

COURT FILE NUMBER 2001-05630

COURT COURT OF QUEEN'S BENCH OF ALBERTA IN BANKRUPTCY AND INSOLVENCY

1202357

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, DOMINION FINCO INC. and DOMINION DIAMOND MARKETING CORPORATION

DOCUMENT **AFFIDAVIT**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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AFFIDAVIT OF KRISTAL KAYE

Sworn on October 30, 2020

I, Kristal Kaye of Calgary, Alberta, SWEAR AND SAY THAT:

1. I am the Chief Financial Officer of Dominion Diamond Mines ULC ("**Dominion Diamond**"), Dominion Diamond Canada ULC ("**Dominion Canada**"), and Dominion Diamond Delaware Company, LLC ("**Dominion Delaware**"), three of the applicants in these proceedings , a director of Dominion Canada and Dominion Diamond Marketing Corporation ("**Dominion Marketing**"), and I also hold other director and officer positions with certain other non-CCAA applicant entities affiliated with Dominion Diamond. As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. I make this affidavit in reply to three points raised by the affidavit of Thomas Croese sworn on October 29, 2020 (the "**Second October Croese Affidavit**").

3. Capitalized terms not defined in this affidavit shall have the meaning given to them in my affidavit of October 28, 2020 (my "**First October Affidavit**").

Approved JV Budget

4. Mr. Croese's evidence in paragraphs 4 and 5 of the Second October Croese Affidavit with respect to the 2020 Approved JV Budget for the Diavik Mine is incorrect. The evidence in paragraph 10 my First October Affidavit is correct.

5. Mr. Croese's analysis in the Second October Croese Affidavit is not based off of the projected Cash Calls in the Approved JV Budget that I approved at a Diavik JV committee meeting in November 2019. At this meeting I approved a budget based on a draft Approved JV Budget (the "**November 2019 JVA Budget**") sent to me by Mr. Croese on October 30, 2019. The figures contained in this November 2019 JVA Budget are the correct ones to use when considering whether or not DDMI has made Cash Calls that are over budget in 2020.

6. The November 2019 JVA Budget included a line item for "Contributions, Dominion Diamond Mines" in a total amount of \$274.4 million USD. This was DDMI's projection for the total Cash Calls to be made of Dominion in 2020.

7. However, this amount of \$274.4 million included Dominion's 40% share of certain "Closure Securitization" costs, for which DDMI had budgeted a total amount of \$166 million USD (meaning a cost of \$66.4 million to Dominion Diamond).

8. At the time that the November 2019 JVA Budget was provided to Dominion on October 30, DDMI and Dominion were negotiating a security agreement (the "**Closure Security**

Agreement") whereby Dominion would provide DDMI with a letter of credit to secure Dominion's obligation for these Closure Securitization costs. Mr. Croese noted as follows when he sent the Approved JV Budget to me on October 30: "Please also note that the closure securitisation cash calls have been included, but will be removed subject to finalisation of the security agreement."

9. Dominion and DDMI finalized the terms of the Closure Security Agreement in December 2019 and Dominion provided DDMI with a letter of credit to secure DDMI for its share of the Closure Securitization costs. This meant that these Closure Securitization costs would not be included in the Cash Calls made of Dominion by DDMI in 2020. DDMI subsequently acknowledged to Dominion in writing that Dominion's cash obligations to DDMI would not include these Closure Securitization costs, pursuant to the terms of the Closure Security Agreement.

10. Therefore, the correct value for the total Dominion 2020 Cash Calls pursuant to the Approved JV Budget is \$274.4 million USD less \$66.4 million USD, for a total of \$208 million USD. This is the figure I used as the Approved JV Budget amount for Dominion's 2020 Cash Calls in my analysis in my First October Affidavit. When the Closure Securitization costs are removed, this is the budgeted Cash Call amount that DDMI received Dominion's approval of in November 2019.

11. I believe that the figures that Mr. Croese uses in the Second October Croese Affidavit to assert that the 2020 Approved JV Budget for Dominion's Cash Calls was actually an amount of \$230.6 million USD (as opposed to the figure \$208 million USD I used) are from a subsequent projection that DDMI provided to Dominion in April 2020 (the "**9Q3 Forecast**"). In this 9Q3 Forecast, DDMI unilaterally added "Cash Reclamation" obligations to the 2020 forecast in an amount of approximately \$56 million USD, for which Dominion's 40% share would be approximately \$22.4 million.

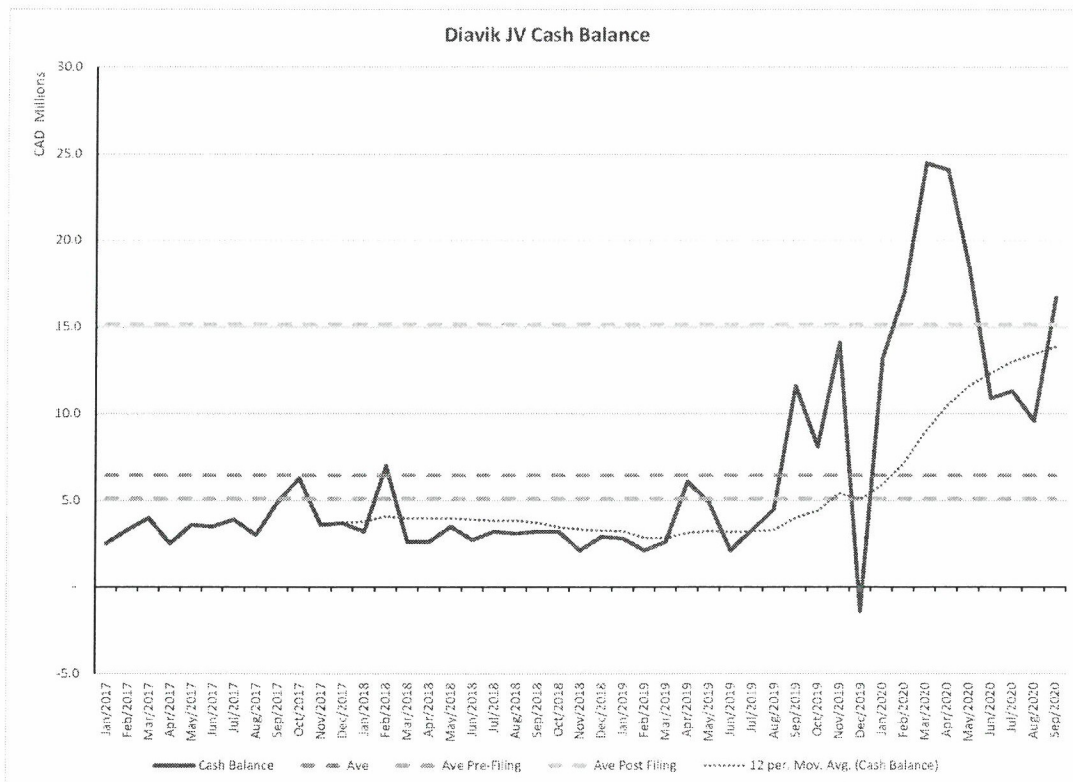
12. While I am cannot be certain as to how Mr. Croese arrived at the numbers in the Second October Croese Affidavit, the addition by DDMI of these Cash Reclamation costs in the 9Q3 Forecast approximately accounts for the discrepancy in the value that I used to determine what the Approved JV Budget for Dominion's Cash Calls was for 2020 in my First October Affidavit versus the figure Mr. Croese uses in the Second October Croese Affidavit. However, this is not the amount provided for in the November 2019 JVA Budget that Dominion approved, which is of

course the correct figure to use when evaluating to what degree DDMI has been over budget in its Cash Calls.

13. That is to say, the evidence in my First October Affidavit that DDMI's Cash Calls since April 22, 2020 are over the Approved JV Budget by approximately \$13.3 million USD or 18.9% is accurate.

JV Cash Account

14. Mr. Croese is incorrect when he states in the Second October Affidavit that the increase in the month-end balances in the JV Cash Account was largely caused by Dominion's request to change the monthly payment date for Cash Calls in April 2020. The increase in the month-end balance in the JV Cash Account began as early as September 2019. This is demonstrated by the below graph showing the month-end balances in the JV Cash Account:



CEWS Benefit

15. With respect to the CEWS benefit, which DDMI has not applied for, I reiterate the statement made in my First October Affidavit that I believe this could be a significant benefit to DDMI and Dominion. I say this in part because Dominion has received an amount of approximately \$6.2 million CAD from the CEWS benefit between March 15, 2020 and September 26, 2020, while operating in care and maintenance with reduced staff.

16. I also note that on April 9, 2020, Mr. Croese wrote to me and stated that DDMI was "currently pursuing opportunities to further reduce cash requirements, such as the Canadian Wage Subsidy". However, DDMI has still failed to apply for this subsidy and reduce its Cash Calls by the correlating amount.

SWORN BEFORE ME at Calgary, Alberta,)
this 30th day of October, 2020.)



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

Morgan Crilly
Barrister & Solicitor



KRISTAL KAYE)