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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*, RSC 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.

APPLICANTS AD HOC COMMITTEE OF BONDHOLDERS (DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP)

PARTY FILING THIS DOCUMENT AD HOC COMMITTEE OF BONDHOLDERS (DDJ CAPITAL MANAGEMENT, LLC, BARINGS LLC and BRIGADE CAPITAL MANAGEMENT, LP)

DOCUMENT **AFFIDAVIT**

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File No. 2001-05630

**AFFIDAVIT OF ANDREW PETITJEAN**  
**Sworn on October 7, 2020**

I, Andrew Petitjean, of the City of New York, in the State of New York, Senior Research Analyst of Brigade Capital Management, LP, **MAKE OATH AND SAY THAT:**

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Overview

1. I have personal knowledge of the matters and facts hereinafter deposed to, except where stated to be based on information and belief, and where so stated I believe the same to be true.
2. I am a Senior Research Analyst with Brigade Capital Management, LP ("**Brigade**"). Brigade is a New York-based investment advisor registered with the U.S. Securities and Exchange Commission.
3. Brigade holds, for its clients, more than US\$70.570 million of the approximately US\$550 million in principal amount of 7.125% secured second lien notes ("**Notes**") issued by Dominion Diamond Mines ULC ("**Dominion Diamond**" or the "**Company**"). The financing provided by the holders of the Notes (the "**Noteholders**") was used by the Company's current ownership group (the "**Shareholder**") to acquire the Company in 2017 for US\$1.2 billion.
4. To ensure that the interests of the Noteholders are properly represented, Brigade has been an active participant in the Company's proceedings under the *Companies' Creditors Arrangement Act* ("**CCAA**") through its membership on the ad hoc committee of Noteholders (the "**Committee**"). The other current members of the Committee are DDJ Capital Management, LLC ("**DDJ**") and Western Asset Management Company, LLC. Together with Barings LLC, a previous member of the Committee with whom we continue to liaise, the Committee collectively holds approximately 60% of all the Notes.
5. I swear this affidavit in support of the Committee's response to the Company's application to be heard on October 14, 2020 for approval of a transaction pursuant to an Asset Purchase Agreement between Dominion Diamond Mines ULC, Dominion Diamond Holdings LLC and Dominion Marketing Corporation, as vendors, their parent, Washington Diamond Investments LLC, and Canadian Diamond Holdings L.P., CA Canadian Diamond Mines ULC, as purchasers (the "**APA**").
6. This affidavit supplements prior affidavits filed in these proceedings by the Committee, including the affidavit of Eric Hoff of DDJ Capital Management, LLC ("**DDJ**") sworn on June 17, 2020 (the "**Hoff Affidavit**") and the affidavit of Michael Noel of Torys LLP ("**Torys**"), sworn on September 24, 2020 (the "**Noel Affidavit**") and to supplement the concurrently filed

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affidavit of Frederick Vescio of Houlihan Lokey, Inc. (“**Houlihan Lokey**”), sworn October 7, 2020 (the “**Vescio Affidavit**”).

7. The Committee vehemently opposes the application for the approval of the APA. As set out below in my affidavit in more detail, the APA is the deeply flawed product of a flawed sales process. There is no reason for the Court to approve the APA at this time, or at all:
  - (a) First, the Company’s sale process was flawed. As addressed below, the process was conducted in an economic environment that could not have been less conducive to reaching a satisfactory conclusion for the Company’s stakeholders. Also as explained below, while the Committee made a good faith effort to put forward a bid to compete with the stalking horse bid of the Company’s Shareholder, it was subject not only to extremely adverse market and industry conditions but also to obstacles not imposed on the Shareholder. Neither the Committee nor any other person whomsoever was ultimately able to submit a binding unconditional offer within the constraints imposed on them in the sales process. In any case, as represented to the Court by its proponents when the sales process was initiated, just because the sales process tested the waters does not mean that an unnecessary and deeply flawed bid that comes out of it should be approved.
  - (b) The APA transaction resulting from the flawed sale process is deeply flawed. It provides no certain value to stakeholders and the proposed cash purchase price may now amount to far less than was originally represented. The APA involves a proposed transaction dealing with only one of the Company’s two mines, it sees no recovery for the Company’s largest secured creditor group while not giving that group a vote, it provides for no deposit or other assurances that the Shareholder will honour its commitments, offers little or no information about the creditworthiness or solvency of the purchaser, and is in any event highly conditional. As conceded in the affidavit of Brendan Bell, sworn October 4, 2020 (the “**Bell Affidavit**”), the Shareholder is not actually committed to taking any of the actions the Company is hoping it will take to re-start the Ekati Mine or otherwise promote the interests of stakeholders. Importantly, as set out in the Vescio Affidavit, the financial value represented by the APA transaction is significantly below the Company’s fair value.
  - (c) The best thing that the Company seems to be able to say about the APA in its filings for the approval application is that it is the only currently available transaction, even if it is so imperfect and highly conditional so as to not be, arguably, a definitive agreement at all. In

fact, the Vescio Affidavit shows that there is no reason why the APA needs to be approved. The Company faces no urgency justifying that the Court approve the APA in light of its inadequacy. The Company has sufficient liquidity to continue until December 31, 2020 or March 31, 2021 on the basis of reasonable assumptions that also permit the Company to take definitive steps towards an early re-start of its Ekati Mine (as opposed to the uncertainties regarding that re-start by the Shareholder if the APA is approved). If the Shareholder withdraws its DIP financing for tactical or other reasons, as it has done previously in the course of these proceedings the Committee is prepared to offer replacement DIP financing on substantially similar terms as the existing DIP financing. With additional time, the parties can pursue a transaction or plan of arrangement or compromise that promotes the interests of all stakeholders and is not designed principally to benefit the Shareholder under whose stewardship the Company found its way to insolvency.

#### **The Company's Flawed Sale Process**

8. The Hoff Affidavit detailed the Committee's concerns regarding the Company's proposed sale and investment solicitation process (the "SISP") before it was approved by the Court on June 19, 2020. I adopt the evidence from the Hoff Affidavit and will not repeat all the Committee's concerns here. As discussed further below, it appears that the Committee's concerns about the SISP process were indeed well-founded.
9. As set out in more detail in the Hoff Affidavit:
  - (a) Even though the world found itself in truly extraordinary times in April 2020, with a worldwide pandemic and an unprecedented global economic shutdown that also completely shut down the international diamond sales market, the Company seemed determined from the outset to pursue a fast track sales process.
  - (b) The Committee was concerned by a quick sale because, in the experience of the Noteholders, most companies seek to avoid distressed sales in order to enhance recovery for stakeholders.
  - (c) Compounding those concerns was the Company's announcement that it was considering an insider proposal from the Shareholder. The Company disclosed that the Shareholder's proposal offered interim financing that would permit the Company to run a prompt sales

process, but only if the Company could be induced to accept the Shareholder's terms for the effective repurchase of the Company's business and assets by way of a stalking horse bid (the "**Shareholder Bid**").

- (d) Repurchase bids from existing owners are unusual but not unprecedented. It is, however, very unusual to have a restructuring process that from the outset revolves around a stalking horse bid from the existing ownership group. The Committee notes, as experienced market participants, the dangerous incentives created by a restructuring process that encourages a shareholder to take on debt obligations to make an acquisition and then seek to jettison those obligations opportunistically to repurchase the business.
  - (e) The Shareholder gains an advantage over other bidders in conducting due diligence and in further developing, negotiating and advancing its bid. Competing bids face the risk of being disqualified or ranked inferior in the sales process if they retained more conditions because they had not been afforded the same time and access.
  - (f) As such, the Committee was also concerned that the Shareholder Bid could have a deterrent effect on other potential bidders because it was an insider bid. The involvement of an insider stalking horse bid serves to chill the bidding process. To sophisticated market participants, the process appears to be stacked in favour of the insider. Other potential bidders looking from the outside in will be deterred from expending their time, resources and money when insiders with no interest in higher and better bids are driving the process.
10. The Committee's concerns about the flawed sale process (summarized above) were substantiated by their experience in that process, as described immediately below, and by the deeply flawed product of the SISP process.
11. The Committee's experience in the SISP process was set out in the September 15, 2020 letter from Torys to counsel for the Company that is Exhibit "A" to the Noel Affidavit (the "**September 15 Letter**"). The problems identified in the September 15 Letter are summarized below:
- (a) From the outset of the CCAA proceedings, the Committee members expressed serious concerns with the path the Company was taking. We questioned why a sale process needed to be initiated at all during an unprecedented worldwide pandemic and economic shutdown, the most hostile environment within which to embark on a sale process. The Company's

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revenue stream had disappeared amidst a complete shutdown of international diamond markets. Financial markets were collapsing, and capital flows had seized up. The Ekati mine was shut down, and the viability of all mining operations was questionable because of the pandemic's health risks.

- (b) In the view of the Noteholders, a better path would have been to place the Company's business and assets in cash conservation and asset preservation mode and to wait for economic conditions to improve, the path other businesses were taking. The Committee made a binding offer of debtor-in-possession ("DIP") financing to the Company so that it would not be constrained by the conditions attached to the Shareholder's financing offer. The Committee invited the Company to consider alternatives.
- (c) The Committee's efforts were unsuccessful, and it was forced into a sale process in the worst of times and over which it had little influence. As Noteholders, we turned our energies to doing what we could to make the best of an extremely difficult situation and to avert the extinguishment of our secured debt in the Shareholder's proposed default-then-repurchase transaction.
- (d) The Committee worked diligently on a proposed transaction that would preserve the Company's business and assets as a whole. The Committee introduced to the process multiple prospective debt and equity financing prospects who showed their genuine interest by executing non-disclosure agreements and spending substantial costs as they tried to work within the restrictions of the sale process playing out in the CCAA proceedings. The Committee members conducted extensive due diligence, engaged in multi-party negotiations with key business partners, and kept the Company apprised of our activities and progress. The Committee demonstrated its commitment and credibility through the expenditure of very substantial time, costs and other resources in these efforts.
- (e) Capital markets, while trending positive, remained unstable and leaned decidedly against cyclical and riskier asset classes. The diamond sales market stayed shut for most of the SISP process, until recently. This made it impossible to obtain measures of market pricing on which any debt or equity financing necessarily turns. Meanwhile, interested financing partners faced significant impediments to their ability to conduct proper due diligence. Canadian borders remained closed and did not permit site inspections by non-Canadian parties and their affiliated representatives.

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- (f) The Company's SISP process was also not fully ready at the outset. The posting of documents and information to the Company's virtual data room, by way of example, occurred on a streaming basis. A variety of important documents were not posted until the latter stages of the process. Certain information and documents were posted only after repeated requests. This hindered the conduct of our due diligence and our proposed financing partners.
- (g) Although we continued to dedicate a great amount of resources to their efforts, in the early part of August the Committee members foresaw the need for a revised timeline. We asked the Monitor to raise with the Company a request for an extension of the SISP deadlines. This request was not accommodated at first, and we reiterated it directly to the Company's representatives approximately ten days before the August 31, 2020 binding offer deadline.
- (h) What ensued were partial, ad hoc accommodations granted by the Company. On Friday, August 28, 2020, only seventy-two hours before the binding offer deadline, we were advised that our extension request had been denied but that an additional eight days were being granted to remove conditions. We complied with the August 31, 2020 submission deadline, and then proceeded to work around-the-clock through the Labour Day holiday weekend to meet the Company's September 8, 2020 deadline for removing conditions. Along the way, the Company made new requests including that, by September 8, 2020, we prepare a detailed mine re-start plan and a proposal for funding the Company's proposed autumn fuel purchases. These requirements were not previously communicated or stipulated in the SISP and tilted the playing field against the Noteholders.
- (i) On September 8, 2020, counsel for the Company was notified that we were unable to comply with the Company's requirement that the offer's conditions be removed. Consequently, we withdrew our offer. The following day, the Company proposed a further qualified extension to September 15, 2020.
- (j) The partial accommodations fell far short of what was requested and regarded as reasonable. The response created an uphill battle for the Committee. The accommodations played out in an ad hoc and qualified manner that has made it extraordinarily difficult to bring critical negotiations to a fruitful completion. The Committee was placed in the position of demanding intermittent urgency in its discussions with third parties, creating a

sub-optimal negotiating platform. The end-of-summer timing constraints were a further obstacle to submitting a bid.

- (k) Accordingly, and despite our best efforts, we were not able to meet the Company's requirements for an offer submission on September 15, 2020.
  - (l) It should not be at all surprising that the SISP process, conducted on its strict terms and in the prevailing environment, was not fruitful. This was not only predictable but, in fact, it was predicted by the Committee. It appears the only bidder was the Shareholder.
  - (m) The market conditions that we expected and had wanted the Company to wait for subsequently arrived. The diamond sales market finally re-opened and there have been highly encouraging recent sales. The Company itself was able to go to market with some of its diamond inventory. This dramatically changes the Company's liquidity situation (as discussed below in more detail) and allows for a greater range of strategic options going forward.
  - (n) There are also now market confirmations that diamond pricing is proving more resilient than expected at the outset of the SISP. Recent sales prices suggest only modest declines from pre-pandemic levels and a generally better pricing environment than most investors anticipated. At a macro level, the financing markets are clearly improving, and investors are starting to show an increased appetite for cyclical and riskier assets. In short, there are fundamental and positive changes trending to normalized conditions and reversing the extraordinarily adverse events of the last five to six months.
12. The implications of the recent developments summarized above are addressed below and support the Committee's position that there is no need for the Court to approve the APA now, or at all.
13. The Committee and other bidders faced significant barriers in the SISP process, including:
- (a) The complete shutdown of the diamond sales market and prevailing acute uncertainty did not permit anyone to make reasonable assumptions regarding future pricing and, therefore, the value of the Company's assets.
  - (b) Highly adverse capital market conditions impeded prospective debt or equity financing for any transaction.



- (c) Arrears regarding the Diavik mine created a big funding obstacle because any prospective purchaser wanting to include it in a transaction would need to fund the up-front payment of large projected “cover payments” to bring that agreement into good standing. The Company’s projections indicated upwards of U.S.\$75,000,000 of cover payments at closing.
  - (d) The Company requested that any offer provide full funding for large fuel purchases and other activities towards an early re-start of operations at the Ekati mine. As it turns out, the proposed purchaser under the APA has not made commitments in this respect (as addressed below).
  - (e) Unlike the Shareholder, all other bidders were required to post a large 10% deposit that would be forfeited if they failed to honour their commitments and to agree that they would keep their bids open for acceptance for a lengthy period of time as a “Backup Bid” even if they were not the “Successful Bid”.
  - (f) The Company required that any binding offer submitted by the Committee delete material conditions or, in the case of reclamation liabilities, that any condition be specifically restricted. This is in contrast to the Shareholder’s APA, which continues to have a broad discretionary condition regarding the entering into of agreements with sureties and the government on reclamation liabilities, among other things.
  - (g) The Company’s cash flow projections throughout the SISP process provided for no revenue whatsoever on the assumption that the diamond sales market would remain closed indefinitely. Ex post, the Company subsequently revised its cash flow projections to take into consideration substantial sales revenue, very significantly altering the financial landscape from that which would have been seen by any bidder in the SISP process.
  - (h) The SISP required any bidder to submit an offer with minimum cash consideration of US\$126,170,000, being the stipulated cash component in the APA. As noted below, the actual cash purchase price may now be very substantially less than that amount.
14. Although it may not necessarily have been harmful for the Company to have simply tested the waters during the SISP, it would now be extremely harmful for it to forge ahead with a deficient transaction on the basis that it is the only supposedly binding offer to have come out of those waters. A bad and unnecessary transaction is not somehow made good in this way, especially

when it is with a related party and is proposed in times of extreme adversity from which the Company is now beginning to emerge.

### **The APA Transaction is Deeply Flawed**

15. From the perspective of the Committee, the APA is deeply flawed. There are two principal reasons for this perspective: the uncertainty regarding the APA, including its highly conditional nature; and purchase price inadequacy. What is set out below is also reflected, in part, in the Vescio Affidavit and is substantiated by the financial analyses conducted by Houlihan Lokey and exhibited to the Vescio Affidavit.
16. First, the APA provides no certain value for stakeholders of the Company. At best, it represents a chance of a transaction (one completed on inadequate financial terms); it grants a no-cost option to the Shareholder (indeed, not only did the Shareholder not pay for the option, it negotiated a break fee for itself if the option is not exercised). The APA contains uncertainty regarding whether its proposed transaction would ever be completed on its terms. The APA is highly conditional (in the purchaser's favour) and leaves the Company and its stakeholders vulnerable to re-negotiation or the termination of the APA without recourse. From our perspective, the APA is an "indefinitive" agreement.
17. The following are among the significant problems in the APA leading to our view that it is inadequate:
  - (a) The cash purchase price is incapable of being determined with certainty because the stipulated amount is reduced dollar-for-dollar to the extent that the Company's court-approved DIP facility at closing has a balance of less than US\$55 million. Given that the Company has recently re-commenced diamond sales that have generated sufficient funds to fully repay its interim facility, the prospective cash purchase price may now be far less than originally suggested.
  - (b) The APA provides for no deposit or other discipline to ensure that the proposed purchaser honours its obligations to complete the transaction. It is unclear whether the Shareholder would suffer any consequences from its own breach or failure.
  - (c) The Company has not disclosed any information about the creditworthiness, solvency or structure of the proposed purchasing entity or entities. It is currently unknown who the

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purchaser will be and what its leverage or capital structure would be. It is therefore not possible to assess whether or for how long the purchaser could honour its commitments and avoid another insolvency.

- (d) In the Bell Affidavit, the Company argues for the desirability of re-starting operations at the Ekati mine sooner rather than later. Leaving aside whether an early re-start is feasible and appropriate, which the Company itself questions, the Bell Affidavit concedes that the proposed APA transaction imposes no obligation whatsoever on the proposed purchaser as to if and when operations at the Ekati mine will be re-started.
  - (e) The exclusion of the Diavik mine from the transaction leaves many unanswered questions regarding the fate of the Company's interests in that mine, the ability to pursue reasonable recovery from those interests, and funding for those activities.
  - (f) The APA contains numerous closing conditions in favour of the proposed purchaser. These include important conditions regarding the need to: (i) enter into undefined agreements acceptable to the proposed purchaser with both governmental authorities and surety companies on critical reclamation liabilities; (ii) pay governmental royalties in unspecified amounts that would affect recovery for other stakeholders; (iii) obtain regulatory approvals for antitrust/competition law and other matters, details of which have not been provided; and (iv) receive governmental approvals for the transfer of all leases, permits, licenses and other operating authorizations. In addition, the proposed purchaser can selectively choose which executory contracts it assumes and always retains the right to not complete the proposed transaction upon the occurrence of an event that has a "Material Adverse Effect".
18. In the view of the Committee, even if the APA was otherwise worthy of approval, the Company should first be required to satisfactorily address the foregoing deficiencies. Questions seeking clarity with respect to the foregoing uncertainty were delivered by Torys to counsel for the Company on October 5, 2020 after the Company delivered its affidavit materials in support of the APA approval application. A copy of the email to counsel for the Company is attached to my affidavit as Exhibit "A". I am advised by Andrew Gray of Torys and believe that no response has been provided. The Committee is surprised that answers to these questions were not included in the Company's affidavit materials, or in affidavit evidence delivered by the Shareholder. In view of the nature of the application, evidence as to the true nature of the APA

transaction and the actual prospects for its completion ought to have been delivered by the Company and the Shareholder to permit the stakeholders and the Court to evaluate the APA.

19. In addition to the uncertainty regarding the APA transaction, in the view of the Committee the purchase price is inadequate for two reasons set out below.
20. First, the APA stipulates a cash purchase price of US\$126,107,000 at first instance. However, as noted above, it provides for a dollar-for-dollar reduction to the extent that the Company's DIP facility has a balance of less than US\$55,000,000 at closing. Accordingly, given the Company's new liquidity prospects, the cash purchase price under the APA may be as low as US\$71,107,000. A purchase price of that amount would represent only a small fraction of the value of the purchase price for the Company in the amount of approximately US\$1,200,000,000 in 2017. That acquisition was largely funded by the Noteholders in the form of their U.S.\$550,000,000 debt investment. If approved by the Court, the APA would permit the Shareholder to refinance its acquisition debt by simply shedding the Company's obligations to the Noteholders.
21. Second, Houlihan Lokey was asked by the Committee to assess the adequacy of the proposed purchase price on the basis of conventional valuation methodologies and the conclusion is that purchase price is below fair value.
22. Houlihan Lokey prepared an analysis of the total enterprise value for the assets to be sold under the APA using net present value calculations for the Company's projected cash flow generation in the years-to-come. Discounted cash flow projections is a conventional and widely-accepted valuation methodology for businesses of this kind.
23. It is important to note that the cash flow projections used in the Houlihan Lokey analysis are the Company's own projections. Houlihan Lokey has adjusted for the fact that the APA excludes the Company's Diavik mine interests.
24. Houlihan Lokey's valuation analysis on this basis is set out in Exhibit "A" to the Vescio Affidavit. This exhibit shows that the value represented by the APA transaction is well below fair value. I note the following from that analysis:
  - (a) In its analysis, Houlihan Lokey calculated fair value using a discount rate of 10.0% (along with other illustrative discount rates). Houlihan Lokey's analysis reveals that the implied

total enterprise value of the assets to be sold under the APA using a 10.0% discount rate is US\$302 million. This is far greater than the prospective cash purchase price under the APA.

- (b) Even if a very conservative 25% discount rate is used, Houlihan Lokey's calculations reveal an implied total enterprise value for the purchased assets of US\$174 million, also well above the purchase price under the APA.

#### **The APA Transaction is not Necessary**

25. Based on its October 5, 2020 filings for the approval application, the argument the Company musters in favour of the APA transaction is that it is the only available transaction. That there are no current alternatives is attributable, to a large extent, to the flawed sale process described above. However, in addition to the APA deficiencies, from the perspective of the Committee there does not appear to be any urgency or immediate impetus to proceed with the transaction contemplated by it.
26. The Company's liquidity position and prospects have recently improved very significantly. With the re-opening of the diamond sales market, referenced above, the Company has held a successful auction of a large batch of diamond inventory and additional diamond sales are now possible.
27. At the request of the Committee, Houlihan Lokey prepared a liquidity analysis up to two future dates: (i) the end of December 2020; and (ii) the end of March 2021. This analysis is set out in Exhibit "B" to the Vescio Affidavit. In each case, the analysis uses information provided by the Company and is based on the assumptions set out in Exhibit "A" to the Vescio Affidavit.
28. The Houlihan Lokey liquidity analysis provides for funding to permit steps to be taken for the re-start of operations at the Ekati Mine, including large fuel purchases. This is a superior position to the transaction contemplated by the APA which, as stated above, contains no commitments regarding the re-start of the Ekati Mine.
29. The Houlihan Lokey liquidity analysis reveals that the Company is in a sustainable liquidity position that permits the time and opportunity to pursue better alternatives to the APA's proposed transaction if DIP financing continues to be made available to it in a maximum

amount not less than what has been available to it so far in these proceedings. There is therefore no urgency or other impetus to move forward with the APA transaction, and more assurances can be provided to stakeholders about a prompt re-start of the Ekati Mine under this scenario.

30. The liquidity conclusions of Houlihan Lokey specifically include that:
  - (a) If the restructuring process continues to the end of December 2020, the ending DIP balance would be C\$56.8 million and there would be C\$4.4 million of cash.
  - (b) If the restructuring process continues to the end of March 2021, the ending DIP balance would be C\$42.6 million and there would be C\$3.2 million of cash.
  
31. Following the completion of the SISP process, the Company has experienced materially positive changes that position it to pursue better alternatives than the transaction proposed under the APA including, among other things:
  - (a) The diamond sales market has re-opened and the Company, among others, has conducted a successful auction of a large batch of diamond inventory. The re-opening of the market permits sources of revenue and a foundation for making future pricing assumptions.
  - (b) The Company's successful diamond sale has greatly improved its liquidity position and prospects and opened up a greater range of options.
  - (c) General capital market conditions have improved steadily since the initiation of the SISP.
  - (d) I am advised by Torys and believe that the Company's Diavik Mine joint venture partner disclosed at the last court hearing that it had made a proposal to the Company that might reduce or eliminate the "cover payments" that would need to be made on closing of any alternative transaction. Although details are not currently known, any consensual or court resolution of this issue could greatly lower the bar for necessary up-front funding for a transaction that includes both the Ekati mine and the Diavik mine.
  
32. The Committee believes that prospects for an alternative sales transaction or plan of arrangement or compromise in these proceedings have very significantly improved in recent days.

33. To ensure that the Companies have the freedom to take this proper step, the Committee is prepared to offer DIP financing in sufficient amounts to fully replace the current interim funding facility and on substantially similar terms.

**Conclusion**

34. The Committee asks that the Court refuse to approve the APA transaction for the reasons set out above.

35. Due to the circumstances of the COVID-19 pandemic, I am unable to be physically present to swear in this affidavit. I, however, was linked by way of video technology to the Commissioner for Oaths (“Commissioner”) notarizing this document. The following steps have been or will be taken by the Commissioner or me:

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

36. I make this affidavit for no improper purpose.

SWORN BEFORE ME at Calgary, Alberta, )  
 this 7th day of October 2020. )  
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 Notary Public or Commissioner for Oaths in )  
 and for the Province of Alberta )

  
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 ANDREW PETITJEAN

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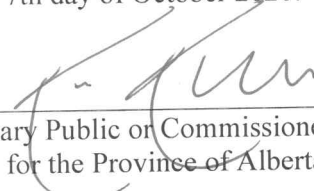
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Notary Public or Commissioner for Oaths in )  
and for the Province of Alberta )



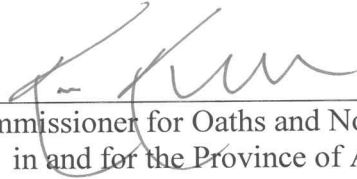
\_\_\_\_\_  
**ANDREW PETITJEAN**

**Kyle D Kashuba**  
Barrister & Solicitor

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THIS IS EXHIBIT "A"  
TO THE AFFIDAVIT OF ANDREW PETITJEAN  
SWORN BEFORE ME THIS 7<sup>th</sup> DAY OF OCTOBER, 2020



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Commissioner for Oaths and Notary Public  
in and for the Province of Alberta

**Kyle D. Kashuba**  
**Barrister & Solicitor**

Subject: Dominion Diamond Mines - Shareholder Group Bid

Date: 10/5/2020 6:59 PM

From: "DeMarinis, Tony" <tdemarinis@torys.com>

To: "Rubin, Peter" <peter.rubin@blakes.com>

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Peter,

It is important that stakeholders and the Court be well informed about all material facts regarding the shareholder group's asset purchase agreement (the "SAPA") for which the Company is requesting Court approval.

We have reviewed the Court materials you served earlier today. They lack a great amount of information that we would typically expect for a proposed transaction of this kind. Accordingly, we ask that you please make available to us, other stakeholders and the Court as promptly as possible the Company's responses to the questions below.

1. **Bidder's Ability to Consummate the Proposed Transaction.** A bidder's ability to consummate a proposed transaction is an important consideration flagged for bids in the Court-approved SISP. What written or other evidence, if any, has the bidding shareholder group (the "Bidder") provided to the Company regarding its ability to consummate its proposed transaction by November 7, 2020? Please include information regarding specific indications of sources of capital.
2. **Closing Assurances/Deposit.** Has the Bidder paid any deposit or provided any other form of financial assurance that it will honour its commitment to complete the SAPA's proposed transaction, if approved by the Court? What recourse does the Company have against the Bidder if the Bidder fails to complete the proposed transaction?
3. **Executory Contracts to be Assumed.** What specific information can the Company provide regarding contracts that will or will not be assumed by the Bidder on closing? Has Schedule "F" to the SAPA been finalized, or is a draft available? What steps will be taken to remedy monetary and non-monetary defaults under those contracts, and what consents been sought and obtained? Please provide specific information beyond the statement in Mr. Bell's affidavit served today that the Company and the Bidder are "actively involved in reviewing Dominion's contracts and engaging in discussions with contractual counterparties".
4. **Bidder's Ability to Satisfy Assumed Obligations.** What written or other evidence, if any, has the Bidder provided of its ability to satisfy the obligations or liabilities to be assumed by it on closing of the proposed transaction?
5. **Creditworthiness of Purchaser.** Has the Bidder specifically identified the legal entity or entities that will own the purchased properties under the SAPA? What information, commitments and undertakings has the Company obtained regarding the purchasing entity or entities, their capital structure, and their creditworthiness and solvency?

6. **Cash Purchase Price.** What is the projected Cash Component (as defined in the SAPA) if the closing takes place on November 7, 2020, given that the SAPA provides for an automatic reduction of the cash purchase price if the Interim Facility (as defined in the SAPA) balance falls below US\$55 million. What is the projected Interim Facility balance on November 7, 2020?
7. **Closing Cash Balance.** What is the Company's projected cash balance on November 7, 2020, including any cash held outside Canada?
8. **Use of Closing Funds.** What are the projected cash receipts and uses on closing of the SAPA transaction? Has the Company prepared a closing funds flow spreadsheet? Can details be provided?
9. **Ekati Mine Re-Start.** Mr. Bell's affidavit states that "a restart of the Ekati Mine will be at the discretion of the Bidder (paragraph 47). Has the Bidder made any commitments at all regarding the Ekati Mine's re-start and, if yes, what are the details?"
10. **Diesel Fuel Purchase.** Mr. Bell's affidavit states that the Bidder "has not committed to the purchase of fuel pending closing of the transactions contemplated by the APA" (paragraph 44). What reasons, if any, has the Bidder given for refusing funding for this purpose? Has the Bidder given any commitments regarding fuel purchases if and when its proposed transaction is completed?
11. **Construction Liens.** What liens have been filed against the Company's properties in respect of services provided to the Company, and how does the Company intend to deal with all such liens under the proposed SAPA transaction?
12. **Diavik Mine.** What is the Company's specific plan for dealing with, and realizing on, its interests in the Diavik Mine not included in the SAPA's proposed transaction? How does the Company intend to fund all such activities following any SAPA transaction?
13. **Employees.** Has the Company retained all employees it had at the commencement of its insolvency proceedings or have certain employees been terminated? Was the Bidder involved in the decision to terminate any such employees? If yes, please provide details. Has the Bidder committed to retaining all other employees not yet terminated?
14. **Financing Condition.** Please confirm that the Bidder has unconditionally waived its financing condition in section 8.13 of the SAPA. Has the Bidder received binding financing commitments in relation to its proposed transaction and, if yes, what are the details? If it has not received financing commitments, what information has the Bidder provided to the Company regarding its capital sources?
15. **Government Royalties.** What royalties have accrued to governmental authorities, including those contemplated by section 6.18 of the SAPA? What arrangements are proposed for their payment under the SAPA's proposed transaction?
16. **Antitrust/Competition, etc. Approvals.** What approvals will be needed under all applicable antitrust, competition and other laws (including the Investment Canada Act) for the proposed SAPA transaction? Has the condition in section 8.2 of the SAPA been satisfied or waived and, if not, what specific timing and activities are contemplated in this respect?
17. **Material Adverse Effect.** Has the Bidder waived or confirmed satisfaction of the "No Material Adverse Effect" clause in section 8.6 of the SAPA? What assurances does the Company have that the Bidder will be unable to rely on this condition to terminate the SAPA?

18. **Surety/Government Condition.** Have there been any discussions with Government representatives regarding reclamation liabilities for the Ekati Mine or, as suggested in Mr. Bell's affidavit (paragraph 81), have those discussions been deferred indefinitely? If there have been communications, please provide details. What assurances does the Company have that negotiations with sureties referred to in paragraph 81 of Mr. Bell's affidavit will result in agreements satisfactory to the Bidder at its "sole discretion", as required by section 8.9 of the SAPA?
19. **Government Authorizations.** What assurances does the Company have that necessary approvals and requirements for the transfer of material authorizations, as required by section 8.8 of the SAPA, will be received on or before November 7, 2020? Can the Company provide information other than the statement in Mr. Bell's affidavit that this matter "requires significant ongoing coordination"?
20. **Alternate Transactions.** What steps is the Company continuing to take to consider alternate transactions to that contemplated by the SAPA, as contemplated generally by the law applicable to directors' duties and section 11.4 of the SAPA?

Thank you.

Tony DeMarinis

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**TORYS**  
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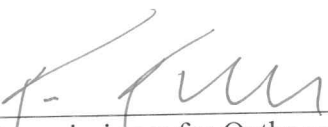
## APPENDIX A

### Certificate of Commissioning by Videoconference

I, Kyle Kashuba, Commissioner of Oaths in and for the Province of Alberta, took the Affidavit of Andrew Petitjean via videoconference on October 7, 2020 (the "Affidavit").

The affiant and I followed the process outlined by the Alberta Court of Queen's Bench in Notice to the Profession and Public #2020-02 dated March 25, 2020. In addition to the steps described in the Affidavit, I compared each page of the copy I received from the affiant with the initialed copy that was before me while I was linked by videoconference with the affiant. Upon being satisfied that the two copies were identical, I affixed my name to the jurat.

On March 17, 2020, the Government of Alberta declared a state of public health emergency pursuant to the Alberta *Public Health Act* in response to the COVID-19 pandemic. The Government of Alberta also strongly recommends that all individuals stay home and avoid contact with others whenever possible. Therefore, I am satisfied that this process was necessary because it was unsafe for the deponent and I to be physically present together.

  
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Commissioner for Oaths and Notary  
Public in and for the Province of Alberta

**Kyle D. Kashuba**  
**Barrister & Solicitor**