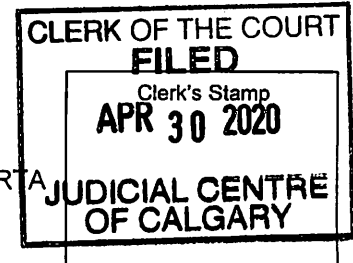


COURT FILE NUMBER 2001-05630
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE CALGARY
APPLICANTS IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED



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 OF THOMAS CROESE**

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AFFIDAVIT OF THOMAS CROESE
Sworn on April 30th, 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 pursuant to:

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

(collectively, the “**JVA**”). A copy of the JVA is attached hereto and marked as **Confidential Exhibit “1”**.

3. In swearing this affidavit (the “**Affidavit**”), I have reviewed the JVA and the affidavit of Kristal Kaye sworn in the within proceedings on April 21, 2020 (“**Kaye Affidavit**”). I have also reviewed the stay-extension application served by Dominion on April 24, 2020 (the “**Stay Extension Application**”). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Kaye Affidavit.

Summary of DDMI’s Responding Position

4. In responding to the Stay Extension Application, DDMI seeks limited relief to preserve its rights and protect the interests of the Joint Venture as follows:

- (a) a modification of the stay of proceedings contained in the Initial Order to permit DDMI to:
 - (i) make Diavik JVA Cover Payments as defined in and contemplated under Article 9.4 of the JVA, on an ongoing basis and in accordance with the terms and conditions therein; and
 - (ii) securely store a portion of Dominion’s share of production from the Diavik Mine at the Diavik Product Splitting Facility in Yellowknife, Northwest Territories until such time that Dominion pays indebtedness owing to it on account of any Diavik JVA Cover Payments made by DDMI;
- (b) sealing Confidential Exhibit 1.

CCAA Filing Background

5. DDMI and Dominion have been operating as joint-venture participants in the operation of the Diavik Mine (the “**Joint Venture**”), in accordance with and pursuant to the JVA, since Dominion was acquired by Washington in 2017. DDMI’s sole material asset is its interest in the Diavik Mine and the Joint Venture, details of which are set out herein.

6. Dominion had previously requested that JVA billings be made payable on the first and fifteenth of the month to enable Dominion to manage cash requirements and complete forecast reconciliations. On April 13, 2020 (being four days after the issuance of the \$16.0 million cash call invoice, and nine days before the commencement of Dominion’s CCAA proceedings), Dominion requested that the payment schedule be altered such that the next payment would be deferred from April 15, 2020 to April 22, 2020. DDMI agreed to Dominion’s request. A copy of the email correspondence between DDMI and Dominion is attached hereto and marked as **Exhibit “A”**.

7. DDMI and Dominion had a regularly scheduled Joint Venture meeting on Monday, April 20, 2020. Dominion did not advise DDMI of its intention to seek an initial order under the *Companies’ Creditors Arrangement Act* (“**CCAA**”) on Wednesday, April 22, 2020 (the “**Initial Order**”) at the meeting of April 20, 2020 or on April 13, 2020 when Dominion requested that its payment schedule be altered and extended from April 15, 2020 to April 22, 2020. On the same day that it obtained the Initial Order, Dominion defaulted on the \$16.0 million cash call that was originally due on April 15, 2020 and subsequently deferred until April 22, 2020. A copy of the cash call issued and not paid by Dominion is attached hereto and marked as **Exhibit “B”**.

Dominion’s Projected Operational Shortfall

8. DDMI is aware of the impact of the COVID-19 pandemic on the global diamond industry. It also appreciates the liquidity crisis that the Applicants are currently experiencing and the need for them to stabilize their business operations for the benefit of their employees, vendors, and other stakeholders through the filing of their Application under the CCAA. The Initial Order and corresponding stay of proceedings have now provided Dominion with these benefits. Dominion’s thirteen-week cash flow forecast for the period April 24 – July 17, 2020 (the “**Dominion Forecast**”), projects a \$42.5 million operational shortfall. Dominion has not accounted for the payment of post-filing JVA billings in this forecast. Estimated JVA billings over the projection

period total \$140.8 million, based on the anticipated invoice date and excluding the unpaid \$16 million April billing. Dominion's 40% proportional share of such billings is \$56.3 million.

9. The JVA accords DDMI the right to make Diavik JVA Cover Payments in the event of a Dominion cash call default. Upon making the Diavik JVA Cover Payment, DDMI acquires a first-lien security interest in Dominion's interest in the Diavik Mine, which ranks in priority to the claims of both the Credit Agreement Lenders and the Trustee. DDMI must make the \$16.0 million Diavik JVA Cover Payment, and future Diavik JVA Cover Payments in respect of any additional Dominion defaults, in order to satisfy obligations of the Joint Venture and ensure the ongoing obligations of the Diavik Mine. Failing to make the Diavik JVA Cover Payments will place DDMI in default of its obligations to its employees, contractors, vendors and place the assets of the Joint Venture and the operation of the Diavik Mine at risk. If Dominion's stay extension application is granted, DDMI is seeking a limited modification to the stay in order to permit it to make Diavik JVA Cover Payments in respect of the \$16.0 million default and any future defaults committed by Dominion under the JVA. These obligations will ultimately be required to continue funding JVA obligations and will preserve and enhance the value of the Joint Venture.

10. The Kaye Affidavit and the Dominion Forecast confirm that Dominion is unable to sell their share of diamonds at this time. Upon making the Diavik JVA Cover Payments, DDMI will obtain a first-lien priority position against Dominion's right, title and interest in, to and under, its Participating Interest and the Assets (as such terms are defined in the JVA), which includes, among others, all diamonds extracted from the Diavik Mine. DDMI is prepared to securely store a portion of Dominion's share of production, equal to the value of any Diavik JVA Cover Payments, at the Diavik Product Splitting Facility (the "PSF") in order to preserve the diamonds. Given Dominion's current inability to vend into the market, this relief does not prejudice Dominion in any fashion.

The Diavik Product Splitting Facility

11. The PSF is located in Yellowknife. Recovered diamonds from the Diavik Mine, are separated and packaged by size and grade and subsequently weighed and stored in a secured vault at the mine site. The diamonds are then securely flown to the PSF where the production undergoes further cleaning and processing. Following this the diamonds are "split" in accordance with agreements between the Participants.

12. The PSF quality management system earned the ISO 9001: 2015 certification, which certifies that all of the PSF's key processes have been monitored and reviewed for customer satisfaction towards quality objectives. The PSF also meets the stringent security standards of the diamond industry and has sufficient storage capacity to store Dominion's share of production from the Diavik Mine for the foreseeable future.

JVA and Security

13. The JVA governs operations between DDMI (a subsidiary of Rio Tinto plc) and Dominion in relation to the Diavik Diamond Mine and various surrounding exploration properties (collectively, the "**Diavik Mine**") in the North Slave Region. The Diavik Mine is located approximately three hundred kilometres northeast of Yellowknife, Northwest Territories and two hundred and twenty kilometres south of the Arctic Circle. Pursuant to the JVA, DDMI has a sixty percent (60%) interest in the Diavik Mine and Dominion has a forty (40%) interest. Commercial production commenced at the Diavik Mine in 2003, underground mining became operational in 2010, with an additional open pit becoming operational in 2018.

14. Under the JVA, DDMI is the manager of the Diavik Mine (the "**Manager**" when referenced in such capacity). In its capacity as Manager, DDMI is responsible for payment of 100% of all "Costs", defined in Article 1.8 of the JVA as:

1.8 "Costs" means all items of outlay and expense whatsoever, direct or indirect, with respect to Operations including without limitation those detailed in Sections 2.1 to 2.14 inclusive of the Accounting Procedures.

15. As a result, DDMI remits full payment, to all vendors, on behalf of the Joint Venture and then collects Dominion's 40% share of such obligations through bi-weekly invoices on the first and fifteenth day of each month, issued to Dominion in accordance with the JVA and customary practices. DDMI is therefore effectively obligated to supply credit to Dominion and then subsequently collect such amounts.

16. Article 9.2 of the JVA addresses cash call timing and billing requirements with respect to the operation of the Diavik Mine, to be conducted in accordance with an approved Program and Budget (as defined in the JVA). Articles 1.6, 1.27 and 9.2 of the JVA state:

1.6 "Budget" means a detailed estimate of all Costs to be incurred by the Participants with respect to a Program.

...

1.27 "Program" means a description in reasonable detail of the scope, direction and nature of the Operations to be conducted and objectives to be accomplished by the Manager for a year or any other reasonable period.

...

9.2 Cash Calls

Prior to the last day of each month the Manager shall submit to each Participant which has elected to contribute to the Program and Budget then in effect a billing for such Participant's share of estimated Costs for the next month. Within 20 days after receipt of each billing, each Participant shall advance to the Manager such estimated amount. Time is of the essence of payment of such billings. If the amount billed for the estimated Costs was less than the actual Costs incurred or charged during that month, the Manager may bill the Participants for the difference at any time, which the Participants will pay within ten days following receipt of billing. With the concurrence of the Management Committee, the Manager may establish more frequent billing cycles to minimize account balances.

17. In a resolution dated effective December 22, 2008 the Management Committee established a change in the billing cycle such that on, or about the beginning and middle of each calendar month the Manager shall submit to each Participant a billing for such Participant's share of estimated Costs under the Program and Budget then in effect, for the ensuing period of approximately two weeks to be paid within seven days.

18. Article 9.4 of the JVA addresses cash call defaults by Participants under the JVA. Pursuant to Article 9.4, if there is a payment default following the making of a cash call, the non-defaulting Participant may satisfy such obligation by making a Diavik JVA Cover Payment, which then constitutes indebtedness owing by the defaulting participant to the non-defaulting participant. Specifically, Articles 9.4(a) and 9.4(b) of the JVA state:

9.4 Default in Making Contributions

(a) If a Participant elects to contribute to an approved Program and Budget and then defaults in its obligation to pay a contribution or cash call hereunder, the [non-defaulting Participant], by notice to the defaulting Participant, may at any time, but shall not be obligated to, elect to make such contribution or meet such cash call on behalf of the defaulting Participant (a "Cover Payment").

(b) Each Cover Payment shall constitute indebtedness due from the defaulting Participant to the [non-defaulting Participant], which indebtedness shall be payable upon demand and shall bear interest from the date incurred to the date of payment at the rate specified in Section 9.3.

19. The indebtedness owing by the defaulting Participant (in this instance, Dominion) to the non-defaulting Participant (in this instance, DDMI) for the making of any Diavik JVA Cover

Payments is secured pursuant to a security interest granted under Articles 9.4(c) of the JVA. Article 9.4(c) of the JVA, as amended by Amending Agreement (No. 2) made January 17, 2002, states:

(c) Each Participant hereby grants to the other, as security for repayment of the indebtedness referred to in Section 9.4 (b) above together with interest thereon, reasonable legal fees and all other reasonable costs and expenses incurred in collecting payment of such indebtedness and enforcing such security interest, a mortgage of and security interest in such Participant's right, title and interest in, to and under, whenever acquired or arising, its Participating Interest and the Assets. Each Participant hereby represents and warrants to the other that such mortgage and security interest ranks and will rank at all times prior to any and all other mortgages and security interests granted by or charging the property of such Participant. Each Participant hereby agrees to take all action necessary to perfect such mortgage and security interest and irrevocably appoints the other Participant as its attorney-in-fact to execute, file and record all financing statements and any other documents necessary to perfect or maintain such mortgage and security interest or otherwise give effect to the provisions hereof. Upon default being made in the payment of the indebtedness referred to in Section 9.4 (b) when due the non-defaulting Participant may on 30 days' notice to the defaulting Participant exercise any or all of the rights and remedies available to it as a secured party at common law, by statute or hereunder including the right to sell the property subject to a mortgage and charge hereunder. The non-defaulting Participant shall remain liable for any deficiency after any sale by the defaulting Participant of the property subject to the mortgage and charge. In the event the non-defaulting Participant enforces the mortgage or security interest pursuant to the terms of this section, the defaulting Participant waives any available right of redemption from and after the date of judgment, any required valuation or appraisal of the mortgaged or secured property prior to sale, any available right to stay execution or to require a marshalling of assets and any required bond in the event a receiver is appointed. Nothing in this Section 9.4(c) shall constitute a waiver or abridgement of any right of a lender to whom a Participant has granted security, provided, however, that nothing in this sentence shall limit the effectiveness of that waiver as against the Participant, or as against such a secured lender to the Participant or any other person to the extent the secured lender or other person is asserting a right of the Participant which the Participant has waived.

20. DDMI's security interest for the Diavik JVA Cover Payments extends to the interest of Dominion in the Assets (as such term is defined in the JVA). The definition of Assets in the JVA, as amended by Amending Agreement (No. 2) made January 17, 2002, includes Dominion's share of diamonds currently held at the PSF, as well as all diamonds subsequently produced from the Diavik Mine and delivered thereto. Specifically, the JVA defines "Assets" as:

1.5 "Assets" means the Properties, Products and all other personal property (which for greater certainty shall include all goods, intangibles, securities, money, documents of title, instruments and chattel paper together with all proceeds of and

accessions to the foregoing) now or hereafter held by the Manager for the benefit of the Participants including without limitation all monies advanced from time to time by the Participants to the Manager pursuant to Section 9.2 hereof.

...

1.26 "Products" means all ores, minerals and mineral resources produced from the Properties under this Agreement including, without limitation, diamonds.

...

1.28 "Properties" means those mining claims described in Part 1 of Schedule A and all mining leases which may replace the same and all other interests in real property which are acquired and held subject to this Agreement, including without limitation the interests in, under and by virtue of the Underlying Agreements.

Intercreditor Arrangements and DDMI's Priority

21. Dominion is party to a credit agreement dated as of November 1, 2017, as amended (collectively, the "**Dominion Credit Agreement**"), between Dominion (as successor to Northwest Acquisition ULC), as borrower, the lenders party thereto from time to time (the "**Credit Agreement Lenders**"), as lenders, and Credit Suisse AG, Cayman Islands Branch (the "**Agent**"), as administrative agent for the Lenders.

22. Dominion is also party to a trust indenture dated as of October 23, 2017, as amended or supplemented (collectively, the "**Trust Indenture**"), between Dominion (as successor to Northwest Acquisition ULC) and Dominion Finco Inc., as co-issuers, and Wilmington Trust, National Association, as trustee (the "**Trustee**").

23. Dominion granted certain security interests to and in favour of the Agent (on behalf of the Credit Agreement Lenders) and the Trustee (on behalf of the noteholders under the Trust Indenture) to secure its obligations thereunder.

24. Each of the Agent (on behalf of the Credit Agreement Lenders) and the Trustee (on behalf of the noteholders under the Trust Indenture) have subordinated their security interests in the Assets to DDMI's security interest for the Diavik JVA Cover Payments pursuant to the Diavik Credit Agreement Subordination Agreement and the Diavik Trust Indenture Subordination Agreement, respectively.

No Prejudice to Dominion

25. The limited and commercially necessary modifications to the current stay of proceedings proposed by DDMI entail no prejudice to Dominion. Conversely, a failure to modify the stay by granting the requested relief would cause immediate and material prejudice to DDMI and the ongoing operation of the Diavik Mine.

26. Section 9.4 of the JVA requires the Non-Defaulting Participant to collect cash calls from the Defaulting Participants and disburse such payments on their behalf. Further, not only does Dominion's cash call default cause prejudice to the Joint Venture by depriving the Manager of funds to make payments in the ordinary course of business; but Dominion understands that the Diavik JVA Cover Payments for April – June are critically important as these are needed to pay vendors for consumables transported across the seasonal Tibbitt to Contwoyto winter ice road (the "**Winter Road**"), as is the case at Dominion's Ekati operations. Many of these materials and associated logistics services have already been received, and DDMI has a corresponding obligation to the relevant vendors for payment. In making these payments, DDMI – as both the Manager and non-defaulting Participant – is acting to ensure the continued operational viability of the Diavik Mine, all of which is to Dominion's immediate and ongoing financial benefit.

27. Dominion's own evidence clearly establishes that the modifications sought by DDMI to the Initial Order cannot reasonably be construed as prejudicial because:

- (a) Ms. Kaye testifies, at paragraphs 12-17 of the Kaye Affidavit, that the COVID-19 pandemic has comprehensively impacted every stage of its business from the extraction to the processing and eventual sale of diamonds from the Ekati and Diavik Mines. Further, the Applicants acknowledge at paragraph 17 of the Kaye Affidavit that "there is currently no timeline for when Dominion's suspension of operations at the Ekati Mine may be lifted or when the company may be able to realize on the diamonds extracted from operations at the Ekati and Diavik Mines that are currently unable to be sorted and sold in the ordinary course (emphasis added);
- (b) Dominion admits that it is in default of its April 2020 payment obligation under the JVA. Further, the Applicants advise that the cash call payments are "[o]ne of the most significant financial burdens faced by Dominion", and while they state they

are exploring interim financing, the current Dominion Forecast shows no capacity to make payment of post-filing obligations under the JVA; and

- (c) by making the Diavik JVA Cover Payments on behalf of the defaulting Participant (Dominion), DDMI has a first-lien security on the diamonds which the Applicants admit they can neither sort nor sell.

Diavik Mine Operations

28. I did not expect to see testimony in the Kaye Affidavit suggesting that Dominion had concerns with respect to the immediacy of its ability to fund cash obligations associated with the Joint Venture and the contents of the correspondence, dated April 27, 2020 (the “**April 27 Correspondence**”), as sent by Dominion’s counsel to DDMI’s counsel. DDMI refutes and disagrees with the characterization of the Manager’s operation of the Joint Venture and the various other accusations set out in the April 27 Correspondence. DDMI intends to issue a corresponding response shortly.

29. Diavik is a major economic contributor in the North, creating local jobs and business opportunities, working in respectful partnership with Indigenous communities and conducting its operations, and preparations for eventual closure and remediation, in a safe and both socially and environmentally responsible way. DDMI has successfully operated the Diavik Mine as a Joint Venture for over 16 years with the first priority being the health and safety of employees and the communities in which we operate. Specifically, the Diavik Mine began production in 2003 and has been underground mining since 2012. In 2018, DDMI opened a fourth diamond pipe at the Diavik Mine, as a method of maintaining production levels during the lifecycle of the mine. Total production at the Diavik Mine, in 2019, was 6,719,000 carats.

30. DDMI is a wholly-owned subsidiary of Rio Tinto plc, part of an international metals and mining corporate group with operations in thirty-six countries (collectively, “**Rio Tinto**”). Rio Tinto is a leading, innovative mining company, operating for more than 150 years, delivering superior returns to shareholders, meeting customers’ needs, working closely with all stakeholders, allocating capital with discipline, and responsibly investing in high-quality projects and in industries with robust, long-term fundamentals. For over four decades, Rio Tinto has operated a global diamond mining and marketing business, from exploration through to closure.

31. The Diavik Mine has had a significant impact on northern communities and has created numerous local jobs and business opportunities, working in respectful partnership with Indigenous

communities and enabling mining to proceed in a safe and environmentally responsible way. As a result, Rio Tinto has committed to a significant number of community investment projects with respect to the Diavik Mine. Between 2000 and 2018, the Diavik Mine spent approximately \$5.7 billion with Northern communities. Of the \$5.7 billion spent in Northern communities, \$3.0 billion was spent with Northern Indigenous partners and their joint ventures. Through the Diavik Mine, DDMI has committed to training apprentices in skilled trades, and also developed a northern leadership development program in partnership with SAIT Polytechnic and Aurora College, which is based on Rio Tinto leadership competencies. Other projects include community grants, scholarships, and donations to local non-profits in the Northwest Territories.

32. DDMI's and Rio Tinto's community involvement does not simply extend to the current operation of the Diavik Mine. DDMI also has a socio-economic monitoring agreement with the Government of the Northwest Territories, which was signed by Indigenous partners. The Environmental Monitoring Advisory Board, created under the socio-economic monitoring agreement and a separate environmental agreement, allows communities and governments to monitor Diavik's environmental commitments.

33. DDMI and Rio Tinto prioritize working with governments, Indigenous groups and local communities to plan the end of its operations at specific mine sites in a way that leaves lasting benefits for the host communities. DDMI projects that the Diavik Mine will cease production in 2025, at which point, there will be no diamonds left to economically mine. As part of the closure process, DDMI is currently undertaking detailed closure planning studies that cover not only site reclamation but also employees, communities and business transition planning. The closure costs, which are necessary for the safe remediation of environmental liabilities are included as part of the Manager's cash calls under the JVA, to the extent that progress remediation and closure study activities are currently underway.

34. DDMI not only operates the Diavik Mine with the first priority being the health and safety of the employees and communities affected by it, but does so in a sustainable manner. Rio Tinto's global expertise has been applied at the Diavik Mine in the construction of an award-winning wind farm that generates significant renewable energy for operations at the Diavik Mine. The Diavik Mine wind farm is one of the largest hybrid wind-diesel power facilities at a remote mine site and, since coming on line in 2012, has offset Diavik's diesel use by over 28 million liters and reduced the overall greenhouse gas emissions by 75,000 tonnes.

35. With respect to the Joint Venture's operations, the 2020-2025 program and budget was approved by both DDMI and Dominion, pursuant to the Management Committee Resolution, executed by Dominion on December 2, 2019. This took into account the Life of Mine plan, as at the end of 2019, and entailed an operating strategy to prioritize A154 North ore (being the highest quality diamonds, in a lower grade pipe) while accelerating mining rates to ensure that the maximum value was obtained by the Joint Venture.

36. DDMI and Dominion meet regularly on Joint Venture matters, with formal quarterly JV Management Meetings and regularly scheduled and ad hoc meetings between peers of both organisations. This includes a weekly reoccurring meeting between Mr. Richard Storrie (President and COO of DDMI) and Mr. Pat Merrin (Acting CEO for Dominion). The weekly recurring meetings are expected to continue, as scheduled. Dominion did not raise any specific expectation or request concerning the curtailment of operations until a April 20, 2020 meeting (being two days prior to the granting of the Initial Order).

37. As Dominion is well aware, the winter road through which the Diavik Mine is primarily supplied is only available for use during a planned 8 weeks in February and March. Accordingly, the cash calls made of the Participants are highest during the second quarter of each year, as it is in these months that the Manager must pay suppliers for a year's worth of consumables to be stored at the Mine and the logistics of transporting those consumables to the site. The total cash calls to the end of July represent approximately 70% of the total cash call obligations for the 2020 calendar year; thereby making ongoing production and operation economically beneficial.

38. The operational reality is that approximately 85% of all JVA obligations that will become due by Dominion over the next two months are unavoidable and will still be necessary and payable, even if the Diavik Mine is placed in care and maintenance. In addition, and while Dominion has suggested that the COVID-19 pandemic has effectively imposed a complete cessation of operations and commerce in the diamond industry, this is inconsistent with DDMI's information and commercial experience. In particular:

- (a) multiple diamond mines continue to operate, while taking increased health-related precautions, including diamond mines in the Northwest Territories. Attached hereto and marked as **Exhibit "C"** is an April 22 news article describing how diamond mines in the Northwest Territories have been exempted from travel restrictions due to their economic importance;

- (b) certain Indian-based companies continue to operate factories outside of India thereby offering customers alternative processing options. Furthermore, in Antwerp, Belgium, all diamond companies which have taken preventative health measures, such as physical distancing, have been permitted to continue to operate. Belgium's Diamond Office ("DO"), a supervisory entity and customs office acting on behalf of the Belgian government where diamonds must be declared for import and export outside of the European Union, has remained in operation throughout the COVID-19 pandemic, thereby permitting the import and export of diamonds;
- (c) the Belgian offices of DDMI's corporate affiliate, Rio Tinto Diamonds, have been able to import rough diamonds from Canada, prepare rough diamonds for sale in Antwerp, and engage with its customers globally to remain in business and generate sales; and
- (d) "diamond tenders" are not the only sales method presently accessible to sellers. Alternative sales methods, including contract sales and negotiated sales, are available to generate sales revenue. To compensate for the reduced physical availability of the rough diamond tender network, there are digital sales channels available to generate activity with willing buyers.

39. In regards to diamond sales, it is important to note that the Joint Venture does not include or contemplate the sale of any diamonds. Diamonds are split between the Participants based on a combination of grade and quality; this is in lieu of pricing. Once split, the diamonds are then sold by each of the Participants through their corresponding channels and networks. For clarity, an affiliate of DDMI has achieved material sales during March and April 2020.

40. The Manager has acted prudently in response to the COVID-19 pandemic at each step of the way. From January, 2020, the Manager began a formal Trigger Action Response Plan focussed on pandemic preparedness and tiered operational responses in order to maintain safe and stable operations, all in anticipation of an increasing threat from COVID-19. The formal business resilience program commenced in March 2020. These proactive preparations enabled additional health control measures to be developed and implemented in full consultation with the Government of the Northwest Territories, and other provincial and federal ministries; as well as

stakeholders, including employees, suppliers, northern communities and indigenous governing bodies.

41. With the onset of the COVID-19 pandemic, the Manager undertook a comprehensive review of the operating strategy at the Diavik Mine (the “**Operating Review**”). The Operating Review concluded that the best outcomes for the Participants, the Mine’s workforce and their communities, and for stakeholders generally were most likely to be realized by continuing to operate in a manner that is consistent with the approved Diavik Program and Budget while simultaneously implementing additional health and safety controls, in order to enable stable operations and protect the wellbeing of vulnerable personnel and communities.

42. As part of the Operating Review, DDMI also undertook a careful analysis of alternative operating strategies during the COVID-19 pandemic, its key conclusions were as follows:

- (a) the projected 2020 free cash flow benefit to the Participants associated with continued operations of the Diavik Mine - compared to entering care and maintenance status - is estimated to be materially favourable, and in the order of \$100 million or more, based on reasonable diamond sales assumptions. Furthermore, the incremental EBITDA margin of continued operations, compared to care and maintenance, is estimated to be very positive;
- (b) further, the analysis demonstrates there would be minimal differences in the near term cash outflows between continuing to operate and entering care and maintenance. For example, Dominion’s share of the Cover Payments (to be disbursed on payments to employees, suppliers, and other stakeholders) in May and June would only be expected to reduce by approximately 15% if operations were to be curtailed from May 1, 2020. This is a consequence of the seasonal nature of the Diavik Mine’s cash expenses such that approximately half of the annual outflows are either incurred or committed in the first quarter of the year, due primarily to the necessary build-up of stores inventories over the course of February and March, given the Winter Road season. Given continually agreed (typical and customary) payment terms, the financial commitments to materials, and freight and logistics suppliers from this period are paid out over the second quarter;

- (c) accordingly, given the marginal benefit to near-term cash outflows and the significant uncertainty regarding the trajectory of the still functioning diamond market, it was determined that the most prudent course of action to protect the interests of the Joint Venture Participants would be to continue operations at the Diavik Mine, rather than crystallise projected lower free cash over 2020 by entering care and maintenance;
- (d) continued operations will at all times be pursued consistent with the protective health measures proactively adopted by DDMI and the Operating Review. At the same time, the Manager and the Participants continue to monitor the development of the COVID-19 pandemic and its impacts on the diamond industry, pending a formal review point in June, 2020. Further cash conservation opportunities, including partial curtailment of operations, operating cost reductions where possible and prudent, further cost reduction opportunities and negotiated deferral of payments will also be evaluated and implemented in the interim.

43. The community benefits that result from continued operation of the Diavik Mine are also significant. DDMI is proud to be both a major contributor to the local economy and employer of local skilled labour, as the Diavik Mine employs more individuals than the Ekati Mine. In 2019, the Diavik Mine counted 1,124 employees and contractors, of whom 555 resided in the Northwest Territories and 242 of whom were indigenous workers from northern communities. Further, in the same year DDMI also disbursed \$500.8 million in operating costs of which \$370.6 million was spent with northern businesses and \$166.7 million with northern indigenous enterprises and communities.

44. In order to ensure the health of its employees and contractors and the welfare of the northern communities in which they reside, in close collaboration with the Northwest Territories' Chief Public Health Office ("**NWT CPHO**"), DDMI has adopted a series of extensive precautionary measures. These measures include:

- (a) temporarily removing vulnerable persons from the Diavik Mine, such as those from remote communities, those over 65 years of age, or those with underlying medical conditions;
- (b) increasing the frequency of the cleaning of facilities, work stations, vehicles, lunchrooms, food prep, and other high-touch areas;

- (c) requesting that all employees who can perform their responsibilities remotely, work from home;
- (d) implementing increased physical distancing procedures and limiting necessary travel to smaller groups;
- (e) an employee assistance program is available to support the Diavik Mine employees, contractors and their family members' mental health; and,
- (f) chartering flights to ensure that all employees are not forced to travel on commercial flights, which has resulted in operating costs savings for the Joint Venture.

45. The NWT CPHO, Dr. Kami Kandola, has emphasized in public remarks that the welfare of workers and their communities also depends on continued employment and sustained investment. Unfortunately, not only does the effective closure of the Ekati Mine deprive its workers and the communities which they support of such benefits, but the proposed terms of the Initial Order show no regard for the welfare and vulnerability of stakeholders in the Northwest Territories – vendors, employees, contractors – and of the northern and indigenous communities reliant upon their incomes as it could have the effect of closing the Diavik Mine.

46. DDMI, as Manager and Participant, is presently of the view that continued operation and production of the Diavik Mine is the prudent and appropriate course of action for the Joint Venture and will ultimately be to the benefit of all stakeholders and parties, including affected northern communities. DDMI will continue to review and assess all relevant information, including market projection and related data, in making decisions relating to future operation and production

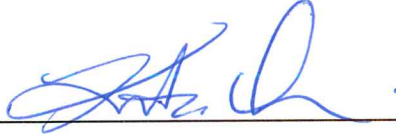
Sealing

47. The JVA contains confidentiality restrictions pertaining to the Joint Venture. DDMI seeks to seal the JVA that it has tendered as Confidential Exhibit 1. Disclosure of the JVA will 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 JVA or the terms contained therein.

This is Exhibit "A" referred to in the Affidavit of

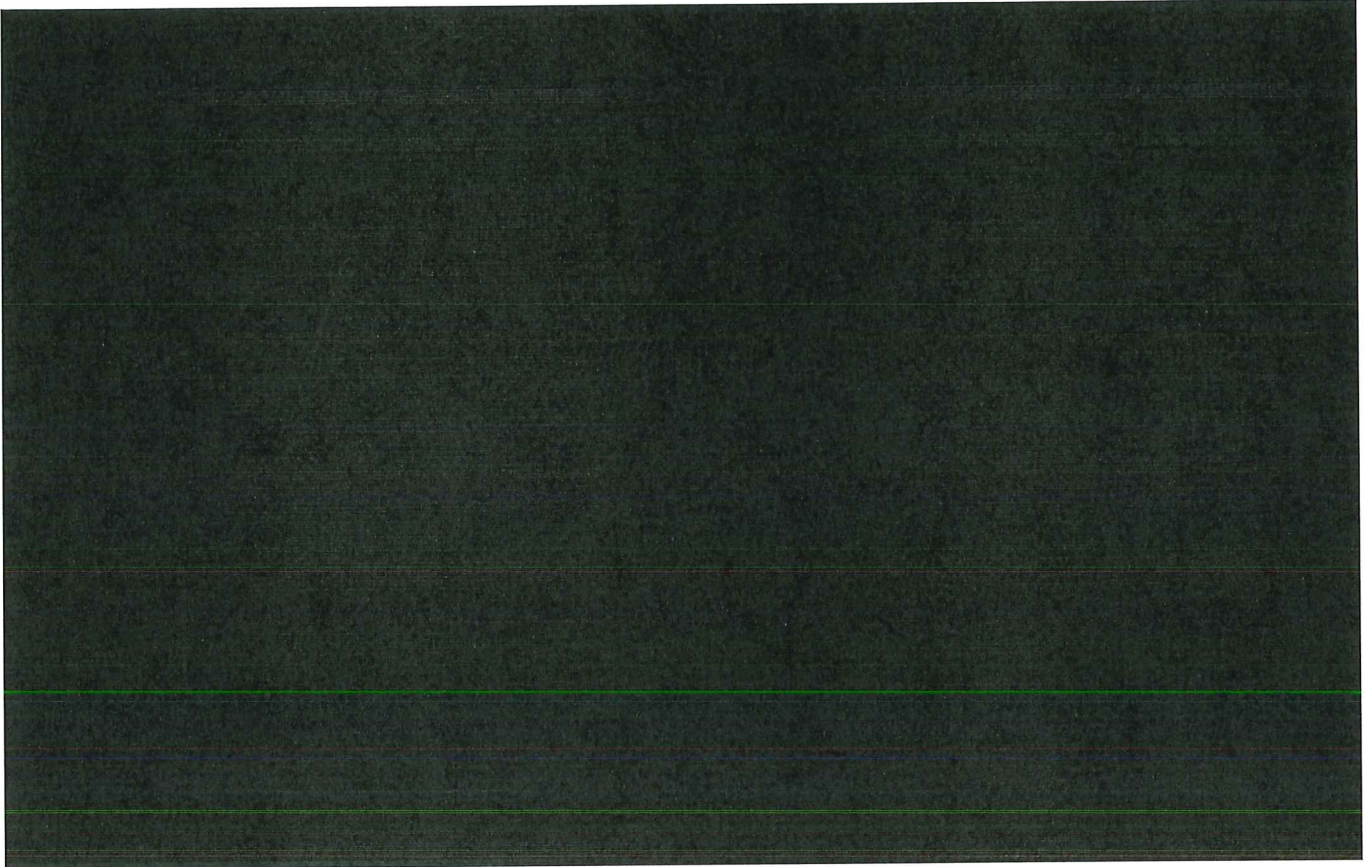
Thomas Croese

sworn before me this 30th day of April, 2020.



A Commissioner for Oaths in and for the Northwest Territories

KRISTA QUINN
A Notary Public in and for the
Northwest Territories.
My appointment expires
March 11, 2021.



From: Storrie, Richard (DDMI) <Richard.Storrie@riotinto.com>
Sent: Wednesday, 15 April 2020 10:55 AM
To: Croese, Thomas (DDMI) <Thomas.Croese@riotinto.com>
Subject: Fwd: [External] Cash call discussion on Friday

Hi Tom,

Please amend cash calls as per Pat Merrin's request

Thanks ,

Rich

Begin forwarded message:

From: Patrick Merrin <pmerrin@washcorp.com>
Date: April 15, 2020 at 9:46:15 AM MDT
To: "Storrie, Richard (DDMI)" <Richard.Storrie@riotinto.com>
Subject: RE: [External] Cash call discussion on Friday

Richard,

I confirm that Dominion would like to receive notices and make payments per the terms of the Management Committee resolution. That is, payments will be due on the 8th and 22nd of each month.

Thanks

Pat

Patrick Merrin | COO-Mining | The Washington Companies | 101 International Drive | Missoula, MT 59808 |
pmerrin@washcorp.com | www.washingtoncompanies.com

From: Storrie, Richard (DDMI) <Richard.Storrie@riotinto.com>
Sent: Monday, April 13, 2020 5:13 PM
To: Patrick Merrin <pmerrin@washcorp.com>
Subject: RE: [External] Cash call discussion on Friday

Hi Pat,

Yes, as per the terms of the Management Committee resolution.

Diavik was asked by Dominion on 6th Feb to bill according to the current schedule, so that the payable date are the 1st and 15th day of the month to enable Dominion to reconcile the actuals with the forecast. If you would prefer to change the schedule so the invoice is issued on these dates with payments due on the 8th and 22nd then we can, but will need to cancel the current cash call and re-issue an increased version (due on the 22nd) to cover the period to 8th May.

Please let me know if you would like to discuss

Thanks,

Rich

Richard Storrie

From: Patrick Merrin <pmerrin@washcorp.com>
Sent: Monday, April 13, 2020 4:31 PM
To: Storrie, Richard (DDMI) <Richard.Storrie@riotinto.com>
Subject: [External] Cash call discussion on Friday

Richard,

Further to our previous conversation, the Manager is to submit billings for each participant's share of estimated costs on or about the beginning and middle of each calendar month to be paid within seven days. Given past practice and that the middle of this calendar month falls on April 15th, please confirm that amount specified in the invoice prematurely issued to Dominion on April 9, 2020 will not be due until April 22, 2020.

Thanks

Pat

Patrick Merrin
 COO-Mining
 101 International Drive
 Missoula, MT 59808
pmerrin@washcorp.com
www.washingtoncompanies.com



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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

This is Exhibit "B" referred to in the Affidavit of

Thomas Croese

sworn before me this 30th day of April, 2020.



A Commissioner for Oaths in and for the Northwest Territories

KRISTA QUINN
A Notary Public in and for the
Northwest Territories.
My appointment expires
March 11, 2021.

RioTinto

Diavik Diamond Mines (2012) Inc.
 P.O. Box 2498
 Suite 300, 5201-50th Avenue
 Yellowknife, NT X1A 2P8 Canada
 T (867) 669 6500 F 1-866-313-2754

BILLED TO:

Dominion Diamond Mines ULC
 900 – 606 4 Street SW
 Calgary, AB T2P 1T1
 Canada

Attention: DDC-AP

DATE: 15-APR-20

INVOICE: DDC 04-20B-R1

DESCRIPTION		AMOUNT
	100%	40%
April Cash Requirement – 2nd cash call	40,000,000.00	\$16,000,000.00
GST Registration # 83952 4048RT		

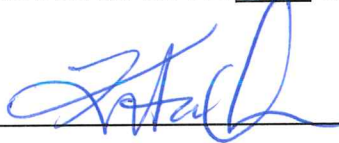
TOTAL CASH CALL \$16,000,000.00

(DUE ON April 22, 2020)

This is Exhibit "C" referred to in the Affidavit of

Thomas Croese

sworn before me this 30th day of April, 2020.



A Commissioner for Oaths in and for the Northwest Territories

KRISTA QUINN
A Notary Public in and for the
Northwest Territories.
My appointment expires
March 11, 2021.

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North

Diamond mines exempt from coronavirus travel restrictions due to economic importance

Safety measures based largely on symptoms, but growing evidence of asymptomatic spread

[Richard Gleeson](#) · CBC News ·

Posted: Apr 22, 2020 5:00 AM CT | Last Updated: April 22



Lac de Gras surrounds the Diavik mine pit about 300 km northeast of Yellowknife. Diavik is one of two N.W.T. diamond mines that continues to operate during the pandemic. (THE CANADIAN PRESS/Adrian Wyld)

[comments](#) 

A glaring exception to travel restrictions placed on those entering the Northwest Territories during the COVID-19 pandemic is the one made for workers at the territory's three diamond mines.

At the mines, people from the N.W.T. work alongside those from provinces where there have been far more confirmed cases of the highly contagious respiratory disease. None of the workers from outside the N.W.T. are required to self-isolate for two weeks like most others arriving in the territory.

In an email, the territories' chief public health officer said the mines are allowed to continue operating because of the huge role they play in the N.W.T.'s economy.

"The goods produced may be a luxury, but the jobs they provide and impacts on families and communities are very real and important," said Dr. Kami Kandola. "More people die and get sick if they do not have work."

On March 20 the territorial government [announced a travel ban](#) into the N.W.T. that excluded mine workers. It was not until April 10 that Kandola introduced requirements aimed at preventing the arrival and spread of COVID-19 at the mines.

- [N.W.T. shuts its borders as 1st case of COVID-19 confirmed in territory](#)

The emphasis at the press conference announcing the measures was on how much the mines were already doing to protect their workers, with Dr. Kandola saying, "It is probably safer to be on those sites than in your own home."

Though the response to the pandemic by the diamond mining companies has been uneven, each one has recognized that, despite prevention measures, there is still a risk of the virus entering the camps.

Dominion Diamond Mines has taken the most severe step. On March 19 it suspended production at its Ekati mine.

Rio Tinto and De Beers continue to operate their Diavik and Gahcho Kué mines at full production. But on March 20 both companies sent home workers from smaller N.W.T. communities to eliminate the possibility of them bringing the virus from the mines to those communities.

Tiny northern communities are believed to be more vulnerable to any COVID-19 outbreaks because of their remoteness and limited health care.

There remain about 500 people on site at Diavik and 320 at Gahcho Kué. About half the workers at both mines live in the N.W.T. No cases of COVID-19 have been detected at either mine.

Longer shifts, physical distancing most of the time

The chief public health officer required workers at the mines to practice physical distancing for 14 days before each shift — the same thing everyone is required to do at all times.

During those 14 days workers are required to record any symptoms and their body temperature each day. (An elevated temperature is an early symptom of the coronavirus.) Rio Tinto says workers at Diavik also have their temperatures taken every day they are at the mine. Workers at Gacho

Kué have their temperatures taken before leaving the site, according to De Beers.



Workers at the De Beers Gahcho Kue diamond mine are required to wear face masks when being flown and bussed to and from the mine. (De Beers)

Researchers say people who contract the virus will show symptoms within 14 days. The hope is that anyone with the virus will show symptoms during that 14-day period of physical distancing and not bring it to the mines.

Shifts have also been lengthened, partly to reduce the number of people coming and going and partly to ensure anyone catching the virus is detected and quarantined before returning home.

At both mines those working shifts of two weeks at the mine then two weeks off are now working a month on and a month off, according to De Beers and Rio Tinto. Workers who were on a shift of four days in and three days off are now working two weeks in and two weeks off.

Workers are required to wear face masks when being flown and bussed to and from the mines.

- [How non-resident mine workers are monitored for COVID-19 in N.W.T.— and other questions from you](#)

In response to a question about what's being done to ensure workers in the second half of their shift are not exposed to workers in the first half of their shift, De Beers said in an email that it is encouraging physical distancing during crew changes, meal times and at daily safety meetings, as well as taking other measures such as extra cleaning.

The chief public health officer came up short of requiring mine employees to stay two metres from one another at all times. Her order says that is not required when workers are working or eating meals.

Asymptomatic spread

The processes set up to catch infections before workers arrive at the mine and once they are there hinges on them showing symptoms.

But there is a growing body of evidence that suggests people can contract the virus — and spread it — without showing any symptoms.

"Asymptomatic and presymptomatic transmission of COVID-19 is occurring," noted the federal government last week in a summary of assumptions about the virus.

- [As N.W.T. prepares for next phase of COVID-19, medical director says physical distancing still key](#)

The Reuters news agency reported last week that 60 per cent of the 600 sailors from the U.S. aircraft carrier Theodore Roosevelt who tested positive for COVID-19 showed no symptoms.

The government is leaving it largely up to the mines to ensure they are complying with the order of the chief public health officer.

The NWT and Nunavut Workers Safety and Compensation Commission has the authority to perform inspections to ensure compliance but, according to an emailed response, has "stopped all non-essential travel to the mine sites to ensure the safety and health of our inspectors, workers on the sites, and the general public."

WSCC inspectors will only be sent to the mines if there is "a serious workplace incident or accident."

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