

CLERK'S STAMP

COURT FILE NUMBER

2001-05630

COURT

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

JUDICIAL CENTRE

CALGARY

APPLICANTS

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

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DOMINION DIAMOND MINES ULC,
DOMINION DIAMOND DELAWARE COMPANY LLC,
DOMINION DIAMOND CANADA ULC, WASHINGTON
DIAMOND INVESTMENTS, LLC, DOMINION DIAMOND
HOLDINGS, LLC, DOMINION FINCO INC. and DOMINION
DIAMOND MARKETING CORPORATION**

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS
DOCUMENT

BLAKE, CASSELS & GRAYDON LLP

Barristers and Solicitors
3500 Bankers Hall East
855 – 2nd Street SW
Calgary, Alberta T2P 4J8

Attention: Peter L. Rubin / Peter Bychawski /
Claire Hildebrand / Morgan Crilly
Telephone No.: 604.631.3315 / 604.631.4218 /
604.631.3331 / 403.260.9657
Email: peter.rubin@blakes.com /
peter.bychawski@blakes.com /
claire.hildebrand@blakes.com /
morgan.crilly@blakes.com
Fax No.: 604.631.3309

AFFIDAVIT OF BRENDAN BELL

Sworn on October 23, 2020

I, Brendan Bell, of Kelowna, British Columbia, MAKE OATH AND SAY THAT:

BS

I. INTRODUCTION

1. I am a director of Dominion Diamond Mines ULC (together with the other entities listed as applicants in these proceedings, "**Dominion**" or the "**Applicants**"). As such, I have personal knowledge of the matters deposed to in this affidavit, except where stated to be based upon information provided to me, in which case I believe the same to be true.

2. This affidavit supplements my prior affidavits sworn in these *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") proceedings on May 21, 2020 (my "**May Affidavit**"), June 12, 2020 (my "**June Affidavit**"), and October 4, 2020 (my "**October Affidavit**"). Capitalized terms not otherwise defined in this affidavit have the meanings ascribed to them in my May Affidavit, my June Affidavit, and my October Affidavit, as applicable.

3. This affidavit provides an update on the status of these CCAA proceedings since I swore my October Affidavit three weeks ago and is made in support of Dominion's application for an order extending the Stay Period (as defined in the Second Amended and Restated Initial Order of this Court dated June 19, 2020) from November 7, 2020 until and including December 15, 2020.

4. My October Affidavit was sworn in support of Dominion's application for an order, among other things, approving the Asset Purchase Agreement (the "**APA**") by and among Dominion Diamond Mines ULC and Dominion Diamond Holdings LLC, as vendors, and Canadian Diamond Holdings L.P. and CA Canadian Diamond Mines ULC, as purchasers (the "**Stalking Horse Purchasers**"), and Washington Diamond Investments, LLC, as parent to the Dominion vendors.

5. The APA was the culmination of a multi-month effort by Dominion, with the support of key stakeholders including the First Lien Lenders and other stakeholders, to find a going concern solution to Dominion's financial challenges that would save the Ekati Mine and its attendant jobs, contracts, impact benefit agreements, tax revenue, and satisfy the company's environmental reclamation obligations, to the benefit of Dominion's stakeholders generally.

6. As noted by Ms. Kaye in her April 21, 2020 affidavit filed in support of these CCAA proceedings:

[8] Dominion has over the years made substantial investments in the local communities that rely upon and are affected by the Ekati and Diavik Mines. In 2018 and 2019 combined, Dominion spent CDN \$922 million of which amount CDN \$524 million

HB

was spent with northern businesses and approximately CDN \$319 million going to Indigenous businesses for goods and services. The total estimated spend with northern businesses by Dominion and its predecessor entities in connection with the Ekati and Diavik Mines since 1999 has been in excess of CDN\$3 billion.

[80] A “**Socio-Economic Agreement**” was concluded with the GNWT with respect to the Ekati Mine and has been in place since 1996. Pursuant to this agreement, Dominion Diamond provides financial support for long-term sustainable community development projects. Dominion Diamond also works to incorporate traditional knowledge in environmental monitoring programs through discussions with communities and on-the-land initiatives which provide direct input into these programs. These programs contribute approximately CDN \$5 million annually to local communities.

[83] Dominion Diamond also has private Impact Benefit Agreements (“**IBAs**”) with four Indigenous groups: Tlicho, Akaitcho, North Slave Metis Alliance and the Kitikmeot Inuit Association. The IBAs operate under a policy based on mutual respect, active partnership and long-term commitment. The IBAs extend over the life-of-mine of the Ekati Mine, and provide mine-related training, employment, business development, and capacity-building opportunities to members of the four Indigenous groups

[86] As noted above, putting the Ekati Mine on care and maintenance status on March 19, 2020 has required Dominion Diamond to reduce its operations to essential personnel only, which has resulted in a temporary net reduction of Canadian individuals actively employed by Dominion Diamond by approximately 400 employees from 634 to 212.

[87] As at April 16, 2020, Dominion Diamond employs the services of 634 individuals in Canada (of whom 212 are actively employed in Canada). The company's employees and contractors come from eleven (11) provinces and territories with greatest representation in the Northwest Territories and Alberta. Dominion's total workforce is presently comprised of: (a) 403 unionized employees (of whom 84 are actively employed); (b) 231 non-unionized employees (of whom 128 are actively employed); and 380 contractors.

[94] Through IBA payments, scholarships, and donations, Dominion Diamond contributed over \$5 million in 2019 to communities in the Northwest Territories and Kugluktuk, Nunavut. An equivalent amount of payment was made by the company in 2018.

BA

7. Five days after swearing my October Affidavit, and on the Friday before the Thanksgiving long weekend, Dominion issued a Press Release (as described below) announcing that its court application for approval of the transaction contemplated by the APA (scheduled for October 14, 2020) would not be proceeding. As discussed below, Dominion's decision to issue the Press Release was necessitated by the inability of the Stalking Horse Purchasers and Dominion's Surety Bond Issuers (as defined below) to reach agreement relating to a material closing condition in the APA.

8. The break-down in negotiations between the Stalking Horse Purchasers and the Surety Bond Issuers had an obvious and significant impact on these CCAA proceedings.

9. Dominion had been working towards completing a going concern transaction (including by attempting to identify potentially better offers than the Stalking Horse Bid through the SISF approved by this Court) for many months. As described in my May, June, and October Affidavits, it was my strongly held view that the transaction contemplated by the APA was the best executable restructuring option for Dominion in the circumstances and was in the best interests of Dominion and its stakeholders.

10. With the transaction contemplated by the APA no longer an option, Dominion has been working diligently with the assistance of its legal counsel and Evercore, and in consultation with the Monitor, to assess all of its available options at this time. As discussed below, over the course of the two weeks since the issuance of the Press Release, Dominion's efforts in this regard have involved discussions with numerous stakeholders including the First Lien Lenders, the Ad Hoc Group, the Government of the Northwest Territories (the "GNWT"), the Surety Bond Issuers, and others.

11. As noted in my prior affidavits, based on my experience with Dominion and involvement in these CCAA proceedings, I am of the view that Dominion's business has value, is deserving of being restructured and saved and that a liquidation of the assets would not serve stakeholder interests. I say this considering not only the best interests of Dominion but also taking into consideration the interests of various stakeholders, including but not limited to, the First Lien Lenders, the Ad Hoc Group, the Northern communities, employees, contractors, creditors, and the environment.

BB

12. In the circumstances, Dominion requests an extension to the CCAA stay to provide time for Dominion and all of its stakeholders to assess, consider and plan around the recent and unfortunate change in circumstances and to assess the restructuring options.

II. UPDATE ON THE APPLICANTS' RESTRUCTURING EFFORTS

A. The Stalking Horse APA

13. As noted in my October Affidavit, the transaction contemplated by the APA, which involved transferring all of the assets of a large operating mine site, was complex and involved multiple concurrent and interrelated work streams that required the Stalking Horse Purchasers' active and ongoing participation and engagement.

14. One major workstream for the closing of the APA that was underway as of the date of my October Affidavit involved ongoing negotiations between the Stalking Horse Purchasers and Dominion's sureties, Aviva Insurance Company of Canada, Argonaut Insurance Company, and Zurich Insurance Company (collectively, the "**Surety Bond Issuers**").

15. The Surety Bond Issuers are the issuers of approximately CAD \$280 million in surety bonds currently posted with the GNWT, which provide continued security for the reclamation obligations of Dominion related to the Ekati Mine.

16. The APA contained a condition to closing that the Stalking Horse Purchasers and the Surety Bond Issuers enter into an agreement, in form and substance satisfactory to the Stalking Horse Purchasers, regarding the treatment of the existing surety bonds.

17. Representatives of the Stalking Horse Purchasers and the Surety Bond Issuers devoted substantial time, effort, and resources to reaching an agreement regarding this important matter. As noted in my October Affidavit, assuming an agreement with the Surety Bond Issuers was reached, the Stalking Horse Purchasers and Dominion would then be required to engage with the GNWT on related reclamation issues.

18. I was closely following these negotiations between the Stalking Horse Purchasers and the Surety Bond Issuers. I was of the view that progress was being made towards a satisfactory agreement. Between October 6, 2020 and October 8, 2020, I participated in various calls related to the treatment of the surety bonds under the APA, including in particular a call I held on October 8, 2020 with representatives of the Surety Bond Issuers directly without any participation of

representatives of the Stalking Horse Purchasers. From these calls, it became clear that the parties had reached an impasse.

19. On Friday, October 9, 2020, Dominion issued a press release (the “**Press Release**”) confirming the impasse reached between the Surety Bond Issuers and the Stalking Horse Purchasers in their negotiations and that there was no reasonable prospect of reaching a satisfactory agreement among them. A copy of the Press Release is attached as **Exhibit “A”**.

20. In the circumstances, as noted in the Press Release, Dominion determined that it was impractical to proceed with its application for court approval of the APA, which was scheduled for October 14, 2020.

21. As noted above, the impasse among the Stalking Horse Purchasers and the Surety Bond Issuers that led to the issuance of the Press Release was a significant and very unfortunate development for these CCAA proceedings.

B. Ongoing Stakeholder Consultation

22. Commencing the day after the issuance of the Press Release, on the Thanksgiving long weekend (October 10 – 12), Dominion, with the assistance of Evercore, its legal counsel and the Monitor, immediately began to consider alternatives and next steps.

23. Dominion, and its advisors, have been and continue to be in regular contact with the First Lien Lenders and their advisors. These contacts have involved numerous discussions with and among the financial and legal advisors to Dominion and the First Lien Lenders, the Monitor, and direct discussions with representatives of Dominion’s management and the advisors to the First Lien Lenders. Both Evercore and Dominion have shared information, documentation and various financial analyses and models with the First Lien Lenders and their advisors, all in an effort to assist the First Lien Lenders in assessing and considering Dominion’s situation and the available options.

24. Dominion and its advisors have also been actively engaged with the Ad Hoc Group and its advisors over the past two weeks. These discussions have also involved numerous discussions with and among the financial and legal advisors to Dominion and the Ad Hoc Group, the Monitor, and representatives of Dominion’s management and members of the Ad Hoc Group directly. In addition, Dominion, with the assistance of Evercore, has shared confidential information, documentation and prepared financial analyses and modelling for the Ad Hoc Group.

During these discussions, the Ad Hoc Group has advised that it is working towards a going concern solution and a restructuring transaction to effect that outcome.

25. The Ad Hoc Group has also advised Dominion that it is prepared to provide interim financing to Dominion in an amount of up to approximately US \$50M in part to fund the restart of the Ekati Mine. While Dominion does not presently require interim financing, the Ad Hoc Group has advised that such financing is available if needed.

26. Dominion has also briefed the GNWT regarding alternative restructuring paths and available options.

27. Dominion has engaged with representatives of a federal financial Crown corporation regarding available options for support for Dominion. Dominion had not previously engaged with such corporation in respect of such matters due to the Stalking Horse Bid and the pursuit of a going concern transaction with the Stalking Horse Bidder.

28. Dominion's advisors have also engaged directly with the advisors to the Surety Bond Issuers to discuss a going concern transaction and the interests of the Surety Bond Issuers in such a going concern outcome. The Surety Bond Issuers have advised that they are prepared to participate in such discussions and to work towards finding a going concern solution to the benefit of all stakeholders. The current bonds issued by the Surety Bond Issuers will continue in place for the benefit of the GNWT in accordance with their terms as Dominion considers its restructuring options.

29. Due to the possibility that Dominion may be unable to find a going concern solution in the near term, it is prudent for Dominion to undertake work on alternate scenarios. Dominion has considered scenarios that have involved the preparation of a number of confidential documents such as: (a) a cash flow analysis with a scaled back care & maintenance spend; (b) an updated and delayed restart plan contemplating restart scenarios in 2021; (c) recapitalization and going concern scenarios and modelling; and (d) a liquidation analysis.

30. The steps set out above are in addition to Dominion's ongoing consultation with the company's stakeholders regarding the status of these CCAA proceedings, including ongoing discussions with Dominion's trades, the union representing Dominion's unionized employees, and other stakeholders such as the beneficiaries under the Socio-Economic Agreement with the GNWT and Impact Benefit Agreements with Indigenous groups.

RB

31. Dominion's discussions and consultations with its stakeholders over the two weeks since the issuance of the Press Release have been focused on finding a restructuring option that will be in the best interests of Dominion and its stakeholders. A going concern solution that will save the Ekati Mine and its attendant jobs, contracts, impact benefit agreements, tax revenue, etc. remains Dominion's preferable outcome for its stakeholders. That said, absent a purchaser for Dominion's assets or an investor prepared to make an equity injection in the near term, there is a real possibility that Dominion will not be able to avoid liquidation. Dominion is therefore considering all options in the interest of its stakeholders generally.

C. The Proposed Stay Extension

32. The Applicants' proposed stay extension from November 7, 2020 (which date coincided with the Outside Date under the SISP) up to and including December 15, 2020 is required in my view to provide Dominion with the necessary breathing room and time to continue the various efforts described above and to continue discussions with stakeholders on a restructuring path that will benefit Dominion's stakeholders generally.

33. In terms of Dominion's ability to fund its operations through the requested stay extension, Dominion has recently completed the sale of the two tranches of diamonds (having an aggregate book value of US \$58 million) described in the affidavit of Kristal Kaye sworn on September 18, 2020. Overall pricing achieved from these sales was higher than anticipated, resulting in sales of US \$54.7 million. Dominion has also recently completed a further sale of smaller diamonds having a book value of US \$15.4 million for US \$15.3 million. As noted in Ms. Kaye's September 18 affidavit, the net revenue from these diamond sales will be lower than the gross sales price in light of expenses, fees, royalties, taxes, etc.). Further diamond sales are not expected until mid to late November once Dominion completes necessary sorting and sale preparation processes scheduled to be completed after the Indian Diwali season.

34. Net revenue generated from these recent sales was paid to reduce the amounts outstanding on the Interim Financing Facility. All advances under the Interim Financing Facility have been repaid.

35. In my October Affidavit I discussed the purchase of diesel fuel by Dominion and the September 25, 2020 agreement reached with a fuel supplier. Shipments of the fuel purchased by Dominion have begun this week and are expected to be delivered to Dominion's tanking facilities in the Yellowknife area over the next 4 weeks. This fuel is not scheduled to be

RB

transported from Yellowknife to the Ekati Mine site until the ice road becomes available in February 2021. The decision regarding whether some or all the fuel recently purchased by Dominion will be transported to the Ekati Mine or instead be sold to third parties will be influenced by the path these restructuring proceedings take over the next few weeks and months. As noted in my October Affidavit, Dominion made the fuel purchase in question as it believed that a potential purchaser of Dominion's business would not be able to restart the Ekati Mine until 2022 unless such fuel purchases were made. Further fuel would need to be purchased in the event of an Ekati mine restart in the first part of 2021.

36. I understand that the Monitor will file a report (the "**Monitor's Seventh Report**") which will include, among other things, a cash flow forecast demonstrating that, subject to the underlying assumptions contained therein, the Applicants will have sufficient funds to continue their operations and fund these CCAA proceedings until December 15, 2020. In preparing the cash flow, Dominion has worked with the Monitor to identify where Dominion may reduce its outgoing cash obligations and reduce expenditures.

37. It is my view that the Applicants have acted and are continuing to act in good faith and with due diligence in these CCAA proceedings and that it is necessary and appropriate that the relief sought by the Applicants be granted.

III. PROCESS FOR COMMISSIONING OF THIS AFFIDAVIT

38. 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, including all Exhibits, before us;

- (d) the Commissioner and I have reviewed each page of this affidavit and Exhibits 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 and Exhibits, 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, including Exhibits, electronically to the Commissioner.

SWORN BEFORE ME by two-way video)
conference on October 23, 2020.)
)
)
)
)
)

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



BRENDAN BELL

BB

- (d) the Commissioner and I have reviewed each page of this affidavit and Exhibits 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 and Exhibits, 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, including Exhibits, electronically to the Commissioner.

SWORN BEFORE ME by two-way video)
conference on October 23, 2020.)
)
)
)
)


A Commissioner for Oaths in and for the
Province of Alberta

Morgan E. Crilly
Barrister & Solicitor

BRENDAN BELL

Handwritten signature

This is Exhibit "A" referred to in the Affidavit
of **BRENDAN BELL** sworn before me by
two-way video conference this 23rd day of
October, 2020.



A Commissioner for Oaths in and for Alberta

Morgan E. Crilly
Barrister & Solicitor





NOTIFICATION

DOMINION DIAMOND MINES PROVIDES UPDATE ON SALE PROCESS

CALGARY, AB – October 9, 2020 – Dominion Diamond Mines ULC (“Dominion” or the “Company”) provided an update today on its previously announced sales and investment solicitation process and the stalking horse bid (the “Stalking Horse Bid”) submitted by Canadian Diamond Holdings, L.P. and CA Canadian Diamond Mines ULC (the “Purchaser”), affiliates of the Washington Companies, for the purchase of certain of Dominion’s assets.

Dominion has been advised that surety bond issuers, Aviva Insurance Company of Canada, Argonaut Insurance Company and Zurich Insurance Company Ltd. (collectively, “the Surety Bond Issuers”) and the Purchaser have reached an impasse in negotiations and there is no reasonable prospect of reaching a satisfactory agreement among them. The Surety Bond Issuers are the issuers of approximately C\$280 million in surety bonds currently posted with the Government of the Northwest Territories, which provide continued security for the reclamation obligations of Dominion related to the Ekati mine. The Stalking Horse Bid is subject to a condition that the Surety Bond Issuers and the Purchaser reach an agreement regarding the treatment of the existing surety bonds.

In these circumstances, Dominion has determined that it is impractical to seek court approval of the Stalking Horse Bid, which is scheduled to be heard on October 14, 2020, because there is no transaction capable of being completed as a result of, among other things, the Purchaser being unable to satisfy the surety condition. As a result, Dominion does not anticipate it will be able to complete the transaction contemplated by the Stalking Horse Bid. As previously disclosed, no other qualified bids were submitted as part of the sale and investment solicitation process in relation to Dominion’s business.

The current bonds issued by the Surety Bond Issuers will continue in place for the benefit of the Government of the Northwest Territories in accordance with their terms.

Dominion remains in creditor protection until November 7, 2020, unless extended. Dominion is working with its advisors and will be consulting with stakeholders to determine next steps. The Company will be assessing all strategic alternatives to return the Ekati Diamond Mine to full operations for the benefit of its employees, the Northwest Territories and other stakeholders.

Copies of the applicable Court orders and other Court materials and information related to the Company’s CCAA proceedings are available on the website maintained by FTI, which has been appointed by the Court as Dominion’s Monitor to oversee the CCAA proceedings: cfcanda.fticonsulting.com/Dominion.

* * * * *

About Dominion Diamond Mines

Dominion Diamond Mines ULC is a Canadian mining company and one of the world’s largest producers and suppliers of premium rough diamond assortments to the global market. The company owns a controlling interest in the Ekati Diamond Mine, which it operates, and owns 40% of the Diavik Diamond Mine. The company also holds a controlling interest in the Lac de Gras Diamond Project. The Ekati and Diavik Diamond Mines, and the Lac de Gras Diamond Project are located in the

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

Northwest Territories of Canada. In addition to its mining and exploration operations, Dominion has offices in Canada, Belgium and India.

For more information, please visit www.ddmines.com and Dominion's private investor portal, or contact investor@ddcorp.ca.

Media Contacts:

Rebecca Hurl

Rebecca.Hurl@ddcorp.ca

403-797-0486

Sard Verbinnen & Co

Jared Levy/Liz Zale

DominionDiamond-SVC@sardverb.com



APPENDIX A

Certificate of Commissioning by Videoconference

I, Morgan Crilly, Commissioner of Oaths in and for Alberta, took the Affidavit of Brendon Bell via videoconference on Oct. 23, 2020 (the "**Affidavit**").

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

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



Commissioner of Oaths in and for Alberta

Morgan E. Crilly
Barrister & Solicitor