's employment shall terminate immediately and automatically upon the death of the Executive, without payment to the Executive except Vested Amounts payable to the date of death.

5.4 Termination Upon Disability

The Corporation may terminate this Agreement at any time upon written notice to the Executive if the Executive becomes permanently physically or mentally disabled and is therefore unable to carry out his duties hereunder, without payment to the Executive except Vested Amounts

payable to the date of such disability, and except such amounts as are required to be paid as required by legislation.

5.5 Termination by Executive

(a) Within six (6) months of a Change in Control, the Executive may terminate this Agreement and his employment upon notice to the Corporation for Good Reason and in such event the Executive shall be entitled to the termination benefits pursuant to Section 6.3.

(b) The Executive may at any time terminate this Agreement and his employment upon 90 days' notice to the Corporation, in which case the sole entitlement of the Executive shall be the payment to him of any Vested Amounts payable to the date of such termination. Where the Executive has provided notice of termination, the Corporation may, in its sole discretion, waive in whole or in part any requirement for the Executive to report to work during this notice period and provide the Executive with pay in lieu thereof.

5.6 Exercise of Long Term Incentive Plans and Restricted Share Units

If this Agreement is terminated, the Executive (or his heirs, executors, administrators or legal personal representatives, as the case may be) shall nevertheless, in accordance with the Option Plan, RSU Plan, PSU Plan and/or long term incentive plans then in effect between the Corporation and the Executive, be entitled to exercise his rights under such plans, if any, as such agreements may permit in accordance therewith, but subject to any further provisions or restrictions as set out in this Agreement.

5.7 Return of Property

Upon termination of employment, howsoever caused, the Executive shall be required to participate in an exit interview.

Upon any termination of this Agreement, the Executive must at once deliver or cause to be delivered to the Corporation all data, books, computers, cell phones, hard drives, documents, effects, money, securities or other property belonging to the Corporation or for which the Corporation is liable to others, which are in the possession, charge, control or custody of the Executive.

5.8 No Obligation to Mitigate

The amounts payable to the Executive hereunder in the event of termination of this Agreement by the Executive in accordance with Sections 5.2 and 5.5(a) above shall not be reduced if the Executive secures, or does not pursue, alternative employment following the termination of his employment with the Corporation.

5.10 Provisions which Operate Following Termination

Notwithstanding any termination of this Agreement, Article 4, Article 5, Sections 6.1, 6.2, and 6.3, Sections 7.1 and 7.2 and Article 8 of this Agreement and any other provisions of this Agreement necessary to give efficacy thereto shall continue in full force and effect following such termination.

ARTICLE 6 - EXECUTIVE'S RIGHTS ON A CHANGE IN CONTROL OR TERMINATION WITHOUT CAUSE

6.1 Executive's Termination Rights After a Change in Control

Following a Change in Control, if the Executive does not terminate this Agreement in accordance with Section 5.5(a), his right to terminate the Agreement under Section 5.5(a) with respect to such Change in Control shall expire but this Agreement will otherwise continue in full force and effect. The expiry of the Executive's rights under Section 5.5(a) with respect to any particular Change in Control will not prevent the Executive from exercising such right of termination with respect to any subsequent occurrence of a Change in Control.

6.2 Continuation of Employment for Interim Period

If the Executive gives notice to terminate this Agreement pursuant to Section 5.5(a) the Executive shall, at the request of the Corporation within 30 days after its receipt of such notice, continue his employment with the Corporation for a period up to six months following such termination at his then existing overall terms of compensation as contemplated by this Agreement to assist the Corporation in an orderly transition of management. The amount paid to the Executive under this Section 6.2 will not reduce the amount payable under Section 6.3.

6.3 Termination Benefits

If the Executive exercises his rights under Section 5.5(a) to terminate this Agreement or if the Corporation terminates this Agreement without Cause or by constructive dismissal pursuant to Section 5.2, the Corporation shall:

(a) pay to the Executive an amount equal to two times his then currently base salary, plus pay to the Executive an amount equal to the greater of two times:

(i) his bonus for the last fiscal period; or

(ii) the average of his bonuses for the last two fiscal periods;

provided that if termination occurs prior to the Executive becoming eligible for his first bonus award, the Executive shall not receive any amount in respect of bonus;

(b) pay to the Executive, within five business days following such termination, the amount of any unpaid salary earned by the Executive up to and including the date of such termination;

(c) pay to the Executive, within five business days following such termination, the amount of any unpaid vacation pay earned by him up to and including the date of such termination; and

(d) at the Executive's option, either the Corporation shall:

(i) continue to make the employer contributions necessary to maintain the Executive's coverage pursuant to all benefit plans provided to the Executive by the Corporation immediately prior to such termination, for a period of two years following such termination and shall deduct from the payment payable to the Executive pursuant to Section 6.3(a) the amount of any employee contributions necessary to maintain such coverage for such period based on any such contributions which were in effect immediately prior to such termination; provided that if it is not possible for the Corporation to maintain the Executive's coverage under such benefit plans the Corporation may, in lieu thereof, pay to the Executive a lump sum equal to the estimated net cost to the Corporation of maintaining such benefits for a two year period if it were possible to do so based on the Corporation's costs of such benefits at such time; or

(ii) pay to the Executive a lump sum equal to the estimated net cost to the Corporation of maintaining such benefits for a two year period based on the Corporation's costs of such benefits at such time;

Sections 6.3(d)(i) and (ii) shall not be taken to relieve the Corporation of its obligation to maintain the Executive's enrolment in the Corporation's group insurance benefits plan to the extent that such obligation is required under legislation.

These termination provisions shall continue to apply to this employment relationship, regardless of the Executive's length of service or any change in job duties, reporting structure, etc.

In order for the Corporation to be obligated to make payment of the amounts set out in Section 6.3 (a) and (d) of this Agreement, it is a condition that the Executive shall first be required to execute the release attached to this Agreement as Schedule "C". Should the Executive refuse to sign the release, then the Corporation shall be obliged to pay only such amounts as are required by legislation.

Subject to the provisions in the LTI Plans, the amounts set out in this Section 6.3 shall be the Executive's sole entitlement in connection with the termination of his employment without cause. For greater certainly, subject to the provisions in the LTI Plans:

a) the Executive expressly acknowledges and agrees that he shall not be entitled to any further compensation or remedy, whether in the form of notice or pay in lieu of such notice, severance or termination pay, under common law or otherwise;

b) the Executive further acknowledges that he shall not be entitled to any further vesting of his long term incentive awards under the LTI Plans after the date of termination of the Executive's employment, such that his entitlement under the LTI Plans shall be without regard to whether Executive continues thereafter to receive any compensation following termination of his employment therefrom, or is paid amounts in lieu of notice of termination.

It is the intention of the Corporation to provide the Executive with compensation upon termination of employment without cause equal to or in excess of any legislated requirements. In the event that this Agreement fails to comply with such statutory requirements, the Corporation agrees to make such further payments or perform such further obligations as are legislatively required.

ARTICLE 7 - INDEMNITY

7.1 General

To the extent that it is lawfully able to do so, the Corporation agrees to indemnify and hold harmless the Executive from and against any losses, costs, claims and liabilities which the Executive may suffer or incur by reason of any matter or thing which the Executive may properly do or have done or cause to be done as an employee, officer or director of the Corporation. The Corporation shall, if possible, include and maintain the Executive under any directors' and officers' liability insurance policy maintained by the Corporation from time to time.

7.2 Legal Proceedings

To the extent that it is lawfully able to do so, the Corporation shall indemnify the Executive and his heirs and legal representatives against all costs, charges and expenses (including any amounts paid to settle any actions or satisfy any judgment) reasonably incurred by the Executive in respect of any civil, criminal or administrative action or proceeding to which he is made a party by reason of being or having been an employee, director or officer of the Corporation if:

(a) the Executive acted honestly and in good faith with a view to the best interests of the Corporation; and

(b) in the case of a criminal or administrative action or proceeding, the Executive had reasonable grounds for believing that his conduct was lawful.

7.3 Related Corporations

The Executive shall not be required to serve as a director, officer or employee of any related corporation unless at the time the Executive undertakes such position, the related corporation and the Corporation jointly and severally agree to indemnify the Executive on the same terms and conditions as are set forth in Sections 7.1 and 7.2. In any event, the Corporation agrees to indemnify the Executive with respect to such service to a related corporation to the extent set out in Sections 7.1 and 7.2.

ARTICLE 8 – GENERAL

8.1 Benefit of Agreement/Assignment

This Agreement shall enure to the benefit of and be binding upon the heirs, executors, administrators and legal personal representatives of the Executive and the successors and permitted assigns of the Corporation. The Executive may not assign this Agreement or the Executive's rights or obligations hereunder, in whole or in part, without the prior written consent of the other party, except by operation of law through the appointment of an executor or administrator of the Executive's estate. The Corporation shall be entitled to assign this Agreement, according to its discretion.

8.2 Entire Agreement

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understanding and agreements between the parties hereto with respect thereto. There are no representations, warranties, forms, conditions, undertakings or collateral agreements, express, implied or statutory between the parties other than as expressly set forth in this Agreement.

8.3 Amendments and Waivers

No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by both of the parties hereto. No waiver of any breach or any provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach or provision waived.

8.4 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability will attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

8.5 Notices

Any demand, notice or other communication (a "Communication") to be given in connection with this Agreement shall be given in writing and may be given by personal delivery or by registered mail addressed to the recipient as follows:

To the Executive:	at the last address of the Executive on the Corporation's records
To the Corporation:	#1102 – 4920 52nd Street Yellowknife, NT X1A 3T1 Attention: CEO

or such other address or individual as may be designated by notice by either party to the other. Any Communication given by personal delivery shall be conclusively deemed to have been given on the day of actual delivery thereof and, if made or given by registered mail, on the fifth day, other than a Saturday, Sunday or statutory holiday in Alberta, following the deposit thereof in the mail. If the party giving any Communication knows or ought reasonably to know of any difficulties with the postal system which might affect the delivery of mail, any such Communication shall not be mailed but will be given by personal delivery.

8.6 Further Assurances

Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out, or better evidence or perfect the full intent and meaning of this Agreement.

8.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Notwithstanding this provision, statutory requirements in regard to employment shall be governed by legislation of the location out of which the Executive's employment is based, from time to time.

8.8 Attornment

For the purpose of all legal proceedings, this Agreement shall be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario shall have sole and exclusive jurisdiction to entertain any action arising under this Agreement. Each of the Corporation and the Executive hereby irrevocably attorns to the exclusive jurisdiction of the courts of the Province of Ontario. This provision shall not be construed so as to bar access to any administrative procedures prescribed by legislation.

8.9 Counterparts

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

8.10 Supersedes Prior Agreements

This Agreement supersedes any prior agreements between the Corporation, on the one hand, and the Executive, on the other hand, relating to the subject matter hereof.

IN WITNESS WHEREOF the parties have executed this Agreement.

WITNESS:)
)
)
) _____
) MATTHEW QUINLAN

DOMINION DIAMOND CORPORATION

By: _____ c/s
Brendan Bell
Chief Executive Officer

Schedule "A"

List of Contracts with Previous Employers

[If this portion is left blank, it shall be irrevocably deemed to be nil.]

Schedule "B"

List of Intellectual Property owned by the Executive

[If this portion is left blank, it shall be irrevocably deemed to be nil.]

Schedule "C'

Release and Indemnity

IN CONSIDERATION of the terms and conditions of settlement set out in the letter from x to x dated x attached hereto ("the Settlement") and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, I, Matthew Quinlan, on behalf of myself, my heirs, successors, administrators and assigns (hereinafter collectively referred to as the "Releasor") hereby release and forever discharge Dominion Diamond Corporation, along with all parents, subsidiaries, affiliates and associated companies, and together with all respective officers, directors, employees, servants and agents and their successors and assigns (hereinafter collectively referred to as the "Releasee") jointly and severally from any and all actions, causes of actions, contracts, covenants, whether express or implied, including but not limited to, any bonus claims of any nature and kind whatsoever, any vacation pay entitlements, any claims and demands for damages, including any disability claims, loss of benefit claims, claims for indemnity, costs, interest, and/or claims for loss or injury of every nature and kind whatsoever and howsoever arising, whether statutory or otherwise and specifically including, but not limited to any claim under employment standards legislation applicable to the province or territory in which I am employed as of the date of my termination (including but not limited to claims for wages, notice, severance, vacation pay or termination pay), and applicable human rights legislation, occupational health and safety legislation and mining legislation, , and any successor legislation, which I may now have, or may hereinafter have, in any way relating to my engagement by, hiring by, my employment by or the cessation of my engagement/employment with the Releasee.

AND FOR THE SAID CONSIDERATION, I further acknowledge, covenant and warrant that I have not filed with any Court, Tribunal, Commission or Agency, *etc.*, any claim or complaint of the type described above, and that if such a claim or complaint has been filed, this Release and Indemnity, entered into freely and without duress, constitutes a full and final bar and/or answer to such claim or complaint. For clarity, I further agree that, as a condition of the Settlement, I will take all necessary steps to ensure the withdrawal or dismissal of such claim or complaint.

AND FOR THE SAID CONSIDERATION, I further acknowledge, covenant and agree that in the event that I should hereafter make any claim, or demand or take any action or proceeding against the Releasee in connection with any matter covered by this Release and Indemnity, or threaten to do so, this document may be raised as an estoppel and complete bar to any such claim, demand, action or proceeding, and that I will be liable to the Releasee for its costs and expenses, including reasonable legal fees, incurred in responding thereto.

AND FOR THE SAID CONSIDERATION, I further acknowledge, covenant and agree that I shall not make any claim or demand or take any action or proceeding in connection with any matter covered by this Release against any other person or corporation who might claim contribution or indemnity from the Releasee by virtue of the said claim or proceeding. I agree that if any such claim, demand, action or proceeding is made by me, the Releasee may raise this document as an estoppel and complete bar to any such claim, demand, action or proceeding and that I will be liable to the Releasee for its costs and expenses, including reasonable legal fees, incurred in responding thereto.

AND FOR THE SAID CONSIDERATION, I further acknowledge, covenant and agree to save harmless and indemnify the Releasee from and against all claims, charges, taxes, penalties or demands which may be made by the Canada Revenue Agency requiring the Releasee to pay income tax, charges, taxes, or penalties under the *Income Tax Act (Canada),* in respect of amounts paid to me, in excess of income tax previously withheld; and in respect of any and all claims, charges, taxes or penalties and demands which may be made on behalf of or related to the Employment Insurance Commission and the Canada Pension Commission under the applicable statutes and regulations with respect to any amounts which may in the future be found to be payable by the Releasee in respect of the Releasor.

AND FOR THE SAID CONSIDERATION, I further acknowledge, covenant and agree that during my engagement/employment I acquired confidential information which is the exclusive property of the Releasee which I shall not use in any manner without the express written permission of the Releasee. I recognize that all material and information that has been disclosed to me during my employment/engagement is confidential information that could be used to the detriment of the Releasee. As such, I will fulfill my obligations to hold such information.

AND FOR THE SAID CONSIDERATION, I further acknowledge, covenant and agree that, notwithstanding the cessation of my engagement/employment, I will not discuss or disclose, to other than my immediate family members, legal advisors, financial advisors or as required by law, the terms of the Settlement or this Release and Indemnity.

I HEREBY AGREE AND ACKNOWLEDGE THAT the consideration provided by the Releasee herein is not deemed to be an admission of liability on the part of the Releasee.

I HEREBY AGREE AND ACKNOWLEDGE THAT in the event that any provision of this Release and Indemnity is deemed void, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

I HEREBY ACKNOWLEDGE AND CONFIRM that I have been afforded sufficient opportunity to obtain independent legal advice with respect to the details of the Settlement before accepting it and signing this Release and Indemnity. I further confirm that I have read this Release and Indemnity, understand it, and am executing it voluntarily and without duress after having been afforded the opportunity to obtain legal advice and having either received such advice or chosen not to do so.

IN WITNESS WHEREOF, the Releasor has duly executed this Release and Indemnity this _____ day of _____, _____ in the presence of the witness whose signature is subscribed below.

SIGNED, SEALED AND DELIVERED in the presence of Witness	**MATTHEW QUINLAN**

8.9 Counterparts

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same instrument.

8.10 Supersedes Prior Agreements

This Agreement supersedes any prior agreements between the Corporation, on the one hand, and the Executive, on the other hand, relating to the subject matter hereof.

IN WITNESS WHEREOF the parties have executed this Agreement.

WITNESS:)
)
)
)

MATTHEW QUINLAN

DOMINION DIAMOND CORPORATION

By: _____ c/s
Brendan Bell
Chief Executive Officer

THIS IS EXHIBIT "B" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 16th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia
Steven Molnar
Barrister & Solicitor

CV 18 00 599579 0000
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MATTHEW QUINLAN

Plaintiff

and

DOMINION DIAMOND MINES ULC

Defendant

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $750 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and $400 for costs and have the costs assessed by the Court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date June 12th, 2018 Issued by _____
Local Registrar

Judith Richards
Registrar

Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: Dominion Diamond Mines ULC
c/o James LeNoury
LeNoury Law
480 University Avenue, Suite 1702
Toronto, Ontario
M5G 1V2

CLAIM

1. The Plaintiff claims:

(a) a declaration that the Defendant has breached his employment agreement and/or that he has been wrongfully dismissed;

(b) a declaration that the restrictive covenants in the employment agreement are unenforceable;

(c) damages for breach of contract and wrongful dismissal, including:

(i) $1,296,854 on account of contractual termination benefits;

(ii) $238,333 on account of accrued annual bonus payments;

(iii) $12,350 on account of matching RRSP contributions; and

(iv) an amount to be determined at trial on account of long term incentive payments;

(d) moral damages, aggravated and/or punitive damages in the amount of $150,000 for the defendant's bad faith conduct in the termination of his employment;

(e) an interim order directing the Defendant to produce all long-term variable compensation plans which form part of the Plaintiff's compensation by operation of article 3.6 of the employment agreement, and an accounting

for any payments made to similarly situated executives employed by Dominion thereunder;

(f) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(g) postjudgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

(h) the costs of this proceeding, plus all applicable taxes; and

(i) such further and other relief as the Plaintiff may request and to this Honourable Court may seem just.

A. The Parties

2. The Plaintiff, Matthew Quinlan ("Quinlan"), is a 44-year old individual residing in Vancouver, British Columbia. Quinlan holds a Bachelor's Degree in Mechanical Engineering and Business Finance, and he is a Chartered Accountant and Chartered Financial Analyst.

3. Quinlan was employed as the Chief Financial Officer ("CFO") of the Defendant, Dominion Diamond Mines ULC ("Dominion"), previously named Dominion Diamond Corporation, from September 8, 2016 until December 28, 2017, when Dominion terminated his employment, purportedly with cause.

4. Dominion is a corporation incorporated pursuant to the laws of BC, with its head office located in Vancouver, BC. Dominion is also registered as an extra-provincial corporation in Ontario and operates offices in Toronto, Ontario and Calgary, Alberta.

5. Dominion is a Canadian diamond mining company with ownership interests in two major diamond mines in the Northwest Territories, the Ekati Diamond Mine and the Diavik Diamond Mine. Dominion supplies rough diamonds to the global market and is Canada's largest independent diamond producer.

6. On November 1, 2017, Dominion was acquired (the "Acquisition") by the Washington Group of Companies ("Washington").

B. Quinlan's Employment Agreement

7. The terms and conditions of Quinlan's employment with Dominion were governed at all times by a written contract of employment of indefinite duration, dated September 2, 2016 (the "Employment Agreement").

1. Choice of Law and Forum

8. The Employment Agreement is governed by and construed in accordance with the laws of Ontario and the federal laws of Canada applicable there. In addition, the parties attorned to the sole and exclusive jurisdiction of the courts of Ontario in respect of any action arising under the Agreement.

2. Quinlan's Compensation and Benefits

9. Quinlan had a contractual right to remuneration, at a minimum, as set out in article 3 of the Employment Agreement, including base salary, benefits, vacation, annual incentive bonus, and long term incentives "as may be in force from time to time".

10. At the time of his termination from Dominion, Quinlan's annual compensation included:

(a) Base salary of $400,000;

(b) Annual incentive bonus at a target of 65% of Quinlan's annual base salary ("Annual Bonus");

(c) Long-term incentive plan awards based on the plans in force from time to time ("LTIP Bonus"). Following the Acquisition, Dominion indicated that a new LTIP plan would be put in place for all executives, the details of which are within the knowledge of Dominion;

(d) RRSP-matching;

(e) Comprehensive benefits, including short and long-term disability coverage, life insurance, and medical and dental insurance coverage; and

(f) Four weeks annual vacation.

11. The Annual Bonus and LTIP Bonus were an integral part of Quinlan's compensation.

3. *Termination Without Cause*

12. Upon termination without cause, the Employment Agreement required Dominion to pay Quinlan termination benefits pursuant to articles 5.2 and 6.3, including:

(a) two times his then current base salary;

(b) two times his bonus for the last fiscal period;

(c) two years continued benefits coverage, or payment of a lump sum equal to the estimated net cost to Dominion of maintaining such benefits for a two year period.

13. These termination benefits apply regardless of the length of Quinlan's service.

C. Quinlan's Employment by Dominion

1. *Background*

14. Quinlan commenced employment as Dominion's CFO on September 8, 2016. Prior to joining Dominion, Quinlan had extensive experience as a senior financial executive in corporate finance, investment banking, financial accounting and the provision of strategic advice to clients in the global mining industry.

15. At all relevant times, Quinlan performed his duties and responsibilities as CFO competently, honestly, and in good faith.

16. Quinlan had an unblemished discipline record, and was not informed of or sanctioned for misconduct of any kind while employed by Dominion.

17. At the time of Quinlan's hiring in September 2016, Dominion (then Dominion Diamond Corporation) was a publicly traded company, listed on the Toronto and New York Stock Exchanges as "DDC".

2. *The Acquisition*

18. In March 2017, following the receipt of an unsolicited takeover proposal from Washington, Dominion's Board of Directors began a strategic review process that included a possible sale of the company.

19. Quinlan was essential to the strategic review process that resulted in Dominion securing a friendly takeover bid from Washington. Quinlan's work was also instrumental in Washington securing financing for the Acquisition.

20. The Acquisition took Dominion private and it was delisted from the Toronto and New York Stock Exchanges. Washington acquired all of Dominion's issued and outstanding shares, which constituted a change in control. Dominion's Board of Directors was reconstituted with new directors.

21. The Acquisition closed on November 1, 2017. That same day, Patrick Evans ("Evans") was appointed President and CEO of Dominion.

22. Though Quinlan never received a formal performance review during his tenure at Dominion, he was roundly praised prior to the close of the Acquisition by Dominion's then-Board of Directors and others at Washington for his contributions to the strategic review and Washington's financing process.

23. In recognition of his efforts and contributions during this period, Dominion granted Quinlan an additional salary payment of $18,750 a month, as well as an incentive payment of $547,500 that was paid to him upon completion of the Acquisition.

3. *The 2018 budget process*

24. Quinlan, as custodian of Dominion's budget process, began preparing for the calendar year 2018 ("CY18") budget in the summer of 2017, before Washington had completed the Acquisition.

25. On November 8, 2017, Quinlan convened a meeting of the Dominion senior leadership team, including Evans, in respect of the draft CY18 budget. This was the first budget-related meeting Evans attended following his appointment as President and CEO.

26. Quinlan, along with Chessa Jope ("Jope"), Dominion's Manager, Financial Planning & Analysis, and Cara Allaway ("Allaway"), Dominion's Controller, delivered a presentation at this meeting on the status of the draft CY18 budget.

27. At the start of the meeting, Evans requested a short summary of the CY18 budget be prepared for Evans to present to the Board of Directors in December, 2017 for approval of the CY18 budget.

28. Quinlan, and the finance team under his direction, prepared the budget summary presentation throughout November.

29. On December 1, 2017, Evans met with Dominion's senior leadership team, including Quinlan, to approve the presentation to the Board of Directors, a draft of which had been circulated in advance of the meeting.

30. Following the meeting, at Quinlan's instruction, Jope sent the presentation to Evans for transmission to the Board of Directors, along with a document containing summary financial "backup" for the presentation and a memo summarizing the key assumptions underlying the budget figures in the presentation.

31. On December 2, 2017, Evans contacted Quinlan seeking further backup documents and spreadsheets that supported the budget presentation. Quinlan

responded promptly that same day, providing Evans with additional backup documents and spreadsheets.

32. On December 3, 2017, Evans thanked Quinlan for the information, stating he found it "very helpful". Evans requested more detail on the budgets of the individual business units before he would be in a position to recommend the budget to the Board of Directors.

33. Quinlan responded promptly and committed to locating submissions from each business unit the following day, as requested.

34. The next morning, December 4, 2017, Quinlan met with other members of the finance team to instruct them on compiling the information Evans had requested. That afternoon, Quinlan supplied Evans with detailed budget review presentations for Dominion's selling, general and administrative expenses ("SG&A") and the Ekati Diamond Mine. Quinlan also offered to send him further backup materials. Evans did not respond.

35. The Board of Directors met on December 5, 2017. On December 8, 2017, Evans emailed Dominion's senior leadership team, including Quinlan, to say that the Board had not approved the CY18 Budget as presented, but that approval would happen in the weeks ahead. He did not request further information from Quinlan at that time, nor did he indicate why the CY18 Budget had not been approved.

4. *The December 11 Request*

36. On December 11, 2017, Evans responded to Quinlan's email of December 4, 2017. Evans sought further detail from Quinlan on the SG&A CY18 budget requests (the "December 11 Request"). Evans stated that he would provide Quinlan with further feedback on the information provided in response.

37. Evans did not indicate that there was any time-sensitive need for the information requested, nor did he request the information be provided by a certain date.

38. Evans was in India at the time of his request, scheduled to return on December 15, 2017.

39. Quinlan responded within minutes, indicating he would compile the information requested.

40. Quinlan took immediate steps to fulfill Evans' request, including immediately contacting Jope and Allaway to begin compiling the information requested by Evans.

41. The three also met the following day, December 12, 2017, to discuss the information they had compiled since the night before and how to present the information most effectively to Evans. Jope and Allaway agreed to prepare further materials at Quinlan's direction to provide context to the micro-level detail of the budget backup documents.

42. On December 15, 2017, Jope sent a draft of the summary she had compiled to Allaway and Quinlan, to which they both provided comments. Jope incorporated most of

these comments into the draft later that day, and sent the revised draft to Quinlan while he was on a return flight to Vancouver from a business trip in Toronto.

43. Quinlan departed on his vacation that afternoon, December 15, 2017. Evans himself had approved Quinlan's vacation request in November, 2017.

44. As the materials were substantially completed by the end of day on Friday, December 15, 2017, Quinlan planned to send the materials to Evans on the following Monday and to offer to meet with him to discuss the materials following his return from vacation.

45. On December 18, 2017, Evans requested Allaway attend at a senior leadership meeting in Quinlan's absence. The meeting had been originally scheduled for December 15, 2017 but was rescheduled to accommodate Evans' travel from India.

46. Allaway emailed Quinlan immediately following the meeting seeking his advice. Evans had informed those in attendance that the revised SG&A budget needed to be approved by the Board of Directors before the end of January, at a meeting yet to be scheduled. Allaway also reported that Evans had reiterated the December 11 Request to her at the meeting.

47. Quinlan and Allaway had a call shortly thereafter, in which Quinlan instructed Allaway to immediately send to Evans the materials they had prepared in response to the December 11 Request.

48. Allaway sent the materials to Evans later that day, copying Quinlan. Evans did not respond to Allaway's email or indicate in any way that the December 11 Request had not been satisfied.

D. Dominion Wrongfully Terminates Quinlan

49. On December 28, 2017 (the "Termination Date"), Evans spoke with Quinlan by phone and informed him that his employment was terminated immediately. Evans informed Quinlan that his termination was for cause, due to Quinlan's failure to provide him information in response to the December 11 Request.

50. That same day, Quinlan received a termination letter from Evans that stated that the December 11 Request had been a directive, and that Quinlan had wilfully disregarded the directive by failing to provide the information requested. As a result, the letter stated, he was terminated immediately for failure to follow a lawful directive of the CEO, in accordance with article 1.1(c)(iv) of the Employment Agreement. This was the sole reason stated for the allegation of cause.

51. Dominion did not provide Quinlan with any notice of this termination or payment in lieu of notice, in breach of both the *Employment Standards Act, 2000*, the Employment Agreement, and the common law.

52. Quinlan denies the allegations contained in the termination letter, and puts Dominion to the strict proof thereof.

53. Quinlan's conduct was not sufficient to constitute just cause as defined at common law or "Cause" as defined in the Employment Agreement. Dominion's decision to

terminate Quinlan for "Cause" as defined in the Employment Agreement was not exercised honestly or in good faith.

54. Quinlan did not ignore or fail to follow a lawful directive of the CEO.

55. The December 11 Request did not constitute a clear and unequivocal directive. It did not establish a clear deadline, nor a clear expectation of what was to be provided.

56. Moreover, Quinlan did not wilfully ignore or fail to follow Evans' December 11 Request. Quinlan immediately made good faith efforts to fulfill the December 11 Request and the information was provided to Evans, on Quinlan's direction, on December 18, 2017.

57. Quinlan was provided no warning that his employment was in jeopardy, nor was he afforded the opportunity to explain or remedy the situation.

58. In the alternative, Quinlan's conduct was not sufficiently serious to warrant summary dismissal.

59. Quinlan's actions were not so significant as to be incompatible with his duties as CFO and were not prejudicial to Dominion's interests. Dominion suffered no demonstrable harm as a result of Quinlan's response to the December 11 Request and Quinlan's termination for cause was a disproportionate response in the circumstances.

E. Damages

60. Dominion did not have just cause to terminate Quinlan and, as a result, Quinlan is entitled to the following amounts in accordance with the without cause termination provisions of his Employment Agreement and the common law.

1. *Salary*

61. Article 6.3(a) of the Employment Agreement entitles Quinlan to a payment equal to two times his base salary of $400,000. Quinlan is therefore entitled to a payment of $800,000.

2. *Benefits*

62. Dominion discontinued Quinlan's benefits on the Termination Date. Article 6.3(d)(ii) of the Employment Agreement therefore entitles Quinlan to a lump sum equal to the estimated net cost of maintaining Quinlan's benefit coverage for a two year period.

63. The estimated annual cost of Quinlan's benefit coverage is $10,094. Quinlan is therefore entitled to a payment of $20,188.

3. *RRSP Contributions*

64. Under the terms of Dominion's Group RRSP, Dominion was obliged to match Quinlan's annual RRSP contributions. Dominion pays out RRSP matching funds in January for the prior calendar year's contributions.

65. As a result of his termination in December 2017, Dominion did not match Quinlan's 2017 RRSP contributions.

66. Quinlan is therefore entitled to an amount equal to his 2017 RRSP contributions, $12,350.

4. *Annual Bonus*

67. Article 3.5 of the Employment Agreement entitles Quinlan to receive a target Annual Bonus of 65% of his annual base salary, equal to $260,000.

68. Annual Bonus entitlement was determined at the close of each fiscal year. Dominion's fiscal year 2018 ("FY2018") ended on January 31, 2018.

69. Quinlan was wrongfully terminated after being employed for 11 out of 12 months of FY2018. At common law, Quinlan is therefore entitled to receive an accrued, pro-rated Annual Bonus for 2018 of $238,333. This entitlement was not varied by the Employment Agreement.

70. Article 6.3(a) of the Employment Agreement also entitles Quinlan to an amount equal to two times his bonus for the last fiscal period.

71. Quinlan is therefore entitled to an amount equal to two times his pro-rated bonus for FY2018, or $476,666.

5. *Moral Damages, Aggravated Damages, and/or Punitive Damages*

72. In terminating Quinlan's employment without notice and without just cause, Dominion acted in a manner that was high handed, in bad faith, and worthy of sanction.

73. Dominion made unsupported and unjustified allegations of cause and deprived Quinlan of reasonable notice of termination. Quinlan was not warned that his employment was in jeopardy, nor was he given the opportunity to respond or explain his actions.

74. Dominion breached its duty of good faith and fair dealing to Quinlan when terminating his employment. Quinlan's reputation in the industry has suffered as a result.

75. In the circumstances, Quinlan is entitled to $150,000 in moral damages, aggravated damages and/or punitive damages.

6. *LTIP Bonus*

76. On the Acquisition, the equity compensation plans that constituted the LTIP Bonus were cancelled. Alternate variable compensation plans were instituted in their stead, and are incorporated into the Employment Agreement by virtue of article 3.6.

77. Quinlan seeks an interim order granting production of the variable compensation plans now in place to determine any payments due thereunder, and an accounting for any payments made to similarly situated executives employed by Dominion in CY18, and up to trial.

78. The Plaintiff proposes this action be tried at Toronto.

June 12, 2018

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Plaintiff

-and-

DOMINION DIAMOND CORP.
Defendant

CV-18-00599579-0000
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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Court File No.: CV-18-005995790000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

THIS IS EXHIBIT "C" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 10th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia

Steven Molnar
Barrister & Solicitor

MATTHEW QUINLAN

Plaintiff

-and-

DOMINION DIAMOND MINES ULC

Defendant

STATEMENT OF DEFENCE

1. The Defendant Dominion Diamond Mines ULC ("Dominion") admits the allegations contained in paragraphs 5 to 9, 10(a) and (d-f), 17, 20 and 21, 38, 64 and 78 of the Plaintiff's Statement of Claim.

2. Dominion denies the allegations contained in paragraphs 1, 3, 4, 10(b-c), 11 to 16, 18, 19, 22 to 37, 39 to 48, 49 to 59, 60 to 63, and 65 to 77 of the Statement of Claim.

3. Dominion has no knowledge of the allegations contained in paragraph 2 of the Statement of Claim.

4. Except as specifically and expressly admitted herein, Dominion denies all of the allegations in the Plaintiff's Statement of Claim.

THE PARTIES

5. The Defendant Dominion is incorporated in accordance with the laws of Canada. Dominion maintains its head office in Calgary, with additional offices in Toronto and Yellowknife. Dominion is Canada's largest diamond producer, operating two diamond mines in the Northwest Territories, Ekati, of which it is the majority owner and operator, and Diavik in which it maintains 40% ownership in conjunction with Rio Tinto which maintains 60% control.

6. The Plaintiff Matthew Quinlan commenced his employment with Dominion on September 2, 2016. He signed a written employment agreement (the "Employment Agreement") on that same date.

7. Pursuant to article 2.1 of the Employment Agreement, Quinlan reported directly to Dominion's Chief Executive Officer ("CEO") and was to undertake such duties as from time to time the CEO might assign, subject only to the control and direction of the company's Board of Directors.

8. At the time Quinlan commenced employment, Dominion was a publicly traded company. Its CEO was Brendan Bell.

9. On November 1, 2017, Dominion was purchased by the privately held Washington Group and de-listed from public stock exchanges. Upon acquisition by Washington Group ("Washington"), effective November 1, 2017, Patrick Evans was appointed Chief Executive Officer of Dominion effective immediately.

THE EMPLOYMENT RELATIONSHIP

10. From the date of hire until his dismissal, Quinlan acted as Chief Financial Officer ("CFO") for Dominion. Despite the significant responsibility that attached to this position, Quinlan had never served as CFO of any organization nor held any prior appointment in the finance department of any public company. He secured his CFO position at Dominion through his friendship with the (then) chairman of Dominion's Audit Committee, David Smith.

11. In addition to Quinlan's common law and contractual obligations to competently and faithfully devote his best efforts in service of the company, as CFO he owed the company fiduciary duties of care, honesty, trust and loyalty. Dominion relies specifically, but without limitation, upon article 2 and article 4.2 of the Employment Agreement.

12. In early 2017 Dominion announced Brendan Bell would be resigning as CEO. From that time until July 15, 2017 when Washington entered into an agreement for the acquisition of Dominion, Quinlan sought the CEO position for himself. Dominion's

Board of Directors opposed such an appointment on the basis that Quinlan was not qualified.

13. Although Dominion was conducting a strategic review to determine the viability of its possible sale, Washington's bid for control of Dominion was uninvited. Quinlan did not wish to see the company sold to a private entity, preferring a public company. In particular, Quinlan had a preference for Quebec-based Stornoway Diamond Corporation.

14. Upon Dominion's formal acquisition by Washington on November 1, 2017, Quinlan reported directly to Patrick Evans. Out of ill feeling at being denied the CEO position and the sale to Washington, Quinlan held an animus against Patrick Evans. Maintaining only a facade of cooperation in their relationship, Quinlan attempted to thwart Evans in his duties.

The Employment Agreement

15. Article 1.1 of the Employment Agreement stipulates cause for dismissal as follows:

> (c) "Cause" shall include, but not be limited to, the following:
>
> (i) breach by the Executive of any of the terms of the Agreement;
>
> (ii) the Executive's misconduct or gross negligence in the performance of his duties hereunder (other than resulting from the Executive's physical or mental incapacity);
>
> (iii) the Executive's conviction of, or pleas of not guilty or no contest to, any offence under the Criminal Code of Canada and/or other applicable legislation, or similar legislation in another country;
>
> (iv) the Executive's failure to follow any directive of the Chief Executive Officer of the Corporation or the Board;
>
> (v) the Executive's commission at any time of any act of fraud, embezzlement, or misappropriation against the Corporation; or
>
> (vi) breach by the Executive of any of the Corporations policies and guidelines.

16. In the event of cause for dismissal, pursuant to article 5.1 of the Employment Agreement, Dominion was entitled to dismiss Quinlan without payment of any compensation except accrued wages and benefits, and any unpaid bonus which had already been determined by Dominion's Human Resources and Compensation Committee (the "Committee").

17. The Employment Agreement contains a number of terms highly favourable to Quinlan. These include generous remuneration, bonus, LTIP and mitigation provisions. In consideration for those favourable terms, Quinlan understood and agreed a high level of performance was expected.

CAUSE FOR DISMISSAL

18. In asserting cause for dismissal, Dominion relies upon, without limitation, the following grounds specified below. Dominion also expressly relies upon the doctrine of after-acquired cause.

Core Incompetence: The 2018 Budget

19. Article 2.1 of the Employment Agreement stipulates that Quinlan, as CFO, was "to undertake such duties as may from time to time be assigned to or vested in [Quinlan] by the Chief Executive Officer" of Dominion.

20. Article 4.2 of the Employment Agreement provides, in part, as follows:

> The Executive shall devote the whole of his time, attention and ability to the business of the Corporation and shall well and faithfully serve the Corporation, using his best efforts to promote the interests of the Corporation.

21. It is noteworthy that pursuant to the Definitions provisions of the Employment Agreement, article 4.1(c) stipulates that "Corporation" shall include the Corporation and, *inter alia*, its parent companies, i.e., in this case, the Washington Group.

22. Among his primary duties as CFO for Dominion, Quinlan was responsible for preparation of the company's budget plans for approval by the company's Board of Directors. The 2018 fiscal year budget was scheduled for presentation on December 2, 2017. The most crucial component of Dominion's budget was the Ekati Mine operating plan and budget. Other key elements of the budget included marketing, exploration and General and Administrative Expenses ("SG&A").

23. While the timing of the budget process had been set prior to the Washington's acquisition of Dominion, that transaction meant that effective November 1, 2017 Evans as the new CEO would first need to review, then subsequently on December 2, 2017 present the budget to a new Board of Directors.

24. A mining industry veteran executive, Evans requested data to help him better understand Dominion's financial state. On November 2, 2017 he requested from Quinlan the company's diamond marketing costs. Even though time was of the essence and this information ought to have been readily available, despite a subsequent reminder on November 6th, Quinlan did not forward this data to Evans until November 15, 2017 without explanation for the delay.

25. In order to ensure the budget components were ready for the Board of Directors, a November 8, 2017 budget meeting was convened at which time Quinlan had overall responsibility for the presentation to Evans and other members of the executive committee. The presentation was disastrous, projecting a USD$50 million operating loss for the Ekati Mine which, with 1,600 workers, was Dominion's centerpiece operation. Quinlan could not readily satisfy Evans' request for particulars for the main numbers to substantiate his projections. Evans informed Quinlan that his performance in this core area of responsibility was unacceptable and a new Ekati budget was required. Given the time required to prepare revisions, this aspect of the overall budget could not be presented to the Board of Directors on December 2, 2017 as planned and was postponed to January 2018.

26. At subsequent meetings on November 20 and December 1, 2017, Evans requested further details on the remaining elements of the budget prior to the Board of Directors meeting. Evans emphasized that an unsuccessful budget presentation, failing to yield Board approval by the end of January 2018, would leave the company unable to pay its employees.

27. The December 2, 2017 Board of Directors meeting was rescheduled to December 5th. Meanwhile Quinlan forwarded some data on December 2nd. However, Evans had sought "all the detailed back-up materials" and the next day, December 3rd, Evans found it necessary to explicitly describe the nature of that detail. Quinlan's failure to grasp the nature of Evans' request again displayed a level of incompetence incompatible with his CFO position at the company.

28. Unable to obtain the data he required, on December 5, 2018 Evans was compelled to postpone the Board of Directors budget meeting until January 2018 for all budget

elements except the exploration budget, thus imperiling operations for the forthcoming year. Such a risk was reasonably foreseeable to a competent CFO. The exploration budget had been prepared by the head of exploration under Mr. Evans' supervision.

29. Again on December 11, 2017 Evans reiterated his directive to Quinlan to furnish details to support the budget presentation. Contrary to the implication at paragraph 37 that there was no indication of the time-sensitive nature of this request, the data concerned the 2018 budget approval and the main elements to that budget had already been postponed once. Time was plainly of the essence and as CFO, Quinlan knew or ought reasonably to have known as much. Indeed, presumably that is why he asserts in his Statement of Claim at paras. 39-41 that he responded "within minutes", "took immediate steps to fulfill" the directive, and met with Cara Allaway, Vice-President Group Controller, and Chessa Jope, Financial Planning & Controller, the very next day.

30. Despite those assertions, Quinlan did not convey the vital information to Evans. Quinlan began his (scheduled) vacation on December 18, 2017 with the information still outstanding. In his absence, it was necessary for Evans to request the long-awaited data from Allaway.

31. Quinlan's failure to fulfill Evans' consistent request for budget information and ultimately his formal directive in relation to a core aspect of his CFO duties when time was of the essence not only contravened his obligations under articles 2.1 and 4.2 of the Employment Agreement, but they imperiled Dominion's operations. Quinlan's actions fell significantly below the standard of competence reasonably expected for a CFO.

32. While the termination letter underscored the December 11, 2017 written directive in citing cause for dismissal, it also references earlier requests for budget related information. In this regard, Dominion relies upon the preceding requests for budget information that began immediately on the heels of the unsuccessful November 8, 2017 budget presentation by Quinlan and culminated with the December 11, 2017 directive that remained unfulfilled a week later.

33. Accordingly, Dominion had cause to dismiss Quinlan on or before December 18, 2017. Nor could the budgetary process stand further delay. However, since Quinlan had just started his holiday and it was shortly before Christmas, Evans held off notification of dismissal until December 28, 2017.

Negligent Misrepresentation and Fiduciary Breach

34. As a result of the flawed budget process under the direction of Quinlan, Washington commissioned an internal audit to better understand the variances. That report was completed on May 18, 2018. The audit concluded that the quality of diamonds being mined by Dominion had been significantly overstated in the public disclosure and in the purchase agreement and that the price projections were much lower.

35. Over the life of the mines, the value of the diamonds in the ground at Ekati and Diavik were projected materially below the value estimated by Quinlan and other senior executives and disclosed in the public records.

36. In its Arrangement Agreement for purchase of Dominion dated July 15, 2017, in order to assess the mineral reserves and resources in determining its purchase price Washington relied upon mandated disclosure by Dominion through regulatory National Instrument 43-101 ("NI 43-101").

37. Quinlan's role in the transaction made him privy to pricing and production information. The Arrangement Agreement was signed by Quinlan on behalf of Dominion. Accordingly, Quinlan knew or ought to have known the valuation of diamond production provided in the purchase agreement was materially inaccurate, as were the price projections. Quinlan also knew that Washington would rely upon this disclosure. Washington ultimately did rely to their detriment on that information.

38. Therefore in his role as CFO, his involvement in the transaction and as signatory to the Arrangement Agreement, Quinlan negligently misrepresented material facts. His actions amount to cause within the meaning of article 1.1(c) of the Employment Agreement.

39. Furthermore, Quinlan also had a duty of care as a fiduciary of Dominion and his conduct breaches that standard. Indeed, the result of Quinlan's misrepresentation

constitutes grounds for potential legal action by Washington. Quinlan's actions therefore fell well below the level of care Dominion expected and undermined the company's trust.

40. Lastly, Quinlan's fiduciary duty contractually extended to Washington itself upon its acquisition of Dominion. The negligent misrepresentation to Washington made by Quinlan is inherently incompatible with that fiduciary duty making a relationship of trust untenable.

41. The foregoing breaches alone or in combination amounted to cause for dismissal.

Gross Negligence

42. Following Quinlan's dismissal, it became apparent that the financial controls and tax model in use at Dominion during Quinlan's tenure were grossly inadequate.

43. As CFO, Quinlan maintained responsibility for these systems and, whether implemented before or during his term of employment, he was duty-bound to correct those systems. Quinlan's failure to take those corrective measures fell materially below the standard of competence reasonably expected for a CFO in his position and amounted to cause for dismissal.

RESPONSE TO THE PLAINTIFF'S CLAIMS FOR DAMAGES

44. Having dismissed Quinlan for cause, Dominion categorically denies all of Quinlan's allegations and claims. Given that cause for termination exists, upon dismissal Quinlan was not entitled to further compensation, bonus, incentive payment, pay under applicable employment standards legislation, or damages of any kind.

45. In the alternative, if Quinlan was dismissed without cause (which Dominion denies), the amounts claimed are excessive and remote and Dominion puts him to the strict proof of his claims.

Salary and Benefits

46. Quinlan's claim for salary and benefits is predicated upon articles 6.3(a) and (d) of the Employment Agreement. Quinlan's execution of the release appended as Schedule "C" to his Employment Agreement was precondition to entitlement to

payments under those provisions. Quinlan did not execute the release. Thus the contractual requirement for such a release as condition for those payments render these provisions inapplicable or, in the alternative, unenforceable as void for vagueness.

No Annual Bonus

47. Upon termination for cause, pursuant to Employment Agreement article 5.1, Quinlan was entitled to "Vested Amounts" payable to the date of termination. Under the Employment Agreement this means accrued salary and benefits, as well as any unpaid bonus which has been determined by the Committee.

48. Quinlan received his accrued salary and benefits. Pursuant to article 3.5 of the Employment Agreement annual bonus is not integral to the compensation. No bonus for the 2017 year was awarded by the Committee to any of the senior executives at Dominion. The discretion to withhold bonus payments was exercised fairly and reasonably. Quinlan therefore has no entitlement to his annual bonus, in whole or pro-rated.

No LTIP Bonus

49. Dominion denies that the Long-Term Incentive Plan ("LTIP") bonuses provided at article 3.6 of the Employment Agreement were "cancelled" as stated at paragraph 76 of Quinlan's Statement of Claim. Indeed, upon closing of the purchase transaction by Washington on November 1, 2017, Quinlan received a total of $2,148,931.57 in accordance with the LTIP provision of the Employment Agreement.

50. Furthermore, Dominion maintains that under articles 3.6 and 6.3 of the Employment Agreement LTIP bonuses are not integral to the compensation, but are entirely at the discretion of the Committee and expressly excluded from compensation owing upon termination. Thus any future LTIP bonus payments to senior executives have no bearing on Quinlan's claims.

51. Under the circumstances, no interim order for production or any accounting are warranted in connection with this aspect of the claim.

No Moral/Aggravated or Punitive Damages

52. Dominion therefore denies that Quinlan has or will suffer any damages for which Dominion is liable.

53. Dominion specifically denies that in terminating Quinlan's employment it acted in a manner that that entitles Quinlan to moral damages, aggravated damages and/or punitive damages. Moreover, it denies that Quinlan has suffered any compensable harm as a result of any conduct in relation to his termination.

Duty to Mitigate

54. Dominion pleads that if Quinlan has suffered any damages in connection with the termination of his employment, which is denied, he was under a duty to mitigate. Article 5.8 of the Employment Agreement which purports to relieve Quinlan of the duty to mitigate is triggered only upon termination of the Employment Agreement by Quinlan and therefore inapplicable or, alternatively, is void for uncertainty and unenforceable.

55. Accordingly, any award of damages should be reduced by Quinlan's income from alternative employment and/or by reason of failure to properly discharge his duty to mitigate.

Set-Off

56. In the event Dominion owes any damages to Quinlan, it pleads legal or equitable set-off as against any damages Quinlan might owe in consequence of his misrepresentations, negligence and breach of fiduciary duty.

57. Dominion accordingly requests that this action be dismissed with costs payable to the Defendant on a substantial indemnity basis.

Date: July 13, 2018

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Lawyers for the Plaintiffs

Court File No.: CV-18-005995790000

MATTHEW QUINLAN	DOMINION DIAMOND MINES ULC
Plaintiff	Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto, Ontario

STATEMENT OF DEFENCE

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Court File No. CV-18-005995790000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MATTHEW QUINLAN

Plaintiff

and

DOMINION DIAMOND MINES ULC

Defendant

REPLY

THIS IS EXHIBIT "D" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 16th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia
Steven Molnar
Barrister & Solicitor

1. The plaintiff, Matthew Quinlan ("Quinlan") admits the following allegations contained in the Statement of Defence ("Defence"): paragraph 5 except the jurisdiction of Dominion's incorporation, paragraph 6 except the date Quinlan's employment commenced, paragraphs 7-9, the first two sentences of paragraph 10, the first sentence of paragraph 12, the first sentence of paragraph 14, paragraph 15, paragraphs 19-20, the last sentence of paragraph 22, the second sentence of paragraph 24, the first sentence of paragraph 25, and the first two sentences of paragraph 37.

2. Quinlan has no knowledge in respect of the allegations contained in the last sentence of paragraph 12, paragraph 23, the first sentence of paragraph 24, the last sentence of paragraph 28, the second sentence of paragraph 34, paragraph 36, and the last two sentences of paragraph 37 of the Defence.

3. Except as specifically and expressly admitted herein, Quinlan denies all of the other allegations in Dominion's Defence.

4. Quinlan repeats and relies on the facts pleaded in the Statement of Claim ("Claim"), issued June 12, 2018. Defined terms contained herein have the meanings ascribed to them in the Claim.

A. The Employment Relationship

5. Quinlan denies the allegation in paragraph 10 of the Defence that he secured his position as CFO for Dominion through a personal relationship. Dominion utilized executive search firm Korn Ferry to fill the CFO position. Quinlan was interviewed multiple times by Dominion executives and vetted by Korn Ferry search personnel. Quinlan was selected by Dominion at the end of a competitive interview process. Quinlan's experience and qualifications were known to Dominion at the time of his hiring.

6. Quinlan denies the allegations contained in paragraphs 12-14 of the Defence. Quinlan did not seek the CEO position for himself. Quinlan was informed by Korn Ferry in February, 2017 that he was being included in the CEO search. Quinlan had no expectations of being hired for that position or that he would progress to the next round of the CEO search. Quinlan had no preference as to whether Dominion was purchased by a public or private company. He harboured no ill-will towards Patrick Evans. Quinlan expressly denies attempting to thwart Evans in his duties for that reason, or any other.

B. The 2018 Budget

7. Quinlan expressly denies that Dominion had cause to dismiss him on or before December 28, 2017.

8. Quinlan denies the allegation in paragraph 22 that the 2018 fiscal year budget was scheduled for presentation to the Board on December 2, 2017. To Quinlan's knowledge,

the presentation of the 2018 calendar year budget ("CY18 Budget") was scheduled for December 4, 2017, and was later rescheduled to December 5, 2017.

9. Quinlan admits the allegation in paragraph 22 that the Ekati Mine operating plan and budget were crucial components of Dominion's budget, although he has no knowledge of whether Dominion regarded them as the "most crucial". Dominion's Chief Operating Officer ("COO"), Chantal Lavoie ("Lavoie"), and Elliot Holland ("Holland"), VP, Projects, and not Quinlan, were responsible for the preparation of the majority of the Ekati Mine budget assumptions and the Ekati Mine operating plan, upon which the overall Ekati Mine budget was based.

10. Quinlan denies the allegation in paragraph 22 that he was solely responsible for the preparation of the Dominion "budget plans". Due to his seniority and the scope of his role as CFO, Quinlan oversaw but was not personally responsible for the compilation of the mine plans or the micro-level budget assumptions upon which the plans were based. However, as Dominion's CFO, Quinlan admits that he and his team were ultimately responsible for the drafting of the budget presentations to the Board as alleged in paragraph 22.

11. Quinlan admits the allegation in paragraph 24 that Evans requested Dominion's diamond marketing costs from him on November 2, 2017. However, Quinlan expressly denies that he delayed answering that request without explanation. To the contrary, on November 2, 2017, immediately after Evans made the request, Quinlan responded and told Evans that he would get his team working on the analysis. On November 6, 2017, Quinlan told Evans that his team had begun to prepare the analysis, and that it would take

some more time because they were already busy preparing the draft CY18 Budget presentation for a meeting scheduled for November 8, 2017, and because Quinlan wanted to ensure the analysis was complete and accurate. Quinlan informed Evans that he had a meeting scheduled with the team that week and would revert to Evans on timing thereafter.

12. Quinlan followed through, telling Evans on Thursday, November 9, 2017 that his team would send the analysis to Jim Pounds ("Pounds"), EVP, Diamonds, for his input and review on the following Tuesday, because that Monday was a holiday. Quinlan's team then met and confirmed the analysis with Pounds on November 15, 2017, before sending it to Evans later that day.

13. Quinlan admits the allegation in paragraph 25 that a meeting was convened on November 8, 2017 to present a draft CY18 Budget to Evans and the senior leadership team in advance of its presentation to the Board on December 4, 2017. In fact, Quinlan convened that meeting himself.

14. Quinlan expressly denies the remaining allegations in paragraph 25. The presentation was not "disastrous", and no one present at the meeting described it to him that way. Quinlan expressly denies the allegations that Evans told Quinlan his performance was "unacceptable" in that meeting, or in any subsequent meetings between them. Quinlan's presentation did not project a USD$50 million operating loss for the Ekati Mine, though projected costs were high due to large-scale reinvestments in the mine scheduled for 2018, as included by Lavoie and Holland.

15. Evans told the senior leadership team in the November 8, 2017 meeting that costs needed to be cut drastically in all operations and that each operation should be cash flow positive after planned capital reinvestments. Evans also requested that all budgets be prepared using materially lower diamond price assumptions and a stronger Canada:US dollar exchange rate over the next five years. Evans requested that the CY18 Budget presentation to be prepared for the December 4, 2017 Board meeting be a high-level presentation with a simple format of "4-5 pages". Evans also told the senior leadership team in the November 8, 2017 meeting for the first time that Dominion would be conducting a "strategic business review" with the close assistance of an external mining consultancy. The strategic review would be completed by March 2018 and would result in a revised CY18 Budget that would be presented to the Board for approval on March 8, 2018 (later rescheduled to March 22, 2018).

16. Holland suggested in the November 8, 2017 meeting that given the quantum of costs to be cut and the scope of the strategic business review, the resulting changes could not be incorporated into the budget prior to the December 4, 2017 Board meeting. Holland proposed the following approach be taken, which was accepted by Evans, Quinlan, and the rest of the senior leadership team present:

(a) the existing Ekati Mine budget would be revised to include any easily identifiable cost savings that could be incorporated into the budget immediately as well as lower diamond prices and a stronger Canada:US dollar exchange rate, as directed by Evans;

(b) the high-level CY18 Budget presentation would be presented to the Board on December 4, 2017;

(c) the high-level CY18 Budget presentation on December 4, 2017 would include a page of cost savings initiatives, prepared by Holland, that would be advanced over the coming months as part of the strategic business review;

(d) a revised Ekati Mine plan would be completed by Lavoie in January 2018; and

(e) a revised Ekati Mine budget and other corporate expense budgets incorporating detailed cost saving initiates would be presented to the Board following the completion of the strategic business review in March 2018.

17. Quinlan expressly denies the allegation in paragraph 25 that the Ekati Mine budget could not be presented to the Board on December 4, 2017. In fact, the Ekati Mine budget presentation materials for the December 4, 2017 Board meeting were approved by Evans at a meeting of the senior leadership team, including Quinlan, on December 1, 2017. When Quinlan provided Evans with the detailed back-up materials Evans had requested on December 3, 2017, Evans responded that the level of detail on the Ekati Mine operations was "fine." To Quinlan's knowledge, there was no need to delay the Ekati Mine budget presentation or approval from December 4, 2017, and certainly none related to his performance.

18. Quinlan has no knowledge of the allegations made in paragraphs 25 and 28 of the Defence regarding the postponement of the Board of Directors meeting from December 5, 2017 to January 2018. Evans did not inform Quinlan (and others) that the CY18 Budget had not been approved as anticipated until December 8, 2017. Evans provided no explanation. Evans gave no indication that Dominion's operations were imperilled.

19. Quinlan expressly denies the allegations in paragraphs 26 and 27 of the Defence. Evans never spoke to Quinlan about the possibility Dominion would be unable to pay its employees. To Quinlan's knowledge, the budget was on track to be approved by the Board on December 4, 2017, well in advance of the beginning of the next fiscal year, with a revised budget to be approved by the Board on March 22, 2018.

20. Quinlan denies that Evans requested further details on the budget at the meetings of November 20 and December 1, 2017. Evans waited until December 2, 2017 to request budget information from Quinlan for the first time since the November 8, 2017 meeting. Quinlan did not fail to grasp Evans' request. The request came as a surprise on the eve of the Board meeting and Quinlan and his team put great efforts into compiling information for Evans that provided both detail and context. Quinlan responded to all requests for information made by Evans in a timely manner.

21. Quinlan denies the allegation in paragraph 29 of the Defence. The December 11 Request was not a reiteration of an earlier directive, rather a new request for specific information on selling, general and administrative costs ("SG&A") arising out of materials Quinlan had previously sent to Evans on December 4, 2017. Quinlan took timely steps to answer the December 11 Request in fulfillment of his duties and obligations to Dominion,

and not because Evans had indicated in any way that there was a time-sensitive need for the information.

22. Quinlan expressly denies the allegation in paragraph 30 of the Defence that the information fulfilling the December 11 Request was not conveyed to Evans by Quinlan. Quinlan directed Allaway, his subordinate, to send the materials to Evans. Dominion's own termination letter acknowledges that the information provided by Quinlan through Allaway fulfilled the December 11 Request.

23. Quinlan denies the allegations in paragraphs 31 and 32 of the Defence. Evans did not make "consistent requests" for information immediately following the November 8, 2017 meeting. Evans' requests began on December 2, 2017 and were fulfilled by Quinlan. Evans made no requests for information between December 4 and 11, 2017. Quinlan took all necessary steps to compile the information in response to the December 11 Request in a timely manner and fulfilled the December 11 Request on December 18, 2017 when he directed Allaway to send the information to Evans.

24. Quinlan also denies the allegation in paragraph 32 that the termination letter merely "underscored" the December 11 Request as cause for dismissal. The termination letter explicitly cites the December 11 Request as the basis for Quinlan's termination for cause. The termination letter makes reference only to requests for information during the month of December, and not beginning in November, as Dominion alleges in paragraph 32 of the Defence.

C. Allegations of Negligent Misrepresentation and Fiduciary Breach

25. Quinlan denies the allegation in paragraph 34 that the budget process was flawed during his tenure at Dominion.

26. The pleadings at paragraphs 34 to 41 of the Defence appear to be respecting alleged duties owed to, and alleged representations made to, Washington, a non-party and an entity to whom Quinlan has no employment or other relationship. Quinlan owed duties as employee only to his employer, Dominion, and not to any prospective or actual shareholder of his employer.

27. Quinlan specifically denies the allegations contained in paragraphs 34 to 41. He did not negligently misrepresent material facts or breach his fiduciary duty to Dominion. Quinlan has no knowledge of the specific information relied upon by Washington in its purchase of Dominion.

28. Quinlan has no knowledge of alleged representations respecting Dominion's diamond qualities. Determining diamond quality is a highly technical practice that requires specialized expertise. The quality of Dominion's diamonds was estimated by experts reporting to each of Dominion's COO and EVP, Diamonds, and was not within Quinlan's field of expertise or his responsibilities as CFO.

29. To the best of Quinlan's knowledge, Dominion's public disclosure was accurate at the time it was made. Dominion's disclosure pursuant to National Instrument 43-101 was prepared by qualified experts, signed-off by Dominion's management and Board (including specifically by the COO), and verified by an independent technical consultant and Qualified Person within the meaning of NI 43-101.

30. Quinlan has no knowledge of alleged inaccuracies or misrepresentations in Dominion's price projections. To the best of Quinlan's knowledge, Dominion's public disclosures, and private disclosures to Washington during the course of the transaction, were accurate at the time they were made and were compiled with due care. All public disclosure was subject to multiple layers of review before being approved by Dominion's management and, as applicable, Board.

31. Quinlan denies misrepresenting, negligently or otherwise, any quality, valuation, or pricing information or projections contained within the Arrangement Agreement. In fact, Dominion made no representations about diamond price projections in the Arrangement Agreement, and reliance on diamond price projections by Washington is explicitly disclaimed in the Agreement.

32. To Quinlan's knowledge, Washington was free to conduct and did conduct extensive due diligence prior to its purchase of Dominion and was provided access to all technical and financial data related to diamond quality and prices sufficient to substantiate Dominion's diamond valuations and price projections.

D. Allegation of Gross Negligence

33. Quinlan requested particulars from Dominion regarding the allegations in paragraphs 42 and 43 of the Defence. Dominion refused to provide any particulars of the allegation that the financial controls and tax model in use during Quinlan's tenure at Dominion were "grossly inadequate." Quinlan denies the allegation of gross negligence at paragraphs 42 and 43 of the Defence to the extent possible without further particulars.

E. Damages

34. Quinlan denies the allegation in paragraph 46 that his claim for salary and benefits is precluded because he did not execute a release upon termination. Section 6.3 of the Employment Agreement states:

> In order for the Corporation to be obligated to make payment of the amounts set out in Section 6.3 (a) and (d) of this Agreement, it is a condition that the Executive shall first be required to execute the release attached to this Agreement as Schedule "C". Should the Executive refuse to sign the release, then the Corporation shall be obliged to pay only such amounts as are required by legislation.

35. Dominion purported to terminate Quinlan for cause, and therefore, s. 6.3 of the Employment Agreement was not in issue, as Dominion thereby indicated it would not be paying any amounts as required by the provision, regardless of the provision of a release. Dominion did not ask Quinlan to execute a release upon termination. Quinlan did not refuse to execute a release.

36. Should Dominion be willing or obligated to make payment of the amounts set out in s. 6.3, Quinlan will execute a release in accordance with s. 6.3.

F. Mitigation

37. Quinlan denies that he has a duty to mitigate his damages.

38. Quinlan relies on s. 5.8 of the Employment Agreement which relieves Quinlan of the duty to mitigate upon termination without cause by Dominion. The Employment Agreement was drafted by Dominion. Quinlan pleads and relies on the doctrine of *contra proferentem*. In the event that any provision of the Employment Agreement is ambiguous, including specifically s. 5.8, any ambiguities should be interpreted against Dominion.

39. In any event, the Employment Agreement specifies the amount of notice and pay in lieu thereof to be provided for a without cause termination, and does not specifically require Quinlan to mitigate his damages. At common law, Quinlan has no duty to mitigate in these circumstances.

40. In the alternative, Quinlan has taken reasonable steps to mitigate his damages and explicitly denies any allegation to the contrary.

G. No Set-off

41. Legal set-off is available only with respect to actions for payment of a debt. Quinlan's action is not for payment of a debt nor has Dominion claimed any debt owing by Quinlan. Legal-set off is not available to Dominion in the circumstances.

42. Equitable set-off is not available to Dominion as it has not counterclaimed against the plaintiff for damages. Moreover, Dominion has not pleaded any material facts necessary to support a claim against Quinlan, nor has Dominion sought damages from Quinlan.

43. In any event, the allegations made by Dominion are not clearly connected to Quinlan's Claim. Dominion's allegations of wrongdoing in their Defence constitute a distinct dispute and have nothing to do with Quinlan's entitlements under the Employment Agreement upon termination.

October 29, 2018

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MATTHEW QUINLAN
Plaintiff

-and-

DOMINION DIAMOND MINES ULC
Defendant

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

REPLY

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Court File No.: CV-18-005995790000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MATTHEW QUINLAN

Plaintiff

-and-

DOMINION DIAMOND MINES ULC

Defendant

AND BETWEEN:

DOMINION DIAMOND MINES ULC

Plaintiff by Counterclaim

THIS IS EXHIBIT "E" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 16th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia

Steven Molnar
Barrister & Solicitor

- and -

MATTHEW QUINLAN

Defendant by Counterclaim

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM

TO THE DEFENDANT TO THE COUNTERCLAIM:

A LEGAL PROCEEDING has been commenced against you by way of a counterclaim in an action in this court. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS COUNTERCLAIM, you or an Ontario lawyer acting for you must prepare a defence to counterclaim in Form 27C prescribed by the Rules of Civil Procedure, serve it on the plaintiff by counterclaim's lawyer or, where the plaintiff by counterclaim does not have a lawyer, serve it on the plaintiff by counterclaim, and file it, with proof of service, in this court, WITHIN TWENTY DAYS after this statement of defence and counterclaim is served on you.

If you are not already a party to the main action and you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

If you are not already a party to the main action, instead of serving and filing a defence to counterclaim, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your defence to counterclaim.

IF YOU FAIL TO DEFEND THIS COUNTERCLAIM, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE AMOUNT OF THE COUNTERCLAIM AGAINST YOU, and $745,192.30 for costs, within the time for serving and filing your defence to counterclaim, you may move to have the counterclaim against you dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the counterclaim and $400 for costs and have the costs assessed by the court.

Date ..... Issued by .....
Local registrar

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Lawyers for the Plaintiff

STATEMENT OF DEFENCE

1. The Defendant Dominion Diamond Mines ULC ("Dominion") admits the allegations contained in paragraphs 5 to 9, 10(a) and (d-f), 17, 20 and 21, 38, 64 and 78 of the Plaintiff's Statement of Claim.

2. Dominion denies the allegations contained in paragraphs 1, 3, 4, 10(b-c), 11 to 16, 18, 19, 22 to 37, 39 to 48, 49 to 59, 60 to 63, and 65 to 77 of the Statement of Claim.

3. Dominion has no knowledge of the allegations contained in paragraph 2 of the Statement of Claim.

4. Except as specifically and expressly admitted herein, Dominion denies all of the allegations in the Plaintiff's Statement of Claim.

THE PARTIES

5. The Defendant Dominion is incorporated in accordance with the laws of Canada. Dominion maintains its head office in Calgary, with additional offices in Toronto and Yellowknife. Dominion is Canada's largest diamond producer, operating two diamond mines in the Northwest Territories, Ekati, of which it is the majority owner and operator, and Diavik in which it maintains 40% ownership in conjunction with Rio Tinto which maintains 60% control.

6. The Plaintiff Matthew Quinlan commenced his employment with Dominion on September 2, 2016. He signed a written employment agreement (the "Employment Agreement") on that same date.

7. Pursuant to article 2.1 of the Employment Agreement, Quinlan reported directly to Dominion's Chief Executive Officer ("CEO") and was to undertake such duties as from time to time the CEO might assign, subject only to the control and direction of the company's Board of Directors.

8. At the time Quinlan commenced employment, Dominion was a publicly traded company. Its CEO was Brendan Bell.

9. On November 1, 2017, Dominion was purchased by the privately held Washington Group and de-listed from public stock exchanges. Upon acquisition by Washington Group ("Washington"), effective November 1, 2017, Patrick Evans was appointed Chief Executive Officer of Dominion effective immediately.

THE EMPLOYMENT RELATIONSHIP

10. From the date of hire until his dismissal, Quinlan acted as Chief Financial Officer ("CFO") for Dominion. Despite the significant responsibility that attached to this position, Quinlan had never served as CFO of any organization nor held any prior appointment in the finance department of any public company. He secured his CFO position at Dominion through his friendship with the (then) chairman of Dominion's Audit Committee, David Smith.

11. In addition to Quinlan's common law and contractual obligations to competently and faithfully devote his best efforts in service of the company, as CFO he owed the company fiduciary duties of care, honesty, trust and loyalty. Dominion relies specifically, but without limitation, upon article 2 and article 4.2 of the Employment Agreement.

12. In early 2017 Dominion announced Brendan Bell would be resigning as CEO. From that time until July 15, 2017 when Washington entered into an agreement for the acquisition of Dominion, Quinlan sought the CEO position for himself. Dominion's Board of Directors opposed such an appointment on the basis that Quinlan was not qualified.

13. Although Dominion was conducting a strategic review to determine the viability of its possible sale, Washington's bid for control of Dominion was uninvited. Quinlan did not wish to see the company sold to a private entity, preferring a public company. In particular, Quinlan had a preference for Quebec-based Stornoway Diamond Corporation.

14. Upon Dominion's formal acquisition by Washington on November 1, 2017, Quinlan reported directly to Patrick Evans. Out of ill feeling at being denied the CEO position and the sale to Washington, Quinlan held an animus against Patrick Evans.

Maintaining only a facade of cooperation in their relationship, Quinlan attempted to thwart Evans in his duties.

The Employment Agreement

15. Article 1.1 of the Employment Agreement stipulates cause for dismissal as follows:

> (c) "Cause" shall include, but not be limited to, the following:
>
> (i) breach by the Executive of any of the terms of the Agreement;
>
> (ii) the Executive's misconduct or gross negligence in the performance of his duties hereunder (other than resulting from the Executive's physical or mental incapacity);
>
> (iii) the Executive's conviction of, or pleas of not guilty or no contest to, any offence under the Criminal Code of Canada and/or other applicable legislation, or similar legislation in another country;
>
> (iv) the Executive's failure to follow any directive of the Chief Executive Officer of the Corporation or the Board;
>
> (v) the Executive's commission at any time of any act of fraud, embezzlement, or misappropriation against the Corporation; or
>
> (vi) breach by the Executive of any of the Corporations policies and guidelines.

16. In the event of cause for dismissal, pursuant to article 5.1 of the Employment Agreement, Dominion was entitled to dismiss Quinlan without payment of any compensation except accrued wages and benefits, and any unpaid bonus which had already been determined by Dominion's Human Resources and Compensation Committee (the "Committee").

17. The Employment Agreement contains a number of terms highly favourable to Quinlan. These include generous remuneration, bonus, LTIP and mitigation provisions. In consideration for those favourable terms, Quinlan understood and agreed a high level of performance was expected.

CAUSE FOR DISMISSAL

18. In asserting cause for dismissal, Dominion relies upon, without limitation, the following grounds specified below. Dominion also expressly relies upon the doctrine of after-acquired cause.

Core Incompetence: The 2018 Budget

19. Article 2.1 of the Employment Agreement stipulates that Quinlan, as CFO, was "to undertake such duties as may from time to time be assigned to or vested in [Quinlan] by the Chief Executive Officer" of Dominion.

20. Article 4.2 of the Employment Agreement provides, in part, as follows:

> The Executive shall devote the whole of his time, attention and ability to the business of the Corporation and shall well and faithfully serve the Corporation, using his best efforts to promote the interests of the Corporation.

21. It is noteworthy that pursuant to the Definitions provisions of the Employment Agreement, article 4.1(c) stipulates that "Corporation" shall include the Corporation and, *inter alia*, its parent companies, i.e., in this case, the Washington Group.

22. Among his primary duties as CFO for Dominion, Quinlan was responsible for preparation of the company's budget plans for approval by the company's Board of Directors. The 2018 fiscal year budget was scheduled for presentation on December 2, 2017. The most crucial component of Dominion's budget was the Ekati Mine operating plan and budget. Other key elements of the budget included marketing, exploration and General and Administrative Expenses ("SG&A").

23. While the timing of the budget process had been set prior to the Washington's acquisition of Dominion, that transaction meant that effective November 1, 2017 Evans as the new CEO would first need to review, then subsequently on December 2, 2017 present the budget to a new Board of Directors.

24. A mining industry veteran executive, Evans requested data to help him better understand Dominion's financial state. On November 2, 2017 he requested from Quinlan the company's diamond marketing costs. Even though time was of the essence and this information ought to have been readily available, despite a subsequent reminder on November 6th, Quinlan did not forward this data to Evans until November 15, 2017 without explanation for the delay.

25. In order to ensure the budget components were ready for the Board of Directors, a November 8, 2017 budget meeting was convened at which time Quinlan had overall

responsibility for the presentation to Evans and other members of the executive committee. The presentation was disastrous, projecting a USD$50 million operating loss for the Ekati Mine which, with 1,600 workers, was Dominion's centerpiece operation. Quinlan could not readily satisfy Evans' request for particulars for the main numbers to substantiate his projections. Evans informed Quinlan that his performance in this core area of responsibility was unacceptable and a new Ekati budget was required. Given the time required to prepare revisions, this aspect of the overall budget could not be presented to the Board of Directors on December 2, 2017 as planned and was postponed to January 2018.

26. At subsequent meetings on November 20 and December 1, 2017, Evans requested further details on the remaining elements of the budget prior to the Board of Directors meeting. Evans emphasized that an unsuccessful budget presentation, failing to yield Board approval by the end of January 2018, would leave the company unable to pay its employees.

27. The December 2, 2017 Board of Directors meeting was rescheduled to December 5th. Meanwhile Quinlan forwarded some data on December 2nd. However, Evans had sought "all the detailed back-up materials" and the next day, December 3rd, Evans found it necessary to explicitly describe the nature of that detail. Quinlan's failure to grasp the nature of Evans' request again displayed a level of incompetence incompatible with his CFO position at the company.

28. Unable to obtain the data he required, on December 5, 2018 Evans was compelled to postpone the Board of Directors budget meeting until January 2018 for all budget elements except the exploration budget, thus imperiling operations for the forthcoming year. Such a risk was reasonably foreseeable to a competent CFO. The exploration budget had been prepared by the head of exploration under Mr. Evans' supervision.

29. Again on December 11, 2017 Evans reiterated his directive to Quinlan to furnish details to support the budget presentation. Contrary to the implication at paragraph 37 that there was no indication of the time-sensitive nature of this request, the data concerned the 2018 budget approval and the main elements to that budget had

already been postponed once. Time was plainly of the essence and as CFO, Quinlan knew or ought reasonably to have known as much. Indeed, presumably that is why he asserts in his Statement of Claim at paras. 39-41 that he responded "within minutes", "took immediate steps to fulfill" the directive, and met with Cara Allaway, Vice-President Group Controller, and Chessa Jope, Financial Planning & Controller, the very next day.

30. Despite those assertions, Quinlan did not convey the vital information to Evans. Quinlan began his (scheduled) vacation on December 18, 2017 with the information still outstanding. In his absence, it was necessary for Evans to request the long-awaited data from Allaway.

31. Quinlan's failure to fulfill Evans' consistent request for budget information and ultimately his formal directive in relation to a core aspect of his CFO duties when time was of the essence not only contravened his obligations under articles 2.1 and 4.2 of the Employment Agreement, but they imperiled Dominion's operations. Quinlan's actions fell significantly below the standard of competence reasonably expected for a CFO.

32. While the termination letter underscored the December 11, 2017 written directive in citing cause for dismissal, it also references earlier requests for budget related information. In this regard, Dominion relies upon the preceding requests for budget information that began immediately on the heels of the unsuccessful November 8, 2017 budget presentation by Quinlan and culminated with the December 11, 2017 directive that remained unfulfilled a week later.

33. Accordingly, Dominion had cause to dismiss Quinlan on or before December 18, 2017. Nor could the budgetary process stand further delay. However, since Quinlan had just started his holiday and it was shortly before Christmas, Evans held off notification of dismissal until December 28, 2017.

Negligent Misrepresentation and Fiduciary Breach

34. As a result of the flawed budget process under the direction of Quinlan, Washington commissioned an internal audit to better understand the variances. That report was

completed on May 18, 2018. The audit concluded that the quality of diamonds being mined by Dominion had been significantly overstated in the public disclosure and in the purchase agreement and that the price projections were much lower.

35. Over the life of the mines, the value of the diamonds in the ground at Ekati and Diavik were projected materially below the value estimated by Quinlan and other senior executives and disclosed in the public records.

36. In its Arrangement Agreement for purchase of Dominion dated July 15, 2017, in order to assess the mineral reserves and resources in determining its purchase price Washington relied upon mandated disclosure by Dominion through regulatory National Instrument 43-101 ("NI 43-101").

37. Quinlan's role in the transaction made him privy to pricing and production information. The Arrangement Agreement was signed by Quinlan on behalf of Dominion. Accordingly, Quinlan knew or ought to have known the valuation of diamond production provided in the purchase agreement was materially inaccurate, as were the price projections. Quinlan also knew that Washington would rely upon this disclosure. Washington ultimately did rely to their detriment on that information.

38. Therefore in his role as CFO, his involvement in the transaction and as signatory to the Arrangement Agreement, Quinlan negligently misrepresented material facts. His actions amount to cause within the meaning of article 1.1(c) of the Employment Agreement.

39. Furthermore, Quinlan also had a duty of care as a fiduciary of Dominion and his conduct breaches that standard. Indeed, the result of Quinlan's misrepresentation constitutes grounds for potential legal action by Washington. Quinlan's actions therefore fell well below the level of care Dominion expected and undermined the company's trust.

40. Lastly, Quinlan's fiduciary duty contractually extended to Washington itself upon its acquisition of Dominion. The negligent misrepresentation to Washington made by Quinlan is inherently incompatible with that fiduciary duty making a relationship of trust untenable.

Breach of Dominion's Policies

41. Quinlan's willful or negligent misrepresentation of diamond production value in the course of the Washington transaction contravened Dominion's written policies as contained in its *Code of Ethics and Business Conduct* (the "*Code*"), and *Corporate Disclosure, Confidentiality and Employee Trading* policy ("Corporate Disclosure Policy"). These written policies formed part of Quinlan's employment contract as specified at section 4.10 of the Employment Agreement. Both policies prohibited employees from engaging in misrepresentation, concealment or dishonest communication of material information. Quinlan's breach of these policies therefore amounted to a separate ground for dismissal pursuant to article 1.1(vi) of the Employment Agreement.

42. The foregoing breaches alone or in combination amounted to cause for dismissal.

Gross Negligence

43. Following Quinlan's dismissal, it became apparent that the financial controls and tax model in use at Dominion during Quinlan's tenure were grossly inadequate.

44. As CFO, Quinlan maintained responsibility for these systems and, whether implemented before or during his term of employment, he was duty-bound to correct those systems. Quinlan's failure to take those corrective measures fell materially below the standard of competence reasonably expected for a CFO in his position and amounted to cause for dismissal.

RESPONSE TO THE PLAINTIFF'S CLAIMS FOR DAMAGES

45. Having dismissed Quinlan for cause, Dominion categorically denies all of Quinlan's allegations and claims. Given that cause for termination exists, upon dismissal Quinlan was not entitled to further compensation, bonus, incentive payment, pay under applicable employment standards legislation, or damages of any kind.

46. In the alternative, if Quinlan was dismissed without cause (which Dominion denies), the amounts claimed are excessive and remote and Dominion puts him to the strict proof of his claims.

Salary and Benefits

47. Quinlan's claim for salary and benefits is predicated upon articles 6.3(a) and (d) of the Employment Agreement. Quinlan's execution of the release appended as Schedule "C" to his Employment Agreement was precondition to entitlement to payments under those provisions. Quinlan did not execute the release. Thus the contractual requirement for such a release as condition for those payments render these provisions inapplicable or, in the alternative, unenforceable as void for vagueness.

No Annual Bonus

48. Upon termination for cause, pursuant to Employment Agreement article 5.1, Quinlan was entitled to "Vested Amounts" payable to the date of termination. Under the Employment Agreement this means accrued salary and benefits, as well as any unpaid bonus which has been determined by the Committee.

49. Quinlan received his accrued salary and benefits. Pursuant to article 3.5 of the Employment Agreement annual bonus is not integral to the compensation. No bonus for the 2017 year was awarded by the Committee to any of the senior executives at Dominion. The discretion to withhold bonus payments was exercised fairly and reasonably. Quinlan therefore has no entitlement to his annual bonus, in whole or pro-rated.

No LTIP Bonus

50. Dominion denies that the Long-Term Incentive Plan ("LTIP") bonuses provided at article 3.6 of the Employment Agreement were "cancelled" as stated at paragraph 76 of Quinlan's Statement of Claim. Indeed, upon closing of the purchase transaction by Washington on November 1, 2017, Quinlan received a total of $2,148,931.57 in accordance with the LTIP provision of the Employment Agreement.

51. Furthermore, Dominion maintains that under articles 3.6 and 6.3 of the Employment Agreement LTIP bonuses are not integral to the compensation, but are entirely at the discretion of the Committee and expressly excluded from compensation owing

upon termination. Thus any future LTIP bonus payments to senior executives have no bearing on Quinlan's claims.

52. Under the circumstances, no interim order for production or any accounting are warranted in connection with this aspect of the claim.

No Moral/Aggravated or Punitive Damages

53. Dominion therefore denies that Quinlan has or will suffer any damages for which Dominion is liable.

54. Dominion specifically denies that in terminating Quinlan's employment it acted in a manner that entitles Quinlan to moral damages, aggravated damages and/or punitive damages. Moreover, it denies that Quinlan has suffered any compensable harm as a result of any conduct in relation to his termination.

Duty to Mitigate

55. Dominion pleads that if Quinlan has suffered any damages in connection with the termination of his employment, which is denied, he was under a duty to mitigate. Article 5.8 of the Employment Agreement which purports to relieve Quinlan of the duty to mitigate is triggered only upon termination of the Employment Agreement by Quinlan and therefore inapplicable or, alternatively, is void for uncertainty and unenforceable.

56. Accordingly, any award of damages should be reduced by Quinlan's income from alternative employment and/or by reason of failure to properly discharge his duty to mitigate.

Set-Off

57. In the event Dominion owes any damages to Quinlan, it pleads legal or equitable set-off as against any damages Quinlan might owe in consequence of his misrepresentations, negligence and breach of fiduciary duty.

58. Dominion accordingly requests that this action be dismissed with costs payable to the Defendant on a substantial indemnity basis.

COUNTERCLAIM

59. The Defendant and Plaintiff by Counterclaim, Dominion, claims:

i) A declaration that Quinlan breached his fiduciary duty to Dominion;

ii) A declaration that Quinlan breached his employment contract;

iii) A declaration that Quinlan willfully, or in the alternative, recklessly or negligently, misrepresented the value of diamonds being mined by Dominion during its transaction with Washington;

iv) An accounting of all Quinlan's profits flowing out of his fiduciary breach and an order for disgorgement of those profits;

v) An award of compensatory damages for breach of fiduciary duty in the sum of $500,000.00;

vi) Punitive damages in the amount of $250,000.00;

vii) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c.C.43;

viii) Costs of this proceeding on a substantial indemnity basis, plus all applicable taxes; and

ix) Such further and other relief as this Honourable Court may deem just.

60. The Plaintiff by Counterclaim, Dominion, repeats and relies upon the allegations in the Statement of Defence in support of the Counterclaim. All defined terms in the Statement of Defence have the same meaning in this Counterclaim.

Duties Owed by Quinlan to Dominion

61. Dominion states that Quinlan, as the company's CFO, owed the company a fiduciary duty both at common law and by statute. Dominion expressly relies upon subsection 122(1) *Canada Business Corporation Act* and *British Columbia Business*

Corporations Act subsection 142(1). Both statutes mandate that corporate officers act honestly and in good faith with a view to the best interests of the company. Dominion pleads that over the course of his employment, in the manner described below, Quinlan failed in this duty.

62. Quinlan's common law and statutory fiduciary duties were heightened and reinforced by Dominion's written policies that formed part of Quinlan's employment contract. Compliance with those policies, as updated from time to time, was expressly stipulated in section 4.10 of Quinlan's written Employment Agreement. As a condition of hiring, on October 14, 2016, Quinlan signed Dominion's *DDC New Hire & Corporate Governance Acknowledgement* ("*Corporate Governance Acknowledgement*"), confirming that he understood Dominion's written policies and agreed to comply with their terms.

63. The *Corporate Governance Acknowledgement* contains five written policies that formed a part of every Dominion employment contract. These five policies included Dominion's *Code* and its *Corporate Disclosure Policy*. On January 23, 2017 Quinlan signed an updated *Corporate Governance Acknowledgement*, re-affirming that he would abide by Dominion's written policies, including the *Code* and *Corporate Disclosure Policy*.

64. *Corporate Governance Acknowledgement* section 2.7 pertaining to Dominion's *Code* required each employee to advance the interests of the company and not use his position for personal gain. Section 2.15 provided that at all times Quinlan was required to perform his work with honesty and integrity and failure to do so could expose him to, *inter alia*, substantial civil damages. Section 2.2 included the following:

> No one should take unfair advantage of anyone through manipulation, concealment, abuses of privileged information, misrepresentation of facts or any other unfair dealing practice.

65. Furthermore, the *Corporate Disclosure Policy* contained at section 3.5 of the *Corporate Governance Acknowledgement* specified that material information which would impact on an investor's assessment of Dominion's share price should not be

disclosed selectively and should be updated if it has become misleading in a material respect. "Material information" is defined to include any information that would reasonably be expected to result in a significant change to Dominion's share price or significant increases or decreases in near-term earnings prospects.

66. Dominion states that for reason of the facts outlined below, Quinlan breached all these foregoing policy provisions.

67. Finally, at all material times during his employment, Quinlan was a Chartered Professional Accountant in the Province of British Columbia. As such, his actions were governed by British Columbia's *CPA Code of Professional Conduct* or, alternatively, the comparable Code in any other applicable territorial jurisdiction within Canada. Among its provisions, section 205 of B.C.'s *CPA Code of Professional Conduct* prohibits members, even if not in public practice, from making or associating themselves with any financial statement or information they know to be false or misleading. Quinlan contravened this edict as described below.

Quinlan's Special Role in the Sale Transaction

68. Commencing in or about July 2015 it was determined by Dominion's Board of Directors that the company would be positioned for corporate sale. From the time of his hire as CFO in September 2016, Quinlan was appointed to lead the team of employees responsible for identifying potential buyers and steering this transaction.

69. When Washington came forward as a potential buyer in or about February 2017, Quinlan led the Dominion team of employees addressing due diligence issues. Integral to the due diligence process, Quinlan was entrusted with creating the business model for the transaction (the "Transaction Model") which would furnish to Washington the essential data and information concerning costs and earnings projections it required as part of its due diligence to form a proper valuation of Dominion as an acquisition property.

70. Three key variables included in that Transaction Model were diamond quality, size and production. These variables determined the value of a given diamond mine's

price projections. Diamond pricing projection is specific to particular diamond-producing zones in a mine called "pipes". Dominion's mines had several pipes.

71. While data and information concerning diamond quality, size and production for each pipe originated with other Dominion employees, it was provided to, and utilized by, Quinlan in preparing the Transaction Model.

72. Accordingly, all salient data and information obtained by Washington for purposes of evaluating diamond price projections in its acquisition of Dominion flowed through Quinlan in the form of the Transaction Model inputs he controlled and utilized. The Transaction Model was first delivered to, and accessed by, Washington along with its financial advisors, BDT & Company ("BDT"), on May 1, 2017, via an electronic Data Room.

73. Contrary to the assertion at paragraph 27 of his Reply, Quinlan well understood the specific information upon which Washington relied. This information would have been known to him through Washington's two due diligence sessions where Quinlan led the team of Dominion's representatives, it was also contained in the Transaction Model he created, and was present in the Arrangement Agreement to which he acted as Dominion's Authorized Signing Officer.

74. On July 15, 2017, Dominion and Washington entered into their Arrangement Agreement. The Material Change Report (Form 51-102F3) filed in conjunction with the Arrangement Agreement, states at section 5.1:

> To fund part of the consideration payable in connection with the Arrangement, Washington has obtained fully committed debt financing provided by Credit Suisse, Citi, UBS and Natix. The balance of the consideration will be funded with an equity commitment by Washington and cash on Dominion's balance sheet. The Company has agreed to use reasonable best efforts to provide the Purchaser in a timely manner with all cooperation reasonably requested by the Purchaser to assist it in causing the conditions in the debt financing to be satisfied or as is otherwise necessary or reasonably requested by the Purchaser in connection with the debt financing.

75. The Arrangement Agreement made several other references to Washington's debt financing, including its formal Debt Commitment Letter with outside lenders. Section

4.12 provided that Dominion was required to use reasonable best efforts to furnish Washington with all cooperation necessary to assist in fulfilling the conditions of its Debt Commitment Letter.

76. As part of its due diligence process, Washington and its financial advisors, BDT, sought information as to the business and financial condition of Dominion contained in the Transaction Model to support the valuation placed on Dominion's shares by itself, its lenders and rating agencies.

77. Throughout the transaction process, Quinlan knew that Washington would rely upon Dominion's pricing projections as an integral aspect of the valuation sought by Washington and BDT, and that information was controlled by, and flowed through him. He was bound as a fiduciary, through *Dominion's Code* incorporated as a term of his employment contract, and by the *CPA Code of Professional Conduct*, to ensure Dominion's pricing information was provided with honesty, good faith, due care and in a diligent and timely manner. Yet Quinlan willfully, or in the alternative, negligently, failed in his obligations.

Quinlan's Concealment of Vital Information

78. After the signing of the Arrangement Agreement on July 15, 2017, and before close of the transaction on November 1, 2017, Dominion's overall diamond price projections dropped approximately eight percent. The price changes varied according to individual pipe. For example, the pricing for Jay pipe dropped by 22%. Over the anticipated life of the mine, this price change projected to a decrease in sales of $410 million dollars.

79. By not later than the end of July 2017, Quinlan already knew that the pricing information in the Transaction Model was inaccurate. He was aware sometime in July 2017 that prices at the Diavik mine were cut on average 8.5% and at Ekati by an average 6.3%.

80. Pursuant to section 4.12 of the Arrangement Agreement, Dominion was required to use "reasonable best efforts" to provide timely information required by Washington in order to satisfy its outside investors and ratings agencies.

81. Sometime in or around September 2017, David Ricciardi, Manager, Corporate Planning and Financial Analysis, was conducting a preliminary economic assessment on an Ekati mine pipe called Fox Deep. He noticed that the July 2017 pricing assumptions for diamonds in this project was lower than in the Transaction Model furnished to Washington. Ricciardi asked Quinlan whether the Transaction Model pricing should therefore be updated to reflect the new numbers. Quinlan answered that there would be no update as this was not Dominion's responsibility. Quinlan stated this was a matter for Washington to ascertain independently through its due diligence process.

82. Disclosure of a change in diamond pricing from what was provided to Washington in the Transaction Model and the updated calculations prior to the close of transaction was information for which Quinlan was solely responsible in his role as CFO and leader of the transaction for Dominion.

83. On September 1, 2017, for purposes of informing debt rating agencies, James Flaherty, Principal of BDT, specifically asked Quinlan by email whether updated pricing information was available:

> "Matt, Do you guys have an updated view on pricing by pipe? As we went through the sell-side process, our diligence guided us towards the December '17 book for 2018 and then growing thereafter but don't want to be overly conservative with agencies."

84. In his emailed reply that same day, Quinlan stated there was no update and that:

> "We only update long term pricing such as this as part of our budget process that historically has wrapped up in January [2017], so between now and then I don't think we will me [sic] making an update as it will have to go through due process."

85. In view of Quinlan's knowledge concerning revised price projections in July 2017, the above statement was patently false and misleading. It comprised a serious breach of Quinlan's fiduciary duties, also breached Dominion's *Code* and *Corporate Disclosure Policy* that formed part of his Employment Agreement, and contravened the *CPA Code of Professional Conduct* to which he was bound.

86. Accordingly, Quinlan knew the pricing information supplied to Washington was inaccurate and concealed this fact not merely by willful omission, but by deliberate misstatement to BDT, thereby knowingly misleading both Washington and investors.

Concealment was Contrary to Dominion's Best Interests

87. By misrepresenting and/or actively concealing accurate price information, Quinlan acted inimically to Dominion's best interests. Quinlan breached his fiduciary duty to Dominion by selectively choosing to ignore the effects his inaccurate information would cause Washington, outside investors and ratings agencies relying upon that information, in favour of shareholders—including himself—who stood to benefit from the higher valuation placed upon Dominion.

88. Quinlan knew or ought to have known that Dominion's best interests weren't limited to its shareholders, but encompassed Dominion's long-term interests. These included its relationships with Washington and investors post-transaction, as well as its wider reputation. Dominion's *Code* specifically emphasized that the company was concerned with its reputation for fairness in all its dealings.

89. Furthermore, upon acquisition, Dominion's best interests aligned with Washington's. From November 1, 2017 onward, Dominion was vested in maintaining a cooperative, productive and profitable relationship with its parent company. Yet Quinlan knew or ought to have known that his misleading actions and statements concerning diamond pricing ensured that not only would Dominion be less profitable than Washington reasonably anticipated, but also potentially jeopardized Dominion's operations for reason that risk could not have been properly allocated.

90. Quinlan also knew or ought to have known that his inaccurate and misleading information would potentially sow mistrust and strain relations between Washington and Dominion. As parent company, Washington gained reason to doubt the integrity of employees at Dominion. Such mistrust in the newly established working relationships between the two companies was not in the best interests of Dominion.

91. Finally, as CFO leading the strategic review and due diligence teams for Dominion, as signatory to the Arrangement Agreement, and also by virtue of his professional

background as CPA and investment banker, Quinlan knew Dominion's pricing information would be relied upon not only by Washington, but by outside investors in the transaction. Quinlan therefore knew or ought to have known that the inaccurate information upon which Washington and outside investors relied would expose Dominion to potential litigation. Creating that kind of legal risk and potential liability was not in Dominion's best interests.

Quinlan's Improper Personal Gain and Personal Enrichment

92. At all material times in his employment, and particularly given his role in the transaction, Quinlan had a duty to avoid self-interest and place Dominion's best interests ahead of his own. Instead, Quinlan used his authority, influence and position to personally enrich himself at Dominion's expense.

93. By concealing data Quinlan knew would more accurately depict diamond pricing compared with that contained in the transaction model, he ensured that Washington's valuation of Dominion, and accordingly, its share price offer, would be overstated. Quinlan knew or ought to have known that updated diamond pricing projections within his knowledge prior to closing of the transaction could not only have caused a downward revision of Washington's share price offer, but might have caused cancellation of the transaction altogether.

94. Quinlan was in a conflict of interest. Prior to the close of the transaction, Quinlan accrued special incentive grants in the form of Dominion stock options, Performance Share Units ("PSUs") and Restricted Share Units ("RSUs"). The value of all three holdings was based on share price. By concealing updated diamond pricing projections, Quinlan ensured shareholders, including himself, received a higher share price offer than would occur if accurate pricing was revealed.

95. Quinlan's shares were immediately redeemed upon close of the transaction with Washington on November 1, 2017 and Quinlan received cash payment as follows:

    i) Stock options (37,296 common shares): $416,006.27;

    ii) PSUs (28,021 Performance Share Units): $832,340.87; and

    iii) RSUs (14,010 Restricted Share Units): $416,161.29.

96. Quinlan also received a transaction completion bonus in the sum of $547,500.00, less statutory deductions.

97. Therefore, as a result of the Washington transaction closure, Quinlan received a total in excess of $2.2 million.

Appropriate Remedies

98. From the foregoing facts it is evident that Quinlan profited handsomely by providing misleading information and concealing data from Washington and investors contrary to Dominion's long-term interests. In so doing, he breached his fiduciary and common law duty to act in Dominion's best interests. Therefore Dominion pleads Quinlan ought to account for and disgorge all personal profits flowing from his breach of fiduciary and common law duties as corporate officer.

99. Additionally, by contravening the *Code* and *Corporate Disclosure Policy* incorporated into his Employment Agreement, Quinlan has committed a grave contractual breach compensable in damages. Dominion expressly relies upon, without limitation, section 4 of its *Code* as implemented March 9, 2017, and the Incentive-Based Clawback Policy referenced therein:

> 4.1 Accounting The Company's books, records and accounts shall accurately, fully and fairly present all transactions and events, and shall conform to required accounting principles, applicable laws and regulations, as well as the Company's internal controls. Inaccurate, incomplete or untimely reporting will not be tolerated and can severely damage the Company and result in legal liability. **In order to maintain a culture of focused, diligent and responsible management, which discourages conduct which might expose the Company to financial, business or reputational risk, the Board has implemented an incentive-based compensation clawback policy, which allows the Company to recover incentive-based compensation in certain circumstances.**
>
> 4.2 Disclosure The Company continuously discloses important information to the public. **All disclosure must be full, fair, accurate, timely and understandable. Executive officers, principal financial officers and other employees working in various departments of the Company have a special responsibility to ensure that all of the Company's disclosures are full, fair, accurate, timely and understandable**. These employees must understand and strictly comply with securities laws and

regulations, generally accepted accounting principles applicable to the Company and all standards, laws, in addition to internal controls and procedures in place.[emphasis added]

100. Dominion's clawback policy plainly forewarned Quinlan that acts or omissions which exposed Dominion to potential financial, business or reputational risk could result in the loss of all incentive-based compensation. This would include Quinlan's redemption of common shares, RSUs and PSUs in addition to transaction completion bonus. Accordingly, in addition to any equitable remedy for breach of fiduciary duty, Dominion seeks enforcement of its contractual rights.

101. Furthermore, the harm occasioned by Quinlan's conduct warrants an equitable award of compensatory damages in the sum of $500,000.00.

102. Dominion states Quinlan's actions were egregious, cavalier and highhanded and thus a further award of punitive damages of $250,000.00 as punishment, denunciation and deterrence is warranted in these circumstances.

103. As a result of the foregoing, Dominion seeks its costs in this counterclaim on a substantial indemnity basis.

104. Dominion requests that this counterclaim be tried together with the main action.

Date: February , 2019

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Lawyers for the Plaintiff

Court File No.: CV-18-005995790000

MATTHEW QUINLAN	**DOMINION DIAMOND MINES ULC**
Plaintiff	**Defendant**

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at
Toronto, Ontario

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM

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Attention: James A. LeNoury
LSUC No.: 32944F

Phone (416) 926-1107
Fax (416) 926-1108

Lawyer for the Defendant

THIS IS EXHIBIT "F" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 16th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia

Steven Molnar
Barrister & Solicitor

DIRECTION

TO: Dominion Diamond Mines ULC

FROM: Matthew Quinlan

I, Matthew Quinlan, hereby irrevocably authorize and direct Dominion Diamond Mines ULC ("Dominion") to pay the $1,250,000 referred to in paragraph 1 of the Minutes of Settlement dated March 6, 2020, in the following manner:

1. $215,000, without witholdings or deductions, directly to Paliare Roland Rosenberg Rothstein LLP, in trust, on account of my legal costs (including HST);

2. $28,638.04, without witholdings or deductions, directly to my bank account, Account # 3117898, TD Canada Trust, Branch #95120, Institution #004, 1055 Dunsmuir Street, Vancouver, BC ("Quinlan's Bank Account"), on account of pre-judgment interest;

3. $11,000.00, without witholdings or deductions, directly to my RRSP Account at #P55049 at Burgundy Asset Management Ltd., 181 Bay Street, Suite 4510, Toronto, Ontario, Attn: Greg Dowdall;

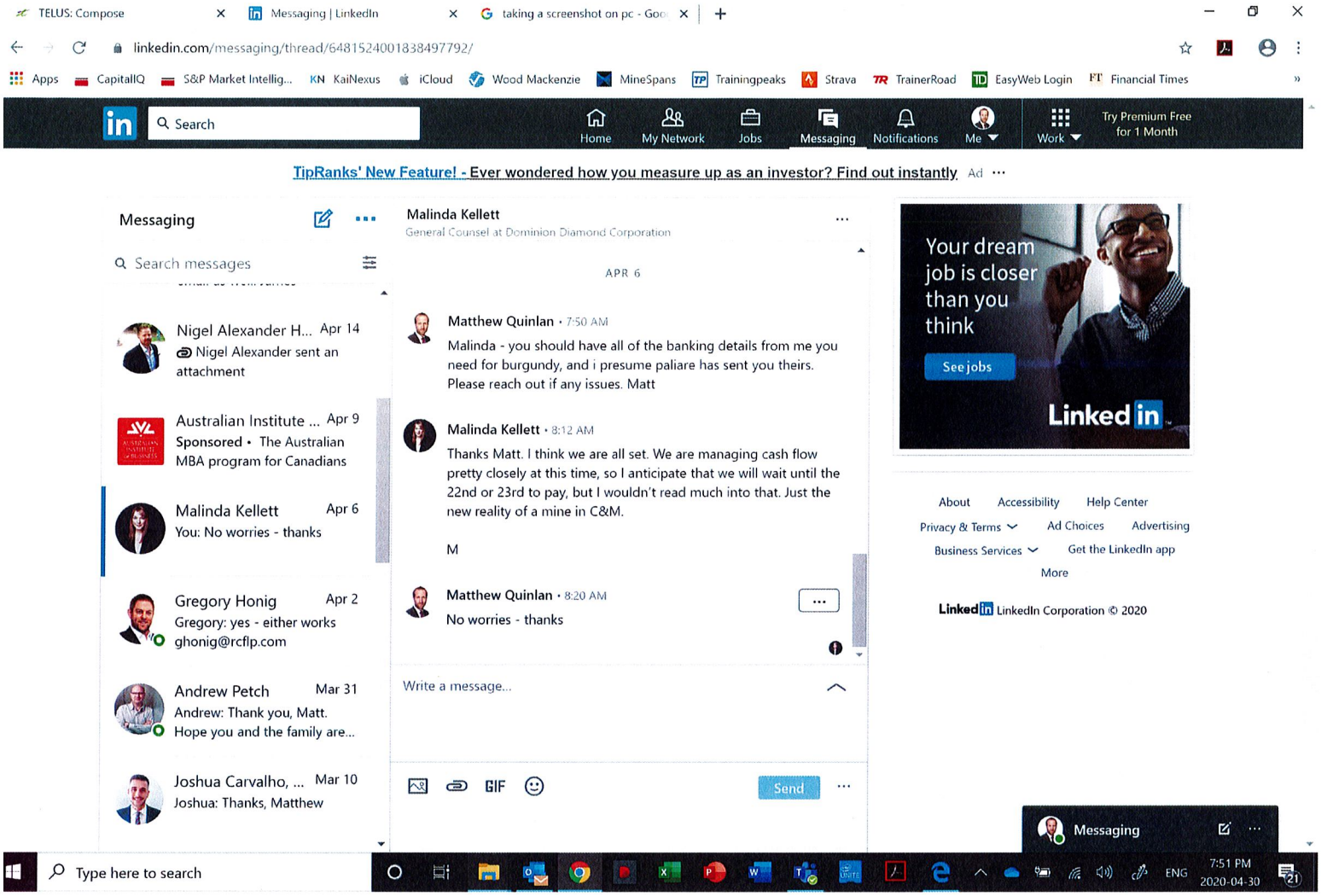
4. $250,000.00, without witholdings or deductions, directly to Quinlan's Bank Account, on account of general and aggravated damages; and

5. The balance, $745,361.96 as a retiring allowance, directly to Quinlan's Bank Account, subject to withholdings and deductions required by law.

This Direction serves as your good and sufficient authority for doing so.

Dated this 16th day of March, 2020.

Matthew Quinlan



THIS IS EXHIBIT "G" REFERRED TO IN THE AFFIDAVIT OF MATTHEW QUINLAN.

SWORN BEFORE ME THIS 11th DAY OF JUNE, 2020.

A Commissioner for Oaths in and for British Columbia

Steven Molnar
Barrister & Solicitor