

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

Clerk's Stamp

APPLICANTS 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

APPLICATION

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT
McCarthy Tétrault LLP
4000, 421 – 7th Avenue SW
Calgary, AB T2P 4K9
Attention: Sean Collins / Walker W. MacLeod

Tel: 403-260-3531 / 3710
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Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca

NOTICE TO THE RESPONDENTS

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: October 30, 2020
Time: 10:00 am
Where: Calgary Courts Centre
Before Whom: The Honourable Justice K.M. Eidsvik

Go to the end of this document to see what you can do and when you must do it.

Remedy claimed or sought: Diavik Diamond Mines (2012) Inc. ("**DDMI**") applies for two orders, substantially in the forms attached as Schedule "**A**" and Schedule "**B**" hereto:

1. Declaring that this application (the "**Application**") is properly returnable on October 30, 2020, and that service of: (i) this Application; and, (ii) the Affidavit #4 of Thomas Croese, sworn

on October 19, 2020 (the “**Fourth Croese Affidavit**”), are validated and declared to be good and sufficient, that service of this Application and the Fourth Croese Affidavit on the persons listed on the service list created and maintained in the within proceedings (the “**CCAA Proceedings**”), is validated, good, and sufficient, and that no persons, other than those on such service list, are entitled to service of the Application or the Fourth Croese Affidavit.

2. Approving the process (the “**Realization Process**”) for realization upon Dominion Diamond ULC’s (“**Dominion**”) share of production from the Diavik Mine (the “**DDMI Collateral**”) and authorizing and empowering DDMI to take the steps and actions necessary to implement the Realization Process.

3. Continuing the suspension ordered by this Court on September 25, 2020 of the operation of paragraph 16 of the Second Amended and Restated Initial Order (the “**SARIO**”) with respect to the requirement implicit in the SARIO requiring DDMI to deliver DDMI Collateral to Dominion to the extent the DICAN Canada valuation exceeds the amount outstanding for Cover Payments.

4. Sealing the exhibits attached as Confidential Exhibit “1”, Confidential Exhibit “2” and Confidential Exhibit “3” (collectively, the “**Confidential Exhibits**”) to the Fourth Croese Affidavit, on the Court file, until further Order of this Honourable Court.

5. Such further and other relief as DDMI may seek, and this Honourable Court may allow.

Grounds for making this application: The grounds for making this application are as follows:

Background to the Application

6. DDMI and Dominion are successors in interest (in this capacity, each a “**Participant**”) to the Diavik Joint Venture Agreement, dated March 23, 1995, between DDMI (as successor to Kennecott Canada ULC) and Dominion (as successor to Aber Resources Limited), as subsequently amended from time to time (collectively and including all amendments thereto referred to as, the “**JVA**”).

7. Pursuant to the JVA, DDMI holds a sixty percent (60%) interest in, and Dominion holds a forty percent (40%) interest in, a mine site and various surrounding exploration properties (collectively, the “**Diavik Mine**”) located approximately 300 kilometers northeast of Yellowknife, Northwest Territories. Specifically, pursuant to Section 3.1 of the JVA, DDMI and Dominion agreed to associate in a joint venture with respect to the Diavik Mine (the “**Joint Venture**”).

8. DDMI is the manager of the Diavik Mine and is responsible for all day to day Operations (as defined in the JVA).

9. Pursuant to the JVA, each Participant is required to make certain contributions in respect of its proportionate share of all costs (the “**Costs**”). In its capacity as manager, DDMI is responsible for the payment of 100% of all Costs, as part of its operation of the Diavik Mine. DDMI typically remits full payment to all vendors on behalf of the Joint Venture and then collects Dominion’s 40% share of such Costs through bi-weekly invoices issued to Dominion in accordance with the JVA (the “**Cash Calls**”).

10. Pursuant to Section 9.4(a) of the JVA, in the event that either Participant defaults in its obligation to pay a contribution or Cash Call, the non-defaulting Participant is permitted (but not obligated) to elect to make such contribution or meet such cash call on behalf of the defaulting Participant (each such payment is referred to as, a “**Cover Payment**”).

11. Pursuant to Section 9.4(b) of the JVA, the amount of any such Cover Payment shall: (i) constitute indebtedness due from the defaulting Participant to the non-defaulting Participant; and, (ii) be secured by, a mortgage of and security interest in such Participant’s right, title and interest in, to and under, whenever acquired or arising, its Participating Interest and the Assets (each as defined in the JVA) (collectively, the “**Security**”).

Realization to Satisfy Cover Payment Indebtedness

12. As of October 19, 2020, Dominion is indebted to DDMI for Cover Payment obligations in the amount of \$119.52 million CAD, plus interest (presently estimated to be in the amount of \$2.37 million CAD) and legal fees, costs and expenses.

13. Dominion has implemented and completed the SISP Procedures (as defined in the SARIO). The SISP Procedures have concluded and there is no offer or transaction in respect of Dominion’s interest in the Diavik Mine. Dominion has not repaid the Cover Payments or any portion thereof and has no intention of doing so. There is no reasonable prospect that Dominion will be able to repay the Cover Payments. It would be unjust and inequitable to not permit DDMI to recover the amounts owing to it on account of the Cover Payments.

14. DDMI has designed the Realization Process, taking current market conditions into account, including its experience in selling DDMI’s share of Diavik Mine production, to optimize recovery on the DDMI Collateral in a fair and transparent manner for the benefit of Dominion and

its stakeholders. The Realization Process will follow standard processes and procedures for diamond sales, including accessing and utilizing international marketing networks and DDMI's diamond team will handle the DDMI Collateral in the same way it handles its own 60% share. DDMI, by and through its parent, Rio Tinto plc, has an extensive network and has capabilities to undertake the realization of the DDMI Collateral.

DICAN Valuation

15. All diamonds produced by the Diavik Mine are evaluated by, Diamonds International Canada Limited (“**DICAN**”) which is a joint venture between the Aboriginal Diamonds Group Ltd. and WWW Internal Diamond Consultants Limited (“**WWW International**”). DICAN provides independent resource evaluation and diamond valuation services to both the government of Ontario and the government of the Northwest Territories (“**GNWT**”). On a monthly basis, DICAN values production from the Diavik Mine which is subsequently used to compare assessed value to royalties, which royalties are then paid on the final sales prices (the “**DICAN Gross Valuation**”).

16. Pursuant to paragraph 16 of the SARIO, DDMI, in its capacity as manager under the JVA, is currently authorized to hold only a portion of the DDMI Collateral, equal to the total value of the Cover Payments made by DDMI, at the production splitting facility in Yellowknife, Northwest Territories (the “**PSF**”), which value is determined based on the DICAN Gross Valuation. DDMI seeks a continuation of the suspension of the operation of this provisions of the SARIO due to concern that the DICAN Gross Valuation does not represent the true realizable value of the DDMI Collateral. Specifically:

- (a) restricting DDMI to holding collateral equal to an appraisal of its value (whether it be based on DICAN or alternative metrics) places DDMI at risk of loss. DDMI should not be placed in a position because, subject to the CCAA priority charges, it has the senior security position on the DDMI Collateral;
- (b) the DICAN Gross Valuation does not equate to the realizable value of the DDMI Collateral. The DICAN Gross Valuation provides a gross value of the product that does not account for sale, marketing, royalty and other fees and expenses that will be incurred as part of realization on the DDMI Collateral;

- (c) the DICAN Gross Valuation does not account for the unprecedented market uncertainty that has been caused by the COVID-19 pandemic, including substantial decreases in sales and inventory build-up;
- (d) in recent years, DICAN has consistently overvalued DDMI's share of Diavik diamonds compared to the actual realised price achieved on sales to third parties.

Sealing

17. The Confidential Exhibits to the Fourth Croese Affidavit contains third-party analysis and information which is confidential and commercially sensitive. Confidential Exhibit "2" and Confidential Exhibit "3" were also provided to DDMI with an expectation that confidentiality would be maintained over them. Disclosure of the market report would cause: (i) serious and irreparable harm to the commercial interests of all of the Participants and their stakeholders due to the potential disclosure of financial and sensitive asset valuation information; and, (ii) reputational harm to WWW International which provides such market analysis on a strictly confidential basis. The sealing provision that DDMI seeks as part of the Application are fair and reasonable method of addressing the serious and irreparable harm that would result if the Confidential Exhibits were publicly disseminated.

18. Such further and other relief as counsel for Dominion may advise and this Honourable Court may permit.

Material or evidence to be relied upon:

19. DDMI intends to rely upon the following materials:

- (a) the Affidavit of Kristal Kaye, sworn on April 21, 2020, filed;
- (b) the Affidavit of Kristal Kaye, sworn on September 18, 2020, filed;
- (c) the Affidavit of Frederick Vescio, sworn on October 7, 2020, filed;
- (d) the Affidavit of Thomas Croese, sworn on April 30, 2020, filed;
- (e) the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, filed;
- (f) the Affidavit #2 of Thomas Croese, sworn on May 28, 2020, filed;

- (g) the Affidavit #3 of Thomas Croese, sworn on June 16, 2020, filed;
- (h) the Affidavit #4 of Thomas Croese, sworn on October 19, 2020, filed;
- (i) the Confidential Exhibits to the Affidavit #4 of Thomas Croese, sworn on October 19, 2020, unfiled;
- (j) the Sixth Report of the Monitor, filed; and,
- (k) such further and other material or evidence as counsel to DDMI may advise and this Honourable Court may permit.

Applicable Rules:

- 20. Rule 6.3, 6.9, 6.28, and 11.27 of the Alberta Rules Of Court, Alta. Reg. 124/2010; and,
- 21. Such further and other Rules as counsel to DDMI may advise.

Applicable Acts and Regulations:

- 22. *Companies' Creditors Arrangements Act*, R.S.C. 1985, c. C-36; and,
- 23. Such further and other Acts and regulations as counsel to DDMI may advise.

Any irregularity complained of or objection relied on:

- 24. None.

How the application is proposed to be heard or considered:

- 25. DDMI proposes that the Application be heard in person or via Webex, with one, some or, all of the parties present.

WARNING

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.

**SCHEDULE "A" TO THE APPLICATION
ORDER (REALIZATION PROCESS)**

Clerk's Stamp

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

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

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 **ORDER (Realization Process)**

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

DATE ON WHICH ORDER WAS PRONOUNCED: **October 30, 2020**

NAME OF JUDGE WHO MADE THIS ORDER: **Justice K.M. Eidsvik**

LOCATION OF HEARING: **Calgary, Alberta**

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** having read the Affidavit of Kristal Kaye, sworn on April 21, 2020, the Affidavit of Kristal Kaye, sworn on September 18, 2020, the Affidavit of Frederick Vescio, sworn on October 7, 2020, the Affidavit of Thomas Croese, sworn on April 30, 2020, the Supplemental Affidavit of Thomas Croese, sworn on May 7, 2020, the Affidavit #2 of Thomas Croese, sworn on May 28, 2020, the Affidavit #3 of Thomas Croese, sworn on June 16, 2020, the Affidavit #4 of Thomas Croese, sworn on October 19, 2020 (the "**Fourth Croese Affidavit**"), the Sixth Report of the

Monitor, dated September 22, 2020, and the Bench Brief of DDMI, all filed; **AND UPON** having read Confidential Exhibits “1”, “2”, and “3” to the Fourth Croese Affidavit, unfilled; **AND UPON** having read the Affidavit of Service of Katie Doran (the “**Service Affidavit**”), to be filed; **AND UPON** hearing counsel for DDMI and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

SERVICE

1. The time for service of the Application and the Fourth Croese Affidavit is abridged, the Application is properly returnable today, service of the Application and the Fourth Croese Affidavit on the service list created and maintained as part of the within proceedings and as set out as Exhibit “A” to the Service Affidavit (the “**Service List**”), in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the Service List, are entitled to service of the Application or the Fourth Croese Affidavit.
2. The realization process in the form attached as Schedule “**A**” hereto (the “**Realization Process**”) be and is hereby approved. DDMI is authorized and empowered to implement the Realization Process and take all steps and actions necessary to implement the Realization Process.
3. The order issued by this Honourable Court on September 25, 2020 (the “**September 25 Order**”) that partially suspended the operation of paragraph 16 of the Second Amended and Restated Initial Order, granted on June 19, 2020 be and is hereby continued on the terms set forth in the September 25 Order.
4. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

J.C.C.Q.B.A.

**SCHEDULE "A" TO THE ORDER (REALIZATION BY DDMI OF SECURITY)
REALIZATION PROCESS**

**SCHEDULE "B" TO THE APPLICATION
ORDER (SEALING)**

Clerk's Stamp

COURT FILE NUMBER	2001-05630
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
APPLICANTS	IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED 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	ORDER (Sealing)
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	McCarthy Tétrault LLP 4000, 421 – 7 th Avenue SW Calgary, AB T2P 4K9 Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis Tel: 403-260-3531 / 3710 / 3536 Fax: 403-260-3501 Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

DATE ON WHICH ORDER WAS PRONOUNCED: **October 30, 2020**

NAME OF JUDGE WHO MADE THIS ORDER: **Justice K.M. Eidsvik**

LOCATION OF HEARING: **Calgary, Alberta**

UPON the application (the "**Application**") of Diavik Diamond Mines (2012) Inc. ("**DDMI**"); **AND UPON** having read the Affidavit #4 of Thomas Croese, sworn on October 19, 2020 (the "**Fourth Croese Affidavit**"), filed; **AND UPON** having read Confidential Exhibits "1", "2", and "3" to the Fourth Croese Affidavit (the "**Confidential Exhibits**"), unfiled; **AND UPON** having read the Affidavit of Service of Katie Doran (the "**Service Affidavit**"), to be filed; **AND UPON** hearing counsel for DDMI and any other counsel present;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the Application and the Fourth Croese Affidavit is abridged, the Application is properly returnable today, service of the Application and the Fourth Croese Affidavit on the service list, in the manner described in the Service Affidavit, is good and sufficient, and no other persons, other than those listed on the service list (the "**Service List**"), are entitled to service of the Application or the Fourth Croese Affidavit.

2. Part 6, Division 4 of the *Alberta Rules of Court* does not apply to the Application and the Clerk of the Court is hereby directed to seal the Confidential Exhibits, on the Court file, until further Order of this Honourable Court. The Confidential Exhibits shall be sealed and filed in an envelope containing the following endorsement thereon:

THIS ENVELOPE CONTAINS CONFIDENTIAL EXHIBITS "1", "2", AND "3" TO THE AFFIDAVIT #4 OF THOMAS CROESE, SWORN ON OCTOBER 19, 2020. THE CONFIDENTIAL EXHIBITS "1", "2", AND "3" TO THE AFFIDAVIT #4 OF THOMAS CROESE, SWORN ON OCTOBER 19, 2020 IS SEALED PURSUANT TO AN ORDER ISSUED BY THE HONOURABLE JUSTICE K.M. EIDSVIK, DATED OCTOBER 30, 2020, AND IS NOT TO BE PLACED ON THE PUBLIC RECORD OR MADE PUBLICALLY ACCESSIBLE UNTIL FURTHER ORDER OF THIS HONOURABLE COURT.

3. Any person may apply, on reasonable notice to the Applicants, DDMI and any other persons likely to be affected, to vary or amend the terms of paragraph 1 of this Order.

4. The Confidential Exhibits are to also be uploaded to the online filesite established by the Monitor (the "**CaseLines Filesite**") in a case file that may only be accessed by the presiding Justices of the Court of Queen's Bench and the parties who are authorized to access materials filed under and pursuant to sealing orders in these proceedings.

5. Service of this Order shall be deemed good and sufficient by serving the same in accordance with the procedures in the CaseLines Service Order granted May 29, 2020 in these proceedings.

J.C.C.Q.B.A.