



No. S071269  
Vancouver Registry

*In the Supreme Court of British Columbia*

Between:

**MICHELLE FAIRHURST AND MARC KAZIMIRSKI**

**Plaintiffs**

and:

**DE BEERS CANADA INC., DB INVESTMENTS SOCIÉTÉ ANONYME, DE BEERS S.A., DE BEERS CONSOLIDATED MINES PROPRIETARY, LTD., THE DIAMOND TRADING COMPANY LIMITED, CSO VALUATIONS A.G., and DE BEERS CENTENARY A.G.**

**Defendants**

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

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**ORDER MADE AFTER APPLICATION  
APPROVAL OF DISTRIBUTION PROTOCOL**

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BEFORE THE HONOURABLE MADAM JUSTICE WARREN ) ) ) 02/Nov//2017

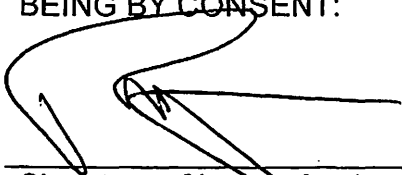
ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on 02/Nov/2017; on hearing Reidar Mogerman, Jennifer Winstanley, and Naomi Kovak on behalf of the plaintiffs and Katherine L. Kay on behalf of the defendants; on reading the materials filed, including the Distribution Protocol attached to this order as "Appendix I"; and on being advised that the parties consent to this order:

THIS COURT ORDERS that:

1. An Order that, for the purposes of the Order, the definitions set out in the Distribution Protocol apply to and are incorporated into the Order.

2. An Order that the proposed Distribution Protocol be approved.
3. An Order that the Distribution Protocol shall govern the administration of the Settlement Agreement entered into with the Defendants, dated October 14, 2016.
4. An order that the approval of the Distribution Protocol is contingent on a parallel or equivalent order being made by the Ontario Superior Court in *Brant v. De Beers Canada Inc., et al.*, Court File No. 1399/10 CP and the Quebec Superior Court in *Sanderson v. De Beers Canada Inc., et al*, Court File No. 500-06-000571-113.
5. Such further and other relief as this Honourable Court may deem just.

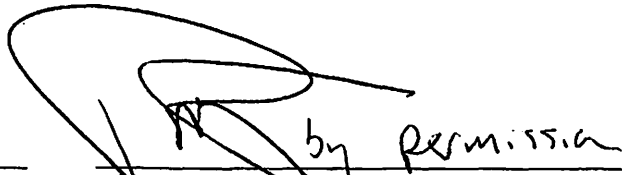
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



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Signature of lawyer for the plaintiffs

Reidar Mogerman

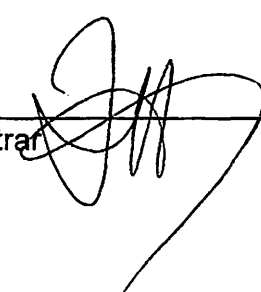


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Signature of lawyer for the defendants

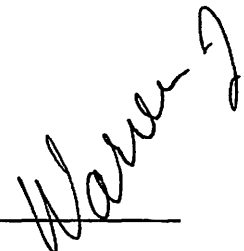
Katherine Kay

By the Court



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Registrar



## **DISTRIBUTION PROTOCOL**

### **IN THE MATTER OF THE CANADIAN DIAMONDS CLASS ACTIONS SETTLEMENT**

<b>GENERAL PRINCIPLES OF THE ADMINISTRATION</b>	<b>2</b>
<b>DEFINITIONS</b>	<b>2</b>
<b>THE CLAIMS ADMINISTRATOR’S DUTIES AND RESPONSIBILITIES</b>	<b>4</b>
<b>SETTLEMENT BENEFITS AVAILABLE TO SETTLEMENT CLASS MEMBERS</b>	<b>6</b>
<b>THE CLAIMS PROCESS</b>	<b>6</b>
The Online Claim Portal	8
The Claims Filing Process	8
Deficiencies	9
Claims Administrator’s Decision	9
Appeal of the Claims Administrator’s Decision	10
<b>THE CLAIMS DISTRIBUTION PROCESS</b>	<b>11</b>
<b>CONFIDENTIALITY</b>	<b>11</b>

## GENERAL PRINCIPLES OF THE ADMINISTRATION

1. The procedures set out in this Distribution Protocol are intended to govern the administration of the settlement agreement entered into with De Beers Canada, Inc., DB Investments, Société Anonyme, De Beers S.A., De Beers Consolidated Mines Proprietary, Ltd., De Beers UK Limited (f/k/a The Diamond Trading Company Limited), CSO Valuations A.G., De Beers Centenary A.G., De Beers Canada Holdings Inc., Anglo American PLC, and Central Holdings Limited SA, dated October 14, 2016 (the “Settlement Agreement”).
2. The definitions set out in the Settlement Agreement apply to and are incorporated in this Distribution Protocol. Where a term is defined in both the Settlement Agreement and the Distribution Protocol, the definition in this Distribution Protocol shall govern.
3. The administration shall:
  - (a) implement and conform to the Settlement Agreement, orders of the Courts and this Distribution Protocol;
  - (b) include the establishment and maintenance of the Settlement Website;
  - (c) employ secure, paperless, web-based systems with electronic registration and record keeping wherever possible;
  - (d) rely on the Gem Grade Diamond sales information provided by the Defendants wherever possible; and
  - (e) be bilingual in all respects.
4. Excluded Persons as defined in the Settlement Agreement are not entitled to the payment of settlement benefits under this Distribution Protocol.
5. Settlement Class Members seeking compensation must disclose and give credit for any compensation received through other proceedings or private out-of-class settlement in relation to their Gem Grade Diamond or Gem Grade Diamond product purchases, unless by such proceedings or private out-of-class settlements the Settlement Class Member’s claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

## DEFINITIONS

6. For the purposes of this Distribution Protocol:
  - (a) **Claim** means the paper or electronic form that a Settlement Class Member must complete and submit before the Claims Filing Deadline in order to be considered for settlement benefits under this Distribution Protocol.

- (b) **Claims Filing Deadline** means the date by which Claims (and any required supporting documentation) must be postmarked or electronically submitted in order for Settlement Class Members to be considered for settlement benefits under this Distribution Protocol.
- (c) **Decision Notice** shall have the meaning attributed to it in paragraph 29.
- (d) **Defendants' Diamond Mining Competitors** includes the Defendants' competitors and their affiliates on the list attached as Appendix A, for example Alrosa, Rio Tinto, BHP Billiton and Argyle. Effort was made to make the list in Appendix A as complete as possible.
- (e) **Diamond Jewellery** means any decorative or functional adornment typically made of metals and containing one or more Gem Grade Diamonds. This includes, among other jewellery, diamond rings, earrings, necklaces, bracelets, watches and cufflinks.
- (f) **Direct Purchaser** means any purchaser of a Gem Grade Diamond from a defendant or a competitor of a defendant. Any person or entity which is or was a Sightholder is excluded for the time period(s) during which such person or entity had Sightholder status.
- (g) **Eligible Gem Grade Diamond Purchases** are purchases of Gem Grade Diamonds and Gem Grade Diamond Products in respect of which the Settlement Class Member is entitled to settlement benefits.
- (h) **Fond Levy** means the amounts payable to the Fonds d'aide aux recours collectifs pursuant to section 42 of *An Act respecting the Class Action*, R.S.Q., c. R-2.1 and calculated in accordance with the governing regulations.
- (i) **Gem Grade Diamond** means diamonds that have been or could have been used in diamond jewellery or for investment purposes (as distinguished from diamonds used for industrial purposes).
- (j) **Gem Grade Diamond Product** means any Rough Diamond, Polished Diamond, Diamond Jewellery, or any other product consisting of or containing one or more Gem Grade Diamonds. It does not include products containing man-made or industrial diamonds.
- (k) **Gem Grade Diamond Purchases** means the aggregate amount actually paid by Settlement Class Members for Gem Grade Diamonds and Gem Grade Diamond Products purchased in Canada between January 1, 1994, and October 14, 2016, less any rebates or other form of discounts (such as off-invoice, bill-back or scan-back trade promotion payments), delivery or shipping charges, and taxes.

- (l) **Indirect Purchaser Consumer** means any Settlement Class member who purchased a Gem Grade Diamond Product for use and not for resale.
- (m) **Indirect Purchaser Reseller** means any Settlement Class Member who purchased a Gem Grade Diamond Product for resale. Resellers may include all of the following: rough stone wholesalers, cutters and polishers, finished stone wholesalers, diamond jewellery manufacturers, diamond jewellery wholesalers, and retailers.
- (n) **Net Settlement Amount** mean the Settlement Amount recovered pursuant to the Settlement Agreement and accrued interest after payment of Class Counsel Fees as approved by the Courts and after deduction of the Administration Expenses and all taxes (including interest and penalties) accruable with respect to the income earned by the Settlement Agreement.
- (o) **Online Claim Portal** means a web-based portal created and maintained by the Claims Administrator in accordance with paragraphs X to X of this Distribution Protocol.
- (p) **Polished Diamond** means a Gem Grade Diamond that has been cut and polished.
- (q) **Purchased in Canada** includes purchases delivered to a location in Canada, regardless of whether the seller was located in Canada or abroad.
- (r) **Rough Diamond** means a Gem Grade Diamond that is uncut and unpolished.
- (s) **Settlement Website** means the website maintained by or on behalf of the Claims Administrator for the purposes of providing Settlement Class Members with information on the Settlement Agreement, the Distribution Protocol, and the claims process, and access to the Online Claim Portal.
- (t) **Sightholder** means a customer entitled to purchase rough diamonds from the Diamond Trading Company at its regularly scheduled Sights.
- (u) **Total Recognized Claim Amount** means the amount calculated by the Claims Administrator according to the claims processing procedure set out in Appendix B.

#### THE CLAIMS ADMINISTRATOR'S DUTIES AND RESPONSIBILITIES

7. The Claims Administrator shall administer the Settlement Agreement and this Distribution Protocol under the ongoing authority and supervision of the Ontario Court.
8. The Settlement Amount shall be held in an interest bearing trust account at a Canadian Schedule 1 bank in Canada and all payments from the Settlement Amount shall be made from that account.

9. The Claims Administrator's duties and responsibilities shall include the following:
- (a) providing notices to the Settlement Class Members as required pursuant to this Distribution Protocol;
  - (b) receiving the Defendants' customer information, including names, addresses and sales information;
  - (c) developing, implementing and operating electronic web-based systems and procedures for receiving and adjudicating Claims. The Claims Administrator shall encourage Settlement Class Members to claim via the Online Claim Portal where possible and shall facilitate this process;
  - (d) developing and implementing processes to detect possible fraudulent conduct, including monitoring claims for unusual activity and multiple claims being filed from the same address, using the same banking information, and using the same serial number;
  - (e) making timely decisions in respect of Claims and notifying the Settlement Class Members of the decision promptly thereafter;
  - (f) arranging payment to Settlement Class Members in a timely fashion after the distribution is authorized by the Ontario Court in accordance with paragraph X;
  - (g) dedicating sufficient personnel to respond to Settlement Class Members inquiries in English or French, as the Settlement Class Member elects;
  - (h) submitting required materials for appeals;
  - (i) remitting the Fonds Levy to the Fonds d'aide aux recours collectifs;
  - (j) arranging payments of Administration Expenses;
  - (k) maintaining, in an easy to understand format, the information being recorded pursuant to paragraph 20 as well as information about Settlement Class Members' Eligible Gem Grade Diamond Purchases and proposed distribution, so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Courts;
  - (l) reporting to Class Counsel respecting Claims received and administered, and Administration Expenses;
  - (m) cash management and audit control;
  - (n) preparing and submitting such financial statements, reports and records as directed by Class Counsel and/or the Ontario Court; and

- (o) fulfilling any tax reporting and arranging payments required arising from the Settlement Amount, including any obligation to report taxable income and make tax payments. All taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Settlement Amount.

**SETTLEMENT BENEFITS AVAILABLE TO SETTLEMENT CLASS MEMBERS**

- 10. The Net Settlement Amount will be available to provide settlement benefits to eligible Settlement Class Members pursuant to this Distribution Protocol. Settlement benefits payable to members of the Quebec Settlement Class will be subject to deductions in respect of the Fonds Levy.
- 11. Members of a family residing in at the same address can pool their Gem Grade Diamond Purchases together and file a single “household” Claim. Persons under the age of 18 are not permitted to file a Claim, but their purchases can be included as part of the household Claim. Settlement benefits payable in respect of a household Claim will be issued to the person filing the Claim on behalf of the household.
- 12. The Settlement Amount will be allocated between the different types of claimants as follows:

Direct Purchaser Claims	[\$ Amount]
Indirect Purchaser Reseller Claims	50.3%
Indirect Purchaser Consumer Claims	49.7%

- 13. Each Settlement Class Member who submits a valid Claim prior to the Claim Filing Deadline will have their Eligible Gem Grade Diamond Purchases assessed according to the claims processing procedures set out in Appendix B.
- 14. The claims processing procedures will assign each claimant a Total Recognized Claim Amount that will form the basis for their *pro rata* distribution from Settlement Amount allocated to that type of claimant.

**THE CLAIMS PROCESS**

- 15. The Claim will require the following information from each type of claimant as specified below:
  - (a) Direct Purchaser Claimants
    - (i) A list of the Rough and Polished Diamonds purchased for delivery to Canada during the Class Period. This will include purchases from a De Beers owned Diamdel, De Beers Polished Diamond Division or De Beers



Diamond Mining Competitors, such as Aber, Alrosa, Argyle, BHP Billiton and Rio Tinto, or affiliates of De Beers Diamond Mining Competitors, from January 1, 1994 to October 14, 2016.

- (ii) A description of the documents that establish the purchases listed, such as invoices, bank statements and/or bookkeeping records. The Claims Administrator may require production of these records to substantiate the Claim.

(b) Indirect Purchaser Reseller Claimants

- (i) A list of aggregate dollar purchases of Rough Diamonds, Polished Diamonds, and Diamond Jewellery, at the price actually paid, for any two years of the Class Period. The two year period may be calendar or fiscal years, and need not be consecutive.
- (ii) Summary documentation to support the Claim, such as bookkeeping records, a worksheet summary of purchases listing purchases by vendor, or a computer printout of purchases.
- (iii) The Claims Administrator may require production of original documentation supporting the Claim, such as invoices, purchase orders or cancelled cheques.

(c) Indirect Purchaser Consumer Claimants

- (i) Information on each Polished Diamond and item of Diamond Jewellery including diamond accented watches or other diamond accented items, purchased for the claimant's own use or as a gift, in Canada or for delivery to Canada during the Class Period.
- (ii) A declaration attesting to the purchase and value of the purchase, together with a credit card statement, a bank statement, cancelled cheque, wire transfer confirmations, proof of insurance, or comparable verification that is acceptable to the Claims Administrator.

16. The Claim will require the following information for all claimants:

- (a) Disclosure as to whether the Settlement Class Member or any entity related to the Settlement Class Member has received compensation through other proceedings or private out-of-class settlements and/or provided a release in respect of any of the Settlement Class Member's purchases, and details of the compensation received and the claims released.

- (b) Authorization to the Claims Administrator to contact the Settlement Class Member or its representative, as the Claims Administrator deems appropriate for more information and/or to audit the Claim.
- (c) A declaration that the information submitted in the Claim is true and correct.
- (d) Banking information required to complete a direct deposit of any settlement benefits payable in accordance with the terms of this Distribution Protocol or election to receive payment by cheque.

### **The Online Claim Portal**

- 17. The Claims Administrator shall create an Online Claim Portal that Settlement Class Members can access in order to file a Claim and shall provide the necessary administration support to enable Settlement Class Members to do so.
- 18. The Online Claim Portal shall be accessible from the Settlement Website.
- 19. The Online Claim Portal shall contain fields that require the Settlement Class Member to provide all applicable information required as part of the Claim.
- 20. The Claims Administrator shall develop procedures for tracking and recording in an electronic format the following information, as it is entered into the Online Claim Portal or provided by Settlement Class Members who file hardcopy Claims in accordance with paragraph X below:
  - (a) names and addresses, purchase data and supporting documents provided by Settlement Class Members as part of the claims process; and
  - (b) any other information that might be useful in the claims administration process.

### **The Claims Filing Process**

- 21. Settlement Class Members will be encouraged to complete and submit a Claim (together with any required supporting documents) electronically using the Online Claim Portal. Claims must be submitted on the Online Claim Portal on or before the Claim Filing Deadline.
- 22. Where a Settlement Class Member has been identified by the Defendants, the Claims Administrator shall provide to the Settlement Class Member, in writing, by e-mail or regular mail, his, her or its personal user name and password to permit that Settlement Class Member access to the Online Claim Portal. Where the Defendants have also provided sales information in respect of the Settlement Class Member, the fields in the Online Claim Portal requiring the Settlement Class Member to provide the value of the Settlement Class Member's purchases shall be automatically populated with the sales information provided by the Defendants.

23. If a Settlement Class Member does not have internet access or is otherwise unable to submit a Claim using the Online Claim Portal, the Settlement Class Member can register over the telephone with the Claims Administrator and the Claims Administrator shall send the Settlement Class Member a hardcopy claim form by mail. The completed and executed hardcopy Claim (together with any required supporting proof of purchase) must be submitted to the Claims Administrator postmarked no later than the Claims Filing Deadline.
24. At its sole discretion, the Claims Administrator can elect to audit any Claim and can reject a Claim, in whole or in part, where, in the Claims Administrator's view, the Settlement Class Member has submitted insufficient or false information or has otherwise engaged in fraudulent conduct.

### **Deficiencies**

25. If, during claims processing, the Claims Administrator finds that deficiencies exist in a Claim or other required information, the Claims Administrator shall notify the Settlement Class Member, by email or regular mail, of the deficiencies. The Claims Administrator shall allow the Settlement Class Member thirty (30) days from the date of such notice to correct the deficiencies. If the deficiencies are not corrected within the thirty (30) day period, the Claims Administrator shall reject the Claim without prejudice to the right of the Settlement Class Purchaser to cure the deficiencies, provided the Settlement Class Purchaser is able to meet the Claims Filing Deadline and other requirements set forth herein. The Online Claim Portal shall be designed so as to minimize the possibility of deficient claims.
26. Settlement Class Members cannot utilize third-party claims services or similar services to file claims. Where Settlement Class Members use third-party claims services or similar services to file Claims, their Claims will be treated as deficient and they will be given an opportunity to cure the deficiency in accordance with paragraph 26 above. Notwithstanding the foregoing, nothing in this paragraph shall preclude Settlement Class Members from being assisted by Class Counsel or another lawyer of their own choosing in the completion of their Claim, in which case the Settlement Class Members will be responsible for any legal expenses arising from those additional and individual legal services.
27. A deficiency shall not include missing the Claims Filing Deadline. The Claims Administrator shall not accept Claims postmarked or electronically submitted after the Claims Filing Deadline.

### **Claims Administrator's Decision**

28. In respect of each Settlement Class Member who has filed a Claim in accordance with this Distribution Protocol, the Claims Administrator shall:

- (a) decide whether the Settlement Class Member is eligible to receive settlement benefits payable out of the Net Settlement Amount in accordance with the Settlement Agreements, orders of the Courts and this Distribution Protocol;
  - (b) verify the Settlement Class Member's Gem Grade Diamond and Gem Grade Diamond Product purchases;
  - (c) make a determination of the value of the Settlement Class Member's Eligible Gem Grade Diamond Purchases; and
  - (d) make a determination of the Settlement Class Member's Total Recognized Claim Amount, in accordance with the claims processing procedures.
29. The Claims Administrator shall send to the Settlement Class Member, by email or regular mail, a decision as to the approval or rejection of the Claim and the determination of the Eligible Gem Grade Diamond Purchases and Recognized Claim Amount (the "Decision Notice"). Where the Claims Administrator has rejected all or part of the Claim of the Settlement Class Member, the Claims Administrator shall include in the Decision Notice its grounds for rejecting all or part of the Claim.
30. The Claims Administrator's decision will be binding upon the Settlement Class Member, subject to the Settlement Class Member's right to appeal, as outlined in paragraphs 31 to 36.

**Appeal of the Claims Administrator's Decision**

31. Subject to paragraph 33, Settlement Class Members shall be granted thirty (30) days from the date of the Decision Notice to appeal the rejection (in whole or in part) of their Claims.
32. Settlement Class Members will not be permitted to submit any new proof of purchase or other documentation with their appeal.
33. The following grounds shall not be grounds for appeal:
- (a) the refusal of the Claims Administrator to accept a Claim postmarked or electronically submitted after the Claims Filing Deadline;
  - (b) the refusal of the Claims Administrator to accept a Claim where no proof of purchase was provided;
  - (c) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member has not cooperated with the Claims Administrator in respect of any audit conducted by the Claims Administrator in respect of that Settlement Class Member's Claim; or

- (d) the refusal of the Claims Administrator to accept a Claim where the Settlement Class Member did not declare that the information submitted in the Claim is true and correct.
- 34. Appeals will be determined by the Court that has jurisdiction with respect to the Settlement Class Member. For example, appeals filed by Settlement Class Members in British Columbia will be heard by the BC Court. The Court(s) may, in its sole discretion, appoint a referee to hear the appeals in its place.
- 35. The Courts may establish rules guiding the appeal process, including the process for making submissions in respect of the appeal and the costs of the appeal.
- 36. The decision on the appeal is final and binding and shall not be subject to any further appeal or review whatsoever.

#### **THE CLAIMS DISTRIBUTION PROCESS**

- 37. As soon as practicable after the claims evaluations and any appeals are completed, the Claims Administrator shall report to Class Counsel the particulars of the proposed distribution to each eligible Settlement Class Member. Class Counsel shall report to the Ontario Court and obtain authorization for the Claims Administrator to distribute the settlement benefits.
- 38. The Claims Administrator shall make arrangements to pay approved Claims as expeditiously as possible following authorization from the Ontario Court. Payments of settlement benefits to Settlement Class Members who file claims using the Online Claim Portal and provide banking information will be made by direct deposit. Payments of settlement benefits to Settlement Class Members who file hardcopy Claims or who file claims using the Online Claim Portal and elect to receive payment by cheque will be made by cheque.
- 39. To the extent that the full Net Settlement Amount is not paid out due to uncashed cheques, residual interest or otherwise, such monies shall be held in trust pending further order of the Courts.

#### **CONFIDENTIALITY**

- 40. All information received from the Defendants or the Settlement Class Members is collected, used, and retained by the Claims Administrator pursuant to the *Personal Information Protection and Electronic Documents Act*, SC 2000 c 5 for the purposes of administering the Settlement Agreement, including evaluating the Settlement Class Member's eligibility status under the Settlement Agreement. The information provided by the Settlement Class Member is strictly private and confidential and will not be disclosed without the express written consent of the Settlement Class Member, except

in accordance with the Settlement Agreement, orders of the Courts and/or this Distribution Protocol.

*In the Supreme Court of British Columbia*

Between:

**MICHELLE FAIRHURST AND MARC KAZIMIRSKI**

**Plaintiffs**

and:

**DE BEERS CANADA INC., DB INVESTMENTS, INC, DE  
BEERS S.A., DE BEERS CONSOLIDATED MINES, LTD.,  
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