

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.

JS  
June 19, 2020  
Justice Eidsvik

DOCUMENT AFFIDAVIT #3 OF THOMAS CROESE

ADDRESS FOR SERVICE  
AND CONTACT  
INFORMATION OF PARTY  
FILING THIS DOCUMENT

McCarthy Tétrault LLP  
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**AFFIDAVIT #3 OF THOMAS CROESE**  
**Sworn on June 16, 2020**

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("DDMI"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.
2. Dominion Diamond Mines ULC ("Dominion") and DDMI are successors in interest (in this capacity, each a "Participant") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "JVA").

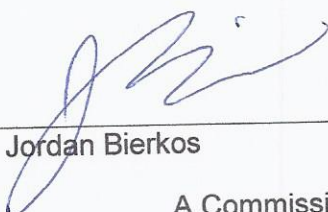
**CERTIFICATE**

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

I, Jordan Bierkos, of the City of Calgary, in the Province of Alberta, Barrister and Solicitor,  
**DO CERTIFY** that:

1. I remotely commissioned the affidavit of Thomas Croese dated June 16, 2020, attached hereto, using videoconferencing software in accordance with the procedure set out in the Court of Queen's Bench of Alberta Notice to the Profession and Public NPP#2020-02 regarding Remote Commissioning of Affidavits for Use in Civil and Family Proceedings During The COVID-19 Pandemic.
2. The remote commissioning process was necessary because it was impossible or unsafe, for medical reasons, for the deponent and I to be physically present together.

**IN TESTIMONY WHEREOF** I have hereunto subscribed my name and affixed my seal of office at the City of Calgary, in the Province of Alberta, this 16 day of June, 2020.

  
\_\_\_\_\_  
Jordan Bierkos

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

A copy of the JVA is attached to my affidavit sworn on April 30, 2020 ("April 30 Affidavit").

3. In swearing this affidavit (the "Croese Affidavit #3"), I have reviewed the JVA; the affidavits of Kristal Kaye sworn in the within proceedings on April 21, May 6, and May 13, 2020 (collectively, the "Kaye Affidavits"); the reports of the court-appointed Monitor, FTI Consulting Canada Inc. ("FTI"), and any supplements thereto (collectively, the "FTI Reports"); as well as the Bench Briefs of DDMI and the appendices thereto filed on May 28, 2020 ("May 28 Bench Brief") and June 12, 2020 ("June 12 Bench Brief").

**DDMI's Position to the Monitor's Proposed Amendments to the SARIO and SISP**

4. DDMI made submissions at the original return of Dominion's application on May 29, 2020 with respect to concerns it had with the fashion by which the transaction documents had been crafted. The May 29, 2020 application was scheduled to continue and conclude on June 3, 2020. On June 2, 2020, the Monitor recommended changes to the SARIO and SISP. Dominion advised of its intention to adjourn its application on the morning of June 3, 2020.
5. On June 11, 2020, McCarthy Tétrault LLP provided its response to the Monitor's recommended changes by emailing blacklines of the SARIO and SISP to counsel to the Monitor and counsel to Dominion. Attached as Exhibit "A" is a true copy of the cover email and the attachments to the email which, for clarity, include the blackline comments on the SARIO and SISP. Attached as Exhibit "B" is a true copy of Dominion's response to the proposed changes.
6. DDMI had largely accepted the comments of the Monitor on the SISP save and except two minor clarifying changes.
7. With respect to the SARIO, DDMI relented on its request that it be granted leave to realize on the diamonds upon the happening of certain trigger events. DDMI maintains its requests that all of Dominion's share of production be held at the PSF and that the Court issue a declaration that no charges other than the Administration Charge and D&O Charge may be granted in priority to the security held by.
8. The full nature and extent of DDMI's position on the relief sought by Dominion will be contained in DDMI's brief of argument including the blacklines of the SISP and SARIO that set out DDMI's position relative to the Monitor's proposed changes .

9. For present purposes, however, DDMI would note that:
- (a) It did not and does not oppose the Stalking Horse Bid and DIP financing term sheet;
  - (b) Its submissions at the May 29, 2020 application centred around its concern that the structure of the proposed SISF will not result in a purchase of Dominion's interest in the Diavik Diamond Mine thus leaving DDMI exposed for the value of the Cover Payments it is making and without a viable and solvent joint venture partner that is able to meet its ongoing obligations under the JVA;
  - (c) Its involvement in these proceedings is involuntary and has been necessitated by Dominion's insolvency. DDMI is required to take steps to protect its interest including by attempting to ensure that: (i) the SISF results in a solvent purchaser acquiring Dominion's interest in the Diavik Diamond Mine; and (ii) such purchaser is sufficiently capitalized to repay the Cover Payments in full in cash upon closing and fulfill the executory obligations as joint venture partner under the JVA and associated agreements including the Closure Security Agreement.
10. DDMI has offered to meet with the Washington Group to discuss the Rio Condition. The Washington Group has indicated that it wishes to defer such a meeting until its Stalking Horse Bid is approved. DDMI wishes to assure the Court that it will meet with the Washington Group to discuss the Rio Condition if the Stalking Horse Bid is approved.

**Dominion's Allegations regarding Operation of the Diavik JVA**

11. Counsel at McCarthy Tétrault LLP ("McCarthy Tétrault") have informed me that on June 12, 2020, Dominion filed an Amended Application together with the June 12 Bench Brief with this Honourable Court. I understand from counsel that a section of the Dominion Brief repeats certain complaints first made by Dominion in respect of the Manager's operation of the Diavik Mine in a letter dated April 27, 2020, and summarized – though the letter is not attached as an exhibit – in Ms. Kaye's affidavit sworn on May 6, 2020.<sup>1</sup>
12. I was surprised to learn of the repetition of these allegations in the Dominion Brief. First, whatever operational disagreements Dominion may now be raising before the Court, such

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<sup>1</sup> At para. 6.

concerns did not prevent Dominion from approving the program and budget for 2020 – 2025 which will govern the operation of the Diavik Mine until its anticipated closure.<sup>2</sup>

13. Second, I have been advised by counsel at McCarthy Tétrault that on April 27, 2020, they received correspondence from counsel for Dominion alleging breaches of the JVA and a failure by the Manager to act in good faith. In addition, Dominion demanded the Manager undertake to cease operations at the mine and “alter financing requirements”. Dominion’s counsel also stated that if these demands were not met by May 8, 2020, they had instructions to commence an action in the British Columbia Supreme Court for such alleged breaches with the stated remedies to be sought including injunctive relief.
14. I have dealt with Dominion’s representatives in respect of the JVA since 2018, and this was the first occasion – outside the context of these proceedings – that it had threatened legal action if the Manager did not immediately comply with its demands.
15. Attached hereto and marked as Exhibits “C”, “D”, “E”, and “F” to this Affidavit are true copies of the correspondence exchanged between counsel for Dominion and counsel for DDML on April 27, May 5, May 13, and May 15, 2020, respectively.
16. During the process of my final review of this Affidavit, counsel for Dominion emailed a letter and unfiled Notice of Civil Claim with counsel’s advice that the “... Notice of Civil Claim ... was submitted for filing today [June 16] with the British Columbia Supreme Court Registry.” Attached hereto and marked as Exhibits “G” and “H” to this Affidavit are true copies of the correspondence received and unfiled Notice of Civil Claim, respectively.
17. DDML disputes the allegations made by Dominion in the Notice of Civil Claim and will vigorously defend the claim.

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<sup>2</sup> As discussed in paragraph 35 of my April 30 Affidavit *et seq.*

*TML*

**Current and Projected Cover Payments under the JVA**

18. As at June 12, 2020, DDMI has made \$51.2 million in Cover Payments as summarized below:

Date	Amount (millions)
May 21	\$16.0
May 21	\$17.6
June 12	\$12.0
June 12	\$5.6
<b>Total</b>	<b>\$51.2</b>

19. The estimated Cover Payments to be made from June 15 – October 31 is estimated to be \$54.3 million as summarized below:

Date	Amount (millions)
June	\$10.0
July	\$14.0
August	\$11.9
September	\$8.7
October	\$9.7
<b>Total</b>	<b>\$54.3</b>

20. All diamonds produced by the Diavik Mine are evaluated (directly or through extrapolation from a sample) by Diamonds International Canada Limited (DICAN), a Yellowknife-based company providing independent resource evaluation and diamond valuation services to

the government of the Northwest Territories in addition to the government of Ontario. DICAN is an incorporated joint venture between the Aboriginal Diamonds Group Ltd and WWW International Diamond Consultants Limited. As such, DICAN is the body responsible for conducting the government royalty valuations that have been referred to by the parties to these proceedings. DICAN is independent from both DDMI and Dominion.

21. DICAN values production from the Diavik mine on a monthly basis. At each valuation, DICAN assesses the value of production from the Diavik Mine, which it then later uses to compare assessed value to royalties, which are paid based on sales prices. For diamonds that are mechanically riffled (usually the smaller size categories) or those that are split by auction (usually the larger size categories) and therefore joint venture diamonds at the time of valuation, DICAN will apply the same values to DDMI's and Dominion's share. For the rest of diamonds, which are intelligently riffled, the values per carat may differ. Even though DDMI does not know the value applied to Dominion's share, it is generally expected to be consistent with the values attributed to DDMI's share of production.
22. DDMI holds at the PSF Dominion's share of the diamonds produced (delivered from the mine and cleaned and sorted at the PSF) since the shipment cut-off that took place on April 22, 2020, the date of Dominion's initial CCAA filing. Since that date, two government valuations have taken place on May 18, 2020 and June 8, 2020. DDMI applied the DICAN values (for DDMI's share of production) to Dominion's share of diamonds that is already split through mechanical or intelligent riffling. Confidential Exhibit "1" sets out the results of such valuation.

#### **Future Financial Obligations of the Diavik JVA**

23. In paragraph 24 of the Croese Affidavit #2, I noted that Dominion's share of the December 31, 2019 calculation of closure costs and reclamation liabilities in the amount of \$365.3 million for the Diavik Mine were subject to the Closure Security Agreement (the "CSA") between DDMI and Dominion, which was filed as confidential exhibit to the same Affidavit. In paragraph 25 of my evidence, I confirmed that on January 1, 2021, Dominion is required to post an additional \$35 million under the CSA to meet its proportionate share of such costs and liabilities.

24. Dominion's 40% of the \$365.3 million of estimated closure costs and reclamation liabilities is \$146.2 million. The \$365.3 million is an order of magnitude estimate. A prefeasibility study related to the closure and rehabilitation of the Diavik Mine was commenced in November, 2018 and is due to be completed in April 2021. While it is too early in the study process to draw any definitive conclusions, recent experience in similar prefeasibility closure studies is that the closure and rehabilitation cost estimate could increase.
25. DDMI is hopeful that there will be a purchaser of Dominion's 40% interest in the Diavik mine including because if the additional \$35 million of letters credit are not posted, then Dominion's current closure and rehabilitation shortfall measured against the December 31, 2019 estimate will be \$41.1 million. As indicated, there is a reasonable likelihood that such shortfall could grow as time advances. Under the CSA, DDMI would have the right to make a Cash Call (and subsequent Cover Payment if the Cash Call is not paid) for any shortfall between security required to be provided by Dominion or its successor.

**The DDMI SIF – Sales and Marketing Fee**

26. In the June 12 Bench Brief, Dominion notes that the DDMI SIF contained a proposed fee for the sale and marketing of its diamonds in the amount of 2.5%. There is a suggestion that such a fee represents a significant financial benefit to DDMI. In fact, a fee of 2.5%, particularly when bench-marked against a recent transaction is commercially reasonable.
27. The run of mine diamonds that are delivered to both DDMI and Dominion from the PSF are sorted by size but are not sorted into quality, colour or shape. As such, each bag of diamonds packed at the PSF will contain a mix of high value stones, very low value stones and everything in between. Furthermore, while the diamonds are clean to the point of being valued by DICAN, they have not been cleaned to the standard where they are ready for sale.
28. As, when and if monetization of diamonds occurs either by Dominion or DDMI, the diamonds will have to be moved overseas in order to finish off the sorting and cleaning processes as well as presenting the goods to potential purchasers. Both Dominion and DDMI sell the majority of their diamonds in Antwerp. This point is further illustrated by the fact that \$116 million of Dominion's current diamond inventory is in India and Belgium. It is also the case the Splitting Protocol in Paragraph 4 provides that certain diamonds are to be delivered to Antwerp.



29. Now shown to me and marked as Exhibit "I" is a true copy of a news release issued by Mountain Province Diamonds Inc. ("Mountain Province"). Mountain Province is a 49% participant with De Beers Canada Inc. in the Gahcho Kué diamond mine located in the Northwest Territories. The news release reports that Mountain Province entered into an agreement to sell US\$ 50 million of diamonds to Dunebridge Worldwide Ltd. ("Dunebridge"). The fee charged by Dunebridge is stated to be calculated at 10% of the value for each sale.
30. DDMI's response to the other issues and concerns raised by Dominion relative to the DDMI SIF in its June 12 Bench Brief will be set out in DDMI's bench brief.

**Free Cash Flow**

31. In paragraph 35 of my April 30 Affidavit, I advised the Court that both Participants had approved a program and budget for the period 2020 – 2025 (the "Diavik JVA Budget") pursuant to a Management Committee Resolution, executed by Dominion on December 2, 2019. In paragraph 41 of the same Affidavit, I explained that a comprehensive Operating Review had been undertaken by the Manager in response to the COVID-19 pandemic; and in paragraph 42(a), I went on to inform the Court that the Operating Review had concluded that under the Diavik JVA Budget – and assuming continued operations of the Diavik Mine as opposed to entering care and maintenance– there was a projected free cash flow benefit of approximately \$100 million in 2020, based on the Manager's assessment of reasonable diamond sales assumptions.
32. I have reviewed Dominion's submissions in its June 12 Bench Brief and note the misunderstanding Dominion seemingly has with respect to my evidence on this point. The testimony cannot be taken to mean that the Diavik Mine would generate \$100 million of positive free cash flow in 2020. The fundamental point that I was making was a relative one. Specifically, that placing Diavik Mine on care and maintenance as opposed to continuing to operate the Diavik Mine would result in \$100 million less cash flow being generated. The primary reason for this is that no diamonds would be produced and so no diamonds could be sold. The Free Cash Flow generation of the Diavik Mine is further illustrated by the information contained in Confidential Exhibit 1.

**DDMI Sealing Order**

33. DDMI will apply to seal the Confidential Exhibit 1. The confidential exhibit contains information which is confidential and commercially sensitive. Disclosure of the spreadsheet would cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the spreadsheets or the information contained therein.
34. I make this Affidavit in response to Dominion's Amended Application returnable June 19, 2020.

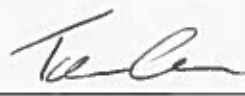
**Process for Commissioning of this Affidavit**

35. I am not physically present before the Commissioner for Oaths (the "Commissioner") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:
- (a) I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on my ID;
  - (b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;
  - (c) the Commissioner and I have a paper copy of this Affidavit before us;
  - (d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;
  - (e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and

(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video )  
conference on June 16, 2020 )

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



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

TMC

**This is Exhibit "A" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

---

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

*TMC*

**Doran, Katie**

---

**From:** Collins, Sean F.  
**Sent:** Thursday, June 11, 2020 8:40 AM  
**To:** 'Chris Simard (simardc@bennettjones.com)'; Peter Rubin (peter.rubin@blakes.com)  
**Subject:** Dominion - DDMI Comments on Monitor's Proposed SARIO and SISP  
**Attachments:** DOCS-#20467277-vpdf-SARIO-MT\_Comments\_on\_Monitor\_s\_Proposed\_Changes.PDF;  
 DOCS-#20468055-vpdf-Monitor\_SISP\_with\_MT\_Comments.PDF

Dear Chris and Peter,

Attached are blacklines with DDMI's comments on the Monitor's proposed SARIO and SISP. As it pertains to the SARIO, DDMI proposes to accept the change that monetization occur automatically and has largely accepted the Monitor's construct that will require further application. As it pertains to quantity of diamonds held, it is proposed that, rather than engage in a valuation exercise at this time, given the reality surrounding the likely timing of diamond sales resuming (ie not before Phase I, at the earliest). DDMI continues its request that there be no future priming of its security.

The SISP comments are a couple of minor clarifying points in para 38.

As discussed, in the interests of attempting to find a commercial resolution to the issues, DDMI provides these comments now and without having reviewed the proposed amendments that will be brought forward by Dominion and others with respect to the transaction documents. DDMI reserves the right to review the revised materials and to advise if its proposal changes upon receipt of the revised materials.

DDMI continues its internal review of the proposed changes and same is subject to its final sign off.

We look forward to hearing from you.



**Sean Collins**  
 Partner | Associé  
 Bankruptcy and Restructuring | Faillite et restructuration  
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 C: 403-607-8534  
 F: 403-260-3501  
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*SMC*

This is Exhibit "B" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.

---

A Commissioner for Oaths in and for the Province of Alberta

TMC

**Doran, Katie**

---

**From:** Rubin, Peter <peter.rubin@blakes.com>  
**Sent:** Friday, June 12, 2020 1:12 PM  
**To:** Collins, Sean F.; 'Chris Simard (simardc@bennettjones.com)'  
**Subject:** [EXT] RE: Dominion - DDMI Comments on Monitor's Proposed SARIO and SISP

Sean – our client is not in agreement with the terms below.

Peter Rubin\*  
 Partner  
[peter.rubin@blakes.com](mailto:peter.rubin@blakes.com)  
 604-631-3315  
 \*Law Corporation

---



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---

**From:** Collins, Sean F. <scollins@MCCARTHY.CA>  
**Sent:** Thursday, June 11, 2020 7:40 AM  
**To:** 'Chris Simard (simardc@bennettjones.com)' <simardc@bennettjones.com>; Rubin, Peter <peter.rubin@blakes.com>  
**Subject:** Dominion - DDMI Comments on Monitor's Proposed SARIO and SISP

**External Email | Courriel électronique externe**

Dear Chris and Peter,

Attached are blacklines with DDMI's comments on the Monitor's proposed SARIO and SISP. As it pertains to the SARIO, DDMI proposes to accept the change that monetization occur automatically and has largely accepted the Monitor's construct that will require further application. As it pertains to quantity of diamonds held, it is proposed that, rather than engage in a valuation exercise at this time, given the reality surrounding the likely timing of diamond sales resuming (ie not before Phase I, at the earliest). DDMI continues its request that there be no future priming of its security.

The SISP comments are a couple of minor clarifying points in para 38.

As discussed, in the interests of attempting to find a commercial resolution to the issues, DDMI provides these comments now and without having reviewed the proposed amendments that will be brought forward by Dominion and others with respect to the transaction documents. DDMI reserves the right to review the revised materials and to advise if its proposal changes upon receipt of the revised materials.

DDMI continues its internal review of the proposed changes and same is subject to its final sign off.

We look forward to hearing from you.



**Sean Collins**  
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**This is Exhibit "C" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

---

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

*TMC*



Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
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April 27, 2020

**Joe McArthur, FCI Arb, C. Arb**  
 Partner  
 Dir: 604-631-3383  
 joe.mcarthur@blakes.com

**VIA E-MAIL (c/o Counsel)**

Reference: 00180245/000004

Rio Tinto  
 Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201-50<sup>th</sup> Avenue  
 Yellowknife, NT X1A 2P8

**Re: Management of Diavik Joint Venture by Diavik Diamond Mines (2012) Inc. ("DDM")**

Dear Sirs/Mesdames:

We are legal counsel for Dominion Diamond Mines ULC ("Dominion").

We write regarding the Diavik Joint Venture Agreement (the "JV Agreement") and DDM's ongoing management and operation of the Diavik mine during the COVID-19 pandemic.

**Impact of COVID-19 Pandemic**

We have now entered unprecedented times, including for the Diavik mine. The COVID-19 pandemic has dramatically impacted the global diamond industry. The diamond market has effectively shut down with the consequence that no immediate revenues are being generated from mining operations, the current market price for diamonds is at a low not seen since 2009, and mining operators around the world have ceased or dramatically curtailed operations. This includes Dominion's suspension of operations at the Ekati mine in March in order to protect the health and safety of our employees and local communities, as a result of the rapid spread of COVID-19 and the high frequency of air travel required for employees and support staff to access mining operations.

Due to COVID-19's impacts on global demand for diamond exports, Diavik's joint venture participants have no means of generating revenue from the stockpiles recorded in March (some 62,271 tonnes and 119,370 estimated carats) or from continued mining operations for the foreseeable future. At the same time, continued operations pose significant health and safety risks for the many workers required to travel and access the mine.

**Economic Performance**

In November 2019, DDM emphasized its commitment to achieving its "stretch plan" and embarking on a program that would focus on cost reduction and organizational transformation. Despite this purported focus on cost reduction, our client has received multiple cash call invoices that do not reflect any

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meaningful reduction of costs. To the contrary, DDM's most recent performance report indicates that cash costs in March exceeded the stretch plan by \$4.9 million.

These significant expenditures were accompanied by poor performance: ore processed for March was 17% below plan; total carats recovered for the month were 14.4% below plan; and the total carats recovered for the period are 13% below budget. Year-to-date cash costs are now \$21.6 million above DDM's stretch plan, while at the same time production year-to-date is 13.6% below plan. The concerns over cash costs this year are heightened by the fact that the mine's cash costs reflect a purely fortuitous drop in fuel costs by \$16 million; despite this \$16 million windfall, the mine's production costs are still unsustainable at a cost of \$195 per tonne.

We understand that part of the reason for the poor results relates to DDM mining in areas which are not part of its annual planned program. DDM appears to be adopting a high-grade approach. This approach makes little economic sense given that the higher-grade carats harvested are going into storage with the risk of leaving the area sterilized. In these circumstances, DDM's current approach is destructive of value for the Joint Venture and its participants. We understand that a high-grade approach may be serving Rio Tinto's interests, but it is not serving the best interests of the Joint Venture and its participants.

The issues that the mine is experiencing this year are compounding the challenges that resulted from DDM's approach last year. In 2019, DDM saw costs rise \$5 million above plan while production dropped 8.5% below plan. The production of lower-grade carats than planned demonstrates that DDM's models are not reliable, and its control of both the open pit and underground mines is poor. These are ongoing issues.

#### **Reasonable Expectations under the JV Agreement**

As you are aware, the fundamental purpose of the JV Agreement for both participants is the exploitation of the mineral interests such that each can benefit from its proprietary interest in the assets through a proportionate share of production. The JV Agreement does not contemplate a situation in which the mine would operate and produce diamonds incapable of generating revenue to pay operational expenses. This unforeseen situation requires DDM as Manager and as the deciding vote on the Management Committee to act.

Given the fundamental purpose underlying the JV Agreement, Dominion is entitled to reasonably expect that:

- (a) the funds supplied by Dominion pursuant to the terms of the JV Agreement will be devoted to optimizing profitable economic production;
- (b) DDM will regularly consult with Dominion; and
- (c) the Participants, including DDM in its capacity as Manager, will not operate in such a manner as to substantially impair the objective of the agreement, being, again, the profitable economic production of product from the Diavik mine.

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Currently these reasonable expectations are not being met:

- (a) The cash supplied by Dominion pursuant to recent cash calls has been devoted to keeping the mine operational but not in a profitable or economically efficient way given the closed diamond market and high operational expenses associated with the COVID-19 pandemic;
- (b) DDM has unilaterally cancelled its regular weekly meetings with Dominion; and
- (c) DDM in its capacity as Manager and in its capacity as the controlling entity in the Management Committee has neglected to take the only reasonable course of action in the circumstances – to dramatically reduce operations or place the Diavik mine on care and maintenance.

#### **DDM's Breach of Its Obligations**

DDM's legal obligations as Manager are separate and apart from its role as a joint venture participant. Among other things, DDM must maintain a distinction between its contractual and fiduciary duties to the joint venture participants and its own commercial interests. This includes ensuring that no partiality is shown in relation to DDM's interests as participant and that DDM's management enjoys no advantage in terms of consultation and access to information.

As Manager and controlling participant on the Management Committee, DDM's fundamental obligations of good faith and fair dealing also encompass DDM's duty not to undermine the purposes of the JV Agreement and not to deprive Dominion of the intended benefits of the JV Agreement.

It is evident from any economic consideration that continued operation of the mine at current levels during the current global COVID-19 pandemic cannot be justified. DDM's continued efforts to finance and operate the mine through the issuance of cash calls in these circumstances represents a significant departure from DDM's obligations as Manager of the joint venture and as the controlling participant on the Management Committee. In exercising its obligations, DDM must base decisions on sound engineering, mining and economic principles. The only inference to be drawn in the circumstances is that DDM has failed to do so.

By failing to act in accordance with Dominion's reasonable expectations, DDM is engaging in a course of conduct in breach of its obligations under the JV Agreement, including its fundamental obligations of good faith and fair dealing. DDM has and continues to engage in this course of conduct with the express knowledge that Dominion is particularly harmed by DDM's failure to take steps to reduce immediate cash requirements during the COVID-19 pandemic.

DDM's approach, including the continuing cash calls, may have a significant negative effect on Dominion's restructuring options. As a result, DDM's irresponsible approach to cash calls has put Dominion's continued active presence in the Northwest Territories in jeopardy. DDM's approach has and may continue to cause substantive harm to not Dominion but also its employees that rely on Dominion and the Northwest Territories itself. We remind DDM that Dominion is one of the largest employers in the Northwest Territories.

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Further, the fact that Dominion has commenced *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") proceedings does not excuse DDM of its contractual and fiduciary duties. Dominion continues to hold a 40% interest in the Joint Venture and has made very substantial cash contribution to hold this interest. As you are well aware, over the last approximately three years alone, Dominion has paid \$763,050,000. in cash calls to the Joint Venture. This 40% interest is not affected by the CCAA process. Among other things, DDM must continue to act in accordance with its consultation obligations including past practices. DDM's unilateral cancelling of its weekly call with Dominion is in breach of these obligations and is unacceptable.

While the JV Agreement purports to limit the liability of the Manager, these protections are not available where DDM's actions as Manager are not independent of DDM's role as the controlling participant, nor are they intended to apply to breaches of good faith and fair dealing. DDM has failed to maintain a proper distinction between its contractual duties as Manager and its commercial interests as a participant and DDM's conduct is causing significant harm to Dominion contrary to Dominion's reasonable expectations. In these circumstances, DDM cannot avail itself of the protections accorded to an independent Manager under the JV Agreement.

#### **Immediate Reduction in Operations**

While we are hopeful that this urgent issue can be resolved without the need for formal dispute resolution proceedings, our client cannot continue to be subjected to cash calls that are inconsistent with DDM's obligations as Manager and Participant. Please respond forthwith indicating what steps DDM intends to take to cease operations and alter financing requirements for the Diavik mine. The current situation at the mine evidently calls for immediate reductions in operations if not placing the mine on care and maintenance. We understand that DDM has been considering these steps for a month but it has not taken the concrete immediate steps that it is obligated to take to protect Dominion's interests under the JV Agreement.

#### **Action in British Columbia Supreme Court**

Absent a response of immediate action to be taken by May 8, 2020, we have instructions to commence an action in British Columbia Supreme Court against DDM for breach of its obligations under the JV Agreement. The action will seek damages against DDM as well as declaratory and injunctive relief with respect to DDM's continuing cash calls issued in breach of its obligations.

Yours truly,

Joe McArthur

JM:JM/aerk

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**This is Exhibit "D" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

---

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

*TMC*

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Suite 2400, 745 Thurlow Street  
Vancouver BC V6E 0C5  
Canada  
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Fax: 604-643-7900

**mccarthy  
tétrault**

**Michael Feder, Q.C.\***  
Partner  
Direct Line: 604-643-5983  
Direct Fax: 604-622-5614  
Email: mfeder@mccarthy.ca

\* practice conducted through law corporation

May 5, 2020

Via Email (joe.mcarthur@blakes.com)

Blakes, Cassels & Graydon LLP  
595 Burrard Street, P.O. Box 49314  
Suite 2600, Three Bentall Centre  
Vancouver BC V7X 1L3

Attention: Joe McArthur

Dear Sirs/Mesdames:

Re: **Diavik Mine Joint Venture**

I represent Diavik Diamond Mines (2012) Inc. ("DDMI"). I write in response to your April 27, 2020 letter.

The assertions in your letter are inaccurate and the arguments in your letter are contrary to the facts, the Diavik Joint Venture Agreement and the law.

Without limiting the generality of the foregoing, some specific corrections follow:

1. DDMI has operated and continues to operate the Diavik mine in accordance with the Diavik Joint Venture Agreement and its legal obligations in that connection. DDMI's core objectives have been and remain to ensure the safety and well-being of the Diavik mine's workers and associated communities and to maximise the economic value extracted from the Diavik mine over its life in full observance of the law. DDMI's approach to the COVID-19 pandemic is consistent with international protocols and best practices and was adopted after consulting local authorities. While your letter suggests that DDMI has pursued some improper, collateral objective, it never identifies that objective. There is none.
2. In response to the COVID-19 pandemic, DDMI undertook a comprehensive review of the operating strategy for the Diavik mine with a view to the objectives outlined above. DDMI concluded that the best course was to continue to operate the mine as contemplated in the 2020-2025 Program and Budget, while simultaneously implementing additional health and safety controls. That is what DDMI has done. Contrary to your letter, putting the mine into care and maintenance status on the basis suggested by Dominion Diamond Mines ULC ("Dominion") would have produced only a minimal savings in near-term expenses as approximately half of annual cash outflows are incurred or committed

to in the first quarter of the year. But continuing to operate the mine should continue to produce significant financial benefits for the joint venture and maintain the mine's significant contribution to the Northwest Territories and local communities through payments to government, employees and suppliers over the remaining life of the mine.

3. The cash call invoices received by Dominion follow the 2020-2025 Program and Budget, which was approved by the Diavik Joint Venture Management Committee, including Dominion's representative Kristal Kaye, on November 26, 2019. They also follow the approach that DDMI and Dominion discussed by email in February 2020. Further, DDMI met with Dominion's acting CEO, Pat Merrin on April 20, 2020 to present first-quarter results; he did not raise any specific concerns regarding the upcoming April 22, 2020 cash call.
4. DDMI has not "unilaterally cancelled its regular weekly meetings with Dominion". DDMI's President, Richard Storrie, met with Mr. Merrin, on Friday, May 1 at 10 a.m. as scheduled. The weekly meeting scheduled for 10 a.m. on Friday, April 24 was cancelled, but only at Mr. Merrin's explicit request.
5. Your letter states that the diamond industry has "effectively shut down" because of the COVID-19 pandemic and that diamonds being produced by the Diavik mine are "incapable of generating revenue to pay operational expenses". That is not the case. Despite some decrease in commerce in the diamond industry, profitable sales remain possible, with Rio Tinto delivering sales of Diavik product during March and April 2020 through its Antwerp office to its customers globally.

Dominion has no legitimate basis for asking DDMI to cease or reduce mine operations or alter financing requirements. DDMI has considered and appropriately rejected those options as they are not the best course of action at this stage.

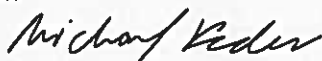
If Dominion plans to apply to court for relief against DDMI, DDMI expects a reasonable period of advance notice of any step in that regard. Please draw this letter to the court's attention in any event.

DDMI also reminds Dominion of the confidentiality requirements applicable to the Diavik joint venture. As Dominion knows, DDMI recently consented only to limited disclosures but is aware of certain disclosures that do not appear to be authorized. DDMI reserves all its rights.

Yours truly,

McCarthy Tétrault LLP

Per:



Michael Feder, Q.C.\*

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MT DOCS 20341084v6

Blakes, Cassels & Graydon LLP - May 5, 2020





**This is Exhibit "E" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

---

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

TMC



Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
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 595 Burrard Street, P.O. Box 49314  
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May 13, 2020

**Joe McArthur, FCI Arb, CARB**  
 Partner  
 Dir: 604-631-3383  
 joe.mcarthur@blakes.com

**VIA E-MAIL**

Reference: 00180245/000013

McCarthy Tétrault LLP  
 Barristers and Solicitors  
 Suite 2400, 745 Thurlow Street  
 Vancouver, BC V6E 0C5

**Attention: Michael Feder, Q.C.**

**Re: Diavik Mine Joint Venture**

Dear Sirs/Mesdames:

We write in response to your May 5, 2020 letter.

There is no tenable commercial rationale for DDMI's approach. No short- or long-term plan has been presented that would justify DDMI's approach given the continued poor performance in the current circumstances. Accordingly, the only logical conclusion our client can draw is that DDMI is pursuing its own objectives without due regard to its obligations under the JV Agreement.

With respect to the cash calls, these have consistently been identified as a concern for our client. The 2020-2025 Program and Budget were based on expense reductions that have never been realized. In any event, as your client well knows our client had no ability to block approval of Programs and Budgets given its minority interest in the project. DDMI's approach has been to continue to extract as much money as possible from Dominion at a time that DDMI knew Dominion was facing significant financial challenges due to COVID-19 and the worldwide diamond sales channels being essentially closed.

With respect to the weekly meetings, it was Mr. Storrie who expressed the view that it was probably for the best that he and Mr. Merrin no longer speak directly. However, we understand that the parties have since resumed communications.

It is not accurate to describe the diamond market as merely suffering "some decrease". This is contrary to reality. The situation is widely known. Our client's information is that a very limited number of sales are occurring at sharp discounts. We understand that this includes the sales that your client has recently concluded. The market is severely depressed and your client's refusal to acknowledge that fact is concerning. Your client's past failure to adjust its approach to account for impacts from COVID-19 is one example of its failure to meet its obligations under the JV Agreement, particularly given DDMI's unsustainable consumption of cash while it continually operates over budget.

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Page 2

Finally, we are not aware of any breach of the confidentiality requirements applicable to the Diavik joint venture and your vague assertion that DDMI is "aware of certain disclosures that do not appear to be authorized" provides our client with no ability to address this allegation.

With respect to any court proceedings, please advise whether you are authorized to accept service of legal proceedings.

Yours truly,



Joe McArthur

JM/au

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**This is Exhibit "F" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

---

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

*TMC*

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**mccarthy  
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Michael Feder, Q.C.\*  
Partner  
Direct Line: 604-643-5983  
Direct Fax: 604-622-5614  
Email: mfeder@mccarthy.ca

\* practice conducted through law  
corporation

May 15, 2020

Via Email (joe.mcarthur@blakes.com)

Blakes, Cassels & Graydon LLP  
595 Burrard Street, P.O. Box 49314  
Suite 2600, Three Bentall Centre  
Vancouver BC V7X 1L3

Attention: Joe McArthur

Dear Sirs/Mesdames:

Re: Diavik Mine Joint Venture

I write in response to your May 13, 2020 letter.

Dominion's assertions and arguments continue to be baseless.

I will seek instructions to accept service of legal proceedings on behalf of DDMI once you send me a copy of what you wish to serve. I do not have a broad authority to accept service with respect to "any court proceedings", which is what your letter seems to ask about.

Yours truly,

McCarthy Tétrault LLP

Per:



Michael Feder, Q.C.\*

This is Exhibit "G" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.

---

A Commissioner for Oaths in and for the Province of Alberta

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June 16, 2020

**Joe McArthur, FCI Arb, CARB**  
Partner  
Dir: 604-631-3383  
joe.mcarthur@blakes.com

**VIA E-MAIL**

Reference: 00180245/000013

McCarthy Tétrault LLP  
Barristers and Solicitors  
Suite 2400, 745 Thurlow Street  
Vancouver, BC V6E 0C5

Attention: Michael Feder, Q.C.

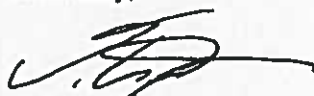
Re: ***Dominion Diamond Mines ULC v. Diavik Diamond Mines (2012) Inc. ("DDMI")***

Dear Sirs/Mesdames:

Please find enclosed for the attention of DDMI an unfiled courtesy copy of a Notice of Civil Claim which was submitted for filing today in the above-noted matter with the British Columbia Supreme Court Registry.

A filed copy of the Notice of Civil Claim will be provided as soon as it is available. Kindly advise if your office will be accepting service of the filed copy on behalf of DDMI.

Yours truly,



Joe McArthur

JM/atj  
Encl.

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**This is Exhibit "H" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

---

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

*TMCC*



No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**DOMINION DIAMOND MINES ULC**

PLAINTIFF

AND

**DIAMON DIAMOND MINES (2012) INC.**

DEFENDANT

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.**

**Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

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- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

## CLAIM OF PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### *The Parties*

1. Dominion Diamond Mines ULC ("Dominion") is an unlimited liability company incorporated under the laws of British Columbia. Dominion is Canada's largest independent producer of natural and responsibly mined premium rough diamonds.
2. Diavik Diamond Mines (2012) Inc. ("DDMI"), is a company incorporated under the laws of Canada and is a wholly-owned subsidiary of Rio Tinto plc ("Rio"). Rio is a global mining and metals company operating in approximately 36 countries with a current market capitalization of approximately USD\$65 Billion.

#### *The Diavik Diamond Mine*

3. Dominion supplies rough diamonds to the global market from its operation of the Ekati Diamond Mine, in which it has an approximate 90% interest, and the Diavik Diamond Mine (the "Diavik Mine"), in which it has a 40% interest. DDMI has a 60% interest in the Diavik Mine.
4. The Diavik Mine, consisting of the mine site and surrounding exploration properties, is located on a 20-kilometer island in Lac de Gras, approximately 300 kilometers northeast of Yellowknife, in the Northwest Territories. Commercial production commenced at the Diavik Mine in 2003.
5. The resources at the Diavik Mine were discovered by Dominion (then Aber Resources Limited ("Aber")) in the early 1990s. Due to the costs required to develop the mine, Dominion entered into a joint venture with Kennecott Canada ULC ("Kennecott") in 1995 and Kennecott became the Manager of the joint venture.
6. The Diavik Mine is currently operated by DDMI. All licenses and permits required to undertake operations at Diavik Mine are held by DDMI, as operator. All employees engaged at the Diavik Mine are the employees of DDMI.

#### *The JV Agreement*

7. Dominion and DDMI are successors in interest to a joint venture agreement dated as of March 23, 1995 between Aber and Kennecott. The JV Agreement was subsequently amended pursuant to:

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- (a) Amending Agreement, dated as of December 1, 1995, between Kennecott and Aber;
- (b) Amending Agreement No.2, dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber; and
- (c) Amending Agreement No.3, dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber.

(collectively, the "JV Agreement").

8. The fundamental purpose of the JV Agreement is the exploitation of mineral interests such that both DDMI and Dominion can benefit from the assets of the joint venture through a proportionate share of production. Dominion's proportionate share of production under the JV Agreement is taken in kind in the form of rough diamonds. At all relevant times DDMI was aware that Dominion depended on the sale of its share of production to finance operation of the Diavik Mine.

9. DDMI acts as Manager under the JV Agreement and exercises an executive role over the operations of the joint venture, subject to direction by the Management Committee. Pursuant to the JV Agreement Dominion's and DDMI's votes on the Management Committee are equal to their participating interests, and nearly all decisions of the Management Committee are decided by a simple majority vote of the participating interests.

10. As the majority participant, DDMI effectively controls the Management Committee. Together with DDMI's position as Manager under the JV Agreement, DDMI exercises all discretionary authority under the JV Agreement, including overall joint venture property and funds supplied by Dominion pursuant to cash calls.

11. Section 7.3 of the JV Agreement provides that the Manager must conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices. As a minority joint venture participant, Dominion is further entitled to expect that DDMI's efforts – and the funds supplied by Dominion – will be devoted to maximizing the profitable production of diamonds from the Diavik Mine.

#### **COVID-19 Impact**

12. COVID-19 has had an acute negative impact on all segments of the global diamond industry. Dominion's ability to move its rough diamond inventory from the point of extraction in the Northwest Territories to sorting facilities in India for further movement and eventual sale on the world market has been effectively frozen.

13. Dominion's inability to generate revenues from its share of production at the Diavik Mine, among other factors, created a liquidity crisis for Dominion that rendered it insolvent and in urgent need of protection under the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "CCAA").

14. On April 22, 2020, upon the application of Dominion and certain of its affiliates (together, the "CCAA Applicants"), the Alberta Court of Queen's Bench in Bankruptcy and Insolvency (the "CCAA Court") granted an initial order with respect to the CCAA Applicants.

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***DDMI's Cash Calls***

14. DDMI's operation of the Diavik Mine is significantly over budget, and production has failed to meet targets. DDMI's poor performance preceded the impact of COVID-19 and has continued to deteriorate. In 2019, costs rose approximately 7% above the stretch plan, while total carats recovered were 8.5% below plan. In November 2019, DDMI committed to achieving its stretch plan and embarking on a program that would focus on cost reduction, among other initiatives. However, in the first quarter of 2020, cash costs were more than 19% above DDMI's stretch plan, while at the same time carats recovered were 13.6% below plan. Dominion has repeatedly objected to DDMI's failure to reduce cash consumption, particularly considering its record of poor production.

15. Despite DDMI's failure to meet production and grade plans, DDMI has taken no effective steps to mitigate, and instead has continually demanded that Dominion satisfy increasingly large cash calls. In the first three months of 2020 alone, those cash calls totaled \$68.9 million. In April 2020, DDMI issued further cash calls to Dominion totaling approximately \$33 million.

16. Despite repeated requests for information, DDMI has refused or neglected to provide all relevant current information to Dominion, including resource and reserve reconciliation reports and information regarding an ongoing reclamation feasibility study being conducted, all of which has been funded by joint venture funds.

17. At the direction of Rio, DDMI has been and continues to prioritize the interests of DDMI and Rio in its management of the Diavik Mine to the detriment of Dominion and the joint venture as a whole.

18. DDMI has continued to maintain full operations at the Diavik Mine without taking into account the disruptions to the diamond industry caused by the COVID-19 and, in particular, without taking into account Dominion's circumstances. DDMI has done so knowing that Dominion has no ability to pay for such cash calls because it cannot materially monetize diamond inventories to pay for them.

19. Without Dominion being able to generate revenues due to COVID-19 related impacts on the diamond market and Dominion's business operations, the DDMI cash call payments have drained Dominion's cash reserves and contributed to Dominion's liquidity crisis. The continued cash calls will also negatively impact Dominion's restructuring efforts.

***DDMI's Breaches***

20. Despite express knowledge that Dominion is particularly harmed by DDMI's conduct, DDMI has and continues to breach its obligations under the JV Agreement, including by, without limitation:

- (a) failing to meet cost budgets, production plans and diamond recovery budgets, including failures in the period preceding the COVID-19 pandemic;
- (b) failing to achieve agreed-upon and appropriate cost reductions;
- (c) deliberately attempting to extract as much capital as possible from Dominion with knowledge of its liquidity crisis;

TMC

- (d) utilizing funds supplied by Dominion pursuant to recent bi-weekly cash calls to operate the mine in a manner that is not economically efficient and does not maximize profitability;
  - (e) failing to develop adequate modelling to support economic development of resources;
  - (f) failing or refusing to base operational and management decisions on sound engineering, mining and economic principles;
  - (g) mining the deposits in a manner inconsistent with the planned program;
  - (h) failing to disclose all relevant information to Dominion;
  - (i) failing to adequately consult with Dominion; and
  - (j) placing DDMI's and Rio's interests ahead of the joint venture with the result of depriving Dominion of the benefit of the JV Agreement.
- (together, DDMI's "Misconduct")

#### **Part 2: RELIEF SOUGHT**

21. Dominion seeks the following relief against DDMI:
- (a) a declaration that DDMI has conducted operations in breach of or in a manner inconsistent with the JV Agreement;
  - (b) general damages;
  - (c) special damages;
  - (d) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
  - (e) costs; and
  - (f) such further and other relief as this Court may deem just.

#### **Part 3: LEGAL BASIS**

##### ***Breach of Contract***

22. Pursuant to the JV Agreement and in light of its fundamental purpose, Dominion is entitled to reasonably expect, among other things, that:
- (a) the funds supplied by Dominion pursuant to the terms of the JV Agreement will be devoted to optimizing profitable economic production;
  - (b) DDMI will regularly consult with Dominion; and

- (c) the Participants, including DDMI in its capacity as Manager, will not operate in such a manner as to cause significant harm to Dominion or substantially impair the objective of the agreement, being, again, the profitable economic production of product from the Diavik Mine.

23. The Manager and Management Committee must exercise decision-making powers in accordance with the JV Agreement and the duties of all participants to act fairly and in good faith. As both Manager and controlling participant on the Management Committee, DDMI's fundamental obligations include a duty not to undermine the purposes of the JV Agreement and not to deprive Dominion of the intended benefits of the JV Agreement.

24. DDMI's continued course of conduct, including its Misconduct, defies reasonable expectations and amounts to a flagrant breach of DDMI's obligations under to the JV Agreement, including its fundamental duty to act honestly, reasonably and in good faith in the performance of its contractual obligations.

***Breach of Fiduciary Duty***

25. At all material times and by virtue of DDMI's role as Manager, DDMI owed and continues to owe fiduciary obligations to Dominion, including but not limited to fiduciary obligations of loyalty, good faith, disclosure and avoidance of a conflict of duty and self-interest. DDMI's continued course of conduct, including but not limited to the Misconduct, amounts to a breach of DDMI's fiduciary obligations.

***Willful Misconduct and Gross Negligence***

26. At all material times, DDMI owed and continues to owe a duty of care requiring DDMI to, among other things, conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices.

27. DDMI's continued course of conduct, including but not limited to DDMI's Misconduct, breached DDMI's duty of care and amounts to willful misconduct and gross negligence. Dominion's acts and omissions exhibit a conscious or reckless indifference to Dominion's rights and a marked departure from the standards according to which a reasonable Manager in DDMI's position would conduct themselves.

***Loss and Damage to Dominion***

28. As a result of DDMI's wrongful acts and omissions, including the breaches, willful misconduct, and negligence described herein, Dominion has suffered and continues to suffer loss and damage including but not limited to economic losses and damages resulting from DDMI's misuse of funds supplied by Dominion during DDMI's management of the Diavik Mine.

TMC

Plaintiff's address for service: Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, PO Box 49314  
Vancouver, BC V7X 1L3  
Attention: Joe McArthur

Fax number address for service (if any): 604-631-3309

E-mail address for service (if any): N/A

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street, Vancouver, B.C.

Date: 16/June/2020



---

Signature of Joe McArthur  
[x] lawyer for Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

**APPENDIX****Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim in breach of contract, breach of fiduciary duty and negligence related to a joint venture.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Court Order Interest Act*, R.S.B.C. 1996, c. 79



**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE  
OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this notice of civil claim on the Defendant outside British Columbia on the ground that, among other things, the proceeding:

- (a) concerns contractual obligations, and, by its express terms, the contract is governed by the law of British Columbia; and
- (b) concerns a business carried on in British Columbia.

TMC

**This is Exhibit "I" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.**

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

*TM*

# NEWS

## MOUNTAIN PROVINCE DIAMONDS PROPOSES TO ENTER INTO A TRANSACTION TO SELL U.S.\$50,000,000 OF DIAMONDS

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### TSX and OTCQX: MPVD

TORONTO and NEW YORK, June 8, 2020 /CNW/ - Mountain Province Diamonds Inc. ("Mountain Province", or the "Company") (TSX: MPVD) and (OTCQX: MPVD) today announces that it proposes to enter into an agreement to sell (the "**Sale**") U.S.\$50,000,000 of diamonds to Dunebridge Worldwide Ltd. ("Dunebridge"). The first sale for approximately U.S.\$ 22,000,000 is expected to occur on June 11<sup>th</sup>, 2020 following the execution of a binding agreement.

The transaction with Dunebridge will permit the Company to sell its run of mine diamonds (below 10.8 carats) at the prevailing market price at the time of each sale. The transaction will also allow the Company to participate, after fees and expenses in a portion of any increase in the value of the diamonds realized by Dunebridge upon its future sale of the diamonds to a third party. The fees, calculated per each sale, are fixed at 10% of the value of each sale for the first year and 10% per year pro-rated for years 2 and 3. The expenses relate to any future sale costs. Once all fees and expenses have been deducted any surplus will be shared equally between Dunebridge and the Company.

The traditional markets for rough diamonds have been closed since mid March 2020 due to the impacts of COVID-19. In the interim, and as previously announced, the Company had been seeking alternative sales channels and sources of financing to ensure sufficient funding for operational and corporate expenses as the mine continues to be operational. This transaction is expected to provide the liquidity required in the short term whilst the Company awaits the gradual re-opening of the global economy and traditional selling methods.

A committee of directors of Mountain Province, all of whom are independent of management and the major shareholder of Mountain Province, (the "Independent Committee"), and comprised of Mr. Tom Peregoodoff, Ms. Karen Goracke, Mr. Dean Chambers, and Mr. William Lamb, undertook a deliberate and full consideration of the Sale and various alternatives and financing options available to Mountain Province and concluded that the Sale is reasonable and represents the best alternative for Mountain Province in the circumstances, having regard to the best interests of Mountain Province and its stakeholders. The Independent Committee has unanimously recommended the Sale to the board of directors of the Company (the "Board"). The Board has received the recommendations and findings of the Independent Committee, and Mr. Jonathan Comerford and Mr. Brett Desmond having declared conflicts of interest and not attending any part of any meeting where the Sale was discussed and not voting on the Sale, has unanimously found that that the Company is in serious financial difficulty, that the Sale is designed to improve the financial position of the issuer, that Section 5.5(f) of National Instrument 61-101 is not applicable, and approved the Sale.

Dunebridge is controlled by Dermot Desmond, an insider and related party of Mountain Province. Mr. Desmond owns just above 32% of the Company's stock. The transaction therefore constitutes a "related party transaction" within the meaning of Multilateral Instrument 61-101 – Protection of Minority Shareholders in Special Transactions ("MI 61-101"). Mountain Province relied on exemptions from the formal valuation and minority approval requirements of MI 61-101 contained in Section 5.5(g) and Section 5.7(e), respectively, on the basis of financial hardship. The terms of the Sale were unanimously approved by the Independent members of Mountain Province's

Board of Directors. Mountain Province was not in a position to file a material change report 21 days prior to closing because the terms of the Sale and its participation were not yet published by the time, and Mountain Province elected to expedite closing of the Sale for sound business reasons.

The completion of the Sale is subject to approval of the TSX, the Company's lenders, and all other necessary regulatory approvals. Proceeds of the Sale will be used for operations and corporate expenses, including the funding of bond interest, all in the ordinary course as having been budgeted by the Company prior to COVID-19.

In connection with this transaction, the Independent Committee was advised by its financial advisor Lazard Canada. Stikeman Elliott LLP acted as counsel to the Independent Committee and Bennett Jones LLP acted as counsel to the Company.

## About the Company

**Mountain Province Diamonds** is a 49% participant with De Beers Canada Inc. in the Gahcho Kué diamond mine located in Canada's Northwest Territories. The Gahcho Kué Joint Venture property consists of several kimberlites that are actively being mined, developed, and explored for future development. The Company also controls 67,164 hectares of highly prospective mineral claims and leases immediately adjacent to the Gahcho Kué Joint Venture property that include an indicated mineral resource at the Kelvin kimberlite and inferred mineral resources for the Faraday kimberlites.

For further information on Mountain Province Diamonds and to receive news releases by email, visit the Company's website at [www.mountainprovince.com](http://www.mountainprovince.com).

## Caution Regarding Forward Looking Information

*This news release contains certain "forward-looking statements" and "forward-looking information" under applicable Canadian and United States securities laws concerning the business, operations and financial performance and condition of Mountain Province Diamonds Inc. Forward-looking statements and forward-looking information include, but are not limited to, statements with respect to operational hazards, including possible disruption due to pandemic such as Covid-19, its impact on travel, self-isolation protocols and business and operations, estimated production and mine life of the project of Mountain Province; the realization of mineral reserve estimates; the timing and amount of estimated future production; costs of production; the future price of diamonds; the estimation of mineral reserves and resources; the ability to manage debt; capital expenditures; the ability to obtain permits for operations; liquidity; tax rates; and currency exchange rate fluctuations. Except for statements of historical fact relating to Mountain Province, certain information contained herein constitutes forward-looking statements. Forward-looking statements are frequently characterized by words such as "anticipates," "may," "can," "plans," "believes," "estimates," "expects," "projects," "targets," "intends," "likely," "will," "should," "to be", "potential" and other similar words, or statements that certain events or conditions "may", "should" or "will" occur. Forward-looking statements are based on the opinions and estimates of management at the date the statements are made, and are based on a number of assumptions and subject to a variety of risks and uncertainties and other factors that could cause actual events or results to differ materially from those projected in the forward-looking statements. Many of these assumptions are based on factors and events that are not within the control of Mountain Province and there is no assurance they will prove to be correct.*

*Factors that could cause actual results to vary materially from results anticipated by such forward-looking statements include the development of operation hazards which could arise in relation to Covid-19, including, but not limited to protocols which may be adopted to control the spread of Covid-19 and any impact of such protocols on Mountain Province's business and operations, variations in ore grade or recovery rates, changes in market conditions, changes in project parameters, mine sequencing; production rates; cash flow; risks relating to the availability and timeliness of permitting and governmental approvals; supply of, and demand for, diamonds; fluctuating commodity prices and currency exchange rates, the possibility of project cost overruns or unanticipated costs and expenses, labour disputes and other risks of the mining industry, failure of plant, equipment or processes to operate as anticipated.*

*These factors are discussed in greater detail in Mountain Province's most recent Annual Information Form and in the most recent MD&A filed on SEDAR, which also provide additional general assumptions in connection with these statements. Mountain Province cautions that the foregoing list of important factors is not exhaustive. Investors and others who base themselves on forward-looking statements should carefully consider the above factors as well as the uncertainties they represent and the risk they entail. Mountain Province believes that the expectations reflected in those forward-looking statements are reasonable, but no assurance can be given that these expectations will prove to be correct and such forward-looking statements included in this news release should not be unduly relied upon. These statements speak only as of the date of this news release.*

*Although Mountain Province has attempted to identify important factors that could cause actual actions, events or results to differ materially from those described in forward-looking statements, there may be other factors that cause actions, events or results not to be anticipated, estimated or intended. There can be no assurance that forward-looking statements will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Mountain Province undertakes no obligation to update*

*forward-looking statements if circumstances or management's estimates or opinions should change except as required by applicable securities laws. This Cautionary Statement is cautionary in that it places emphasis on the fact that forward-looking statements—statements concerning mineral assets and resource estimates may also be deemed to constitute forward-looking statements to the extent they involve estimates of the mineralization that will be encountered as the property is developed.*

*Further, Mountain Province may make changes to its business plans that could affect its results. The principal assets of Mountain Province are administered pursuant to a joint venture under which Mountain Province is not the operator. Mountain Province is exposed to actions taken or omissions made by the operator within its prerogative and/or determinations made by the joint venture under its terms. Such actions or omissions may impact the future performance of Mountain Province. Under its current note and revolving credit facilities Mountain Province is subject to certain limitations on its ability to pay dividends on common stock. The declaration of dividends is at the discretion of Mountain Province's Board of Directors, subject to the limitations under the Company's debt facilities, and will depend on Mountain Province's financial results, cash requirements, future prospects, and other factors deemed relevant by the Board.*

SOURCE Mountain Province Diamonds Inc.

## NEWS

For further information: Stuart Brown, President and CEO, 161 Bay Street, Suite 1410, Toronto, Ontario M5J 2S1, Phone: (416) 361-3562, E-mail: [info@mountainprovince.com](mailto:info@mountainprovince.com); Keyvan Salehi, VP Corp Dev & Tech Services, 161 Bay Street, Suite 1410, Toronto, Ontario M5J 2S1, Phone: (416) 361-3562, E-mail: [info@mountainprovince.com](mailto:info@mountainprovince.com)



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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 **AFFIDAVIT #3 OF THOMAS CROESE**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
McCarthy Tétrault LLP  
4000, 421 – 7<sup>th</sup> Avenue SW  
Calgary, AB T2P 4K9  
Attention: Sean Collins / Walker W. MacLeod / Pantelis Kyriakakis  
Tel: 403-260-3531 / 3710 / 3536  
Fax: 403-260-3501  
Email: scollins@mccarthy.ca / wmacleod@mccarthy.ca / pkyriakakis@mccarthy.ca

**AFFIDAVIT #3 OF THOMAS CROESE**  
**Sworn on June 16, 2020**

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

1. I am the Manager, Finance of Diavik Diamond Mines (2012) Inc. ("**DDMI**"). I have personal knowledge of the facts and matters sworn to in this Affidavit, except where I have received information from someone else or some other source of information. In the instances where I have received information from someone else or some other source, I have identified such person or source, and I believe such information to be true.
2. Dominion Diamond Mines ULC ("**Dominion**") and DDMI are successors in interest (in this capacity, each a "**Participant**") to the Diavik Joint Venture Agreement dated as of March 23, 1995 between Kennecott Canada Inc. and Aber Resources Limited, as subsequently amended (collectively, the "**JVA**").



A copy of the JVA is attached to my affidavit sworn on April 30, 2020 ("**April 30 Affidavit**").

3. In swearing this affidavit (the "**Croese Affidavit #3**"), I have reviewed the JVA; the affidavits of Kristal Kaye sworn in the within proceedings on April 21, May 6, and May 13, 2020 (collectively, the "**Kaye Affidavits**"); the reports of the court-appointed Monitor, FTI Consulting Canada Inc. ("**FTI**"), and any supplements thereto (collectively, the "**FTI Reports**"); as well as the Bench Briefs of DDMI and the appendices thereto filed on May 28, 2020 ("**May 28 Bench Brief**") and June 12, 2020 ("**June 12 Bench Brief**").

**DDMI's Position to the Monitor's Proposed Amendments to the SARIO and SISP**

4. DDMI made submissions at the original return of Dominion's application on May 29, 2020 with respect to concerns it had with the fashion by which the transaction documents had been crafted. The May 29, 2020 application was scheduled to continue and conclude on June 3, 2020. On June 2, 2020, the Monitor recommended changes to the SARIO and SISP. Dominion advised of its intention to adjourn its application on the morning of June 3, 2020.
5. On June 11, 2020, McCarthy Tétrault LLP provided its response to the Monitor's recommended changes by emailing blacklines of the SARIO and SISP to counsel to the Monitor and counsel to Dominion. Attached as **Exhibit "A"** is a true copy of the cover email and the attachments to the email which, for clarity, include the blackline comments on the SARIO and SISP. Attached as **Exhibit "B"** is a true copy of Dominion's response to the proposed changes.
6. DDMI had largely accepted the comments of the Monitor on the SISP save and except two minor clarifying changes.
7. With respect to the SARIO, DDMI relented on its request that it be granted leave to realize on the diamonds upon the happening of certain trigger events. DDMI maintains its requests that all of Dominion's share of production be held at the PSF and that the Court issue a declaration that no charges other than the Administration Charge and D&O Charge may be granted in priority to the security held by.
8. The full nature and extent of DDMI's position on the relief sought by Dominion will be contained in DDMI's brief of argument including the blacklines of the SISP and SARIO that set out DDMI's position relative to the Monitor's proposed changes .



9. For present purposes, however, DDMI would note that:
- (a) It did not and does not oppose the Stalking Horse Bid and DIP financing term sheet;
  - (b) Its submissions at the May 29, 2020 application centred around its concern that the structure of the proposed SISF will not result in a purchase of Dominion's interest in the Diavik Diamond Mine thus leaving DDMI exposed for the value of the Cover Payments it is making and without a viable and solvent joint venture partner that is able to meet its ongoing obligations under the JVA;
  - (c) Its involvement in these proceedings is involuntary and has been necessitated by Dominion's insolvency. DDMI is required to take steps to protect its interest including by attempting to ensure that: (i) the SISF results in a solvent purchaser acquiring Dominion's interest in the Diavik Diamond Mine; and (ii) such purchaser is sufficiently capitalized to repay the Cover Payments in full in cash upon closing and fulfill the executory obligations as joint venture partner under the JVA and associated agreements including the Closure Security Agreement.
10. DDMI has offered to meet with the Washington Group to discuss the Rio Condition. The Washington Group has indicated that it wishes to defer such a meeting until its Stalking Horse Bid is approved. DDMI wishes to assure the Court that it will meet with the Washington Group to discuss the Rio Condition if the Stalking Horse Bid is approved.

**Dominion's Allegations regarding Operation of the Diavik JVA**

11. Counsel at McCarthy Tétrault LLP ("McCarthy Tétrault") have informed me that on June 12, 2020, Dominion filed an Amended Application together with the June 12 Bench Brief with this Honourable Court. I understand from counsel that a section of the Dominion Brief repeats certain complaints first made by Dominion in respect of the Manager's operation of the Diavik Mine in a letter dated April 27, 2020, and summarized – though the letter is not attached as an exhibit – in Ms. Kaye's affidavit sworn on May 6, 2020.<sup>1</sup>
12. I was surprised to learn of the repetition of these allegations in the Dominion Brief. First, whatever operational disagreements Dominion may now be raising before the Court, such

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<sup>1</sup> At para. 6.





concerns did not prevent Dominion from approving the program and budget for 2020 – 2025 which will govern the operation of the Diavik Mine until its anticipated closure.<sup>2</sup>

13. Second, I have been advised by counsel at McCarthy Tétrault that on April 27, 2020, they received correspondence from counsel for Dominion alleging breaches of the JVA and a failure by the Manager to act in good faith. In addition, Dominion demanded the Manager undertake to cease operations at the mine and “alter financing requirements”. Dominion’s counsel also stated that if these demands were not met by May 8, 2020, they had instructions to commence an action in the British Columbia Supreme Court for such alleged breaches with the stated remedies to be sought including injunctive relief.
14. I have dealt with Dominion’s representatives in respect of the JVA since 2018, and this was the first occasion – outside the context of these proceedings – that it had threatened legal action if the Manager did not immediately comply with its demands.
15. Attached hereto and marked as **Exhibits “C”, “D”, “E”, and “F”** to this Affidavit are true copies of the correspondence exchanged between counsel for Dominion and counsel for DDMI on April 27, May 5, May 13, and May 15, 2020, respectively.
16. During the process of my final review of this Affidavit, counsel for Dominion emailed a letter and unfiled Notice of Civil Claim with counsel’s advice that the “... Notice of Civil Claim ... was submitted for filing today [June 16] with the British Columbia Supreme Court Registry.” Attached hereto and marked as **Exhibits “G” and “H”** to this Affidavit are true copies of the correspondence received and unfiled Notice of Civil Claim, respectively.
17. DDMI disputes the allegations made by Dominion in the Notice of Civil Claim and will vigorously defend the claim.

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<sup>2</sup> As discussed in paragraph 35 of my April 30 Affidavit *et seq.*



**Current and Projected Cover Payments under the JVA**

18. As at June 12, 2020, DDMI has made \$51.2 million in Cover Payments as summarized below:

<b>Date</b>	<b>Amount (millions)</b>
May 21	\$16.0
May 21	\$17.6
June 12	\$12.0
June 12	\$5.6
<b>Total</b>	<b>\$51.2</b>

19. The estimated Cover Payments to be made from June 15 – October 31 is estimated to be \$54.3 million as summarized below:

<b>Date</b>	<b>Amount (millions)</b>
June	\$10.0
July	\$14.0
August	\$11.9
September	\$8.7
October	\$9.7
<b>Total</b>	<b>\$54.3</b>

20. All diamonds produced by the Diavik Mine are evaluated (directly or through extrapolation from a sample) by Diamonds International Canada Limited (DICAN), a Yellowknife-based company providing independent resource evaluation and diamond valuation services to



the government of the Northwest Territories in addition to the government of Ontario. DICAN is an incorporated joint venture between the Aboriginal Diamonds Group Ltd and WWW International Diamond Consultants Limited. As such, DICAN is the body responsible for conducting the government royalty valuations that have been referred to by the parties to these proceedings. DICAN is independent from both DDMI and Dominion.

21. DICAN values production from the Diavik mine on a monthly basis. At each valuation, DICAN assesses the value of production from the Diavik Mine, which it then later uses to compare assessed value to royalties, which are paid based on sales prices. For diamonds that are mechanically riffled (usually the smaller size categories) or those that are split by auction (usually the larger size categories) and therefore joint venture diamonds at the time of valuation, DICAN will apply the same values to DDMI's and Dominion's share. For the rest of diamonds, which are intelligently riffled, the values per carat may differ. Even though DDMI does not know the value applied to Dominion's share, it is generally expected to be consistent with the values attributed to DDMI's share of production.
22. DDMI holds at the PSF Dominion's share of the diamonds produced (delivered from the mine and cleaned and sorted at the PSF) since the shipment cut-off that took place on April 22, 2020, the date of Dominion's initial CCAA filing. Since that date, two government valuations have taken place on May 18, 2020 and June 8, 2020. DDMI applied the DICAN values (for DDMI's share of production) to Dominion's share of diamonds that is already split through mechanical or intelligent riffling. Confidential Exhibit "1" sets out the results of such valuation.

#### **Future Financial Obligations of the Diavik JVA**

23. In paragraph 24 of the Croese Affidavit #2, I noted that Dominion's share of the December 31, 2019 calculation of closure costs and reclamation liabilities in the amount of \$365.3 million for the Diavik Mine were subject to the Closure Security Agreement (the "CSA") between DDMI and Dominion, which was filed as confidential exhibit to the same Affidavit. In paragraph 25 of my evidence, I confirmed that on January 1, 2021, Dominion is required to post an additional \$35 million under the CSA to meet its proportionate share of such costs and liabilities.



24. Dominion's 40% of the \$365.3 million of estimated closure costs and reclamation liabilities is \$146.2 million. The \$365.3 million is an order of magnitude estimate. A prefeasibility study related to the closure and rehabilitation of the Diavik Mine was commenced in November, 2018 and is due to be completed in April 2021. While it is too early in the study process to draw any definitive conclusions, recent experience in similar prefeasibility closure studies is that the closure and rehabilitation cost estimate could increase.
25. DDMI is hopeful that there will be a purchaser of Dominion's 40% interest in the Diavik mine including because if the additional \$35 million of letters credit are not posted, then Dominion's current closure and rehabilitation shortfall measured against the December 31, 2019 estimate will be \$41.1 million. As indicated, there is a reasonable likelihood that such shortfall could grow as time advances. Under the CSA, DDMI would have the right to make a Cash Call (and subsequent Cover Payment if the Cash Call is not paid) for any shortfall between security required to be provided by Dominion or its successor.

**The DDMI SIF – Sales and Marketing Fee**

26. In the June 12 Bench Brief, Dominion notes that the DDMI SIF contained a proposed fee for the sale and marketing of its diamonds in the amount of 2.5%. There is a suggestion that such a fee represents a significant financial benefit to DDMI. In fact, a fee of 2.5%, particularly when bench-marked against a recent transaction is commercially reasonable.
27. The run of mine diamonds that are delivered to both DDMI and Dominion from the PSF are sorted by size but are not sorted into quality, colour or shape. As such, each bag of diamonds packed at the PSF will contain a mix of high value stones, very low value stones and everything in between. Furthermore, while the diamonds are clean to the point of being valued by DICAN, they have not been cleaned to the standard where they are ready for sale.
28. As, when and if monetization of diamonds occurs either by Dominion or DDMI, the diamonds will have to be moved overseas in order to finish off the sorting and cleaning processes as well as presenting the goods to potential purchasers. Both Dominion and DDMI sell the majority of their diamonds in Antwerp. This point is further illustrated by the fact that \$116 million of Dominion's current diamond inventory is in India and Belgium. It is also the case the Splitting Protocol in Paragraph 4 provides that certain diamonds are to be delivered to Antwerp.



29. Now shown to me and marked as **Exhibit "I"** is a true copy of a news release issued by Mountain Province Diamonds Inc. ("**Mountain Province**"). Mountain Province is a 49% participant with De Beers Canada Inc. in the Gahcho Kué diamond mine located in the Northwest Territories. The news release reports that Mountain Province entered into an agreement to sell US\$ 50 million of diamonds to Dunebridge Worldwide Ltd. ("**Dunebridge**"). The fee charged by Dunebridge is stated to be calculated at 10% of the value for each sale.
30. DDMI's response to the other issues and concerns raised by Dominion relative to the DDMI SIF in its June 12 Bench Brief will be set out in DDMI's bench brief.

### Free Cash Flow

31. In paragraph 35 of my April 30 Affidavit, I advised the Court that both Participants had approved a program and budget for the period 2020 – 2025 (the "**Diavik JVA Budget**") pursuant to a Management Committee Resolution, executed by Dominion on December 2, 2019. In paragraph 41 of the same Affidavit, I explained that a comprehensive Operating Review had been undertaken by the Manager in response to the COVID-19 pandemic; and in paragraph 42(a), I went on to inform the Court that the Operating Review had concluded that under the Diavik JVA Budget – and assuming continued operations of the Diavik Mine as opposed to entering care and maintenance– there was a projected free cash flow benefit of approximately \$100 million in 2020, based on the Manager's assessment of reasonable diamond sales assumptions.
32. I have reviewed Dominion's submissions in its June 12 Bench Brief and note the misunderstanding Dominion seemingly has with respect to my evidence on this point. The testimony cannot be taken to mean that the Diavik Mine would generate \$100 million of positive free cash flow in 2020. The fundamental point that I was making was a relative one. Specifically, that placing Diavik Mine on care and maintenance as opposed to continuing to operate the Diavik Mine would result in \$100 million less cash flow being generated. The primary reason for this is that no diamonds would be produced and so no diamonds could be sold. The Free Cash Flow generation of the Diavik Mine is further illustrated by the information contained in Confidential Exhibit 1.



**DDMI Sealing Order**

33. DDMI will apply to seal the Confidential Exhibit 1. The confidential exhibit contains information which is confidential and commercially sensitive. Disclosure of the spreadsheet would cause serious and irreparable harm to the commercial interests of all of the Participants because of the potential disclosure of financial and asset valuation information. Other than DDMI and Dominion, no other person has a reasonable expectation or right to be able to access the spreadsheets or the information contained therein.
34. I make this Affidavit in response to Dominion's Amended Application returnable June 19, 2020.

**Process for Commissioning of this Affidavit**

35. I am not physically present before the Commissioner for Oaths (the "**Commissioner**") taking this Affidavit, but I am linked with the Commissioner by video technology. The following steps have been or will be taken by me and the Commissioner:
- (a) I have shown the Commissioner the front and back of my current government-issued photo identification ("ID") and the Commissioner has compared my video image to the information on my ID;
  - (b) the Commissioner has taken a screenshot of the front and back of my ID to retain it;
  - (c) the Commissioner and I have a paper copy of this Affidavit before us;
  - (d) the Commissioner and I have reviewed each page of this Affidavit to verify that the pages are identical and have initialed each page in the lower right corner;
  - (e) at the conclusion of our review of the Affidavit, the Commissioner administered the oath to me, and the Commissioner watched me sign my name to this Affidavit; and



(f) I will send this signed Affidavit electronically to the Commissioner.

SWORN BEFORE ME by two-way video )  
conference on June 16, 2020 )

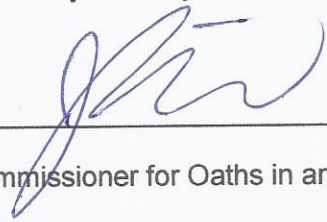
  
\_\_\_\_\_)  
A COMMISSIONER FOR OATHS )  
in and for the Province of Alberta )

**Jordan Bierkos**  
*Barrister & Solicitor*

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



This is Exhibit "A" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*





**Doran, Katie**

---

**From:** Collins, Sean F.  
**Sent:** Thursday, June 11, 2020 8:40 AM  
**To:** 'Chris Simard (simardc@bennettjones.com)'; Peter Rubin (peter.rubin@blakes.com)  
**Subject:** Dominion - DDMI Comments on Monitor's Proposed SARIO and SISP  
**Attachments:** DOCS-#20467277-vpdf-SARIO-MT\_Comments\_on\_Monitor\_s\_Proposed\_Changes.PDF;  
 DOCS-#20468055-vpdf-Monitor\_SISP\_with\_MT\_Comments.PDF

Dear Chris and Peter,

Attached are blacklines with DDMI's comments on the Monitor's proposed SARIO and SISP. As it pertains to the SARIO, DDMI proposes to accept the change that monetization occur automatically and has largely accepted the Monitor's construct that will require further application. As it pertains to quantity of diamonds held, it is proposed that, rather than engage in a valuation exercise at this time, given the reality surrounding the likely timing of diamond sales resuming (ie not before Phase I, at the earliest). DDMI continues its request that there be no future priming of its security.

The SISP comments are a couple of minor clarifying points in para 38.

As discussed, in the interests of attempting to find a commercial resolution to the issues, DDMI provides these comments now and without having reviewed the proposed amendments that will be brought forward by Dominion and others with respect to the transaction documents. DDMI reserves the right to review the revised materials and to advise if its proposal changes upon receipt of the revised materials.

DDMI continues its internal review of the proposed changes and same is subject to its final sign off.

We look forward to hearing from you.

**Sean Collins**  
 Partner | Associé

**McCarthy Tétrault LLP**



A handwritten signature in blue ink, appearing to be 'SR', is located in the bottom right corner of the page.

This is Exhibit "B" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*



**Doran, Katie**

---

**From:** Rubin, Peter <peter.rubin@blakes.com>  
**Sent:** Friday, June 12, 2020 1:12 PM  
**To:** Collins, Sean F.; 'Chris Simard (simardc@bennettjones.com)'  
**Subject:** [EXT] RE: Dominion - DDMI Comments on Monitor's Proposed SARIO and SISP

Sean – our client is not in agreement with the terms below.

Peter Rubin\*  
 Partner

604-631-3315  
 \*Law Corporation

*Blakes*

**Blake, Cassels & Graydon LLP**  
 595 Burrard Street, Suite 2600, Vancouver BC V7X 1L3  
 Tel: 604-631-3300 Fax: 604-631-3309  
[blakes.com](http://blakes.com) | [Twitter](#) | [Unsubscribe](#)

**From:** Collins, Sean F. <scollins@MCCARTHY.CA>  
**Sent:** Thursday, June 11, 2020 7:40 AM  
**To:** 'Chris Simard (simardc@bennettjones.com)' <simardc@bennettjones.com>; Rubin, Peter <peter.rubin@blakes.com>  
**Subject:** Dominion - DDMI Comments on Monitor's Proposed SARIO and SISP

Dear Chris and Peter,

Attached are blacklines with DDMI's comments on the Monitor's proposed SARIO and SISP. As it pertains to the SARIO, DDMI proposes to accept the change that monetization occur automatically and has largely accepted the Monitor's construct that will require further application. As it pertains to quantity of diamonds held, it is proposed that, rather than engage in a valuation exercise at this time, given the reality surrounding the likely timing of diamond sales resuming (ie not before Phase I, at the earliest). DDMI continues its request that there be no future priming of its security.

The SISP comments are a couple of minor clarifying points in para 38.

As discussed, in the interests of attempting to find a commercial resolution to the issues, DDMI provides these comments now and without having reviewed the proposed amendments that will be brought forward by Dominion and others with respect to the transaction documents. DDMI reserves the right to review the revised materials and to advise if its proposal changes upon receipt of the revised materials.

DDMI continues its internal review of the proposed changes and same is subject to its final sign off.

We look forward to hearing from you.

**Sean Collins**  
Partner | Associé

**McCarthy Tétrault LLP**

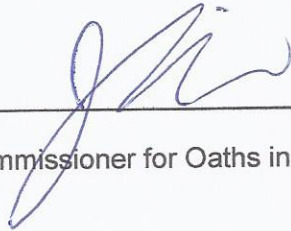


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**External Email:** Exercise caution before clicking links or opening attachments | **Courriel externe:** Soyez prudent avant de cliquer sur des liens ou d'ouvrir des pièces jointes

A handwritten signature in blue ink, consisting of several loops and a long tail.

This is Exhibit "C" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*





Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents  
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 Suite 2600, Three Bentall Centre  
 Vancouver BC V7X 1L3 Canada  
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**Joe McArthur, FCI Arb, C. Arb**  
 Partner  
 Dir: 604-631-3383  
 joe.mcarthur@blakes.com

April 27, 2020

**VIA E-MAIL (c/o Counsel)**

Reference: 00180245/000004

Rio Tinto  
 Diavik Diamond Mines (2012) Inc.  
 P.O. Box 2498  
 Suite 300, 5201-50<sup>th</sup> Avenue  
 Yellowknife, NT X1A 2P8

**Re: Management of Diavik Joint Venture by Diavik Diamond Mines (2012) Inc. ("DDM")**

Dear Sirs/Mesdames:

We are legal counsel for Dominion Diamond Mines ULC ("Dominion").

We write regarding the Diavik Joint Venture Agreement (the "JV Agreement") and DDM's ongoing management and operation of the Diavik mine during the COVID-19 pandemic.

**Impact of COVID-19 Pandemic**

We have now entered unprecedented times, including for the Diavik mine. The COVID-19 pandemic has dramatically impacted the global diamond industry. The diamond market has effectively shut down with the consequence that no immediate revenues are being generated from mining operations, the current market price for diamonds is at a low not seen since 2009, and mining operators around the world have ceased or dramatically curtailed operations. This includes Dominion's suspension of operations at the Ekati mine in March in order to protect the health and safety of our employees and local communities, as a result of the rapid spread of COVID-19 and the high frequency of air travel required for employees and support staff to access mining operations.

Due to COVID-19's impacts on global demand for diamond exports, Diavik's joint venture participants have no means of generating revenue from the stockpiles recorded in March (some 62,271 tonnes and 119,370 estimated carats) or from continued mining operations for the foreseeable future. At the same time, continued operations pose significant health and safety risks for the many workers required to travel and access the mine.

**Economic Performance**

In November 2019, DDM emphasized its commitment to achieving its "stretch plan" and embarking on a program that would focus on cost reduction and organizational transformation. Despite this purported focus on cost reduction, our client has received multiple cash call invoices that do not reflect any

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meaningful reduction of costs. To the contrary, DDM's most recent performance report indicates that cash costs in March exceeded the stretch plan by \$4.9 million.

These significant expenditures were accompanied by poor performance: ore processed for March was 17% below plan; total carats recovered for the month were 14.4% below plan; and the total carats recovered for the period are 13% below budget. Year-to-date cash costs are now \$21.6 million above DDM's stretch plan, while at the same time production year-to-date is 13.6% below plan. The concerns over cash costs this year are heightened by the fact that the mine's cash costs reflect a purely fortuitous drop in fuel costs by \$16 million; despite this \$16 million windfall, the mine's production costs are still unsustainable at a cost of \$195 per tonne.

We understand that part of the reason for the poor results relates to DDM mining in areas which are not part of its annual planned program. DDM appears to be adopting a high-grade approach. This approach makes little economic sense given that the higher-grade carats harvested are going into storage with the risk of leaving the area sterilized. In these circumstances, DDM's current approach is destructive of value for the Joint Venture and its participants. We understand that a high-grade approach may be serving Rio Tinto's interests, but it is not serving the best interests of the Joint Venture and its participants.

The issues that the mine is experiencing this year are compounding the challenges that resulted from DDM's approach last year. In 2019, DDM saw costs rise \$5 million above plan while production dropped 8.5% below plan. The production of lower-grade carats than planned demonstrates that DDM's models are not reliable, and its control of both the open pit and underground mines is poor. These are ongoing issues.

#### **Reasonable Expectations under the JV Agreement**

As you are aware, the fundamental purpose of the JV Agreement for both participants is the exploitation of the mineral interests such that each can benefit from its proprietary interest in the assets through a proportionate share of production. The JV Agreement does not contemplate a situation in which the mine would operate and produce diamonds incapable of generating revenue to pay operational expenses. This unforeseen situation requires DDM as Manager and as the deciding vote on the Management Committee to act.

Given the fundamental purpose underlying the JV Agreement, Dominion is entitled to reasonably expect that:

- (a) the funds supplied by Dominion pursuant to the terms of the JV Agreement will be devoted to optimizing profitable economic production;
- (b) DDM will regularly consult with Dominion; and
- (c) the Participants, including DDM in its capacity as Manager, will not operate in such a manner as to substantially impair the objective of the agreement, being, again, the profitable economic production of product from the Diavik mine.

Currently these reasonable expectations are not being met:

- (a) The cash supplied by Dominion pursuant to recent cash calls has been devoted to keeping the mine operational but not in a profitable or economically efficient way given the closed diamond market and high operational expenses associated with the COVID-19 pandemic;
- (b) DDM has unilaterally cancelled its regular weekly meetings with Dominion; and
- (c) DDM in its capacity as Manager and in its capacity as the controlling entity in the Management Committee has neglected to take the only reasonable course of action in the circumstances – to dramatically reduce operations or place the Diavik mine on care and maintenance.

### **DDM's Breach of its Obligations**

DDM's legal obligations as Manager are separate and apart from its role as a joint venture participant. Among other things, DDM must maintain a distinction between its contractual and fiduciary duties to the joint venture participants and its own commercial interests. This includes ensuring that no partiality is shown in relation to DDM's interests as participant and that DDM's management enjoys no advantage in terms of consultation and access to information.

As Manager and controlling participant on the Management Committee, DDM's fundamental obligations of good faith and fair dealing also encompass DDM's duty not to undermine the purposes of the JV Agreement and not to deprive Dominion of the intended benefits of the JV Agreement.

It is evident from any economic consideration that continued operation of the mine at current levels during the current global COVID-19 pandemic cannot be justified. DDM's continued efforts to finance and operate the mine through the issuance of cash calls in these circumstances represents a significant departure from DDM's obligations as Manager of the joint venture and as the controlling participant on the Management Committee. In exercising its obligations, DDM must base decisions on sound engineering, mining and economic principles. The only inference to be drawn in the circumstances is that DDM has failed to do so.

By failing to act in accordance with Dominion's reasonable expectations, DDM is engaging in a course of conduct in breach of its obligations under the JV Agreement, including its fundamental obligations of good faith and fair dealing. DDM has and continues to engage in this course of conduct with the express knowledge that Dominion is particularly harmed by DDM's failure to take steps to reduce immediate cash requirements during the COVID-19 pandemic.

DDM's approach, including the continuing cash calls, may have a significant negative effect on Dominion's restructuring options.. As a result, DDM's irresponsible approach to cash calls has put Dominion's continued active presence in the Northwest Territories in jeopardy. DDM's approach has and may continue to cause substantive harm to not Dominion but also its employees that rely on Dominion and the Northwest Territories itself. We remind DDM that Dominion is one of the largest employers in the Northwest Territories.







Page 4

Further, the fact that Dominion has commenced *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36 ("CCAA") proceedings does not excuse DDM of its contractual and fiduciary duties. Dominion continues to hold a 40% interest in the Joint Venture and has made very substantial cash contribution to hold this interest. As you are well aware, over the last approximately three years alone, Dominion has paid \$763,050,000. in cash calls to the Joint Venture. This 40% interest is not affected by the CCAA process. Among other things, DDM must continue to act in accordance with its consultation obligations including past practices. DDM's unilateral cancelling of its weekly call with Dominion is in breach of these obligations and is unacceptable.

While the JV Agreement purports to limit the liability of the Manager, these protections are not available where DDM's actions as Manager are not independent of DDM's role as the controlling participant, nor are they intended to apply to breaches of good faith and fair dealing. DDM has failed to maintain a proper distinction between its contractual duties as Manager and its commercial interests as a participant and DDM's conduct is causing significant harm to Dominion contrary to Dominion's reasonable expectations. In these circumstances, DDM cannot avail itself of the protections accorded to an independent Manager under the JV Agreement.

#### **Immediate Reduction in Operations**

While we are hopeful that this urgent issue can be resolved without the need for formal dispute resolution proceedings, our client cannot continue to be subjected to cash calls that are inconsistent with DDM's obligations as Manager and Participant. Please respond forthwith indicating what steps DDM intends to take to cease operations and alter financing requirements for the Diavik mine. The current situation at the mine evidently calls for immediate reductions in operations if not placing the mine on care and maintenance. We understand that DDM has been considering these steps for a month but it has not taken the concrete immediate steps that it is obligated to take to protect Dominion's interests under the JV Agreement.

#### **Action in British Columbia Supreme Court**

Absent a response of immediate action to be taken by May 8, 2020, we have instructions to commence an action in British Columbia Supreme Court against DDM for breach of its obligations under the JV Agreement. The action will seek damages against DDM as well as declaratory and injunctive relief with respect to DDM's continuing cash calls issued in breach of its obligations.

Yours truly,



Joe McArthur

JM:JM/aerk

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This is Exhibit "D" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*



McCarthy Tétrault LLP  
Suite 2400, 745 Thurlow Street  
Vancouver BC V6E 0C5  
Canada  
Tel: 604-643-7100  
Fax: 604-643-7900

**mccarthy  
tétrault**

**Michael Feder, Q.C.\***  
Partner  
Direct Line: 604-643-5983  
Direct Fax: 604-622-5614  
Email: mfeder@mccarthy.ca

\* practice conducted through law corporation

May 5, 2020

Via Email (joe.mcarthur@blakes.com)

Blakes, Cassels & Graydon LLP  
595 Burrard Street, P.O. Box 49314  
Suite 2600, Three Bentall Centre  
Vancouver BC V7X 1L3

**Attention: Joe McArthur**

Dear Sirs/Mesdames:

**Re: Diavik Mine Joint Venture**

I represent Diavik Diamond Mines (2012) Inc. ("DDMI"). I write in response to your April 27, 2020 letter.

The assertions in your letter are inaccurate and the arguments in your letter are contrary to the facts, the Diavik Joint Venture Agreement and the law.

Without limiting the generality of the foregoing, some specific corrections follow:

1. DDMI has operated and continues to operate the Diavik mine in accordance with the Diavik Joint Venture Agreement and its legal obligations in that connection. DDMI's core objectives have been and remain to ensure the safety and well-being of the Diavik mine's workers and associated communities and to maximise the economic value extracted from the Diavik mine over its life in full observance of the law. DDMI's approach to the COVID-19 pandemic is consistent with international protocols and best practices and was adopted after consulting local authorities. While your letter suggests that DDMI has pursued some improper, collateral objective, it never identifies that objective. There is none.
2. In response to the COVID-19 pandemic, DDMI undertook a comprehensive review of the operating strategy for the Diavik mine with a view to the objectives outlined above. DDMI concluded that the best course was to continue to operate the mine as contemplated in the 2020-2025 Program and Budget, while simultaneously implementing additional health and safety controls. That is what DDMI has done. Contrary to your letter, putting the mine into care and maintenance status on the basis suggested by Dominion Diamond Mines ULC ("Dominion") would have produced only a minimal savings in near-term expenses as approximately half of annual cash outflows are incurred or committed

to in the first quarter of the year. But continuing to operate the mine should continue to produce significant financial benefits for the joint venture and maintain the mine's significant contribution to the Northwest Territories and local communities through payments to government, employees and suppliers over the remaining life of the mine.

3. The cash call invoices received by Dominion follow the 2020-2025 Program and Budget, which was approved by the Diavik Joint Venture Management Committee, including Dominion's representative Kristal Kaye, on November 26, 2019. They also follow the approach that DDMI and Dominion discussed by email in February 2020. Further, DDMI met with Dominion's acting CEO, Pat Merrin on April 20, 2020 to present first-quarter results; he did not raise any specific concerns regarding the upcoming April 22, 2020 cash call.
4. DDMI has not "unilaterally cancelled its regular weekly meetings with Dominion". DDMI's President, Richard Storrie, met with Mr. Merrin, on Friday, May 1 at 10 a.m. as scheduled. The weekly meeting scheduled for 10 a.m. on Friday, April 24 was cancelled, but only at Mr. Merrin's explicit request.
5. Your letter states that the diamond industry has "effectively shut down" because of the COVID-19 pandemic and that diamonds being produced by the Diavik mine are "incapable of generating revenue to pay operational expenses". That is not the case. Despite some decrease in commerce in the diamond industry, profitable sales remain possible, with Rio Tinto delivering sales of Diavik product during March and April 2020 through its Antwerp office to its customers globally.

Dominion has no legitimate basis for asking DDMI to cease or reduce mine operations or alter financing requirements. DDMI has considered and appropriately rejected those options as they are not the best course of action at this stage.

If Dominion plans to apply to court for relief against DDMI, DDMI expects a reasonable period of advance notice of any step in that regard. Please draw this letter to the court's attention in any event.

DDMI also reminds Dominion of the confidentiality requirements applicable to the Diavik joint venture. As Dominion knows, DDMI recently consented only to limited disclosures but is aware of certain disclosures that do not appear to be authorized. DDMI reserves all its rights.

Yours truly,

McCarthy Tétrault LLP

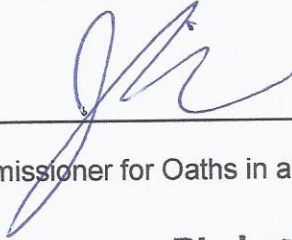
Per:



Michael Feder, Q.C.\*

154213/516250  
MT DOCS 20341084v6

This is Exhibit "E" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*





Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents  
 595 Burrard Street, P.O. Box 49314  
 Suite 2600, Three Bentall Centre  
 Vancouver BC V7X 1L3 Canada  
 Tel: 604-631-3300 Fax: 604-631-3309

May 13, 2020

**Joe McArthur, FCI Arb, CARB**  
 Partner  
 Dir: 604-631-3383  
 joe.mcarthur@blakes.com

**VIA E-MAIL**

Reference: 00180245/000013

McCarthy Tétrault LLP  
 Barristers and Solicitors  
 Suite 2400, 745 Thurlow Street  
 Vancouver, BC V6E 0C5

**Attention: Michael Feder, Q.C.**

**Re: Diavik Mine Joint Venture**

Dear Sirs/Mesdames:

We write in response to your May 5, 2020 letter.

There is no tenable commercial rationale for DDMI's approach. No short- or long-term plan has been presented that would justify DDMI's approach given the continued poor performance in the current circumstances. Accordingly, the only logical conclusion our client can draw is that DDMI is pursuing its own objectives without due regard to its obligations under the JV Agreement.

With respect to the cash calls, these have consistently been identified as a concern for our client. The 2020-2025 Program and Budget were based on expense reductions that have never been realized. In any event, as your client well knows our client had no ability to block approval of Programs and Budgets given its minority interest in the project. DDMI's approach has been to continue to extract as much money as possible from Dominion at a time that DDMI knew Dominion was facing significant financial challenges due to COVID-19 and the worldwide diamond sales channels being essentially closed.

With respect to the weekly meetings, it was Mr. Storrie who expressed the view that it was probably for the best that he and Mr. Merrin no longer speak directly. However, we understand that the parties have since resumed communications.

It is not accurate to describe the diamond market as merely suffering "some decrease". This is contrary to reality. The situation is widely known. Our client's information is that a very limited number of sales are occurring at sharp discounts. We understand that this includes the sales that your client has recently concluded. The market is severely depressed and your client's refusal to acknowledge that fact is concerning. Your client's past failure to adjust its approach to account for impacts from COVID-19 is one example of its failure to meet its obligations under the JV Agreement, particularly given DDMI's unsustainable consumption of cash while it continually operates over budget.

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Page 2

Finally, we are not aware of any breach of the confidentiality requirements applicable to the Diavik joint venture and your vague assertion that DDMI is "aware of certain disclosures that do not appear to be authorized" provides our client with no ability to address this allegation.

With respect to any court proceedings, please advise whether you are authorized to accept service of legal proceedings.

Yours truly,

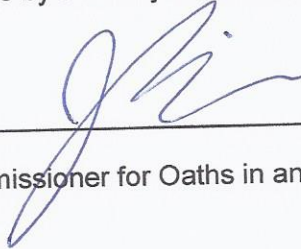


Joe McArthur

JM/lau



This is Exhibit "F" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*





McCarthy Tétrault LLP  
Suite 2400, 745 Thurlow Street  
Vancouver BC V6E 0C5  
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mccarthy  
tétrault

**Michael Feder, Q.C.\***  
Partner  
Direct Line: 604-643-5983  
Direct Fax: 604-622-5614  
Email: mfeder@mccarthy.ca

\* practice conducted through law corporation

May 15, 2020

Via Email (joe.mcarthur@blakes.com)

Blakes, Cassels & Graydon LLP  
595 Burrard Street, P.O. Box 49314  
Suite 2600, Three Bentall Centre  
Vancouver BC V7X 1L3

**Attention: Joe McArthur**

Dear Sirs/Mesdames:

**Re: Diavik Mine Joint Venture**

I write in response to your May 13, 2020 letter.

Dominion's assertions and arguments continue to be baseless.

I will seek instructions to accept service of legal proceedings on behalf of DDMI once you send me a copy of what you wish to serve. I do not have a broad authority to accept service with respect to "any court proceedings", which is what your letter seems to ask about.

Yours truly,

McCarthy Tétrault LLP

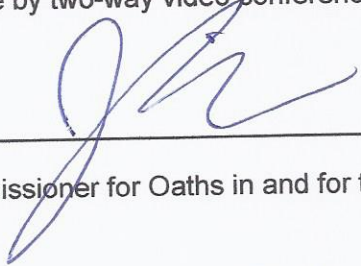
Per:



Michael Feder, Q.C.\*



This is Exhibit "G" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*





Blake, Cassels & Graydon LLP  
 Barristers & Solicitors  
 Patent & Trademark Agents  
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 Suite 2800, Three Bentall Centre  
 Vancouver BC V7X 1L3 Canada  
 Tel: 604-631-3300 Fax: 604-631-3309

June 16, 2020

**Joe McArthur, FCI Arb, C Arb**  
 Partner  
 Dir: 604-631-3383  
 joe.mcarthur@blakes.com

**VIA E-MAIL**

Reference: 00180245/000013

McCarthy Tétrault LLP  
 Barristers and Solicitors  
 Suite 2400, 745 Thurlow Street  
 Vancouver, BC V6E 0C5

**Attention: Michael Feder, Q.C.**

**Re: *Dominion Diamond Mines ULC v. Diavik Diamond Mines (2012) Inc.* ("DDMI")**

Dear Sirs/Mesdames:

Please find enclosed for the attention of DDMI an unfiled courtesy copy of a Notice of Civil Claim which was submitted for filing today in the above-noted matter with the British Columbia Supreme Court Registry.

A filed copy of the Notice of Civil Claim will be provided as soon as it is available. Kindly advise if your office will be accepting service of the filed copy on behalf of DDMI.

Yours truly,



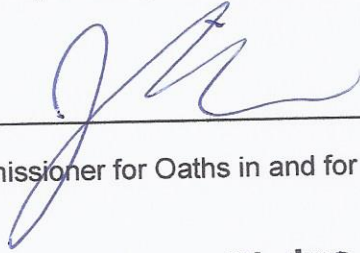
Joe McArthur

JM/atj  
 Encl.

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This is Exhibit "H" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



---

A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*



No.  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

**DOMINION DIAMOND MINES ULC**

PLAINTIFF

AND

**DIAVIK DIAMOND MINES (2012) INC.**

DEFENDANT

**NOTICE OF CIVIL CLAIM**

**This action has been started by the Plaintiff for the relief set out in Part 2 below.**

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

**JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.**

**Time for Response to Civil Claim**

A Response to Civil Claim must be filed and served on the Plaintiff,

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,

- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the Court, within that time.

## CLAIM OF PLAINTIFF

### Part 1: STATEMENT OF FACTS

#### *The Parties*

1. Dominion Diamond Mines ULC ("**Dominion**") is an unlimited liability company incorporated under the laws of British Columbia. Dominion is Canada's largest independent producer of natural and responsibly mined premium rough diamonds.

2. Diavik Diamond Mines (2012) Inc. ("**DDMI**"), is a company incorporated under the laws of Canada and is a wholly-owned subsidiary of Rio Tinto plc ("**Rio**"). Rio is a global mining and metals company operating in approximately 36 countries with a current market capitalization of approximately USD\$65 Billion.

#### *The Diavik Diamond Mine*

3. Dominion supplies rough diamonds to the global market from its operation of the Ekati Diamond Mine, in which it has an approximate 90% interest, and the Diavik Diamond Mine (the "**Diavik Mine**"), in which it has a 40% interest. DDMI has a 60% interest in the Diavik Mine.

4. The Diavik Mine, consisting of the mine site and surrounding exploration properties, is located on a 20-kilometer island in Lac de Gras, approximately 300 kilometers northeast of Yellowknife, in the Northwest Territories. Commercial production commenced at the Diavik Mine in 2003.

5. The resources at the Diavik Mine were discovered by Dominion (then Aber Resources Limited ("**Aber**")) in the early 1990s. Due to the costs required to develop the mine, Dominion entered into a joint venture with Kennecott Canada ULC ("**Kennecott**") in 1995 and Kennecott became the Manager of the joint venture.

6. The Diavik Mine is currently operated by DDMI. All licenses and permits required to undertake operations at Diavik Mine are held by DDMI, as operator. All employees engaged at the Diavik Mine are the employees of DDMI.

#### *The JV Agreement*

7. Dominion and DDMI are successors in interest to a joint venture agreement dated as of March 23, 1995 between Aber and Kennecott. The JV Agreement was subsequently amended pursuant to:



- 3 -

- (a) Amending Agreement, dated as of December 1, 1995, between Kennecott and Aber;
- (b) Amending Agreement No.2, dated as of January 17, 2002, between Diavik Diamond Mines Inc. and Aber; and
- (c) Amending Agreement No.3, dated as of March 3, 2004, between Diavik Diamond Mines Inc. and Aber.

(collectively, the “JV Agreement”).

8. The fundamental purpose of the JV Agreement is the exploitation of mineral interests such that both DDMI and Dominion can benefit from the assets of the joint venture through a proportionate share of production. Dominion’s proportionate share of production under the JV Agreement is taken in kind in the form of rough diamonds. At all relevant times DDMI was aware that Dominion depended on the sale of its share of production to finance operation of the Diavik Mine.

9. DDMI acts as Manager under the JV Agreement and exercises an executive role over the operations of the joint venture, subject to direction by the Management Committee. Pursuant to the JV Agreement Dominion’s and DDMI’s votes on the Management Committee are equal to their participating interests, and nearly all decisions of the Management Committee are decided by a simple majority vote of the participating interests.

10. As the majority participant, DDMI effectively controls the Management Committee. Together with DDMI’s position as Manager under the JV Agreement, DDMI exercises all discretionary authority under the JV Agreement, including overall joint venture property and funds supplied by Dominion pursuant to cash calls.

11. Section 7.3 of the JV Agreement provides that the Manager must conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices. As a minority joint venture participant, Dominion is further entitled to expect that DDMI’s efforts – and the funds supplied by Dominion – will be devoted to maximizing the profitable production of diamonds from the Diavik Mine.

### **COVID-19 Impact**

12. COVID-19 has had an acute negative impact on all segments of the global diamond industry. Dominion’s ability to move its rough diamond inventory from the point of extraction in the Northwest Territories to sorting facilities in India for further movement and eventual sale on the world market has been effectively frozen.

13. Dominion’s inability to generate revenues from its share of production at the Diavik Mine, among other factors, created a liquidity crisis for Dominion that rendered it insolvent and in urgent need of protection under the *Companies’ Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the “CCAA”).

14. On April 22, 2020, upon the application of Dominion and certain of its affiliates (together, the “CCAA Applicants”), the Alberta Court of Queen’s Bench in Bankruptcy and Insolvency (the “CCAA Court”) granted an initial order with respect to the CCAA Applicants.

### **DDMI's Cash Calls**

14. DDMI's operation of the Diavik Mine is significantly over budget, and production has failed to meet targets. DDMI's poor performance preceded the impact of COVID-19 and has continued to deteriorate. In 2019, costs rose approximately 7% above the stretch plan, while total carats recovered were 8.5% below plan. In November 2019, DDMI committed to achieving its stretch plan and embarking on a program that would focus on cost reduction, among other initiatives. However, in the first quarter of 2020, cash costs were more than 19% above DDMI's stretch plan, while at the same time carats recovered were 13.6% below plan. Dominion has repeatedly objected to DDMI's failure to reduce cash consumption, particularly considering its record of poor production.

15. Despite DDMI's failure to meet production and grade plans, DDMI has taken no effective steps to mitigate, and instead has continually demanded that Dominion satisfy increasingly large cash calls. In the first three months of 2020 alone, those cash calls totaled \$68.9 million. In April 2020, DDMI issued further cash calls to Dominion totaling approximately \$33 million.

16. Despite repeated requests for information, DDMI has refused or neglected to provide all relevant current information to Dominion, including resource and reserve reconciliation reports and information regarding an ongoing reclamation feasibility study being conducted, all of which has been funded by joint venture funds.

17. At the direction of Rio, DDMI has been and continues to prioritize the interests of DDMI and Rio in its management of the Diavik Mine to the detriment of Dominion and the joint venture as a whole.

18. DDMI has continued to maintain full operations at the Diavik Mine without taking into account the disruptions to the diamond industry caused by the COVID-19 and, in particular, without taking into account Dominion's circumstances. DDMI has done so knowing that Dominion has no ability to pay for such cash calls because it cannot materially monetize diamond inventories to pay for them.

19. Without Dominion being able to generate revenues due to COVID-19 related impacts on the diamond market and Dominion's business operations, the DDMI cash call payments have drained Dominion's cash reserves and contributed to Dominion's liquidity crisis. The continued cash calls will also negatively impact Dominion's restructuring efforts.

### **DDMI's Breaches**

20. Despite express knowledge that Dominion is particularly harmed by DDMI's conduct, DDMI has and continues to breach its obligations under the JV Agreement, including by, without limitation:

- (a) failing to meet cost budgets, production plans and diamond recovery budgets, including failures in the period preceding the COVID-19 pandemic;
- (b) failing to achieve agreed-upon and appropriate cost reductions;
- (c) deliberately attempting to extract as much capital as possible from Dominion with knowledge of its liquidity crisis;





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- (d) utilizing funds supplied by Dominion pursuant to recent bi-weekly cash calls to operate the mine in a manner that is not economically efficient and does not maximize profitability;
  - (e) failing to develop adequate modelling to support economic development of resources;
  - (f) failing or refusing to base operational and management decisions on sound engineering, mining and economic principles;
  - (g) mining the deposits in a manner inconsistent with the planned program;
  - (h) failing to disclose all relevant information to Dominion;
  - (i) failing to adequately consult with Dominion; and
  - (j) placing DDMI's and Rio's interests ahead of the joint venture with the result of depriving Dominion of the benefit of the JV Agreement.
- (together, DDMI's "**Misconduct**")

## Part 2: RELIEF SOUGHT

21. Dominion seeks the following relief against DDMI:

- (a) a declaration that DDMI has conducted operations in breach of or in a manner inconsistent with the JV Agreement;
- (b) general damages;
- (c) special damages;
- (d) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (e) costs; and
- (f) such further and other relief as this Court may deem just.

## Part 3: LEGAL BASIS

### ***Breach of Contract***

22. Pursuant to the JV Agreement and in light of its fundamental purpose, Dominion is entitled to reasonably expect, among other things, that:

- (a) the funds supplied by Dominion pursuant to the terms of the JV Agreement will be devoted to optimizing profitable economic production;
- (b) DDMI will regularly consult with Dominion; and



- (c) the Participants, including DDMI in its capacity as Manager, will not operate in such a manner as to cause significant harm to Dominion or substantially impair the objective of the agreement, being, again, the profitable economic production of product from the Diavik Mine.

23. The Manager and Management Committee must exercise decision-making powers in accordance with the JV Agreement and the duties of all participants to act fairly and in good faith. As both Manager and controlling participant on the Management Committee, DDMI's fundamental obligations include a duty not to undermine the purposes of the JV Agreement and not to deprive Dominion of the intended benefits of the JV Agreement.

24. DDMI's continued course of conduct, including its Misconduct, defies reasonable expectations and amounts to a flagrant breach of DDMI's obligations under to the JV Agreement, including its fundamental duty to act honestly, reasonably and in good faith in the performance of its contractual obligations.

#### ***Breach of Fiduciary Duty***

25. At all material times and by virtue of DDMI's role as Manager, DDMI owed and continues to owe fiduciary obligations to Dominion, including but not limited to fiduciary obligations of loyalty, good faith, disclosure and avoidance of a conflict of duty and self-interest. DDMI's continued course of conduct, including but not limited to the Misconduct, amounts to a breach of DDMI's fiduciary obligations.

#### ***Willful Misconduct and Gross Negligence***

26. At all material times, DDMI owed and continues to owe a duty of care requiring DDMI to, among other things, conduct all operations in an efficient manner and in accordance with sound mining and other applicable standards and practices.

27. DDMI's continued course of conduct, including but not limited to DDMI's Misconduct, breached DDMI's duty of care and amounts to willful misconduct and gross negligence. Dominion's acts and omissions exhibit a conscious or reckless indifference to Dominion's rights and a marked departure from the standards according to which a reasonable Manager in DDMI's position would conduct themselves.

#### ***Loss and Damage to Dominion***

28. As a result of DDMI's wrongful acts and omissions, including the breaches, willful misconduct, and negligence described herein, Dominion has suffered and continues to suffer loss and damage including but not limited to economic losses and damages resulting from DDMI's misuse of funds supplied by Dominion during DDMI's management of the Diavik Mine.



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Plaintiff's address for service: Blake, Cassels & Graydon LLP  
Barristers and Solicitors  
Suite 2600, Three Bentall Centre  
595 Burrard Street, PO Box 49314  
Vancouver, BC V7X 1L3  
Attention: Joe McArthur

Fax number address for service (if any): 604-631-3309

E-mail address for service (if any): N/A

Place of trial: Vancouver, B.C.

The address of the registry is: 800 Smithe Street, Vancouver, B.C.

Date: 16/June/2020



Signature of Joe McArthur  
[x] lawyer for Plaintiff

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) prepare a List of Documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.



**APPENDIX****Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:**

This is a claim in breach of contract, breach of fiduciary duty and negligence related to a joint venture.

**Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:**

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

**Part 3: THIS CLAIM INVOLVES:**

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

**Part 4:**

*Court Order Interest Act, R.S.B.C. 1996, c. 79*



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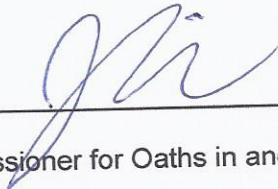
**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE  
OUTSIDE BRITISH COLUMBIA**

The Plaintiff claims the right to serve this notice of civil claim on the Defendant outside British Columbia on the ground that, among other things, the proceeding:

- (a) concerns contractual obligations, and, by its express terms, the contract is governed by the law of British Columbia; and
- (b) concerns a business carried on in British Columbia.

A handwritten signature in blue ink, consisting of stylized initials, located in the bottom right corner of the page.

This is Exhibit "I" referred to in the Affidavit #3 of Thomas Croese  
sworn before me by two-way video conference this 16th day of June, 2020.



\_\_\_\_\_  
A Commissioner for Oaths in and for the Province of Alberta

**Jordan Bierkos**  
*Barrister & Solicitor*



## NEWS

# MOUNTAIN PROVINCE DIAMONDS PROPOSES TO ENTER INTO A TRANSACTION TO SELL U.S.\$50,000,000 OF DIAMONDS

TSX and OTCQX: MPVD

TORONTO and NEW YORK, June 8, 2020 /CNW/ - Mountain Province Diamonds Inc. ("Mountain Province", or the "Company") (TSX: MPVD) and (OTCQX: MPVD) today announces that it proposes to enter into an agreement to sell (the "Sale") U.S.\$50,000,000 of diamonds to Dunebridge Worldwide Ltd. ("Dunebridge"). The first sale for approximately U.S.\$ 22,000,000 is expected to occur on June 11<sup>th</sup>, 2020 following the execution of a binding agreement.

The transaction with Dunebridge will permit the Company to sell its run of mine diamonds (below 10.8 carats) at the prevailing market price at the time of each sale. The transaction will also allow the Company to participate, after fees and expenses in a portion of any increase in the value of the diamonds realized by Dunebridge upon its future sale of the diamonds to a third party. The fees, calculated per each sale, are fixed at 10% of the value of each sale for the first year and 10% per year pro-rated for years 2 and 3. The expenses relate to any future sale costs. Once all fees and expenses have been deducted any surplus will be shared equally between Dunebridge and the Company.

The traditional markets for rough diamonds have been closed since mid March 2020 due to the impacts of COVID-19. In the interim, and as previously announced, the Company had been seeking alternative sales channels and sources of financing to ensure sufficient funding for operational and corporate expenses as the mine continues to be operational. This transaction is expected to provide the liquidity required in the short term whilst the Company awaits the gradual re-opening of the global economy and traditional selling methods.

A committee of directors of Mountain Province, all of whom are independent of management and the major shareholder of Mountain Province, (the "Independent Committee"), and comprised of Mr. Tom Peregoodoff, Ms. Karen Goracke, Mr. Dean Chambers, and Mr. William Lamb, undertook a deliberate and full consideration of the Sale and various alternatives and financing options available to Mountain Province and concluded that the Sale is reasonable and represents the best alternative for Mountain Province in the circumstances, having regard to the best interests of Mountain Province and its stakeholders. The Independent Committee has unanimously recommended the Sale to the board of directors of the Company (the "Board"). The Board has received the recommendations and findings of the Independent Committee, and Mr. Jonathan Corniford and Mr. Brett Desmond having declared conflicts of interest and not attending any part of any meeting where the Sale was discussed and not voting on the Sale, has unanimously found that that the Company is in serious financial difficulty, that the Sale is designed to improve the financial position of the issuer, that Section 5.5(f) of National Instrument 61-101 is not applicable, and approved the Sale.

Dunebridge is controlled by Dermot Desmond, an insider and related party of Mountain Province. Mr. Desmond owns just above 32% of the Company's stock. The transaction therefore constitutes a "related party transaction" within the meaning of Multilateral Instrument 61-101 - Protection of Minority Shareholders in Special Transactions ("MI 61-101"). Mountain Province relied on exemptions from the formal valuation and minority approval requirements of MI 61-101 contained in Section 5.5(g) and Section 5.7(e), respectively, on the basis of financial hardship. The terms of the Sale were unanimously approved by the independent members of Mountain Province's

Board of Directors. Mountain Province was not in a position to file a material change report 21 days prior to closing because the terms of the Sale and the participation agreement were not yet established by the time the Board of Directors met. Mountain Province elected to proceed with the Sale for sound business reasons.

The completion of the Sale is subject to approval of the TSX, the Company's lenders, and all other necessary regulatory approvals. Proceeds of the Sale will be used for operations and corporate expenses, including the funding of bond interest, all in the ordinary course as having been budgeted by the Company prior to COVID-19.

In connection with this transaction, the Independent Committee was advised by its financial advisor Lazard Canada. Stikeman Elliott LLP acted as counsel to the Independent Committee and Bennett Jones LLP acted as counsel to the Company.

#### About the Company

**Mountain Province Diamonds** is a 49% participant with De Beers Canada Inc. in the Gahcho Kué diamond mine located in Canada's Northwest Territories. The Gahcho Kué Joint Venture property consists of several kimberlites that are actively being mined, developed, and explored for future development. The Company also controls 67,164 hectares of highly prospective mineral claims and leases immediately adjacent to the Gahcho Kué Joint Venture property that include an indicated mineral resource at the Kelvin kimberlite and inferred mineral resources for the Faraday kimberlites.

For further information on Mountain Province Diamonds and to receive news releases by email, visit the Company's website at [www.mountainprovince.com](http://www.mountainprovince.com).

#### Caution Regarding Forward Looking Information

*This news release contains certain "forward-looking statements" and "forward-looking information" under applicable Canadian and United States securities laws concerning the business, operations and financial performance and condition of Mountain Province Diamonds Inc. Forward-looking statements and forward-looking information include, but are not limited to, statements with respect to operational hazards, including possible disruption due to pandemic such as Covid-19, its impact on travel, self-isolation protocols and business and operations, estimated production and mine life of the project of Mountain Province; the realization of mineral reserve estimates; the timing and amount of estimated future production; costs of production; the future price of diamonds; the estimation of mineral reserves and resources; the ability to manage debt; capital expenditures; the ability to obtain permits for operations; liquidity; tax rates; and currency exchange rate fluctuations. Except for statements of historical fact relating to Mountain Province, certain information contained herein constitutes forward-looking statements. Forward-looking statements are frequently characterized by words such as "anticipates," "may," "can," "plans," "believes," "estimates," "expects," "projects," "targets," "intends," "likely," "will," "should," "to be," "potential" and other similar words, or statements that certain events or conditions "may," "should" or "will" occur. Forward-looking statements are based on the opinions and estimates of management at the date the statements are made, and are based on a number of assumptions and subject to a variety of risks and uncertainties and other factors that could cause actual events or results to differ materially from those projected in the forward-looking statements. Many of these assumptions are based on factors and events that are not within the control of Mountain Province and there is no assurance they will prove to be correct.*

*Factors that could cause actual results to vary materially from results anticipated by such forward-looking statements include the development of operation hazards which could arise in relation to Covid-19, including, but not limited to protocols which may be adopted to control the spread of Covid-19 and any impact of such protocols on Mountain Province's business and operations, variations in ore grade or recovery rates, changes in market conditions, changes in project parameters, mine sequencing, production rates, cash flow, risks relating to the availability and timeliness of permitting and governmental approvals; supply of, and demand for, diamonds; fluctuating commodity prices and currency exchange rates, the possibility of project cost overruns or unanticipated costs and expenses, labour disputes and other risks of the mining industry, failure of plant, equipment or processes to operate as anticipated.*

*These factors are discussed in greater detail in Mountain Province's most recent Annual Information Form and in the most recent MD&A filed on SEDAR, which also provide additional general assumptions in connection with these statements. Mountain Province cautions that the foregoing list of important factors is not exhaustive. Investors and others who base themselves on forward-looking statements should carefully consider the above factors as well as the uncertainties they represent and the risk they entail. Mountain Province believes that the expectations reflected in those forward-looking statements are reasonable, but no assurance can be given that these expectations will prove to be correct and such forward-looking statements included in this news release should not be unduly relied upon. These statements speak only as of the date of this news release.*

*Although Mountain Province has attempted to identify important factors that could cause actual actions, events or results to differ materially from those described in forward looking statements, there may be other factors that cause actions, events or results not to be anticipated, estimated or intended. There can be no assurance that forward-looking statements will prove to be accurate, as actual results and future events could differ materially from those anticipated in such statements. Mountain Province undertakes no obligation to update*



forward-looking statements if circumstances or management's estimates or opinions should change except as required by applicable securities laws. The reader is cautioned not to place undue reliance on these forward-looking statements. Exploration, development and resource estimates may also be deemed to constitute forward-looking statements to the extent they involve estimates of the mineralization that will be encountered as the property is developed.

Further, Mountain Province may make changes to its business plans that could affect its results. The principal assets of Mountain Province are administered pursuant to a joint venture under which Mountain Province is not the operator. Mountain Province is exposed to actions taken or omissions made by the operator within its prerogative and/or determinations made by the joint venture under its terms. Such actions or omissions may impact the future performance of Mountain Province. Under its current note and revolving credit facilities Mountain Province is subject to certain limitations on its ability to pay dividends on common stock. The declaration of dividends is at the discretion of Mountain Province's Board of Directors, subject to the limitations under the Company's debt facilities, and will depend on Mountain Province's financial results, cash requirements, future prospects, and other factors deemed relevant by the Board.

SOURCE Mountain Province Diamonds Inc.

For further information: Stuart Brown, President and CEO, 161 Bay Street, Suite 1410, Toronto, Ontario M5J 2S1, Phone: (416) 361-3562. E-mail: info@mountainprovince.com; Keyvan Salehi, VP Corp Dev & Tech Services, 161 Bay Street, Suite 1410, Toronto, Ontario M5J 2S1, Phone: (416) 361-3562, E-mail: info@mountainprovince.com

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