

IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRICK GOLD CORPORATION,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK; AND THE
HONORABLE ELIZABETH
GONZALEZ, DISTRICT JUDGE,
DEPT. XI,

Respondent,

and

BULLION MONARCH
MINING, INC.,

Real Party in Interest.

Case No.

Electronically Filed
Aug 25 2021 08:40 a.m.

Elizabeth A. Brown
Clerk of Supreme Court
**APPENDIX IN SUPPORT OF
BARRICK GOLD CORPORATION'S
PETITION FOR WRIT OF
PROHIBITION**

VOLUME III OF VIII

DATED this 24th day of August, 2021.

PISANELLI BICE PLLC

By: /s/ Jordan T. Smith

James J. Pisanelli, Esq., #4027

Todd L. Bice, Esq., #4534

Debra L. Spinelli, Esq., #9695

Jordan T. Smith, Esq., #12097

400 South 7th Street, Suite 300

Las Vegas, Nevada 89101

Attorneys for Petitioner Barrick Gold Corporation

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Barrick Gold Corporation's Motion to Dismiss	10/11/2019	I	PA 0045-0128
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Bullion Monarch Mining, Inc.'s Opposition to Motion to Dismiss FILED UNDER SEAL	11/12/2019	I, II	PA 0186-0329
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10	FILED UNDER SEAL			
11	Transcript of Proceedings	09/22/2020	VI	PA 1174-1249

CERTIFICATE OF SERVICE

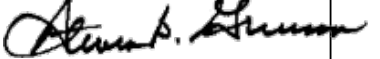
I HEREBY CERTIFY that I am an employee of Pisanelli Bice PLLC, and that on this 24th day of August, 2021, I electronically filed and served via United States Mail, postage prepaid, a true and correct copy of the above and foregoing **APPENDIX TO BARRICK GOLD CORPORATION'S PETITION FOR WRIT OF PROHIBITION** properly addressed to the following:

Clayton P. Brust, Esq.
ROBISON, SHARP, SULLIVAN & BRUST, P.C.
71 Washington Street
Reno, NV 89503

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

The Honorable Elizabeth Gonzalez
Eighth Judicial District court, Dept. XI
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Kimberly Peets
An employee of PISANELLI BICE PLLC



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Attorneys for Defendant Barrick Gold Corporation

DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

BARRICK GOLDSTRIKE MINES, INC.;
BARRICK GOLD EXPLORATION INC.;
BARRICK GOLD CORPORATION;
NEVADA GOLD MINES, LLC; BARRICK
NEVADA HOLDING LLC; and DOES 1
through 20,

Defendants.

Case No.: A-18-785913-B
Dept. No.: XI

**APPENDIX TO BARRICK GOLD
CORPORATION'S MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Ex.	Description	Page Nos.
A	Bullion Monarch Mining, Inc. Amended Complaint filed in Case No. 3:08-cv-00227-ECR-VPC on June 22, 2009	001-041
B	Memorandum of Points and Authorities in Support of Rule 12(b)(2) Motion to Dismiss All Claims Against Barrick Gold Corporation for Lack of Personal Jurisdiction filed in Case No. 3:08-cv-00227-ECR-VPC on July 16, 2009	042-060
C	Declaration of Sybil E. Veenman in Support of Rule 12(b)(2) Motion to Dismiss All Claims Against Barrick Gold Corporation for Lack of Personal Jurisdiction dated July 16, 2009	061-064
D	Stipulation and Order for Dismissal Without Prejudice filed in Case No. 3:08-cv-00227-ECR-VPC dated July 28, 2009	065-067
E	Order Granting Barrick Goldstrike Mines, Inc.'s Motion to Dismiss filed in Case No. 3:09-cv-00612-MMD-WGC dated November 1, 2018	068-077
F	Order Granting Motion to Dismiss Appeal filed in Case No. 18-17246 dated July 10, 2020	078-079

G	Excerpts of Deposition of John Mansanti dated December 20, 2017	080-093
H	Excerpts of Deposition of Blake Measom dated March 21, 2018	094-115
I	Excerpts of Deposition of Tony Astorga dated March 20, 2018	116-125
J	Excerpts of Deposition of Andy Bolland dated March 21, 2018	126-148
K	Declaration of Dana Stringer dated October 11, 2019	149-152
L	Declaration of Dana Stringer dated December 18, 2019	153-155

DATED this 28th day of July, 2020.

PISANELLI BICE PLLC

By: /s/ Dustun H. Holmes

James J. Pisanelli, Esq., Bar No. 4027
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400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Barrick Gold Corporation

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 28th day of July, 2020, I filed a true and correct copy of the foregoing **APPENDIX TO BARRICK GOLD CORPORATION'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

Kristine E. Johnson, Esq.
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/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT A

1 Clayton P. Brust, Esq. (SBN 5234)
2 **ROBISON, BELAUSTEGUI, SHARP & LOW**
3 71 Washington Street
4 Reno, Nevada 89503
5 (775) 329-3151
6 Attorneys for Plaintiff
7 Bullion Monarch Mining, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11 BULLION MONARCH MINING, INC., a
12 Utah corporation,

CASE NO. **CV-N-08-00227-ECR-VPC**

13 Plaintiff,

14 vs.

15
16 NEWMONT USA LIMITED, a Delaware
17 corporation, d/b/a NEWMONT MINING
18 CORPORATION, BARRICK GOLD
19 CORPORATION, BARRICK
20 GOLDSTRIKE MINES, INC and DOES I-
21 X, inclusive,

AMENDED COMPLAINT
[Jury Trial Demanded]

22 Defendant(s).
23 _____/

24 Plaintiff as its complaint alleges:

25 1. Bullion Monarch Mining ("Bullion"), is a Utah corporation doing
26 business in the State of Nevada at all times relevant hereto.

27 2. Newmont USA Limited, a Delaware Corporation, dba Newmont Mining
28 Corporation (herein after "Newmont") is a Delaware Corporation doing business in
the State of Nevada at all times relevant hereto.

2A. Barrick Gold Corporation is a Canadian company and has been doing business in Nevada at all times relevant hereto and Barrick Goldstrike Mines, Inc. (collectively referred to as "Barrick") is a Colorado corporation and has been doing business in Nevada at all times relevant hereto.

3. The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants designated as DOES I through X are unknown to Plaintiff and therefore Plaintiff sues these Defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of these Defendants when they have been ascertained.

FACTS

4. On or about May 10, 1979, Bullion's predecessor in interest, Bullion Monarch Company, and Newmont's predecessors in interest, Universal Explorations, Ltd. and Universal Gas, Inc., entered into a royalty agreement ("Agreement") whereby Bullion was to receive a royalty based on production from any mining operations within the Subject Property as described in Exhibit A-1 to the Agreement and the "Area of Interest" described in Exhibit A-2 to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein as Exhibit 1. The term of the Agreement is 99 years.

5. The Area of Interest provision applies to all mining interests acquired by the other parties to the Agreement, or their successors in interest, within the Area of Interest whether by "leasing or purchase of private lands and minerals, or unpatented mining claims." All of such acquired mining interests become subject to the terms and conditions of the Agreement. The Area of Interest is located in

1 Eureka and Elko Counties in the State of Nevada.

2 6. Further, in the event a mining interest from within the Area of Interest
3 was or is used to acquire mining interests outside the Area of Interest, Bullion's
4 royalty interest would also follow to the new property. Upon information and
5 belief, this has occurred.

7 7. Paragraph 18 of the Agreement provides that the terms of the
8 Agreement are binding upon the successors of the parties to the Agreement.

9 8. Newmont has recognized that it is obligated to pay royalties pursuant
10 to the Agreement and is currently paying Bullion a royalty on those mining claims
11 designated in Exhibit A-1 to the Agreement. However, when Bullion requested a
12 detailed accounting of the royalties being paid by Newmont in or about August of
13 2007, Newmont refused to provide detailed accounting for the royalty it is
14 currently paying pursuant to the Agreement, initially claimed it was not governed by
15 the Agreement, and demanded that Bullion employees only contact Newmont
16 through counsel regarding any royalties Newmont may owe. These claims and
17 demands by Newmont violated the Agreement which allows for Bullion to inquire
18 about the royalty owed and requires Newmont to provide detailed accountings of
19 its mining activities so that Bullion may verify the accuracy of the royalty being paid
20 by Newmont.

24 9. Bullion also inquired about whether Newmont was involved in any
25 mining activities in the Area of Interest in or about August of 2007. Until that
26 time, Newmont had failed to reveal that it was involved in any mining activities in
27 the Area of Interest and had concealed such activities from its "reports" of its
28

1 mining activities to Bullion. Again, Newmont refused to provide any accounting for
2 mineral production from within the Area of Interest and claimed it was not subject
3 to the Agreement (despite having paid certain minimal royalties pursuant to the
4 Agreement for years). Several weeks later, in September of 2007, Newmont
5 changed its position, provided an entirely different excuse for refusing to pay a
6 royalty upon its mining activities in the Area of Interest, tacitly admitted that it was
7 subject to the Agreement, but still refused to provide any information regarding its
8 activities in the Area of Interest and refused to pay any royalties based upon
9 Newmont's operations in the Area of Interest. Newmont's failure and refusal to
10 provide accountings of its activities in the Area of Interest has prevented Bullion to
11 from ascertaining its rights and determining the exact timing and amount of
12 royalties Newmont owes Bullion arising from Newmont's activities in the Area of
13 Interest.
14
15

16
17 9A. On or about December 23, 1991, High Desert Mineral Resources of
18 Nevada, Inc. entered an agreement with Newmont by which High Desert Mineral
19 Resources of Nevada, Inc. and Newmont agreed to share responsibility for any
20 royalties and obligations due to Bullion pursuant to the Agreement.
21

22 9B. Barrick, through a succession of companies, including, but not limited
23 to Barrick HD Inc. and Barrick Goldstrike Mines, Inc. (a Colorado corporation), is
24 the successor in interest to High Desert Mineral Resources of Nevada, Inc. for
25 purposes of the December 23, 1991 agreement between High Desert Mineral
26 Resources of Nevada, Inc. and Newmont. Further, Barrick is the corporate
27 successor to High Desert Mineral Resources of Nevada, Inc. and, upon information
28

1 and belief took over all responsibilities of High Desert Mineral Resources of Nevada,
2 Inc. in approximately 1995, thereby making Barrick responsible for any royalties
3 and obligations due Bullion pursuant to the Agreement that are not owed by
4 Newmont.
5

6 10. Bullion, Barrick and Newmont are citizens of different states. The
7 amount in controversy in this matter exceeds \$75,000.00. Further, a substantial
8 part, if not all, of the relevant events in this matter occurred in the State of Nevada
9 and all of the property that gives rise to this action is located in the State of
10 Nevada. Accordingly, jurisdiction and venue of this matter are properly in this
11 Court.
12

13 **FIRST CLAIM FOR RELIEF**
14 **(Declaratory Judgment)**

15 11. Plaintiff incorporates the allegations contained in paragraphs 1-10 as if
16 set forth verbatim.

17 12. An actual legal controversy exists between Plaintiff and Defendants as
18 to whether Defendants owe Bullion a royalty and/or compensation for mining
19 activities and production of minerals from property in the Area of Interest.
20

21 13. Bullion and Defendants have adverse legal positions with respect to
22 their existing legal controversy and Bullion has a legally protectible interest as to
23 whether it is entitled to a royalty and/or compensation for mining activities and
24 production from within the Area of Interest.
25

26 14. The existing legal controversy between Plaintiff and Defendants is ripe
27 for judicial determination.
28

1 15. As a result of the parties' dispute as to whether Bullion is entitled to
2 royalties, Bullion seeks a declaratory judgment from this Court declaring that Bullion
3 is entitled to the royalties from one or both of the Defendants for production from
4 within the Area of Interest.

5
6 **SECOND CLAIM FOR RELIEF**
7 **(Breach of Contract)**

8 16. Bullion incorporates the allegations contained in paragraphs 1-15 as if
9 set forth verbatim.

10 17. Defendants are obligated to pay Bullion royalties on mining activities
11 pursuant to the parties' Agreement as described above.

12 18. Defendants have materially breached the terms of the Agreement.

13 19. As a direct and proximate result of Defendants' breach, Bullion has
14 suffered general and special damages in excess of \$75,000.00.

15 20. Bullion has also been forced to retain counsel to pursue this action,
16 and has incurred attorney's fees as a result of Defendants' breach.

17
18 **THIRD CLAIM FOR RELIEF**
19 **(Breach of the Covenant of Good Faith and Fair Dealing)**

20 21. Bullion incorporates the allegations contained in paragraphs 1 through
21 20 as if set forth verbatim.

22 22. Nevada law implies into each contract or agreement a covenant of
23 good faith and fair dealing.

24 23. The Agreement includes an implied, if not express, covenant of good
25 faith and fair dealing.

26 24. The acts and omissions of Defendants, as described above, has
27
28

1 deprived Bullion of benefits which Bullion had bargained for with Defendants'
2 predecessors in interest.

3 25. As a sole, direct and proximate result fo the foregoing, Bullion has
4 been damaged in a sum in excess of \$75,000.00, to be more precisely proven at
5 trial.
6

7 **FOURTH CLAIM FOR RELIEF**
8 **(Unjust Enrichment)**

9 26. Bullion incorporates the allegations contained in Paragraphs 1 through
10 25 as if set forth verbatim.

11 27. Bullion allowed Defendants and Defendants' predecessors in interest
12 to explore and mine in areas where Bullion had established claims and refrained
13 from further exploration and mining activities in the Area of Interest as described
14 above.
15

16 28. Defendants and Defendants' predecessors in interest accepted
17 Bullion's property rights and agreement to refrain from further exploration/mining
18 activities and enjoyed their use.
19

20 29. In exchange for relinquishment of such property rights and exploration
21 and mining rights pursuant to the Agreement, Bullion expected to be paid and is
22 entitled to be paid its royalty for production from the Area of Interest.

23 30. Bullion has not been paid for the amount it has enriched Defendants.

24 31. Defendants have been unjustly enriched by Bullion.
25

26 32. Bullion is entitled to compensation for the amount Defendants have
27 been unjustly enriched.
28

1 33. Bullion has also been forced to retain counsel to pursue this action
2 and has incurred attorney fees as a result of Defendants' actions.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Accounting)**

5 34. Bullion incorporates the allegations contained in paragraphs 1 through
6 33 as if set forth verbatim fully herein.

7 35. Bullion seeks an accounting of all royalties owed to Bullion for mining
8 activities of Defendants in the Area of Interest as described above.

9 36. Bullion has made a demand upon Newmont, and hereby makes a
10 demand upon Barrick, to provide accounting records for Defendants' mining
11 activities in the Area of Interest and Newmont has refused same.

12 37. Bullion seeks an order from this Court directing Defendants to provide
13 an accounting of same.

14 38. Bullion has been required to engage legal counsel to prosecute this
15 action and is entitled to its costs incurred and reasonable attorney's fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Bullion prays for judgment against Defendants, as follows:

18 1. For declaratory relief declaring Defendants' obligation to pay
19 royalties based upon production from within the Area of Interest as provided by the
20 Agreement;

21 2. For special and general damages in an amount in excess of seventy-
22 five thousand dollars (\$75,000.00) according to proof at trial;

23 3. For prejudgment interest;

4. An order directing Defendants to provide an accounting;
5. For reasonable attorney fees and costs of suit incurred herein;
6. A jury trial on all issues so triable; and
7. For such other and further relief as the Court determines to be appropriate under the circumstances.

DATED this 22nd day of June, 2009.

ROBISON, BELAUSTEGUI, SHARP & LOW

By 

Clayton P. Brust, Esq.

Attorneys for Plaintiff
Bullion Monarch Mining, Inc.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused a true copy of **AMENDED COMPLAINT [Jury Trial Demanded]** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ personal delivery/hand delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

_____ Reno Carson Messenger Service

Holland & Hart, LLP
Matthew B. Hippler, Esq.
Shane Biornstad, Esq.
5441 Kietzke Lane, 2nd Flr.
Reno, NV 89511

Dated this 22nd day of June, 2009.



Employee of Robison, Belaustegui,
Sharp & Low

EXHIBIT "1"

EXHIBIT "1"

AGREEMENT

THIS AGREEMENT is made and entered into as of the 10th
day of May, 1979 by and between the following parties:

BULLION MONARCH COMPANY, a Utah corporation (BULLION);

POLAR RESOURCES CO., a Nevada corporation (POLAR);

UNIVERSAL GAS (MONTANA), INC., a Montana corporation,
and UNIVERSAL EXPLORATIONS, LTD., a Canadian corporation
(UNIVERSAL);

CAMSELL RIVER INVESTMENTS, LTD., a Canadian corporation
(CAMSELL);

LAMBERT MANAGEMENT LTD., a Canadian corporation (LAMBERT
and

ELTEL HOLDINGS LTD., a Canadian corporation (ELTEL);

W I T N E S S E T H:

WHEREAS the parties hereto would all profit from the
mining of and production of certain mining properties located in
the Lynn Mining District, Eureka County, Nevada, more fully des-
cribed in Exhibit A-1 attached hereto and incorporated herein by
reference, hereinafter collectively referred to as the "Subject
Property;" and

WHEREAS the parties have interest in exploring a wider
range of mineral properties in which the Subject Property is em-
bedded, hereinafter referred to as the "Area of Interest," more
fully described in Exhibit A-2 attached hereto and incorporated
herein by reference; and

WHEREAS the parties hereto are desirous of developing the
Subject Property's mineral potential by building adequate milling
facilities and developing a mine ("the Project"); and

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05/11/79

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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WHEREAS BULLION purports to own a royalty interest in and to the Subject Property as is more fully set forth in Exhibit A-1; and

WHEREAS POLAR purports to own a 100% interest in and to part of the Subject Property as is more fully set forth in Exhibit A subject to possible outstanding interests and royalties, purports to own a 100% interest in and to other portions of the Subject Property as is more fully set forth in Exhibit A-1, and has under a Lease and Option a 77½% interest to other portions of the Subject Property; and

WHEREAS CAMSELL, LAMBERT and ELTEL are interrelated organizations acting in concert as to the Subject Property, collectively being referred to hereinafter as "CAMSELL" unless specifically referred to otherwise, and have invested monies in the development of the Subject Property to date, their interest and relationship to the Project being governed by that certain Letter Agreement with POLAR dated March 14, 1979, as amended by the letters of March 16, 1979, April 6, 1979 and April 10, 1979, attached thereto, all attached hereto as Exhibit B; and

WHEREAS UNIVERSAL GAS (MONTANA), INC. is presently financing further development of the mining and production potential of the Subject Property, primarily for the production of precious metals basically under the terms of that certain Agreement with POLAR dated March 14, 1979 attached hereto as Exhibit C; and

WHEREAS UNIVERSAL EXPLORATIONS, LTD. is prepared and able to guarantee the financial obligations of UNIVERSAL GAS (MONTANA), INC. contained herein, both corporations will be collectively referred to as UNIVERSAL herein with the understanding amongst the

-2-

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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05/11/79

parties hereto that UNIVERSAL GAS (MONTANA), INC. will be the active participant referred to as UNIVERSAL while any reference to UNIVERSAL EXPLORATIONS, LTD. under the collective term UNIVERSAL speaks only to its financial backing of the UNIVERSAL obligations recited herein;

NOW THEREFORE, in consideration of the conditions, covenants, promises, obligations, payments and agreements herein contained, the parties agree as follows:

1. SOLE AGREEMENT: That as between the parties hereto this Agreement shall be the sole and only agreement governing the ownership, operations and payment from the Subject Property, cancelling, revoking, rescinding and terminating any and all other deeds, conveyances, contracts or agreements between the parties hereto, or any combination thereof, affecting the Subject Property, except any agreement that may exist between CAMSELL, LAMBERT and ELTEL as to investment in Subject Property development and divisions of proceeds received therefrom, and except any agreement, contract or deed specifically preserved by the terms hereof. Should the terms of any agreement, letter agreement or other document or understanding preserved by specific reference herein be in conflict with this Agreement the terms of this Agreement shall control.

2. OWNERSHIP OF SUBJECT PROPERTY: That as between the parties hereto it is understood and agreed that the ownership of the Subject Property as presently constituted is as set forth in Exhibit A attached hereto, subject only to the terms and conditions of this Agreement specifically referred to herein. In addition, it is understood, agreed and warranted amongst the parties hereto that except

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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

05/11/79

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for agreements, deeds and other documents specifically mentioned herein that none of the parties hereto, individually, in combination or collectively, have conveyed or encumbered the Subject Property.

A. Simultaneously herewith, BULLION shall execute and deliver a Grant Deed to UNIVERSAL conveying all of its right, title and interest in the Subject Property to ~~UNIVERSAL~~. Such interest of BULLION conveyed to UNIVERSAL shall be subject to the payment provisions of Paragraph 4, infra. . Also see paragraph 6

B. Simultaneously herewith, POLAR shall execute and deliver a Grant Deed to UNIVERSAL conveying all of its right, title and interest in the Subject Property to UNIVERSAL, subject to the terms and conditions of the March 14, 1979 POLAR - UNIVERSAL Agreement.

C. Simultaneously herewith, CAMSELL shall execute and deliver a Quitclaim Deed to UNIVERSAL conveying and quitclaiming all of its right, title and interest in the Subject Property to UNIVERSAL.

D. At all times pertinent hereto, UNIVERSAL shall have the right to pledge or otherwise hypothecate the titles to any portions, or the whole of, the Subject Property for the purpose of obtaining financing for development of the Subject Property, except that no more than a total of FIFTY PERCENT (50%) of the then current market value of such property shall be so hypothecated or encumbered. At the time, under the March 14, 1979 Agreement, Exhibit C, UNIVERSAL reaches the "earning point", its conveyance to PO of 50% interest shall be unencumbered.

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RENO AND ELKO, NEVADA

PA 0433

3. UNIVERSAL AS OPERATOR: That on March 14, 1979 POLAR and UNIVERSAL entered into an Agreement, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, whereby UNIVERSAL, under the terms and conditions thereof, was to become the sole and only operator of the mineral production from the Subject Property as of March 1, 1979, and that all of the parties hereto agree to the terms of said Agreement allowing UNIVERSAL the sole and only control over further development and production from the Subject Property pursuant to the March 14, 1979 Agreement and ratify the same as if they had been signatory thereto.

4. PAYMENTS TO BULLION:

C.A. Commencing May 1, 1979, ~~UNIVERSAL~~ shall pay to BULLION an advance minimum royalty of \$2,500.00 each and every month through October of 1979 or until gross production sales from the Subject Property have reached the amount of \$62,500.00 per month, whichever comes first.

C.B. Commencing on November 1, 1979, UNIVERSAL shall pay to BULLION an advance minimum royalty of \$5,000.00 each and every month until gross production sales from the Subject Property has reached the amount of \$125,000.00 per month, or until BULLION has received an aggregate of \$250,000.00 under these subparagraphs, A and B.

^{not}
D. C. BULLION shall receive a FOUR PERCENT (4%) gross smelter return from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) until BULLION has received an aggregate of \$500,000.00 under these subparagraphs, A, B and C.

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ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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^{net} D. Thereafter BULLION shall receive a TWO PERCENT (2%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) until BULLION has received an aggregate of \$1,000,000.00 under these subparagraphs, A, B, C and D.

^{net} E. Thereafter BULLION shall receive a ONE PERCENT (1%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated).

"Gross smelter return," as used above, shall mean the amount of earned revenues, as used in accordance with generally accepted accounting principles, payable to UNIVERSAL by any smelter or other purchaser of metals, ores, minerals or mineral substances, or concentrates produced therefrom for products mined from the Subject Property.

Upon SIXTY (60) days' written notice by BULLION to UNIVERSAL, BULLION may elect to take any monthly production royalty in kind but will be totally responsible for all loading and transportation and the costs thereof. BULLION agrees not to materially interfere with UNIVERSAL's operations should it elect to receive payment in kind, and will hold all the remaining parties hereto harmless from its actions in loading and transporting the in kind payments.

All advance royalty payments shall be due on the first day of each month and all production royalties shall be due no later than FORTY-FIVE (45) days after the date payment for production sales is received by UNIVERSAL.

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5. OBLIGATIONS OF BULLION AND POLAR: BULLION and POLAR shall assume and retain all obligations that they have independently incurred by virtue of their activities on and for the Subject Property prior to the date of this Agreement and, in particular, BULLION shall assume and retain the obligation of that certain Deed of Trust made in favor of Ira J. Jaffee, Trustee, as Beneficiary, recorded in the Official Records of Eureka County, Nevada, Book 41, Page 362. At all times pertinent hereto, UNIVERSAL shall have the unqualified right to direct any and all funds due BULLION or POLAR hereunder to remove any obligations of BULLION or POLAR, respectively, secured by the Subject Property, or any portion thereof, and such will be credited toward the payment schedule due BULLION or POLAR. See Paragraph 4, supra.

6. PURCHASE OF BULLION'S INTEREST: That at the time BULLION has received an aggregate of \$1,000,000.00 under the terms and conditions of Paragraph 4, supra, BULLION will have been deemed to have sold and UNIVERSAL and POLAR deemed to have purchased all of BULLION's right, title and interest in the Subject Property (50% each, subject to the terms and conditions of the March 14, 1979 Agreement, Exhibit C) and forever relieving UNIVERSAL and POLAR from any contractual commitment to BULLION by virtue of UNIVERSAL's or POLAR's actions or operations on the Subject Property, save and except for the ONE PERCENT (1%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) set forth in Paragraph 4(E), supra. At that time, UNIVERSAL and POLAR will execute and deliver

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to BULLION a Royalty Deed forever evidencing such royalty interest, ONE-HALF PERCENT (1/2%) being chargeable each against UNIVERSAL and POLAR.

7. DEFAULT OF OBLIGATIONS TO BULLION: If, at any time, UNIVERSAL is in default of its payment obligations to BULLION, BULLION, upon FORTY-FIVE (45) days' written notice to all of the parties hereto, may terminate this Agreement and demand that UNIVERSAL execute and deliver to BULLION a Quitclaim Deed of all of its right, title and interest to that portion of the then Subject Property that is specifically listed in Exhibit A-1 attached hereto, but not the additional properties added to the Subject Property list subsequent to the date of this Agreement. During the notice period, UNIVERSAL, or any other party hereto not BULLION, or anyone on their behalf, may pay such obligation to BULLION and cure such default.

8. PRODUCTION EXPENSE OVERRUN: Pursuant to the terms of the Letter Agreement between POLAR and CAMSELL dated March 14, 1979, Exhibit B, POLAR and CAMSELL agree to share in cost overruns incurred by UNIVERSAL in bringing the Project into production should UNIVERSAL's initial development costs prior to production exceed ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00), or should UNIVERSAL's initial development costs and production costs exceed \$1,250,000.00 at any time after production commences but production expenses exceed production payments or revenues.

The parties agree to share in cost overruns in excess of \$1,250,000.00 commitment of UNIVERSAL in the following percenta

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UNIVERSAL 50%
POLAR-CAMSELL 50%

Except as herein outlined, the terms, conditions and penalties for cost overruns and the non-participation in such overruns are governed by Clause 10(D), Schedule B, POLAR - UNIVERSAL Agreement of March 14, 1979.

9. DIVISION OF PROCEEDS: The proceeds of production shall be governed by the terms of this Agreement only (except for the CAMSELL, LAMBERT and ELTEL arrangements). As operator under the March 14, 1979 Agreement (see Paragraph 3, supra), UNIVERSAL shall have the right to pay all normal operating and production expenses, including insurance and taxes (excepting income taxes accruing to the individual parties hereto, but specifically including net proceeds of mine taxes, real and personal property taxes associated with mining and income taxes accruing to the venture), pursuant to normal and usual accounting practices and the terms of the March 14, 1979 Agreement from production payments received. In addition, UNIVERSAL shall be able to treat as production expenses and deduct from production payments received all rentals, advance royalties and production royalties paid to BULLION, the Poulsen Group and any others. The amounts received from products produced from the Subject (production payments) less the production expenses, as defined herein and in the March 14, 1979 Agreement between POLAR and UNIVERSAL, shall be the net production receipts.

As between the parties hereto, the net production receipt shall be divided as follows:

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A. BULLION: none, being only entitled to the payments set forth above in Paragraph 4;

B. UNIVERSAL: FIFTY PERCENT (50%); and

C. POLAR, CAMSELL: FIFTY PERCENT (50%), pursuant to that Letter Agreement between POLAR and CAMSELL dated March 14, 1979, Exhibit B.

Nothing herein shall be construed as prohibiting POLAR-CAMSELL from taking their interest in kind provided that they give UNIVERSAL SIXTY (60) days' written notice of such election. POLAR-CAMSELL will be totally responsible for all loading and transportation and the costs thereof. POLAR-CAMSELL will not materially interfere with UNIVERSAL's operations should it elect to receive payments in kind and will hold all the remaining parties hereto harmless from its actions in loading and transporting the in kind payments. It is understood and agreed that all such in kind payments are net, after deduction of the proportionate amount of mining and operation costs.

10. TERMINATION BY UNIVERSAL: UNIVERSAL's participation in the Project is governed by the terms and conditions of the POLAR - UNIVERSAL Agreement of March 14, 1979, Exhibit C, except as specifically modified herein. Upon fulfilling its obligations thereunder, UNIVERSAL has the right to terminate its position as Project Operator and to terminate its further participation in Project development and expenses thereof. Such termination is governed by the terms and conditions of the March 14, 1979 UNIVERSAL - POLAR Agreement and, in particular, Schedule B attached thereto.

11. ADDITIONAL PROPERTY ACQUISITIONS: UNIVERSAL, as operator, shall have the exclusive right to acquire additional

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mineral properties within the Area of Interest on behalf of the parties hereto, be such acquisition by virtue of the rights and privileges under the 1872 Mining Law, or the leasing or purchase of private lands and minerals, or unpatented mining claims. All parties hereto agree to immediately quitclaim and assign to UNIVERSAL any and all other real property or interest in such that they may have within the Area of Interest, Exhibit A-2, as of the date of this Agreement, subjecting the same to the terms and conditions of this Agreement, excepting any interest of BULLION in and to those properties presently being worked by Western States Minerals (Pancan

Upon acquiring such properties within the Area of Interest, UNIVERSAL shall offer to include such into the Subject Property upon payment by POLAR-CAMSELL of FIFTY PERCENT (50%) of all acquisition costs incurred in acquiring such properties. Acquisition costs shall include, but are not limited to, purchase price, rental fees, real estate or finder's commissions, legal fees, closing costs, title examinations, appraisal fees and costs incurred by UNIVERSAL in otherwise evaluating the property to be acquired.

Should POLAR-CAMSELL reject such offer or fail to pay or reach agreement for paying such acquisition costs within FORTY-FIVE (45) days of such offer by UNIVERSAL, then such properties within the Area of Interest shall not become part of the Subject Property as they apply to POLAR-CAMSELL and will remain the sole property of UNIVERSAL without any obligations to POLAR-CAMSELL, but subject to the royalty interest of BULLION.

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RENO AND ELKO, NEVADA

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However, should POLAR accept such offer and pay or reach an agreement with UNIVERSAL for paying such acquisitions costs, the newly acquired properties shall become part of the Subject Property and will be treated thereafter under the terms of this Agreement pertaining to the Subject Property.

12. POULSEN LEASE AND OPTION: The parties hereto recognize the Lease and Option of POLAR with the Poulsens, a copy of which is attached hereto as Exhibit D. UNIVERSAL shall make all payments due thereunder and shall credit such as a development or production expense.

*What are
The Poulsen
Properties?*

While under Lease, the Poulsen properties shall be, and are, part of the Subject Property, however, at any time, UNIVERSAL may elect to exercise the purchase option. Upon doing so, UNIVERSAL shall offer such to POLAR-CAMSELL under the terms of Paragraph 12, supra. Failure of POLAR-CAMSELL to participate in the acquisition (purchase) costs shall remove such properties from Subject Property status as the same applies to POLAR-CAMSELL.

13. TERM: The term of this Agreement, as it affects the continuing contractual relationships between the parties hereto, is for a period of NINETY-NINE (99) years commencing on the date hereof, unless sooner terminated, surrendered or forfeited.

14. TITLE PERFECTION: The parties hereto recognize that title to the Subject Property, or portions thereof, may contain certain imperfections, clouds thereon or outstanding interests that may require acquisition, clearing or otherwise perfecting. UNIVERSAL shall, in its discretion, seek out such imperfections and cure the same. All expenses incurred by UNIVERSAL in investi-

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PA 0441

gating title to the Subject Property from March 1, 1979, and curing imperfections or acquiring outstanding interests in the same shall be treated as a development or production expense by UNIVERSAL pursuant to the March 14, 1979 POLAR - UNIVERSAL Agreement.

15. INSPECTION, RECORDS: At all times pertinent hereto, the non-operating parties shall have the right to reasonable inspection of the Subject Property and all geological and production records upon giving FIVE (5) days' written notice to UNIVERSAL. Such inspection shall be at the Subject Property or at any offices of UNIVERSAL in the Elko-Carlin, Nevada area. Personal inquiry by the parties hereto directly to UNIVERSAL shall be made only to the following UNIVERSAL officers and employees, and no others:

Joseph A. Mercier
Dan Mercier
Don Hargrove

or their nominees.

Monthly, on the monthly anniversary of this Agreement, UNIVERSAL shall prepare and deliver to the parties hereto a summary report of development on the Subject Property, including building construction, geological finds, etc., and setting forth production and development expenditures.

16. NOTICES: All notices required herein shall be in writing by certified or registered mail, (United States or Canada, as the case may be), return receipt requested (or the Canadian equivalent of such service), to the addresses listed below. Service of such notice is to be deemed accomplished as of the date of mailing:

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ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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PA 0442

BULLION MONARCH COMPANY
Attention: R. D. Morris
Henderson Bank Building
Elko, NV 89801

UNIVERSAL GAS (MONTANA), INC.
Attention: Joe Mercier, President
640 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 1G7

With a copy to: UNIVERSAL GAS (MONTANA), INC.
Attention: John C. Miller, Esq.
Blohm Building, Suite 201
Elko, NV 89801

POLAR RESOURCES CO.
Attention: C. Warren Hunt
1119 Sydenham Road, S. W.
Calgary, Alberta
CANADA T2T 0T5

CAMSELL RIVER INVESTMENTS
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

LAMBERT MANAGEMENT LTD.
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

ELTEL HOLDINGS LTD.
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

17. RECORDATION: This Agreement may be recorded into the Official Records of either Eureka County of Elko County, Nevada or both, by any one of the parties hereto.

18. BINDING EFFECT: The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

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ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

19. ASSIGNABILITY: The respective positions and interests of the parties hereto shall be freely assignable except that such assignment shall not be binding on or affect the remaining parties hereto in any manner, unless and until such assignment is noted in writing to UNIVERSAL, or any successor Operator.

IN WITNESS WHEREOF, the parties hereto set their hands as of the day and year first above written.

BULLION MONARCH COMPANY, a Utah corporation

BY: R. D. Monix
TITLE: PRESIDENT

POLAR RESOURCES CO., a Nevada corporation

BY: [Signature]
TITLE: President

UNIVERSAL GAS (MONTANA), INC. a Montana corporation

BY: [Signature]
TITLE: President

CAMSELL RIVER INVESTMENTS Ltd. a Canadian corporation

BY: K. H. Lambert
TITLE: President

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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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PA 0444

LAMBERT MANAGEMENT LTD., a Canadian corporation

BY: K.H. Lambert
TITLE: President

ELTEL HOLDINGS LTD., a Canadian corporation

BY: K.H. Lambert
TITLE: Director + Secretary

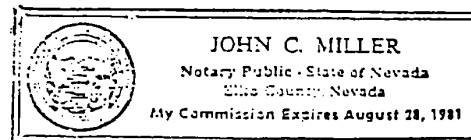
UNIVERSAL EXPLORATIONS, LTD. a Canadian corporation

BY: [Signature]
TITLE: [Signature]

STATE OF Nevada)
COUNTY OF Elko) SS.

On May 11, 1979, personally appeared before me, a Notary Public, R.O. Morris, a duly qualified and acting officer of BULLION MONARCH COMPANY, who acknowledged to me that he executed the above instrument in that capacity.

[Signature]
NOTARY PUBLIC



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ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

05/11/79

PA 0445

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On _____, 1979, personally appeared before me, a Notary Public, C. WARREN HUNT, a duly qualified and acting officer of POLAR RESOURCES CO., who acknowledged to me that he executed the above instrument in that capacity.

NOTARY PUBLIC

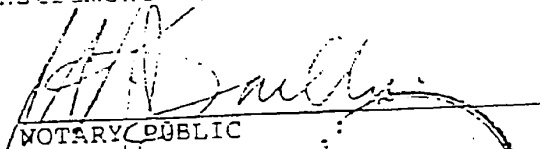
PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 28, 1979, personally appeared before me, a Notary Public, Joseph A. Mercier, a duly qualified and acting officer of UNIVERSAL GAS (MONTANA), INC., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of CAMSELL RIVER INVESTMENTS, INC., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC

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05/11/79

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ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

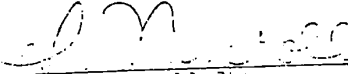
PA 0446

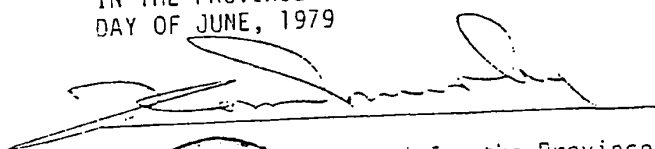
AFFIDAVIT OF EXECUTION

I Susan Lee Nicholl of the City of Calgary, in the Province of Alberta, make oath and say that:

1. I was personally present and did see Mr. C. Warren Hunt named in the within or in annexed instrument who is personally known to me to be the person named therein, duly signed and executed the same for the purposes named therein.
2. That the same was executed at the City of Calgary, in the Province of Alberta and that I am the subscribing witness thereto.
3. That I know the said Mr. C. Warren Hunt and he is, in my belief, of the full age of twenty-one years.

SWORN BEFORE ME AT THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA, THIS 7th
DAY OF JUNE, 1979


SUSAN LEE NICHOLL


A Notary Public in and for the Province of Alberta



BOOK 71 PAGE 26

PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of LAMBERT MANAGEMENT LTD., who acknowledged to me that he executed the above instrument in that capacity.

K. Lambert
NOTARY PUBLIC



PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of ELTEL HOLDINGS LTD., who acknowledged to me that he executed the above instrument in that capacity.

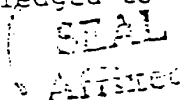
K. Lambert
NOTARY PUBLIC



PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, Joseph A. Mercier, a duly qualified and acting officer of UNIVERSAL EXPLORATIONS, LTD., who acknowledged to me that he executed the above instrument in that capacity.

Joseph A. Mercier
NOTARY PUBLIC



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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

PA 0448

EXHIBIT A-1SUBJECT PROPERTY

The following described unpatented and patented mining claims generally located in Sections 1, 2, 10, 11 and 12 of Township 35 North, Range 50 East, M.D.B.&M., Lynn Mining District, Eureka County, Nevada:

<u>Unpatented Claims</u>	<u>Polar</u>	<u>Bullion</u>
	100%	Royalty
Big Jim	"	"
Big Jim 1 to 31, inclusive	"	"
Cracker Jack	"	"
Cracker Jack 1 to 5, inclusive	"	"
Yellow Rose 6 to 21, inclusive	"	"
Polar 1 to 20, inclusive	"	"
Hill Top	"	"
Hill Top 1 to 2, inclusive	"	"
Hill Top Fractional	"	"
Hill Top 1 to 4 Fractional	"	"
RJV	"	"
Unity 1	"	"
Unity 2	"	"
Badger	"	"
Badger 1	"	"
Compromise 4 to 7, inclusive	"	"
Lamira	"	"
Junction	"	"
Paragon	"	"
Paragon 2	"	"
Paragon 4	"	"
Paragon Fractional	"	"

Patented Claims (Poulsen Lease and Option)

	<u>U.S. Patent No.</u>	<u>U.S. Survey No.</u>	<u>Polar</u>	<u>Bullion</u>
			77%	Royalty
Big Six No. 3	783757	4332	"	"
Holt	881735	4422	"	"
July	935874	4528	"	"
Great Divide	945439	4393	"	"
Bald Eagle	046758	4527	"	"

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RENO AND ELKO, NEVADA

EXHIBIT A-1

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EXHIBIT A-2

AREA OF INTEREST

check + verify

All those lands contained in the Sections and Townships listed below approximately encompassing the area EIGHT (8) miles in a northerly direction, EIGHT (8) miles in a southerly direction, EIGHT (8) miles in an easterly direction and EIGHT (8) miles in a westerly direction from Section 10, Township 35 North, Range 50 East, M.D.B.&M., Eureka County, Nevada.

Township 34 North, Range 49 East
Sections: 1-5, 8-17 and 20-24

Township 35 North, Range 49 East
Sections: 1-5, 8-17, 20-29 and 32-36

Township 36 North, Range 49 East
Sections: 1-5, 8-17, 20-29 and 32-36

Township 37 North, Range 49 East
Sections: 32-36

Township 34 North, Range 50 East
Sections: 1-24

Township 35 North, Range 50 East
Sections: All

Township 36 North, Range 50 East
Sections: All

Township 37 North, Range 50 East
Sections: 31-36

Township 34 North, Range 51 East
Sections: 3-10 and 15-22

Township 35 North, Range 51 East
Sections: 3-10, 15-22 and 27-34

Township 36 North, Range 51 East
Sections: 3-10, 15-22 and 27-34

Township 37 North, Range 51 East
Sections: 31-34

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

EXHIBIT A-2

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PA 0450

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
HOME OIL TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-26
13716 - 101 AVENUE,
EDMONTON, ALBERTA
CANADA T5N 0J7

March 14, 1979

Polar Resources Co.
1119 Sydenham Road, S. W.
Calgary, Alberta
T2T 0T5

Attention: Mr. Warren Hunt

Dear Sirs:

RE: Gold Claims Lynn Mining District
Eureka County, Nevada

As you are aware, since early 1976 Camsell River Investments Ltd. has entered into several agreements with you relating to the Bullion Monarch Company gold claims in Nevada and has also entered into agreements relating to the same properties with Bullion Monarch Company. As a result of these agreements, Camsell and its silent coventurers, Lambert Management Ltd. and Eltel Holdings Ltd. have advanced about \$505,000. U.S. to you and \$300,000. U.S. to Bullion Monarch Company and have expended a further \$10,000. U.S. or so on drilling invoices and other expenses relating to the properties.

Our mutual files on this matter are extensive and the legal determination of the various agreements would undoubtedly take more time and effort to resolve than is prudent under the circumstances. We have always maintained that we do not wish to hamper your efforts to put the properties into production so long as an equitable arrangement can be reached between us. Based on the proposed agreement you have negotiated with Universal Gas (Montana) Inc. (hereinafter called the "Mill Agreement") and our meetings and telephone conversations of March 10, 11, 12 and 13, we believe we have reached an agreement acceptable to you and the parties we represent. This agreement between you and the "Camsell Group" would enable Universal to obtain the interest it has bargained for in the Mill Agreement and would resolve our diverse interests in an amiable fashion.

/2

BOOK 71 PAGE 30

EXHIBIT f

The Agreement is as follows:

- 1) All of the interests of any nature whatsoever of Polar Resources Co. and those of other parties represented by Polar Resources Co. (hereinafter called the "Polar Group") and all of the interests of any nature whatsoever of Camsell River Investments Ltd. and those of the parties represented by Camsell River Investments Ltd. (hereinafter called the "Camsell Group") in "The Mining Properties" as defined in the Mill Agreement shall be pooled and then reallocated 50% to Universal Gas (Montana) Inc. pursuant to the Mill Agreement and 50% collectively to the Polar Group and the Camsell Group (hereinafter called the "Polar-Camsell Group").
- 2) The Camsell Group will receive 100% of the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties until the Camsell Group has received an amount equivalent to its expenditures relating to the Mining Properties before interest as established by independent audit. This amount is about \$815,000 U.S.
- 3) After the Camsell Group has received the amount indicated in paragraph 2 above, the Polar Group will receive 100% of the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties until the Polar Group has received an amount equivalent to its expenditures relating to the Mining Properties before interest as established by independent audit. This amount is about \$450,000. U.S.
- 4) After the Polar Group has received the amount indicated in paragraph 3 above, the Polar Group and the Camsell Group will split the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties on a 50-50 basis until the Camsell Group has received an amount equivalent to the amount of interest the Camsell Group would have paid to its banker calculated on all Camsell Group advances to Polar Resources Co. and Bullion Monarch Company from the dates of advance at the Canadian Imperial Bank of Commerce prime rate from time to time plus 2% per annum, compounded semi annually. Any cash received by the Camsell Group pursuant to this agreement would be credited to the "phantom bank account" on the date of receipt in order to determine the amount to be ultimately received by the Camsell Group pursuant to this paragraph 4.
- 5) After the Camsell Group has received the amount calculated pursuant to paragraph 4 above, the Polar-Camsell Group's interests shall be divided and an undivided 30% of the interest shall be transferred to the Camsell Group and an undivided 70% shall be transferred to the Polar Group.

/3

BOOK 71 PAGE 31

6) Title to the Polar-Camsell Group's interest in the Mining Properties shall be held in trust by Polar Resources Co. pursuant to the terms of this Agreement and this Agreement or its successor shall be filed against the title to the Mining Properties in the appropriate offices in the state of Nevada. Polar shall deliver to the Camsell Group a legal opinion from a Nevada attorney stating that the terms and conditions of this Agreement are enforceable by the Camsell Group as against Polar Resources Co. and that the Camsell Group's interests have been adequately registered to protect its interests as against third parties.

7) The proceeds Polar Resources Co. receives from Universal Gas (Montana) Inc. on the sale of the assets listed in the Mill Agreement shall be distributed as follows:

- a) The Polar Group shall receive 100% of the proceeds from the sale of assets acquired after December 31, 1976.
- b) The Camsell Group shall receive 80.4% of the proceeds from the sale of assets acquired prior to January 1, 1977 and the Polar Group shall receive the balance.
- c) Polar Resources Co. shall account to the Camsell Group for any assets held on December 31, 1976 which have been disposed of by Polar Resources Co. subsequent to December 1, 1976 but prior to the execution of the Mill Agreement. The Camsell Group shall receive an amount equal to 80.4% of such disposition proceeds from Polar Resources Co. and the source of funds for such payment shall be the Polar Group's share of the proceeds of the sale of assets pursuant to the Mill Agreement.

8) The Polar-Camsell Group recognizes a fee of \$1,500. per month payable to Polar Resources Co. from the cash flow generated by the mill for the services of Warren Hunt from the date of commencement of milling operations and also recognizes the need to employ a full time representative at the mine as soon as gold production commences in meaningful amounts.

9) In the event of cost overruns beyond the \$1,250,000. U.S. stated in the Mill Agreement, the Polar-Camsell Group acknowledges that it will be responsible for 50% of such overruns. These overruns shall be allocated as between the Polar Group and the Camsell Group as follows:

- a) For exploration, mine development, and mine operation expenses on the Big Jim claims 24 and 25 and for mill development expenses related to that mine, 50% shall be paid by the Polar Group and 50% shall be paid by the Camsell Group.

/4

BOOK 71 PAGE 32

- b) For all other expenses 70% shall be paid by the Polar Group and 30% shall be paid by the Camseil Group.

10) This Agreement is subject to the execution of the Mill Agreement and is subject to revision of the method contemplated in paragraph 1 to arrive at the interests outlined in paragraphs 2, 3, 4 and 5 if subsequent investigation reveals that the tax consequences of such method are adverse. The intent is that the Agreement will be structured so as to minimize adverse tax implications in Canada and the United States for all parties concerned while at the same time arriving at the same distribution of cash flow from the Mining Properties:

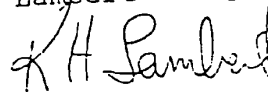
11) This Agreement shall be interpreted in accordance with the laws of the Province of Alberta.

12) Each of the parties shall execute any further agreements required by legal counsel for any party to implement the terms or intent of this Agreement.

If you agree with the above terms and conditions please indicate your acceptance on the copy of this letter enclosed.

Yours very truly,

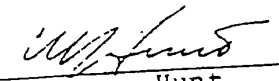
Lambert Management Ltd.


K. H. Lambert
President

/mjm
encl:


Accepted this ~~17~~ day of March, 1979

Polar Resources Ltd.


C. Warren Hunt
President

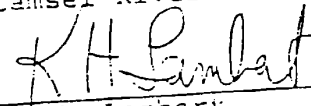
Accepted this 14th day of March, 1979

Eltel Holdings Ltd.


K. H. Lambert
Secretary

Accepted this 14th day
of March, 1979

Camseil River Investments


K. H. Lambert
President

BOOK 71 PAGE 33

Telephone: (403) 233-0047
808 HOME OIL TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403)
13716 - 101 AVE
EDMONTON, AL
CANADA T5N

March 16, 1979

Polar Resources Co.
1119 Sydenham Road, S. W.
Calgary, Alberta
T2T 0T5

Attention: Mr. Warren Hunt

Dear Sirs:

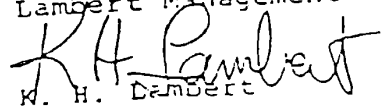
RE: Gold Claims - Lynn Mining District
Eureka County, Nevada

Further to our letter of March 14, 1979 and the writer's meeting with your Messrs. Hunt and Ross Hamilton on March 14, 1979, we wish to confirm that the agreement contained in the said letter is amended by adding the following:

- 9.1(a) Any funds advanced pursuant to sub paragraph 9(a) shall be repaid pro rata from the Polar-Camsell Group's first cash flow from the mill prior to the commencement of payments to the Camsell Group pursuant to paragraph 2.
- 9.1(b) Any funds advanced pursuant to sub paragraph 9(b) shall be repaid pro rata from the Polar-Camsell Group's cash flow from the mill after the obligations to the Camsell Group outlined in paragraph 1 have been satisfied.
- 9.2 The penalty provisions in the Mill Agreement shall apply mutatis mutandis to the Polar Group and the Camsell Group in the event of a default by either Group on an obligation to advance further funds pursuant to paragraph 9.

If you agree with the above additional terms and conditions please indicate your acceptance on the copy of this letter enclosed.

Yours very truly,

Lambert Management Ltd.

K. H. Lambert

/mjm

71 34

Attachment to: Polar Resources Co.
March 16, 1979

Accepted this day of March, 1979

Polar Resources Co.

C. Warren Hunt
President

Accepted this 16th day of March, 1979
Eltel Holdings Ltd.

K. H. Lambert
K. H. Lambert
Secretary

Accepted this 16th day of March, 1979
Camsel River Investments Ltd.

KH Lambert
KH. Lambert
President

1070 SILVER STREET
ELKO, NEVADA 89801

(702) 738-8712

April 6, 1979

Mr. K. H. Lambert
Lambert Management Ltd.
5908, 324 8th Ave. S.W.
Calgary T2P 2Z2

Dear Sir:

Your letter of March 16 1979 is acknowledged and a copy returned herewith signed as requested.

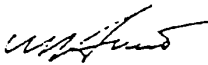
In accordance with our telephone conversation this morning, in which the writer pointed out that clauses 7b and 7c of the letter agreement of March 14, 1979 were unduly broad in that they might be construed to include Polar's assets which had not been acquired by the joint venture nor in the period of the joint venture, April 1 - Nov. 30, 1976, the following is proposed:

Clause 7 subclause b is amended so that the words "prior to Jan. 1, 1977" are replaced by "between April 1, 1976 and November 30, 1976".

Clause 7 subclause c. The meaning of the word "assets" as used in this subclause is understood to mean properties and equipment acquired by the joint venture or charged by Polar to the joint venture so as to establish equity of contributions of the members of the joint venture, that is to say, Polar Resources Co. and Camels River Investments Ltd.

If the foregoing meet with your approval, kindly sign a copy hereof and return for our files.

Yours truly,
Polar Resources Co.


C. Warren Hunt, Pres.

*See qualifications in
letter of April 10/79
Lambert Management
per K H Lambert*

BOOK 71 PAGE 36

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
808 HOME OIL TOWER
8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-261
13716 - 101 AVENUE
EDMONTON, ALBERTA
CANADA T5N 0J7

April 10, 1979

Polar Resources Co.
1119 Sydenham Road S.W.
Calgary, Alberta
T2T 0T5

ATTENTION: Mr. Warren C. Hunt

Dear Sirs:

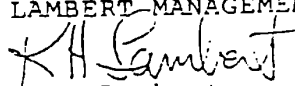
RE: Gold Claims Lynn Mining District
Eureka County, Nevada

Further to your letter of April 6, 1979, we wish to confirm our agreement that clauses 7b and 7c of our letter agreement of March 14, 1979 have not been drafted to contemplate assets to be sold under the Mill Agreement. We agree that the language should be changed.

We are prepared to accept your suggested change for sub clause 7b provided that the 80.4% figure is changed to reflect the actual percentage of the total funds used by Polar between April 1 and November 30, 1976 which was injected by the Camsell Group. Your auditor could provide us with that percentage.

We accept your clarification of the word "assets" in sub clause 7c and would also suggest that the 80.4% figure used in sub clause 7c should be changed to the same percentage as will be used in subclause 7b.

If the foregoing meets with your approval, kindly sign the enclosed copy of this letter and return it for our files.

Yours very truly,
LAMBERT MANAGEMENT LTD.

K.H. Lambert
President

KHL/rs

Enc.

Accepted this 11th day of April, 1979

POLAR RESOURCES LTD.

PER: 

BOOK 71 PAGE 37

EXHIBIT B

1 PARSONS BEHLE & LATIMER

2 Michael R. Kealy (Nevada Bar No. 0971)
3 50 West Liberty Street, Suite 750
4 Reno, NV 89501
Telephone: (775) 323-1601
Facsimile: (775) 348-7250

5 Francis M. Wikstrom (Utah Bar No. 3462; *pro hac vice* pending)
6 Michael P. Petrogeorge (Utah Bar No. 8870; *pro hac vice* pending)
7 Brandon J. Mark (Utah Bar No. 10439; *pro hac vice* pending)
8 One Utah Center
9 201 South Main Street, Suite 1800
Salt Lake City, UT 84111
Telephone: (801) 536-6700
Facsimile: (801) 536-6111
Email: ecf@parsonsbehle.com

10 Attorneys for Defendants Barrick Gold Corporation and Barrick
11 Goldstrike Mines Inc.

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE DISTRICT OF NEVADA
14

15 BULLION MONARCH MINING, INC.,

16 Bullion Monarch,

17 v.

18 NEWMONT USA LTD., *et al.*,

19 Defendants.
20
21

Case No. CV-N-08-00227-ECR-VPC

**MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF RULE 12(b)(2)
MOTION TO DISMISS ALL
CLAIMS AGAINST BARRICK
GOLD CORPORATION FOR
LACK OF PERSONAL
JURISDICTION**

22 Defendant Barrick Gold Corporation ("BGC"), by and through its undersigned counsel,
23 respectfully submits this memorandum of points and authorities in support of its motion to
24 dismiss the claims asserted against BGC in Bullion Monarch Mining, Inc.'s ("Bullion Monarch"),
25 Amended Complaint pursuant to Rule 12(b)(2) of the Federal Rules of Civil Procedure.
26
27
28

4820-5523-1492.3

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INTRODUCTION

Bullion Monarch has, in its Amended Complaint, lumped together Barrick Goldstrike Mines Inc. ("Goldstrike") and BGC, treating them as one indistinguishable entity. But the truth is that these entities are separate parties with vastly different levels of contact with this Nevada forum. Unlike Goldstrike, which has extensive mining operations in Nevada, as well as employees, offices, and equipment to carry out those mining operations, BGC has never owned or operated any mine in Nevada, has no offices, employees, or property in the state, and conducts no regular business in this forum.

Bullion Monarch's only basis for naming BGC as a defendant appears to be that BGC is the ultimate parent of Goldstrike. But there is no reason for BGC to be a party to this lawsuit. Goldstrike is the only Barrick-related entity that has any connection to the mining properties that are the subject of Bullion Monarch's claims and the only Barrick-related entity that has any potential exposure in this case.¹ Goldstrike has substantial assets in the state of Nevada, and there is no question that it could satisfy any judgment that may be entered against it and in favor of Bullion Monarch in this case. BGC is not, under the law, held to answer for Goldstrike's activities, and there is no reason to require BGC to litigate in this forum.

It would be unconstitutional for this Court to assert personal jurisdiction over BGC in this matter. BGC is a Canadian holding company with significant investments around the world, primarily in the gold mining sector. BGC itself, however, does not own or operate gold mines or related facilities. Instead, like most parent holding companies, BGC owns the stock of other companies, and those companies own and operate the mines under the management and supervision of their officers and directors. BGC does not do business, sell or buy goods or services, pay taxes, employ staff, or hold any bank accounts in Nevada. Simply stated, BGC has no direct presence whatsoever in the state. Given the dearth of contacts between the company and this forum, BGC is not subject to general personal jurisdiction in this forum. Likewise,

¹ Goldstrike concedes, through its simultaneously filed Answer, that it is the corporate successor of High Desert Mineral Resources of Nevada, Inc. Although Goldstrike denies that this fact renders it a party to the 1979 agreement, or obligates it to pay any royalties to Bullion Monarch, Goldstrike concedes that insofar as any liability is ultimately found, it is Goldstrike (not BGC) that is bound.
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1 because BGC has had virtually no contacts with the Nevada forum, particularly contacts related to
2 the claims asserted in this lawsuit, this Court lacks specific personal jurisdiction over the
3 company.

4 For all of the reasons set forth below, constitutional due process guarantees require that
5 the Court refuse to exercise personal jurisdiction over BGC and dismiss all of Bullion Monarch's
6 claims against BGC in this action.

7 **STATEMENT OF FACTS**

8 1. BGC is Canadian company incorporated in Ontario, Canada. (Am. Compl. ¶ 2A;
9 Declaration of Sybil E. Veenman, Senior Vice President, Assistant General Counsel, and
10 Secretary of BGC ("Veenman Decl.") ¶ 4, attached as **Exhibit 1** hereto.)

11 2. BGC's headquarters are located in Toronto, Canada. (Veenman Decl. ¶ 4.)

12 3. BGC exists as a parent holding company, managing its investments and interests
13 in various wholly and partially owned subsidiary companies. (Veenman Decl. ¶ 5.)

14 4. Although most of BGC's subsidiary companies are involved in the gold mining
15 industry, BGC holds a diverse portfolio of interests and investments. (Veenman Decl. ¶ 6.)

16 5. BGC's subsidiary companies operate in numerous countries throughout the world
17 and operate and exist under the laws of those jurisdictions. (Veenman Decl. ¶ 7.)

18 6. BGC is not licensed to do business in Nevada and does not regularly carry out,
19 solicit, or transact business in the state. (Veenman Decl. ¶ 8.)

20 7. BGC does not own any real or tangible personal property in Nevada, nor does it
21 hold any bank accounts in Nevada. (Veenman Decl. ¶ 9.)

22 8. BGC does not have any employees in Nevada and does not have an office,
23 address, or telephone listing within the state. (Veenman Decl. ¶ 10.)

24 9. BGC does not sell any goods or services in Nevada. (Veenman Decl. ¶ 11.)

25 10. BGC has never paid income or property taxes in Nevada. (Veenman Decl. ¶ 12.)

26 11. BGC does not itself engage in mining or processing activities, operate mining or
27 processing facilities, or participate in activities ancillary to mining or processing activities within
28

1 Nevada or the United States, nor does it own any equipment or facilities to do so. (Veenman
2 Decl. ¶ 13.)

3 12. BGC does not buy, sell, or trade commodities of any type, including gold or other
4 precious metals, in Nevada. (Veenman Decl. ¶ 14.)

5 13. There are two intermediate corporate parents between Goldstrike and BGC.
6 (Veenman Decl. ¶ 15.)

7 14. Goldstrike is a Colorado corporation and is a wholly owned subsidiary of Barrick
8 Gold Exploration Inc. ("Exploration"), which is incorporated in Delaware. (Veenman Decl.
9 ¶ 16.)

10 15. Exploration is a wholly owned subsidiary of ABX Financeco Inc. ("ABX"), also a
11 Delaware corporation. (Veenman Decl. ¶ 17.)

12 16. ABX is a wholly owned subsidiary of BGC. (Veenman Decl. ¶ 18.)

13 17. Goldstrike and BGC observe and comply with all applicable requirements for
14 maintaining their separate corporate existence and identities. (Veenman Decl. ¶ 19.)

15 18. Although BGC, consistent with its position as the ultimate parent company,
16 monitors the overall business strategy of Goldstrike, Goldstrike's officers and managers perform
17 the day-to-day management of the company and direct and control the company's activities in
18 Nevada. (Veenman Decl. ¶ 20.)

19 19. Goldstrike is not authorized to act for or on behalf of BGC. (Veenman Decl.
20 ¶ 21.)

21 20. BGC and Goldstrike maintain separate corporate by-laws, minutes, and records,
22 and each company maintains separate bank accounts. (Veenman Decl. ¶ 22.)

23 21. None of the directors of BGC is also a director of Goldstrike. (Veenman Decl.
24 ¶ 23.)

25 22. Any financial transactions between BGC and Goldstrike are documented on the
26 appropriate financial reports of the two companies to ensure the funds are separately tracked and
27 accounted for by each company. (Veenman Decl. ¶ 24.)

23. Goldstrike has substantial assets in Nevada, including the Goldstrike Mine located north of Carlin, Nevada, and is capable of satisfying any judgments that may be entered against it in this case. (Veenman Decl. ¶ 25.)

ARGUMENT

I. PROCEDURAL ASPECTS OF MOTIONS UNDER RULE 12(b)(2)

Bullion Monarch bears the burden of establishing that the Court has personal jurisdiction over each Defendant. Doe v. Unocal Corp., 248 F.3d 915, 922 (9th Cir. 2001). In determining whether Bullion Monarch has met its burden, this Court “must analyze whether personal jurisdiction exists over each defendant separately.” Fze v. Buchan, 602 F. Supp. 2d 1186, 1191 (D. Nev. 2009) (citing Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd., 328 F.3d 1122, 1130 (9th Cir. 2003)).

Although the Court must credit any uncontroverted allegations of fact contained in Bullion Monarch’s Amended Complaint, it “may not assume the truth of allegations in a pleading which are contradicted by affidavit.” Alexander v. Circus Circus Enters., Inc., 972 F.2d 261, 262 (9th Cir. 1992) (internal quotation marks omitted); Fze, 602 F. Supp. 2d at 1191. Thus, insofar as the Declaration of Sybil Veenman undermines the scant, conclusory allegations of personal jurisdiction contained in Bullion Monarch’s Amended Complaint, the Declaration controls the analysis.

II. THE BASIC LEGAL FRAMEWORK APPLICABLE TO THE EXERCISE OF PERSONAL JURISDICTION

In cases in which this Court’s subject-matter jurisdiction is alleged to exist by virtue of diversity of citizenship, 28 U.S.C. § 1332, “a federal court applies the personal jurisdiction rules of the forum state provided the exercise of jurisdiction comports with due process.” Scott v. Breeland, 792 F.2d 925, 927 (9th Cir. 1986); Fze, 602 F. Supp. 2d at 1191-92. Ordinarily, this involves two inquiries: first, whether the forum state’s long-arm statute permits the exercise of personal jurisdiction, and second, whether the exercise of jurisdiction violates the due process protections of the United States Constitution. Data Disc, Inc. v. Sys. Tech. Assoc., Inc., 557 F.2d 1280, 1286 (9th Cir. 1977).

4820-5523-1492.3

- 4 -

1 Because “Nevada’s long arm statute has been liberally construed to reach the outer limits
 2 of federal constitutional due process, . . . the essential inquiry [in this case] becomes whether the
 3 exercise of jurisdiction comports with the defendant’s constitutional due process rights.” Zuffa,
 4 LLC v. Showtime Networks, Inc., No. 2:07-cv-00369, 2007 WL 2406812, at *6 (D. Nev. Aug.
 5 17, 2007); see also Trump v. Eighth Jud. Dist. Ct., 857 P.2d 740, 747 (Nev. 1993) (“Nevada’s
 6 long-arm statute has been construed to extend to the outer reaches of due process . . .”).

7 The Court may exercise personal jurisdiction over BGC only if Bullion Monarch
 8 establishes that the Court has either general or specific jurisdiction over the company. Dole Food
 9 Co. v. Watts, 303 F.3d 1104, 1111 (9th Cir. 2002). For the Court to exercise general personal
 10 jurisdiction over BGC, Bullion Monarch “must demonstrate [that BGC] has sufficient contacts to
 11 ‘constitute the kind of continuous and systematic general business contacts that approximate
 12 physical presence’” in the forum. Fze, 602 F. Supp. 2d at 1192 (quoting Glencore Grain
 13 Rotterdam B.V. v. Shivnath Rai Harnarain Co., 284 F.3d 1114, 1124 (9th Cir. 2002) (internal
 14 quotation marks omitted)). “The standard for establishing general jurisdiction is fairly high . . .”
 15 Bancroft & Masters, Inc. v. Augusta Nat’l Inc., 223 F.3d 1082, 1086 (9th Cir. 2000) (internal
 16 quotation marks omitted); see also Trump, 857 P.2d at 748 (“General jurisdiction will only lie
 17 where the level of contact between the defendant and the forum state is high.”)

18 Absent a showing that BGC has a virtual physical presence in Nevada, a showing which
 19 Bullion Monarch cannot make, it must establish that the Court may properly exercise specific
 20 jurisdiction over BGC for purposes of this lawsuit. To establish specific jurisdiction, Bullion
 21 Monarch must show that BGC did “some act or consummate[d] some transaction within the
 22 forum . . . by which [it] purposefully avail[ed it]self of the privilege of conducting activities in the
 23 forum” and that the asserted claim “arises out of or results from” that act. See, e.g., Doe, 248
 24 F.3d at 923.

25 As set forth more fully below, Bullion Monarch cannot establish a proper basis for the
 26 exercise of general or specific jurisdiction against BGC in this case. This Court should therefore
 27 grant BGC’s motion and dismiss all of Bullion Monarch’s claims against BGC for lack of
 28 personal jurisdiction.

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1 **III. THIS COURT LACKS GENERAL PERSONAL JURISDICTION OVER BGC**

2 **A. BGC Has Never Had Systematic Or Continuous Contacts With the Nevada**
 3 **Forum.**

4 In determining whether a litigant has had systematic and continuous contacts with the
 5 forum sufficient to subject the party to general jurisdiction, courts have developed a flexible list
 6 of salient factors. Courts consider such factors as “whether the defendant makes sales, solicits or
 7 engages in business in the state, serves the state’s markets, designates an agent for service of
 8 process, holds a license, or is incorporated there.” Bancroft & Masters, Inc., 223 F.3d at 1086;
 9 see also In re W. States Wholesale Natural Gas Antitrust Litig., 605 F. Supp. 2d 1118, 1131 (D.
 10 Nev. 2009) (hereinafter “Natural Gas Litig.”) (same).

11 Other pertinent factors include whether the defendant (1) has an office or employees
 12 within the forum, Miller v. DePuy Spine, Inc., No. 2:07-cv-01639, 2008 WL 2761018, at *3 (D.
 13 Nev. July 11, 2008); (2) has a mailing address or telephone listing in the forum, Natural Gas
 14 Litig., 605 F. Supp. 2d at 1127; (3) owns property within the forum, China N.E. Petroleum
 15 Holding, Ltd. v. Topworth Assets Ltd., No. 2:06-cv-01070, 2007 WL 1746332, at *1 (D. Nev.
 16 June 14, 2007); or (4) has paid taxes or holds bank accounts in the forum, Bancroft & Masters,
 17 Inc., 223 F.3d at 1086.

18 As established by the sworn Declaration of Sybil E. Veenman, and set forth above, BGC
 19 engages in none of the hallmark activities that would permit this Court to exercise general
 20 personal jurisdiction over it. BGC is not incorporated under Nevada law, is not licensed to do
 21 business in the State of Nevada, and does not regularly carry out, solicit, or transact business in
 22 the state. (Statement of Facts (“Facts”), supra, ¶¶ 1-3, 6.) BGC does not buy, sell, or trade any
 23 goods, services, or commodities in Nevada. (Facts ¶¶ 9, 12.) BGC does not have an office or
 24 employees in Nevada, nor does it have a mailing address or telephone listing in the state. (Facts
 25 ¶ 8.) BGC does not own any real or tangible personal property in this forum, has never paid
 26 property or income taxes in Nevada, and does not hold any bank accounts in the state. (Facts
 27 ¶¶ 7, 10.) In short, BGC has done nothing to “approximate physical presence” in Nevada, a *sine*

1 *qua non* for this Court to exercise general personal jurisdiction over the company. Fze, 602 F.
 2 Supp. 2d at 1192 (quoting Glencore Grain Rotterdam Bv, 284 F.3d at 1124).

3 **B. Goldstrike's Activities in Nevada Are Irrelevant to the Personal Jurisdiction**
 4 **Inquiry for BGC.**

5 It is axiomatic that “[p]ersonal jurisdiction over each defendant must be analyzed
 6 separately.” Harris Rutsky & Co. Ins. Servs., 328 F.3d at 1130. As such, “[i]t is well established
 7 that, as a general rule, where a parent and a subsidiary are separate and distinct corporate entities,
 8 the presence of one . . . in a forum state may not be attributed to the other” Holland Am.
 9 Line, Inc. v. Wärtsilä N. Am., Inc., 485 F.3d 450, 459 (9th Cir. 2007) (citing Doe, 248 F.3d at
 10 925); accord Miller, 2008 WL 2761018, at *3.

11 Only two exceptions exist to this general rule, and neither exception applies to BGC. The
 12 first occurs when a subsidiary is merely the “alter ego” of the parent company. Doe, 248 F.3d at
 13 926. To satisfy this exception, the Bullion Monarch must show “(1) that there is such unity of
 14 interest and ownership that the separate personalities of the two entities no longer exist and (2)
 15 that failure to disregard their separate entities would result in fraud or injustice.” Id. (alteration
 16 marks by court removed).

17 The second exception, often referred to as the “agency” exception, exists when the
 18 “subsidiary functions as the parent corporation’s representative in that it performs services that
 19 are sufficiently important to the foreign corporation that if it did not have a representative to
 20 perform them, the corporation’s own officials would undertake to perform substantially similar
 21 services.” Id. at 928.

22 1. **Goldstrike Is Sufficiently Separate From and Independent of BGC Such**
 23 **That It Cannot Be Deemed the Mere Alter Ego of BGC.**

24 Bullion Monarch does not, and cannot, allege any facts sufficient to establish that
 25 Goldstrike is the mere “alter ego” of BGC. To establish that a subsidiary company is the alter ego
 26 of its parent for purposes of imputing the subsidiary’s contacts with a forum to the parent, a
 27 plaintiff must establish that the parent “dictates every facet of the subsidiary’s business” and “is
 28

1 involved in the day-to-day operations” of the subsidiary. Id. at 926-27 (alteration marks by court
 2 omitted); see also Truck Ins. Exch. v. Palmer J. Swanson, Inc., 189 P.3d 656, 660 (Nev. 2008)
 3 (“The corporate cloak is not lightly thrown aside and . . . the alter ego doctrine is an exception to
 4 the general rule recognizing corporate independence.” (internal quotation marks omitted)).

5 That a parent is the sole shareholder of a subsidiary, or has some high-level involvement
 6 in setting the subsidiary’s business objectives, does not reveal a unity of interest and ownership or
 7 improper domination by the parent. Proper involvement by a parent company in its subsidiary’s
 8 affairs specifically includes “‘monitoring the subsidiary’s performance, supervision of the
 9 subsidiary’s finance and capital budget decisions, and articulation of general policies and
 10 procedures,’” among other things. Doe, 248 F.3d at 926 (quoting United States v. Bestfoods, 524
 11 U.S. 51, 72 (1998)).

12 BGC is the corporate great-grandparent of Goldstrike; there are two intermediate
 13 corporate parents between BGC and Goldstrike—ABX and Exploration. (Facts ¶¶ 13-16.) None
 14 of BGC’s directors is a member of Goldstrike’s board of directors. (Facts ¶ 21.) Although BGC
 15 exercises its prerogative as the ultimate corporate parent to monitor the overall business strategy
 16 of its affiliated companies, including the subsidiaries in the Goldstrike branch of the family tree,
 17 Goldstrike’s officers and managers perform the day-to-day operational management of the
 18 company. (Facts ¶ 18); Doe, 248 F.3d at 927; Truck Ins. Exch., 189 P.3d at 661.

19 Similarly, BGC “has maintained the corporate formalities by properly documenting” any
 20 financial transactions between itself and Goldstrike. Doe, 248 F.3d at 928; (Facts ¶ 22). BGC
 21 and Goldstrike have likewise observed all other applicable corporate formalities by, among other
 22 things, maintaining separate corporate by-laws, minutes, records, and bank accounts. (Facts
 23 ¶¶ 17, 19-20); Truck Ins. Exch., 189 P.3d at 661; LFC Mktg. Group, Inc. v. Loomis, 8 P.3d 841,
 24 847 (Nev. 2000) (“[F]ailure to observe corporate formalities” is a factor in the alter-ego
 25 analysis.).

26 As for the second requirement, Bullion Monarch cannot establish that “failure to disregard
 27 [BGC’s and Goldstrike’s] separate entities would result in fraud or injustice.” Doe, 248 F.3d at
 28 926. Courts often find such fraud and injustice when the subsidiary is so undercapitalized that a

1 judgment creditor would be unable to recover against the subsidiary. LFC Mktg. Group, Inc., 8
 2 P.3d at 847. Here, however, Goldstrike owns and operates the highly productive Goldstrike Mine
 3 near Carlin, Nevada, and has sufficient assets to satisfy any judgment that the Court may enter
 4 against it in this case. (Facts ¶ 23.) As a result, there is no basis for this Court to disregard the
 5 corporate separateness of BGC and Goldstrike.

6 In sum, while BGC is somewhat “involved in the activities of” Goldstrike, its involvement
 7 is limited to and entirely “consistent with [its] investor status.” Doe, 248 F.3d at 926 (internal
 8 quotation marks omitted). Such parental involvement is appropriate under the law, does not
 9 render Goldstrike the mere “alter ego” of BGC, and does not subject BGC to personal jurisdiction
 10 in Nevada.

11 2. Goldstrike is Not BGC’s Agent for Purposes of the Personal Jurisdiction
 12 Analysis.

13 In Doe, the United States Court of Appeals for the Ninth Circuit distinguished the
 14 situation in which a subsidiary acts as the agent of the parent corporation, thereby subjecting the
 15 parent to the forum-related contacts of its subsidiary, from the situation in which the parent is
 16 merely a holding company. 248 F.3d at 928-29. “[I]n the case of a holding company[,] the
 17 parent could simply hold another type of subsidiary, in which case imputing the subsidiaries’
 18 jurisdictional contacts to the parent would be improper.” Id. at 929. Under Doe, the key
 19 distinction is whether the ““business of the parent is the business of investment,”” or whether,
 20 ““on the other hand, . . . there is no basis for distinguishing between the business of the parent and
 21 the business of the subsidiaries.”” Id. (quoting Bellomo v. Pa. Life Co., 488 F. Supp. 744, 746
 22 (S.D.N.Y. 1980)).

23 As established by the Declaration of Sybil E. Veenman, and set forth above, BGC is the
 24 paradigmatic example of a holding company, whose sole business is the management of its
 25 investments and interests in a variety of mining operations and businesses in other industries.
 26 (Facts ¶¶ 3-5.) BGC does not itself engage in mining or ore processing activities, it does not
 27 operate mining or processing facilities, and it does not participate in activities ancillary to mining
 28 or processing activities. (Facts ¶ 11.) As a practical matter, BGC could not engage in such
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1 activities because it owns no equipment or facilities to do so. (Id.) Even if it desired to do so,
2 BGC could not “perform the activities of its U.S. operational subsidiaries were they unavailable
3 to act as its ‘representative.’” Doe, 248 F.3d at 929.

4 A recent decision of this Court confirms that it would be improper to attribute
5 Goldstrike’s Nevada contacts to BGC. In Natural Gas Litigation, decided earlier this year, this
6 Court held that a parent company, which held a large portfolio of companies in the energy
7 industry, was not subject to personal jurisdiction under an agency theory because of its
8 subsidiaries’ contacts with the forum. 605 F. Supp. 2d 1118, 1136-38 (D. Nev. 2009).² Like
9 BGC here, the parent company in Natural Gas Litigation established, by way of affidavit, that it
10 merely held “the shares of the different subsidiaries that are actually engaged in the different
11 business operations of” of the parent company, including the subsidiaries whose acts in the forum
12 were alleged to have caused the plaintiff’s harm. Id. at 1136.

13 In the course of discussing the agency theory of personal jurisdiction, this Court cited
14 approvingly Sonora Diamond Corp. v. Superior Court, 99 Cal. Rptr. 2d 824, 840-41 (Cal. Ct.
15 App. 2000), a case strikingly similar to this one. As this Court noted, Sonora Diamond Corp.
16 established the principle that “where the parent company owned a subsidiary mining company’s
17 stock *but did not itself engage in the business of gold mining*, imputing the subsidiary’s forum
18 contacts to the parent was not appropriate.” Natural Gas. Litig., 605 F. Supp. 2d at 1135
19 (emphasis added).

20 Because BGC does not, and indeed cannot, itself engage in the mining business, but has
21 instead invested in the stock of a subsidiary that has the capacity to engage in such operations, it
22 would be improper for this Court to attribute Goldstrike’s contacts with the Nevada forum to
23 BGC. As such, there is no basis for the exercise of general personal jurisdiction over BGC.

24
25
26
27 ² Although the Natural Gas Litigation case was transferred to this Court by the Judicial Panel on Multidistrict
28 Litigation, this Court, consistent with well-established legal principles, “appl[ie]d law from the United States Court
of Appeals for the Ninth Circuit in deciding whether jurisdiction [wa]s appropriate under the Due Process Clause.”
605 F. Supp. 2d at 1131.
4820-5523-1492.3

1 **IV. THIS COURT LACKS SPECIFIC PERSONAL JURISDICTION OVER BGC**

2 **A. BGC Has Never Purposefully Availed Itself of the Privilege of Conducting**
 3 **Activities in Nevada.**

4 In the Ninth Circuit, “[a] purposeful availment analysis [rather than a purposeful direction
 5 analysis] is most often used in suits sounding in contract.” Schwarzenegger v. Fred Martin Motor
 6 Co., 374 F.3d 797, 802 (9th Cir. 2004). The “evaluation of the jurisdictional significance of a
 7 defendant’s contract or other business in the forum is not rigid and formalistic, but rather practical
 8 and pragmatic.” Boschetto v. Hansing, 539 F.3d 1011, 1016 (9th Cir. 2008) (citing Burger King
 9 Corp. v. Rudzewicz, 471 U.S. 462, 478 (1985)).

10 The second prong of the specific jurisdiction analysis requires a nexus between the claims
 11 asserted and the defendant’s forum-related activities, and thus the only activities of BGC relevant
 12 to this inquiry are those related to Bullion Monarch’s claims in this particular case. See Terracom
 13 v. Valley Nat’l Bank, 49 F.3d 555, 561 (9th Cir. 1995) (“The second prong of the specific
 14 jurisdiction test is met if ‘but for’ the contacts between the defendant and the forum state, the
 15 cause of action would not have arisen.”). “In a breach of contract case, it is only the ‘dealings
 16 *between the parties in regard to the disputed contract*’ that are relevant to the mini[m]um
 17 contacts analysis.” Hanes Cos. v. Contractor’s Source, Inc., No. 1:08CV334, 2008 WL 4533989,
 18 at *6 (M.D.N.C. Oct. 6, 2008) (quoting Vetrotex Certaineed Corp. v. Consol. Fiber Glass Prods.
 19 Co., 75 F.3d 147, 153 (3d Cir. 1996) (emphasis in original)).

20 Bullion Monarch’s claims in this litigation arise entirely out of a 1979 agreement, and its
 21 theory about how BGC is liable under that contract is tenuous, vague, and desultory. (See Am.
 22 Compl. ¶¶ 4-9B.) Bullion Monarch’s Amended Complaint is devoid of allegations establishing
 23 any affirmative, purposeful acts on the part of BGC in connection with that 1979 agreement. At
 24 best, Bullion Monarch appears to aver that BGC somehow became liable under the 1979
 25 agreement in 1995, more than fifteen years after its execution, when one of its subsidiaries (HD
 26 Acquisition) merged with a joint venture partner (High Desert Mineral Resources of Nevada,
 27
 28

1 Inc.³) of an alleged successor (Newmont Mining Company) to one of the original parties
 2 (Universal Gas) of the 1979 agreement. (Am. Compl. ¶¶ 9A-9B.) While Bullion Monarch's
 3 liability theory is tenuous at best, its allegations are insufficient, as a matter of law, to
 4 demonstrate that BGC has—by virtue of its purported position as the mere parent to the successor
 5 of a joint venture partner with a successor of an original party to the 1979 contract—purposefully
 6 availed itself of the privilege of doing business in the Nevada forum. Tellingly, Bullion Monarch
 7 does not assert a single fact actually linking BGC to the operation of the joint venture or the 1979
 8 agreement.

9 Apart from BGC's purported status as the ultimate parent company of a subsidiary, that,
 10 through a long, tortured chain of events, is alleged to have certain contractual obligations to
 11 Bullion Monarch, no other connection between BGC, the Nevada forum, and Bullion Monarch's
 12 claims is alleged in the Amended Complaint. Exercising jurisdiction over BGC upon such a
 13 flimsy connection to the Nevada forum would run directly afoul of the United States Supreme
 14 Court's admonition in Burger King Corp. v. Rudzewicz that "a contract alone does not
 15 automatically establish minimum contacts." Boschetto, 539 F.3d at 1017 (citing Burger King
 16 Corp., 471 U.S. at 478).

17 **B. Bullion Monarch's Claims Do Not Arise From or Relate to BGC's Activities**
 18 **in the Nevada Forum.**

19 In order to establish specific jurisdiction over BGC, Bullion Monarch must not only
 20 demonstrate purposeful availment, but also that its claims "arise out of [BGC's] forum-related
 21 activities." Terracom, 49 F.3d at 560. The Ninth Circuit employs a "but-for" test to assess
 22 whether there is a sufficient nexus between the plaintiff's claims and the defendant's in-forum
 23 activities. That test is satisfied only "if 'but for' the contacts between the defendant and the
 24 forum state, the cause of action would not have arisen." Id. at 561.

25 Here, Bullion Monarch affirmatively alleges that its claims arise directly from the actions
 26 of Newmont: "Newmont refused to provide [a] detailed accounting for the royalty," Newmont

27 ³ Following the merger, the surviving corporation, High Desert Mineral Resources of Nevada, Inc., was immediately
 28 renamed "Barrick HD Inc."
 4820-5523-1492.3

1 breached the 1979 agreement by making “demands” on Bullion Monarch, Newmont “had
2 concealed [certain mining] activities from its ‘reports’ of its mining activities” to Bullion
3 Monarch, and Newmont “refused to provide any information regarding its activities in the Area of
4 Interest and refused to pay any royalties” that Bullion Monarch claims it is owed. (Am. Compl.
5 ¶¶ 8-9.) Indeed, precisely the same claims asserted in the Amended Complaint against BGC and
6 Goldstrike have been pending against Newmont, by itself, since April 2008.

7 Bullion Monarch also seems to suggest that, insofar as Goldstrike is the ultimate corporate
8 successor of High Desert Mineral Resources of Nevada, Goldstrike somehow obligated itself to
9 the terms of the 1979 agreement and breached the agreement by failing to pay required royalties.
10 Even if such allegations were true, BGC cannot be held to answer for the liabilities of its
11 independent subsidiary. The Amended Complaint lacks a single allegation concerning any act or
12 omission on the part of BGC that, separate and apart from the allegations against Newmont and
13 Goldstrike, purportedly gives rise to Bullion Monarch’s claims. Thus, Bullion Monarch cannot
14 establish any “but for” link between the conduct of BGC and its claims in this action.

15 In Terracom, the Ninth Circuit recognized that where the acts of parties other than the
16 defendant were sufficient to cause the plaintiff’s harm, the defendant’s actions were not a but-for
17 cause of the claims for purposes of the specific jurisdiction analysis. 49 F.3d at 560-61. In
18 Terracom, the plaintiff alleged that a bank, which had certified the financial ability of a surety on
19 a government contract, was subject to personal jurisdiction in the forum in which the contract was
20 supposed to have been performed. Id. at 556-57. Because other parties shared the responsibility
21 for verifying the financial status of the surety, and because the bank’s certification was only one
22 of several considerations in that process, the court found that even without the bank’s allegedly
23 improper certification, the plaintiff’s claims would still have arisen. Id. at 561.

24 As in Terracom, Bullion Monarch’s own allegations establish that it is the alleged failure
25 of Newmont and Goldstrike to pay royalties or provide accountings that led to the alleged
26 breaches of the 1979 agreement. Bullion Monarch alleges no acts by BGC in the Nevada forum
27 that contributed to such breach. As such, Bullion Monarch cannot establish that its claims would
28

1 not have arisen but for the involvement of BGC and cannot establish any basis for this Court to
2 exercise specific personal jurisdiction over BGC.

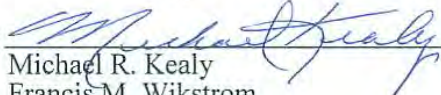
3 In sum, because BGC has not purposefully availed itself of the privilege of doing business
4 in the Nevada forum, and the claims in this case have nothing to do with BGC's activities in
5 Nevada or elsewhere, this Court may not exercise specific personal jurisdiction over BGC.

6 **CONCLUSION**

7 For the foregoing reasons, the Court should grant BGC's Rule 12(b)(2) motion and enter
8 an order dismissing all of Bullion Monarch's claims against BGC for lack of personal
9 jurisdiction.

10 Dated: July 16, 2009

PARSONS BEHLE & LATIMER

11
12 By: 
13 Michael R. Kealy
14 Francis M. Wikstrom
15 Michael P. Petrogeorge
16 Brandon J. Mark
17 *Attorneys for Defendants Barrick Gold*
18 *Corporation and Barrick Goldstrike Mines*
19 *Inc.*
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Parsons Behle & Latimer, and that on the 16th day of July, 2009, a true and correct copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RULE 12 (b)(2) MOTION TO DISMISS ALL CLAIMS AGAINST BARRICK GOLD CORPORATION FOR LACK OF PERSONAL JURISDICTION was served via the Court's CM/ECF system, as follows:

Clayton P. Brust, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, Nevada 89503

Matthew B. Hippler, Esq.
Shane M. Biornstad, Esq.
Holland & Hart, LLP
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Employee of Parsons Behle & Latimer

EXHIBIT C

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5 Francis M. Wikstrom (Utah Bar No. 3462; *pro hac vice* pending)
6 Michael P. Petrogeorge (Utah Bar No. 8870; *pro hac vice* pending)
7 Brandon J. Mark (Utah Bar No. 10439; *pro hac vice* pending)
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9 Attorneys for Defendants Barrick Gold Corporation and Barrick
10 Goldstrike Mines Inc.

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13
14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE DISTRICT OF NEVADA
16

17 BULLION MONARCH MINING, INC.,

18 Plaintiff,

19 v.

20 NEWMONT USA LTD., *et al.*,

21 Defendants.

Case No. CV-N-08-00227-ECR-VPC

**DECLARATION OF SYBIL E.
VEENMAN IN SUPPORT OF RULE
12(b)(2) MOTION TO DISMISS ALL
CLAIMS AGAINST BARRICK GOLD
CORPORATION FOR LACK OF
PERSONAL JURISDICTION**

22 I, Sybil E. Veenman, declare to the best of my knowledge as follows:
23

24 1. I am over the age of eighteen years old, and I am authorized to make this
25 declaration on behalf of Barrick Gold Corporation ("BGC").

26 2. Currently, I hold the positions of Senior Vice President, Assistant General
27 Counsel, and Secretary with BGC. I have been the corporate Secretary of BGC since 1995.
28

1 3. Through my duties with BGC, I am familiar with the business operations of BGC,
2 as well as its relationship with Barrick Goldstrike Mines Inc. ("Goldstrike").

3 4. BGC is incorporated in Ontario, Canada, and its headquarters are located in
4 Toronto, Ontario.

5 5. BGC exists as a parent holding company, managing its investments and interests
6 in various wholly and partially owned subsidiary companies.

7 6. Although most of BGC's subsidiary companies are involved in the gold mining
8 industry, BGC holds a diverse portfolio of interests and investments.

9 7. BGC's subsidiary companies operate in numerous countries throughout the world
10 and operate and exist under the laws of those jurisdictions.

11 8. BGC is not licensed to do business in Nevada and does not regularly carry out,
12 solicit, or transact business in the state.

13 9. BGC does not own any real or tangible personal property in Nevada, nor does it
14 hold any bank accounts in Nevada.

15 10. BGC does not have any employees in Nevada and does not have an office,
16 address, or telephone listing within the state.

17 11. BGC does not sell any goods or services in Nevada.

18 12. BGC has never paid income or property taxes in Nevada.

19 13. BGC does not itself engage in mining or processing activities, operate mining or
20 processing facilities, or participate in activities ancillary to mining or processing activities within
21 Nevada or the United States, nor does it own any equipment or facilities to do so.

22 14. BGC does not buy, sell, or trade commodities of any type, including gold or other
23 precious metals, in Nevada.

24 15. There are two intermediate corporate parents between Goldstrike and BGC.

25 16. Goldstrike is a Colorado corporation and is a wholly owned subsidiary of Barrick
26 Gold Exploration Inc. ("Exploration"), which is incorporated in Delaware.

27

28

1 17. Exploration is a wholly owned subsidiary of ABX Financeco Inc. ("ABX"), also a
2 Delaware corporation.

3 18. ABX is a wholly owned subsidiary of BGC.

4 19. Goldstrike and BGC observe and comply with all applicable requirements for
5 maintaining their separate corporate existence and identities.

6 20. Although BGC, consistent with its position as the ultimate parent company,
7 monitors the overall business strategy of Goldstrike, Goldstrike's officers and managers perform
8 the day-to-day management of the company and direct and control the company's activities in
9 Nevada.

10 21. Goldstrike is not authorized to act for or on behalf of BGC.

11 22. BGC and Goldstrike maintain separate corporate by-laws, minutes, and records,
12 and each company maintains separate bank accounts.

13 23. None of the directors of BGC is also a director of Goldstrike.

14 24. Any financial transactions between BGC and Goldstrike are documented on the
15 appropriate financial reports of the two companies to ensure the funds are separately tracked and
16 accounted for by each company.

17 25. Goldstrike has substantial assets in Nevada, including the Goldstrike Mine located
18 north of Carlin, Nevada, and is capable of satisfying any judgments that may be entered against it
19 in this case.

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct.

22 Executed on this 16th of July 2009.

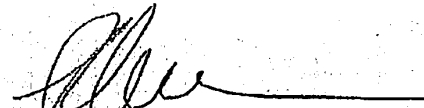
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25 
26 Sybil E. Veenman
27
28

EXHIBIT D

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8 Bullion Monarch Mining, Inc.

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC., a
Utah corporation,

CASE NO. **CV-N-08-00227-ECR-VPC**

Plaintiff,

vs.

NEWMONT USA LIMITED, a Delaware
corporation, d/b/a NEWMONT MINING
CORPORATION, BARRICK GOLD
CORPORATION, BARRICK
GOLDSTRIKE MINES, INC. and DOES I-
X, inclusive,

Defendant(s).

NEWMONT USA LIMITED, a Delaware
Corporation, dba NEWMONT MINING
CORPORATION,

Counterclaimant,

vs.

BULLION MONARCH MINING, INC., a
Utah corporation.

Counterdefendant.

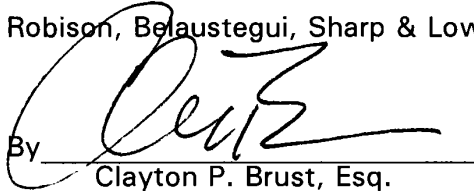
STIPULATION FOR DISMISSAL WITHOUT PREJUDICE; ORDER

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Bullion

1 Monarch Mining, Inc., and Defendant Barrick Gold Corporation, by and through their
2 undersigned counsel, that the claims against Barrick Gold Corporation in the above-
3 entitled action may be, and hereby are, dismissed without prejudice, and each party
4 to pay their own costs and attorney fees.
5

6 Dated this 27th day of July, 2009.

7 Robison, Belaustegui, Sharp & Low

8
9 By 
10 Clayton P. Brust, Esq.
11 Attorneys for Plaintiff
12 Bullion Monarch Mining, Inc.

Dated this 24th day of July, 2009.

Parsons Behle & Latimer

By: s/Michael P. Petrogeorge
Michael P. Petrogeorge, Esq.
Brandon J. Mark, Esq.
Francis Wikstrom, Esq.
Michael Kealy, Esq.
Attorneys for Defendants
Barrick Goldstrike Mines, Inc.,
and Barrick Gold Corporation

13
14
15 **ORDER**

16 **IT IS SO ORDERED.**

17 IT IS FURTHER ORDERED that Defendant Barrick Gold Corporation's
18 Motion to Dismiss (#70) is DENIED as moot.

19
20 Dated this 28th day of July, 2009.

21
22 
23 UNITED STATES DISTRICT JUDGE

EXHIBIT E

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

BULLION MONARCH MINING, INC.,

Plaintiff,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

Case No. 3:09-cv-00612-MMD-WGC

ORDER

I. SUMMARY

Plaintiff Bullion Monarch Mining, Inc. sued Defendant Barrick Goldstrike Mines, Inc. in an attempt to recover royalties on the proceeds of a gold mine. (ECF No. 2.) Some eight years later, Defendant has moved to dismiss for lack of subject matter jurisdiction (the "Motion"), specifically arguing the parties were not diverse at the time this case was split from a related case.¹ (ECF No. 281.) Because the Court agrees with Defendant that its nerve center was located in Salt Lake City, Utah, in June 2009, the Court will grant Defendant's Motion. The Court will also grant Plaintiff's related motions to seal.² (ECF Nos. 283, 284, 292.)

¹The Court also reviewed Plaintiff's response (ECF No. 285), and Defendant's reply (ECF No. 297), along with the corresponding appendices and exhibits.

²While there is a "strong presumption" in favor of access, and a party seeking to seal judicial materials must identify "compelling reasons" that outweigh the "public interest in understanding the public process," *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178–1180 (9th Cir. 2006), there may be compelling reasons to seal "business information that might harm a litigant's competitive standing." *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 598 (1978). Here, compelling reasons exist. Specifically, Plaintiff has moved to selectively seal references to, and exhibits describing, Defendant's confidential business information. (ECF Nos. 283, 284, 292.) This information may harm Defendant's competitive standing if revealed. Thus, Plaintiff's motions are granted. Plaintiff will file redacted versions of the applicable documents within fifteen days.

II. BACKGROUND

The Court refers to its prior order in which it described the facts of this case. (ECF No. 224 at 2-5.) It will not restate those facts here because they are largely irrelevant to Defendant's Motion. As relevant here, Defendant represents that it moved to dismiss for lack of jurisdiction after Defendant became aware of the potential jurisdictional defect in this case, while preparing a proposed joint pretrial order that called for a jurisdictional statement. (ECF No. 281 at 3.) On Plaintiff's motion, Judge Cobb ordered jurisdictional discovery and denied Defendant's motion to dismiss without prejudice. (ECF Nos. 263, 267.) Upon the completion of jurisdictional discovery, and in line with a briefing schedule set by Judge Cobb, Defendant filed its a renewed motion to dismiss for lack of jurisdiction. (ECF No. 281.)

Plaintiff and Defendant agree on many of the threshold questions applicable here. Plaintiff initially filed suit against a third party, and added Defendant as a party to that suit in the spring of 2009. (ECF No. 281 at 4.) Per the parties' agreement, the case between Plaintiff and Defendant was severed from the original case in October 2009, and has been proceeding as a separate case ever since. (*Id.*) Plaintiff alleged, and continues to allege, this Court has diversity jurisdiction over the parties. (*Id.*) The parties agree that the relevant point in time for the jurisdictional inquiry is June 2009, when Plaintiff filed its amended complaint in the original case adding Defendant as a party. (ECF Nos. 281 at 11-12, 285 at 6 n.1.)

The question before the Court is whether Defendant's principal place of business was in Nevada (or Toronto) or Utah in June 2009. The parties agree that Plaintiff is a citizen of Utah, which is both its state of incorporation and the location of its principal place of business. (ECF No. 281 at 4, 5; see *also* ECF No. 2 at 1.) The parties also agree that Defendant is a Colorado corporation. (ECF No. 281 at 4; see *also* ECF No. 2 at 2.) The amount in controversy requirement is satisfied and not in dispute. But the parties disagree as to Defendant's principal place of business in June 2009. If, as Defendant argues, its principal place of business at the time was in Utah, the parties are

1 not diverse, and this Court has no jurisdiction over this case. (ECF No. 281 at 3-4.) But
2 if, as Plaintiff argues, Defendant's principal place of business in June 2009 was in either
3 Nevada or Toronto, Canada, the parties are diverse, and this Court may continue to
4 exercise diversity jurisdiction over this case. (ECF No. 285 at 1-2.)

5 **III. LEGAL STANDARD**

6 Rule 12(b)(1) of the Federal Rules of Civil Procedure allows defendants to seek
7 dismissal of a claim or action for a lack of subject matter jurisdiction. Although the
8 defendant is the moving party in a motion to dismiss brought under Rule 12(b)(1), the
9 plaintiff is the party invoking the court's jurisdiction. As a result, the plaintiff bears the
10 burden of proving that the case is properly in federal court. *See McCauley v. Ford Motor*
11 *Co.*, 264 F.3d 952, 957 (9th Cir. 2001) (citing *McNutt v. General Motors Acceptance*
12 *Corp.*, 298 U.S. 178, 189 (1936)). Plaintiff's burden is subject to a preponderance of the
13 evidence standard. *See Leite v. Crane Co.*, 749 F.3d 1117, 1121 (9th Cir. 2014).

14 Federal courts are courts of limited jurisdiction. *See Owen Equip. & Erection Co.*
15 *v. Kroger*, 437 U.S. 365, 374 (1978). A federal court is presumed to lack jurisdiction in a
16 particular case unless the contrary affirmatively appears. *See Stock West, Inc. v.*
17 *Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989)
18 (citation omitted). "Because subject matter jurisdiction goes to the power of the court to
19 hear a case, it is a threshold issue and may be raised at any time and by any party."
20 *Mallard Auto. Grp., Ltd. v. United States*, 343 F. Supp. 2d 949, 952 (D. Nev. 2004) (citing
21 Fed. R. Civ. P. 12(b)(1)).

22 Here, Defendant brings a factual attack on the Court's alleged diversity
23 jurisdiction. In a factual attack, the challenger disputes the truth of the allegations that,
24 by themselves, would otherwise invoke federal jurisdiction. *See Safe Air for Everyone v.*
25 *Myer*, 373 F.3d 1035, 1039 (9th Cir. 2004). Once a moving party has converted a motion
26 to dismiss into a factual motion by presenting affidavits or other evidence properly
27 brought before the court, the party opposing the motion must furnish affidavits or other
28 evidence necessary to satisfy its burden of establishing subject matter jurisdiction. *See*

1 *Savage v. Glendale Union High School*, 343 F.3d 1036, 1039 n. 2 (citing *St. Clair v. City*
2 *of Chico*, 880 F.2d 199, 201 (9th Cir. 1989)); *see also Trentacosta v Front. Pac. Aircraft*
3 *Indus.*, 813 F.2d 1553, 1559 (9th Cir. 1987) (stating that on a factually attacked 12(b)(1)
4 motion to dismiss, the nonmoving party's burden is that of Rule 56(e)).

5 **IV. DISCUSSION**

6 For the reasons explained below, the Court finds that Plaintiff has not met its
7 burden to establish the Court's subject matter jurisdiction over this case. In contrast, the
8 Court is persuaded by Defendant's argument—supported by the evidence before the
9 Court—that its principal place of business was Salt Lake City, Utah in June 2009. Thus,
10 the Court must dismiss Plaintiff's claims against Defendant without prejudice.

11 The parties and the Court agree that *Hertz Corp. v. Friend*, 559 U.S. 77 (2010),
12 governs the Court's analysis here. In *Hertz*, the Supreme Court clarified that a
13 corporation's principal place of business, for diversity jurisdiction purposes, is its "nerve
14 center." *Id.* at 92-93. A corporation can have only one nerve center—it is a single place
15 within a single state. *Id.* at 93. A corporation's nerve center is "the place where a
16 corporation's officers direct, control, and coordinate the corporation's activities." *Id.* at 92-
17 93. "And in practice it should normally be the place where the corporation maintains its
18 headquarters—provided that the headquarters is the actual center of direction, control,
19 and coordination, *i.e.*, the "nerve center," and not simply an office where the corporation
20 holds its board meetings (for example, attended by directors and officers who have
21 traveled there for the occasion)." *Id.* at 93. The party asserting federal jurisdiction—here,
22 Plaintiff—must present "competent proof" to substantiate its jurisdictional allegations.
23 *See id.* at 96-97.

24 Defendant argues that its nerve center was located in Salt Lake City, Utah in June
25 2009. (ECF No. 281.) Plaintiff counters that Defendant's nerve center was located either
26 in Nevada or Toronto, Canada in June 2009. (ECF No. 285.) As mentioned, the Court
27 agrees with Defendant.
28

1 Defendant proffered un rebutted evidence that the majority of its corporate officers
2 and executives lived and worked out of offices leased by Defendant's corporate parent in
3 Salt Lake City in 2009. The Court finds this evidence persuasive in finding that
4 Defendant's nerve center was in Salt Lake City at the time. First, five out of ten of
5 Defendant's officers—including its President and CEO Greg Lang ("Lang"), Vice
6 President Mike Feehan, and CFO Blake Meason—lived and worked out of Salt Lake City
7 at the time. (ECF Nos. 281 at 13, 281-7 at 8-9, 297 at 2.) Second, four out of six of the
8 members of Defendant's board of directors lived and worked in Salt Lake City at the
9 time. (ECF No. 281-7 at 6.) Third, eight out of ten of Lang's direct reports lived and
10 worked in Salt Lake City at the time. (*Id.* at 9-10.) Fourth, all of Defendant's witnesses
11 deposed during jurisdictional discovery—including some of Defendant's corporate
12 officers—offered un rebutted testimony that Defendant's corporate headquarters were in
13 Salt Lake City at the time.³ (ECF No. 297 at 7.)

14 Plaintiff responds with the creative but ultimately unpersuasive argument that the
15 Court should ignore the location of Defendant's corporate officers and instead look at the
16 location of Defendant's *de facto* executives. (ECF No. 285 at 5-8.) Defendant's main
17 business is the operation of a gold mine outside of Elko, Nevada. Thus, Plaintiff argues
18 the Court should primarily look at that mine's general manager's location and find that
19 his location—in Nevada—was Defendant's nerve center. (*Id.*) The mine's general
20 manger oversaw nine direct reports who were also based in Nevada, and was ultimately
21 responsible for the 1600 employees and 400-500 independent contractors that worked in
22 and around the mine. (ECF Nos. 285 at 2, 6-7, 281-7 at 10-12, 15.) The mine's general
23 manager also, understandably, ran the mine from Nevada—he made decisions about

24
25 ³Defendant did not properly authenticate the six deposition transcripts it attached
26 as exhibits to its Motion. (ECF Nos. 281-1, 281-2, 281-3, 281-4, 281-5, 281-6.)
27 Nonetheless, the Court will consider them because Plaintiff attached properly
28 authenticated versions of the same transcripts to its response (ECF Nos. 289-7, 286-1,
289-3, 286-8, 286-10, 286-9), both parties cite to them, and neither party contests the
authenticity of the transcripts. See *Orr v. Bank of Am., NT & SA*, 285 F.3d 764, 776 (9th
Cir. 2002).

1 how to operate the mine, issued Requests for Proposals to subcontractors, conducted
2 equipment inventories, held meetings, hired and fired people, and served as a point of
3 contact for state and local officials. (ECF No. 285 at 5-8.)

4 But the mine's general manager at the time testified at his deposition that he
5 reported to executives in Salt Lake City. (ECF No. 297 at 4-5.) He had to give weekly
6 reports to executives in Salt Lake City on the mine's progress, they had to approve the
7 budgets he presented, and they also had to approve higher-level hires the general
8 manager wanted to make. (*Id.* at 5.) Executives in Salt Lake City also set human
9 resources policies, and mine-related policies such as production targets and life-of-mine
10 plans. (*Id.*) Thus, the mine's general manger is better characterized as part of
11 Defendant's nervous system than as its sole nerve center.⁴

12 Further, Plaintiff's *de facto* executive argument conflicts with the Court's reading
13 of *Hertz*. The *Hertz* Court provided a hypothetical intended to clarify the application of
14 the nerve center test this Court finds analogous to these facts. "For example, if the bulk
15 of a company's business activities visible to the public take place in New Jersey, while its
16 top officers direct those activities just across the river in New York, the 'principal place of
17 business' is New York." *Hertz*, 559 U.S. at 96. Here, Utah is New York, while Nevada is
18 New Jersey. While it does appear that the bulk of Defendant's business activities were in
19 Nevada, Defendant's top officers were directing those activities just across the state
20 border in Utah. Thus, Defendant's nerve center was in Salt Lake City. See *id.*; see also
21 *Dawson v. Richmond Am. Homes of Nevada, Inc.*, Case No. 2:12-cv-01563-MMD, 2013
22 WL 1405338, at *2 (D. Nev. Apr. 5, 2013) (finding that nerve center was located where
23

24 ⁴Plaintiff also argues that a contracts administrator named Tony Astorga was a *de*
25 *facto* corporate officer relevant to this analysis, but the Court disagrees. (ECF No. 285 at
26 6-8.) Instead, the Court agrees with Defendant that Mr. Astorga was part of an
27 administrative supply chain team that reported into executives in Salt Lake City. (ECF No
28 297 at 5-6.) Indeed, the entire shared services center where Mr. Astorga worked,
consisting of various administrative personnel and located in Elko, Nevada, appears to
have reported into Salt Lake City. (*Id.*) And while Mr. Astorga negotiated contracts on
Defendant's behalf, he used forms provided by Salt Lake City and was confined both in
terms of his signing authority and his discretion in negotiating contract terms. (*Id.*)

1 the majority of Defendant's corporate officers worked and set direction even though
2 Defendant's president managed day-to-day operations from a different state); *Corral v.*
3 *Homeeq Servicing Corp.*, Case No. 2:10-cv-00465, 2010 WL 3927660, at *3-4 (D. Nev.
4 Oct. 6, 2010) ("Absent such high-level officers directing the corporation from Nevada,
5 Defendant cannot be deemed to have its principal place of business here.").

6 The Court is also unpersuaded by several of Plaintiff's subsidiary arguments that
7 Defendant's nerve center was located in Nevada in June 2009. Plaintiff argues that
8 Defendant's nerve center could not have been in Utah because it did not register to do
9 business in Utah in 2009, or any other year. (ECF No. 285 at 2, 14-15.) But this lack of
10 registration in Utah is not determinative here. *See Thunder Properties, Inc. v. Wood*,
11 Case No. 3:14-cv-00068-RCJ-WGC, 2017 WL 777183, at *2 (D. Nev. Feb. 28, 2017);
12 *Pound for Pound Promotions, Inc. v. Golden Boy Promotions, Inc.*, Case No. 2:16-cv-
13 01872-GMN-PAL, 2017 WL 1157853, at *2 (D. Nev. Mar. 28, 2017). Plaintiff also argues
14 that Defendant's nerve center was in Nevada because Defendant listed its office and/or
15 mine addresses on various tax documents, filings with Nevada state agencies, and
16 contracts. (ECF No. 285 at 5.) But the stated location of a business on contracts and
17 required filings does not dictate the location of that business' nerve center. *See Hertz*,
18 559 U.S. at 97.

19 In addition, Plaintiff argues that the Court should not consider Defendant's
20 corporate officers in Salt Lake City because they were employed by Defendant's
21 corporate parent, and held similar executive roles with a number of other subsidiaries
22 owned by Defendant's ultimate corporate parent. (ECF No. 285.) But corporate officers
23 can hold executive roles at multiple related subsidiaries without changing the result of
24 this jurisdictional inquiry. *See Cent. W. Virginia Energy Co. v. Mountain State Carbon*,
25 *LLC*, 636 F.3d 101, 106-7 (4th Cir. 2011). And given the evidence presented by
26 Defendant tending to show that its Salt Lake City-based executives oversaw Defendant's
27 operations in Nevada, and the undisputed evidence that the Salt Lake City-based
28 executives were formally listed as Defendant's corporate officers, the Court declines to

1 exclude consideration of them in this jurisdictional analysis. (ECF Nos. 281 at 14-15,
2 281-7 at 8-9, 281-8, 297 at 2, 4, 6-7.)

3 Finally, Plaintiff argues in the alternative that Defendant's nerve center was
4 Toronto, Canada—the headquarters of Defendant's ultimate corporate parent. (ECF No.
5 285 at 12-14.) However, Defendant's un rebutted evidence tends to show that executives
6 in Salt Lake City—not Toronto—directed and controlled Defendant's activities. (ECF
7 Nos. 281-2 at 10-12, 281-3 at 4-5, 281-6 at 10-11.) Plaintiff also contends that a 2009
8 shareholder's resolution lists a Canadian address and was signed by a Canadian
9 member of Defendant's board of directors, which show that Defendant was controlled by
10 a nerve center in Toronto. (ECF No. 285 at 9.) However, again, the address written on
11 an official form is not necessarily relevant to this analysis. *See Hertz*, 559 U.S. at 97.
12 Further, while it is true that some members of Defendant's board were located in
13 Toronto, the majority were located in Salt Lake City. (ECF No. 281-7 at 6.) Thus, given
14 the evidence before the Court, Toronto was not Defendant's nerve center in June 2009.

15 In sum, the Court agrees with Defendant that its principal place of business in
16 June 2009 was Salt Lake City, Utah, which renders it a citizen of Utah for purposes of
17 diversity jurisdiction. Because Plaintiff was also a citizen of Utah at the time, the parties
18 are not diverse.

19 **V. CONCLUSION**

20 The Court notes that the parties made several arguments and cited to several
21 cases not discussed above. The Court has reviewed these arguments and cases and
22 determines that they do not warrant discussion as they do not affect the outcome of
23 Defendant's Motion.

24 It is therefore ordered that Defendant's motion to dismiss (ECF No. 281) is
25 granted. Plaintiff's claims are dismissed without prejudice.

26 It is further ordered that Plaintiff's motions to seal (ECF Nos. 283, 284, 292) are
27 granted. Plaintiff will file redacted versions of the applicable documents, as Plaintiff
28 stated in the motions to seal, within fifteen days from the date of the entry of this order.

1 The Clerk of the Court is directed to enter judgment in accordance with this order
2 and close this case.

3
4 DATED THIS 1st day of November 2018.

5
6 

7 MIRANDA M. DU
8 UNITED STATES DISTRICT JUDGE
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EXHIBIT F

FILED

UNITED STATES COURT OF APPEALS

JUL 10 2020

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

BULLION MONARCH MINING, INC.,

Plaintiff-Appellant,

v.

BARRICK GOLDSTRIKE MINES, INC.,

Defendant-Appellee.

No. 18-17246

D.C. No.

3:09-cv-00612-MMD-WGC

District of Nevada,

Reno

ORDER

Appellant's motion to dismiss this appeal pursuant to Fed. Rule App. Proc. 42(b) (Dkt. #58) is granted. Each party is to bear their own attorneys' fees and costs on appeal.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Wendy Lam
Deputy Clerk
Ninth Circuit Rule 27-7

PA 0496

EXHIBIT G

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

vs.

Case No. 03:09-CV-612-MMD-WGC

BARRICK GOLDSTRIKE MINES, INC.,

Defendant.

DEPOSITION OF

JOHN MANSANTI

December 20, 2017

9:30 a.m.

1600 Broadway, Suite 1600
Denver, Colorado 80202

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Karen S. Fogle, RPR

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Salt Lake City, Utah 84111
(801) 532-1234
mpetrogeorge@parsonsbehle.com

Also Present:

Ms. Jan Steiert

1 A. Correct.

2 Q. Was Mr. Feehan a Goldstrike employee?

3 MR. PETROGEORGE: Objection; foundation.

4 A. I don't remember the organization. I think
5 he was -- depending on how Goldstrike was organized, he
6 was my boss. I reported to him. I don't remember the
7 organization quite honestly.

8 Q. Where was he located?

9 A. He was located in Salt Lake.

10 Q. Did you report to anybody else in Salt
11 Lake?

12 A. Not at that time.

13 Q. What time? 2009?

14 A. That's correct. The time I was at
15 Goldstrike. Prior to that, I reported to Greg Lang.
16 When I came to Goldstrike, I reported to Mike Feehan.

17 Q. Greg Lang was also in Salt Lake?

18 A. And Mike Feehan reported to Greg Lang. For
19 clarification, the joint ventures reported to Greg
20 Lang. When I was at Turquoise and Cortez, I reported
21 to Greg. When I went to a Barrick operation -- it was
22 100 percent Barrick, it wasn't a joint venture -- I
23 reported to Mike Feehan.

24 Q. How did you communicate with Mr. Feehan
25 back then?

1 A. Telephone, email, and then once in a while
2 he would come out -- Greg was out every week. Probably
3 had as much communication with Greg as Mike.

4 Q. When you were at Goldstrike?

5 A. Greg is pretty hands-on.

6 Q. Did you also communicate with Mr. Lang via
7 telephone?

8 A. Occasionally.

9 Q. Did you communicate with Mr. Lang via
10 email?

11 A. Once in a while.

12 Q. Was the majority of your communication with
13 Mr. Feehan by email or telephone?

14 A. Probably telephone. We would have weekly
15 telephone calls with all the operating properties and
16 other calls. So probably more by telephone than email.

17 Q. When were those meetings typically held?

18 A. I think Thursdays.

19 Q. Who would be on those Thursday meetings?

20 A. There would be me and then the line manager
21 at Cortez, the mine manager at Turquoise Ridge, and the
22 mine manager at Gold Mountain. There was a mine
23 manager at Eskay Creek, our Canadian operation. And
24 I'm probably missing a property in there or two.

25 Q. So the meetings -- we would have the mine

1 managers on the conference, Mr. Feehan on the
2 conference?

3 A. Correct. It was his meeting.

4 Q. Anybody else from Mr. Feehan's level or
5 above?

6 A. Dependent upon the issues, but sometimes
7 Greg would sit in, if I remember. Rarely. There might
8 be somebody from tech services that would sit in from
9 time to time. But, generally, it was Mike and his
10 direct reports.

11 Q. Was there ever anybody from Canada, except
12 for the manager of Eskay Creek, on the calls?

13 A. From Toronto?

14 Q. Yes.

15 A. Not that I remember.

16 Q. What was typical -- if there was a
17 typical -- of those conferences?

18 A. It was pretty typical. Each site would
19 report progress relative to the prior week. So safety
20 performance, environmental performance, production.
21 And then after we would go through all that, there
22 would be some coordination. If there were key issues
23 coming up, depending on where you were in the budget
24 cycle or some kind of a safety initiative that involved
25 those sites, that was coordinated at that time. Key

1 projects -- sometimes personnel issues, not discipline,
2 but like transfers, things of that nature, were
3 discussed.

4 Q. Did you ever have to do layoffs or anything
5 like that?

6 A. Yes.

7 Q. Is that something that you would first
8 coordinate with your HR -- with Ms. Byington -- and how
9 did that go?

10 A. Again, that was part of the budget. We
11 actually laid off part of the workforce at Auto Clave
12 because Cortez Hills was wrapping up at that time. We
13 coordinated with Cortez Hills. That plan was put
14 together and reviewed out of Salt Lake City. Craig
15 Beasley was the director of -- I don't know what his
16 title was, but he was regionally HR out of Salt Lake.

17 Q. I think I saw a press release about that.
18 Is that where you're trying to save as many Barrick
19 jobs as possible and moving them around?

20 A. I think we saved two-thirds of the people.
21 There is a group -- seniority that we ended up losing.
22 Some were able to find places at Goldstrike. The
23 others we found homes for at Cortez Hills.

24 Q. For something where transfers are
25 occurring, the people in Salt Lake would get involved,

1 terms of finances and flow of information? Do you know
2 one way or another?

3 A. My recollection is the Barrick structure --
4 at that time it was a regional model with multiple
5 regions, North America, South America, Africa, and
6 Australia. Greg Lang headed up the North America
7 region, which we answered to. And he was accountable
8 for the regional performance as far as safety, costs,
9 production, environmental compliance.

10 Q. Do you know one way or another whether
11 anyone in Toronto held a Goldstrike title?

12 A. I don't know for sure.

13 MR. PETROGEORGE: That's all I have.

14 EXAMINATION

15 BY MR. BRUST:

16 Q. But, ultimately, Toronto called the shots;
17 correct?

18 A. I mean -- as far as -- define shots.

19 Q. You talked a couple times about -- that
20 life-of-mine would have to go up to Toronto --

21 A. No.

22 Q. Okay. What about operating issues? I
23 think you said Greg Lang reported to Toronto for
24 operating issues.

25 A. I mean, he reported to Peter Kinver, who is

1 the COO of the company.

2 Q. In Toronto?

3 A. Yes. But Greg -- that was the line of
4 accountability. Again, it was management by variance.
5 If we were hitting our production targets and our cost
6 targets, I think it was communication coordination.
7 Greg was ultimately -- I answered to Mike who, in turn,
8 answered to Greg for production?

9 Q. And Greg, in turn, answered to Toronto for
10 the region's production?

11 A. Yes.

12 Q. And how did you know that Toronto was even
13 in the picture? Did they say Toronto wants this to
14 happen or Toronto says this?

15 A. Very rarely. For instance, in tires and
16 the Bimbo job we found that not only buying North
17 America's tires but buying Africa's and South America's
18 tires there was a benefit. So that was a
19 Toronto-driven initiative to look at some corporate
20 synergies around supply chain.

21 Q. When things could be coordinated from the
22 region, that would be something Toronto would do very
23 similar to how Salt Lake would coordinate for North
24 America?

25 A. That's right.

1 Q. What other types of things do you remember
2 either Mr. Feehan or anybody else saying this is coming
3 from Toronto?

4 A. I don't remember that happening very much.
5 Capital sometimes -- again, when you have the budget as
6 we rolled up regionally, there would be a corporate
7 roll-up. There were already kind of bans -- for lack
8 of a better term -- that things would come into.
9 Mr. Feehan spoke for Barrick North America probably 98,
10 99 percent of the time.

11 Q. You said that when Nigel Bain's -- his
12 duties -- if they had to bring in capital, he would
13 have to get authority. Can you explain what you mean
14 by that?

15 A. What I meant by that is if we had a
16 budget -- and this would apply to any of us managing
17 the site -- if there was a significant deviation from
18 the plan that would require capital -- and underground
19 is probably the best example because, if you have to
20 excavate in a different area, that's capitalized
21 work -- in that case, if it was significant, usually we
22 could -- if I knew it was a couple million here or
23 something like that, we could not do something over
24 here and substitute.

25 Q. You could manage it within Goldstrike?

1 A. We could to a point. But we would have to
2 communicate that to Salt Lake because there was an
3 expectation that whatever you substituted that for that
4 activity was not going to happen.

5 Q. When you talk about having to bring in
6 capital and get authority for that type of deviation in
7 the budget, when you say bring in capital, do you mean
8 from an outside company?

9 A. No.

10 Q. What do you mean by bring in capital?

11 A. Just having access to more capital spending
12 through the region.

13 Q. When I say another company, I mean another
14 Barrick company. If you're going to have to bring in
15 capital, it would come from another Barrick company;
16 correct?

17 A. That would be a regional decision. For
18 instance, if -- let's say, Cortez -- as I told you, our
19 budget changed when I first got to Goldstrike. Part of
20 the reason it did is Cortez needed additional capital
21 dollars, so we gave up capital dollars in that case.

22 Q. Goldstrike gave up capital dollars to
23 Cortez?

24 A. Yes.

25 Q. When one of the Barrick companies had to

1 move money to another Barrick company, that is
2 something that would have to go through Salt Lake City?

3 A. Yes.

4 Q. If it was within Goldstrike, you could do a
5 lot of that yourself?

6 A. That's correct.

7 Q. Why would life-of-mine review and support
8 have to go up to Toronto?

9 A. Because life-of-mine would generally pack
10 reserves. Reserves were material from a public
11 reporting standpoint. There is other reasons but
12 that's one of the key ones.

13 Q. What about on the safety side? What types
14 of safety things went up to Toronto?

15 A. If you had a fatality, it was reported. A
16 critical accident, those would go to Toronto, more
17 informational.

18 Q. What about planning safety procedures or
19 safety policy? Was that Toronto also?

20 A. No.

21 MR. BRUST: That's all the questions I
22 have.

23 MR. PETROGEORGE: Just a couple
24 clarifications there.

25

EXAMINATION

BY MR. PETROGEORGE:

Q. When you talked about moving capital within Goldstrike, I think you said even though you had discretion in terms of I will move from one thing over to here, it was a major shift, and you were going to communicate that with Salt Lake; correct?

A. Yes. And my guess is the shared business center would know that, that would affect forecasting, so those were communicated on multiple fronts.

Q. In terms of the -- sort of the total percentage of your job that was impacted by Salt Lake, can you estimate that for me?

A. All of it.

MR. PETROGEORGE: No further questions.

MR. BRUST: I don't have any other questions. Thank you.

(Deposition concluded at 11:33 a.m.)

C E R T I F I C A T I O N

I, KAREN S. FOGLE, Registered Professional
Reporter and notary public, within and for the State of
Colorado, do hereby certify:

That JOHN MANSANTI, the witness whose
examination is hereinbefore set forth, was first duly
sworn by me and that this transcript of said testimony
is a true record of the testimony given by said
witness.

I further certify that I am not related to
any of the parties to this action by blood or marriage,
and that I am in no way interested in the outcome of
this litigation.

IN WITNESS WHEREOF, I have hereunto set my
hand this 3rd day of January, 2018.

SIGNATURE REQUESTED



Karen S. Fogle RPR

EXHIBIT H

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
)
Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
_____)

DEPOSITION OF
BLAKE MEASOM
MARCH 21, 2018

ATKINSON-BAKER, INC.
COURT REPORTERS
(800) 288-3376
www.depos.com
REPORTED BY: DEBY COUVILLON GREEN, CA CSR NO. 2791
TX CSR NO. 8929
UTAH CSR NO. 10611481-7801
FILE NO.: AC02625

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
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Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
)
_____)

Oral deposition of BLAKE MEASOM, taken on
behalf of the Plaintiff Bullion Monarch Mining, Inc.,
and duly sworn, was taken in the above-styled case on
March 21, 2018 from 12:08 P.M. to 1:14 P.M. before Deby
Couvillon Green, CSR in and for the State of Texas and in
and for the State of California, and in and for the State
of Utah, Registered Professional Reporter, reported by
machine shorthand, at Parsons Behle & Latimer,
201 South Main Street, Suite 1800, Salt Lake City,
Utah, 84111 pursuant to the Federal Rules of Civil
Procedure and the provisions stated in the record
or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFF:

LEWIS ROCA ROTHGERGER LLP
(No appearance at the deposition.)
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Las Vegas, Nevada 89169-5996
(702) 949-8200

--- and ---

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ALSO PRESENT:

PETER WEBSTER, General Counsel U.S.
Barrick

JAN N. STEIERT, Chief Legal Officer
EMX ROYALTY CORP

1 A. Just --

2 Q. -- BGNA.

3 A. -- just BGNA?

4 Q. Yeah.

5 A. No.

6 Q. Did you have any other positions with other
7 Barrick entities from -- well, let's just say -- 2009?

8 A. Yes.

9 Q. Okay. What were different entities you had
10 positions with?

11 A. I -- I would have to have an org chart for me to
12 tell you honestly or the -- the list. But I was -- I was
13 CFO and -- well, I was CFO on virtually all U.S.
14 entities, legal entities and I was a director on -- I
15 can't say it was all -- at least a majority of them.

16 Q. Were you a director of Barrick Gold Corp.?

17 A. No.

18 Q. Were you an officer of Barrick Gold Corp.?

19 A. No.

20 Q. Were you a director of Goldstrike?

21 A. Yes.

22 Q. And were you an officer of Goldstrike?

23 A. Yes.

24 Q. And were you the CFO of Goldstrike?

25 A. Yes.

1 Q. And were those the -- other than as CFO position
2 with nearly all of the U.S. entities, did you have any
3 other positions with the other U.S. entities?

4 A. No.

5 Q. (Nods head.)

6 A. I don't recall anything that would have been
7 different.

8 Q. And I think you said your paycheck came from
9 Barrick Gold North America --

10 A. That's correct.

11 Q. -- correct?

12 All right. So you were an employee of
13 Barrick Gold North America, correct?

14 A. Correct.

15 Q. And then were you also an employee of
16 Goldstrike?

17 A. No.

18 Q. Do you remember -- well, let me back up. As an
19 employee of Barrick Gold North America, were your duties
20 to help oversee the other U.S. entities?

21 A. Help me understand what you mean by "oversee."

22 Q. Well, what were your duties? Maybe that's an
23 easier way to do it. You just tell me what your duties
24 were as CFO of BGNA.

25 A. Okay. BGNA was a management company which

1 employed us -- the -- the employees of that entity which
2 was the regional headquarters for the North America
3 region within Barrick.

4 I was part of the leadership team in that
5 entity.

6 And we were given direction to manage the
7 North America business unit which comprised all of the
8 mine sites, closure properties and other legal entities
9 that were within that North America region.

10 And so it -- it essentially functioned as a
11 stand-alone entity.

12 And -- and we had the responsibility for
13 management of all of those properties under that
14 umbrella.

15 Q. Did BGNA do anything in addition to managing the
16 other entities?

17 MR. PETROGEORGE: Objection. Vague.

18 Q. (BY MR. BRUST:) Did BGNA --

19 A. Help me understand.

20 Q. -- operate mines directly itself?

21 A. No.

22 Q. And you said that you were given direction to
23 manage.

24 Who gave the direction to BGNA to manage?

25 A. Well, there's a global Barrick Gold Corporation.

1 Barrick global made the decision to run its business as
2 operating companies in various regions. And so they set
3 up similar offices in other regions.

4 But the -- the -- the mandate to our
5 leadership team was, This is your business. You need to
6 run this as a business. You will make the decisions as
7 to how that business is operated, deployment of capital
8 within the business unit, within the region of that
9 business unit; you know, deployment of personnel within
10 that region. Production. How that's determined.
11 Creating budgets. Reporting. Virtually everything.

12 Q. So did you have a reporting relationship with
13 Barrick Gold Corp.?

14 A. No. My direct reporting relationship was to the
15 president of Barrick Gold North America.

16 Q. And that was Mr. Lang?

17 A. That was Greg Lang.

18 Q. Did you ever communicate with anybody in Toronto
19 from Barrick Gold Corp.?

20 A. Sure.

21 Q. What types of things would you communicate with
22 the people in Toronto about?

23 A. Frequently it was on best practice. So we did a
24 lot of best practice sharing across the regional units
25 and we would have Toronto people involved in that.

1 But that was, you know, communication
2 facilitation between my counterparts in the other regions
3 and myself typically with some of that. So it was to
4 kind of promote consistency, if you will, and that way I
5 would communicate it with the treasury group in Toronto
6 because they had the global mandate for the deployment of
7 capital within the company and so I -- I could obviously
8 see everything within North America and we made decisions
9 based on that.

10 But if there were decisions that had to be
11 made to move capital from one regional business unit to
12 another, then we would have communicated with them on
13 that type of thing.

14 Q. And so do you know whether -- well, do you know
15 who owned -- or who -- yeah -- in 2009 who owned Barrick
16 Gold North America?

17 MR. PETROGEORGE: I'm gonna note an objection
18 for the record that I don't believe this is part of the
19 30(b)(6) notice.

20 But go ahead and answer, if you know.

21 THE WITNESS: I'd have to look at an org
22 chart. I -- I don't know for sure which entity directly
23 owned Barrick Gold of North America.

24 I don't know if it was directly owned by BGC.
25 There may have been an intermediary in there.

1 And then the general manager for whichever
2 mine was making a presentation to that committee would be
3 there.

4 We usually had a representative from the
5 safety -- the regional safety director.

6 Who else would have been...

7 Q. And "...regional safety director" would have
8 been from Barrick Gold North America?

9 A. Right.

10 Q. Okay.

11 A. And -- and we typically had Gordon Merriam who
12 was the contracting and procurement manager because he
13 would have been involved in negotiations and helping put
14 contracts together, as well.

15 Q. You mentioned that there was Mr. Lang would be
16 involved if it reached his level of approval?

17 A. Right.

18 Q. What was his level of approval?

19 A. Again, I'm not gonna tell you the exact number
20 because I don't remember it off the top of my head.

21 But we had a delegation-to-authority policy
22 in place that spelled that out for -- so if it was an
23 operating expense, it was the entire budget for the North
24 America region.

25 Q. Um-hum.

1 A. And so whatever the budget we had put into place
2 that had been approved for the year by the -- the team
3 and then was in line with the global allocation, he had
4 full -- full approval for that budget.

5 On capital spend there was a ceiling and I
6 don't remember the number.

7 Q. Who was on the team that did the approval of the
8 budget?

9 A. Same team. It was all of the senior leaders in
10 the -- at Barrick Gold of North America. So it was --
11 it -- it -- I -- I'd call it Greg Lang and his senior
12 leadership team.

13 Q. Was anybody from Toronto involved in setting the
14 budget for Barrick Gold North America?

15 A. No.

16 Toronto's role, again, and that was in -- in
17 global allegation of capital. So they may come back --
18 and did quite often come back to us and say, "We could
19 use this much more production globally to meet our global
20 targets; can you do it?"

21 And we could then go back and review and see
22 if we could offer that up.

23 But they didn't participate in the budget
24 setting and -- and -- and in that process. That was
25 something that we presented to them.

1 Q. And when you presented it to them, what was the
2 purpose of presenting it to them?

3 A. Again, for them to be able to allocate globally
4 where -- whatever resources may be -- may have been
5 needed.

6 Q. Was there ever a time where you did not present
7 a budget to Barrick Gold Corp.?

8 A. No, not for a final budget.

9 Q. Was it -- were you supposed to present them --
10 (Simultaneous colloquy.)

11 A. Well, they have --

12 Q. -- yearly?

13 THE REPORTER: Wait.

14 THE WITNESS: -- they have it consolidated.
15 So as -- as the public company, they had to consolidate
16 that for reporting purposes, et cetera, to the public
17 market.

18 So -- so, no, we had to report it from that
19 standpoint so that they could consolidate.

20 Q. (BY MR. BRUST:) And, other than occasionally
21 asking whether Barrick Gold North America and the
22 companies that it oversaw could produce more gold or more
23 profit, was there ever any other changes that they
24 suggested or made to the budget?

25 A. Just similar things to that where it was

1 discussions were with counsel?

2 A. Correct.

3 MR. BRUST: All right. Thanks.

4 EXAMINATION

5 BY MR. PETROGEORGE:

6 Q. Mr. Measom, how were the resources for Barrick
7 Gold of North America, including the Salt Lake City
8 office and the Shared Business Center, allocated among
9 the various entities that you were in charge with
10 managing and overseeing?

11 A. So we did an allocation of the costs for those
12 various departments for Barrick Gold of North America
13 and -- and it was a couple of different things.

14 We -- for example, Human Resources and I.T.
15 tended to be driven by head counts, and so we would
16 allocate based on the head counts at the given mine
17 sites.

18 Other departments -- technical, safety, some
19 of those kinds of things -- were driven more by just a --
20 the production levels or the size of the business for
21 each of the mine sites, so we would do that based on the
22 production levels.

23 Q. So while the BA- -- while BGNA as the entity
24 employed those folks that were in Salt Lake and the SBC,
25 the costs of those employees were shared and allocated to

1 the various entities that you were managing and
2 overseeing.

3 A. For the most part, yes.

4 Q. Okay.

5 A. There were a few departments that we didn't
6 allocate because they just really didn't specifically do
7 work at the mine sites.

8 Q. Where did you, as the CFO of Goldstrike,
9 considered -- consider BGMI's corporate headquarters to
10 be in 2009?

11 A. Salt Lake for sure.

12 Q. And was all of the payroll for Barrick
13 Goldstrike Mines, Inc. processed in the Salt Lake City
14 office?

15 A. Yes, it was.

16 Q. Once Barrick Goldstrike of North America -- or,
17 I'm sorry -- Barrick Gold of North America created a
18 budget for the region, would Toronto ever come in and
19 overrule that budget?

20 A. No.

21 As I said, they may come down and -- and ask
22 for more production for, you know, help in balancing a
23 cost profile or something like that.

24 But we had the discretion within our
25 portfolio of entities in North America to get that

1 production or those changes from whichever one we felt
2 like it made the most sense as the management team to do
3 that.

4 Q. Did Toronto have any involvement whatsoever in
5 establishing the budget for Barrick Goldstrike Mines,
6 Inc.?

7 A. No.

8 Q. Did Barrick Gold of North America have any
9 involvement in establishing the budget for Barrick
10 Goldstrike Mines, Inc.?

11 A. Yes, absolutely.

12 Q. What involvement?

13 A. Again, oversight. We -- we worked with them
14 directly. We would work with them on setting the
15 targets, in giving them an idea of what our goal -- our
16 regional targets were.

17 And, you know, we had history to work with,
18 so we knew where they had been and kind of how their
19 operations were going and what they might be able to do.
20 So we would work with them on targets for that.

21 Asked them to then go and put their best foot
22 forward. And then we would again bring the region
23 together and look at where we -- where we consolidated,
24 where we rolled up as a region. And then we may go back
25 and do that, you know, iterations of that until we got

1 the -- the budget that we felt like was our best foot
2 forward in terms of what we wanted to accomplish as a
3 region.

4 Q. In terms of involvement and control over setting
5 budget for Goldstrike, was BGNA's involvement in that
6 more significant than whatever role Toronto had in
7 setting BGNA's budget?

8 A. Much more.

9 MR. PETROGEORGE: No further questions.

10 MR. BRUST: Okay.

11 EXAMINATION

12 BY MR. BRUST:

13 Q. You talked about the cost allocations. And let
14 me make sure I understand what you were saying.

15 A. Okay.

16 Q. You're saying that if -- that -- that part of
17 the budgets of the companies in Nevada took into account
18 the cost of operating BGNA; is that correct?

19 A. Yes, I believe so. It was -- it was an
20 allocation of the BGNA costs.

21 So essentially, because we had responsibility
22 for operating those entities, those mine sites, it was an
23 allocation of those costs to those mine sites.

24 Q. So, for example, Cortez --

25 A. (Nods head.)

1 Q. -- in its budget would have an alloca- -- an
2 expense that would pay for some of the salaries at BGNA.

3 A. Salaries and other things, yes.

4 Q. Okay. Okay.

5 And then you said there were some things that
6 were not allocated. What -- what things were not
7 allocated to the companies in Nevada?

8 A. The only one I can think of right off the top of
9 my head was we had a portion of legal costs where --

10 Q. Um-hum.

11 A. -- it was specific to a given case or a given
12 issue that was being addressed and we didn't allocate
13 those because it was -- we -- we costed those directly to
14 that, wherever that entity, whatever entity had that
15 particular issue.

16 Q. I see.

17 So then all of BGNA's funding came from the
18 companies that it was managing; is that correct?

19 A. Well, yeah.

20 I mean BGNA didn't have a revenue source. So
21 you couldn't -- you couldn't just say, "Yeah, yeah, the
22 money pays the bills within BGNA."

23 But it was the management company, the
24 operating entity for all of those mines.

25 Q. Did any of BGNA's funds that allowed it to

1 operate come from Toronto?

2 A. No.

3 MR. BRUST: Okay.

4 That's all --

5 MR. PETROGEORGE: One --

6 MR. BRUST: -- I have.

7 MR. PETROGEORGE: -- one follow-up, just so
8 I'm clear.

9 EXAMINATION

10 BY MR. PETROGEORGE:

11 Q. Mr. Brust asked you about Cortez in -- as part
12 of those questions.

13 Where was the corporate headquarters of
14 Cortez in '09?

15 A. Salt Lake.

16 MR. PETROGEORGE: Okay. No further
17 questions.

18 MR. BRUST: Thank you.

19 THE WITNESS: Sure.

20 MR. PETROGEORGE: Okay.

21 (Brief discussion off the record.)

22 MR. PETROGEORGE: Yeah. We'll read and sign.

23 If you can send it to me, I'll coordinate
24 with Mr. Measom to get that done.

25 (At the request of Mr. Brust and

1 Mr. Petrogeorge during an off-the-record discussion,
2 the following proceedings were copied into the record
3 from the deposition of Tony Astorga held on March 20,
4 2018, starting at page 127, line 19 through page 128,
5 line 5, and apply to this deposition also:

6 "MR. PETROGEORGE: Back on the
7 record on the Astorga deposition.

8 "All of the exhibits that
9 were marked in that deposition are
10 de-designated. None of that is
11 confidential.

12 "I'm reserving the right
13 with respect to some of the
14 incomplete documents that I can't
15 say for sure whether the entire
16 document needs to be marked
17 'Confidential,' but the version
18 of the exhibit is not.

19 "THE REPORTER: And the
20 transcript is not.

21 "MR. PETROGEORGE: Correct.

22 "MR. BRUST: Yes.")

23 (At 1:14 p.m. the deposition
24 was concluded.)
25

WITNESS SIGNATURE

STATE OF _____)
)
COUNTY OF _____)

I, the undersigned, declare under penalty of perjury:

That I have read the foregoing transcript;

That I have made any corrections, additions or deletions that I was desirous of making;

That the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____ day of _____,
20____, at _____, _____.
(City) (State)

BLAKE MEASOM

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
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Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
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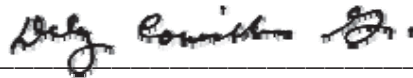
REPORTER'S CERTIFICATE
I, Deby Couvillon Green, Certified Shorthand
Reporter for the State of Texas CSR No. 8929 and for the
State of California CSR No. 2791, and for the State of
Utah CSR No. 10611481-7801, Registered Professional
Reporter and Registered Merit Reporter, do hereby
certify:
That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;
That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;
That a review of the transcript by the
deponent was requested;

1 That the foregoing is a true and correct
2 transcript of my shorthand notes so taken.

3 I further certify I am not a relative or
4 employee of any attorney of the parties, nor financially
5 interested in the action.

6 I declare under penalty of perjury under the
7 laws of Texas that the foregoing is true and correct.

8 Dated this 28th day of March, 2018.

9
10 



11 DEBY COUVILLON GREEN, Texas CSR No. 8929
12 Expiration Date: 12-31-2019
13 California CSR No. 2791
14 Expiration Date: 8-31-2018
15 Utah CSR No. 10611481-7801
16 Expiration Date: 5-31-2020
17 Atkinson-Baker Court Reporters, Inc.
18 Firm Registration No. 32
19 Expiration Date: 12-31-2019
20 500 North Brand Boulevard
21 Glendale, California 91203
22 (818) 551-7300
23
24
25

FILE NO.: AC02625

EXHIBIT I

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

3 BULLION MONARCH MINING, INC.,)

4 Plaintiff,)

5 v.)

6 BARRICK GOLDSTRIKE MINES, INC.,)

7 Defendant,)

CERTIFIED COPY

) Case No.

) 03:09-CV-612-MMD-WGC

8
9 DEPOSITION OF

10 TONY ASTORGA

11 MARCH 20, 2018

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21 ATKINSON-BAKER, INC.
22 COURT REPORTERS
(800) 288-3376
www.depos.com

23 REPORTED BY: DEBY COUVILLON GREEN, CA CSR NO. 2791
TX CSR NO. 8929
24 UTAH CSR NO. 10611481-7801

25 FILE NO.: AC02624

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,)
)
 Plaintiff,)
)
 v.) Case No.
) 03:09-CV-612-MMD-WGC
 BARRICK GOLDSTRIKE MINES, INC.,)
)
 Defendant,)
)
)
)

Oral deposition of TONY ASTORGA, taken on
behalf of the Plaintiff Bullion Monarch Mining, Inc.,
and duly sworn, was taken in the above-styled case on
March 20, 2018 from 8:55 A.M. to 12:36 P.M. before Deby
Couvillon Green, CSR in and for the State of Texas and in
and for the State of California, and in and for the State
of Utah, Registered Professional Reporter, reported by
machine shorthand, at Parsons Behle & Latimer,
201 South Main Street, Suite 1800, Salt Lake City,
Utah, 84111 pursuant to the Federal Rules of Civil
Procedure and the provisions stated in the record
or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFF:

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(No appearance at the deposition.)
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--- and ---

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e-mail mpetrogeorge@parsonsbehle.com

ALSO PRESENT:

PETER WEBSTER, General Counsel U.S.
Barrick

1 Mr. Haddock about contract issues?

2 MR. PETROGEORGE: Without revealing any
3 substance --

4 MR. BRUST: Right.

5 MR. PETROGEORGE: -- you can answer that
6 question.

7 THE WITNESS: On occasion.

8 But the majority of the communication was
9 in -- with Mr. Grandy.

10 Q. (BY MR. BRUST:) Were there any Barrick lawyers
11 that you spoke with in Nevada?

12 MR. PETROGEORGE: Objection. Vague with
13 respect to whether you're referring to inside or outside
14 counsel.

15 Q. (BY MR. BRUST:) Either.

16 A. So my communication with lawyers as -- as part
17 of Barrick Gold of -- of North America was in -- the only
18 lawyers that I recall discussing matters with were
19 based -- individuals that were based in Salt Lake City.

20 Q. And do you recall any conversations with lawyers
21 based in Salt Lake City who did not work for Barrick Gold
22 North America?

23 And what I mean by that is something that
24 your counsel just mentioned which is there are lawyers
25 like Mr. Petrogeorge who don't work directly for Barrick

1 Gold North America or Barrick Goldstrike, they work for a
2 law firm that's been hired by the business.

3 And then there are lawyers like Mr. Haddock
4 who actually work directly for the company.

5 And so what I'm asking is did you ever have
6 conversations with any lawyers that were what we call
7 outside counsel?

8 A. Not that I can recall.

9 Q. Okay. Did you ever have to communicate with
10 anybody in Toronto regarding contracts?

11 (Brief pause.)

12 A. I don't recall during the period having to talk
13 with individuals from the Toronto office in regards to
14 specific contracts. I don't recall at this time.

15 Q. Did you ever receive any guidance or policies
16 from Toronto while you worked for Barrick Gold North
17 America?

18 A. There were Barrick Gold Corporation policies
19 that were then distributed through the regions. And the
20 policies for Barrick Gold of North America. I was
21 working underneath the direction of Barrick Gold of North
22 America's policies.

23 Q. Okay. So were you also working under the
24 directions of Barrick Gold's policies?

25 A. Barrick Gold Corporation's policies would then

1 be applied to the -- the various regions. So in that
2 respect, I would say, "Yes."

3 Q. Okay. Do you remember which policies came from
4 Barrick Gold?

5 A. Barrick Gold Corporation had five main supply
6 chain policies that were the direction when I started
7 in -- in the beginning of 2009.

8 Q. Do you remember what those were?

9 A. Those were policies related to sourcing process
10 and procurement and contracts policies. However, the --
11 because they were Barrick Gold Corporation policies, the
12 application of those policies may differ depending upon
13 the region which they would support.

14 So the legal law and requirements of entities
15 located in the United States may differ from locations
16 in, say, Chile or Peru or Africa or those various
17 different entities.

18 Q. How did you receive the policies from Barrick
19 Gold Corp.?

20 A. Through Barrick Gold of North America.

21 Q. Would they come through emails or would you go
22 to meetings?

23 A. The Corp. -- the policies were distributed to me
24 and made available to -- to me through websites.

25 Q. So then was part of your job to follow those

1 policies?

2 A. Yes.

3 Q. Okay. Did you work for Barrick Gold Corp.?

4 A. I worked for Barrick Gold of North America.

5 MR. BRUST: Okay. All right, Counsel.

6 I don't know if there are any documents that
7 you produced that were not marked "Confidential." So,
8 as we go into these, do you want to -- I'm assuming you
9 want to designate -- do you want to designate the
10 transcript "Confidential" or what do you want to do?

11 MR. PETROGEORGE: Let's take them one at a
12 time.

13 MR. BRUST: Okay.

14 MR. PETROGEORGE: And I'll -- I can confer
15 with Peter on that.

16 MR. BRUST: Okay. Okay.

17 I'm handing you what's been marked Exhibit
18 Number 1.

19 (Whereupon Exhibit 1 was marked
20 for identification.)

21 Q. (BY MR. BRUST:) So Exhibit Number 1, is that an
22 email from you?

23 A. Yes. It's an e-mail dated April 14, 2009.

24 Q. And it says behind your name "(Nevada SBC)". Is
25 that the "SBC" is the Shared Business Center we've been

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC.,)
)
Plaintiff,)
)
v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
)
)

REPORTER'S CERTIFICATE

I, Deby Couvillon Green, Certified Shorthand
Reporter for the State of Texas CSR No. 8929 and for the
State of California CSR No. 2791, and for the State of
Utah CSR No. 10611481-7801, Registered Professional
Reporter and Registered Merit Reporter, do hereby
certify:

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;

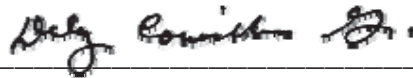
That a review of the transcript by the
deponent was requested;

1 That the foregoing is a true and correct
2 transcript of my shorthand notes so taken.

3 I further certify I am not a relative or
4 employee of any attorney of the parties, nor financially
5 interested in the action.

6 I declare under penalty of perjury under the
7 laws of Texas that the foregoing is true and correct.

8 Dated this 28th day of March, 2018.

9
10 



11 DEBY COUVILLON GREEN, Texas CSR No. 8929
12 Expiration Date: 12-31-2019
13 California CSR No. 2791
14 Expiration Date: 8-31-2018
15 Utah CSR No. 10611481-7801
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20 500 North Brand Boulevard
21 Glendale, California 91203
22 (818) 551-7300
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FILE NO.: AC02624

EXHIBIT J

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
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Plaintiff,)
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) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
)
_____)

DEPOSITION OF
ANDY BOLLAND
MARCH 21, 2018

ATKINSON-BAKER, INC.
COURT REPORTERS
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TX CSR NO. 8929
UTAH CSR NO. 10611481-7801
FILE NO.: AC02625

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
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Plaintiff,)
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v.) Case No.
) 03:09-CV-612-MMD-WGC
BARRICK GOLDSTRIKE MINES, INC.,)
)
Defendant,)
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)
_____)

Oral deposition of ANDY BOLLAND, taken on
behalf of the Plaintiff Bullion Monarch Mining, Inc.,
and duly sworn, was taken in the above-styled case on
March 21, 2018 from 8:57 A.M. to 10:31 A.M. before Deby
Couvillon Green, CSR in and for the State of Texas and in
and for the State of California, and in and for the State
of Utah, Registered Professional Reporter, reported by
machine shorthand, at Parsons Behle & Latimer,
201 South Main Street, Suite 1800, Salt Lake City,
Utah, 84111 pursuant to the Federal Rules of Civil
Procedure and the provisions stated in the record
or attached hereto.

A P P E A R A N C E S

FOR THE PLAINTIFF:

LEWIS ROCA ROTHGERGER LLP
(No appearance at the deposition.)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
(702) 949-8200

--- and ---

ROBISON, SHARP, SULLIVAN & BRUST
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email: cbrust@rssblaw.com

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(801) 532-1234
e-mail mpetrogeorge@parsonsbehle.com

ALSO PRESENT:

PETER WEBSTER, General Counsel U.S.
Barrick

JAN N. STEIERT, Chief Legal Officer
EMX Royalty Corp.

1 Q. And, of course, Goldstrike is in there.

2 A. Turquoise Ridge.

3 THE REPORTER: Sorry?

4 THE WITNESS: Turquoise Ridge.

5 Q. (BY MR. BRUST:) Do you know who owns Barrick
6 Gold North America?

7 MR. PETROGEORGE: Now or in 2009?

8 Q. (BY MR. BRUST:) In 2009.

9 A. I would be guessing, but I'm saying Barrick Gold
10 Corporation.

11 Q. Okay. And Barrick Gold Corporation is
12 headquartered in Toronto; is that right?

13 A. That's correct.

14 Q. And who owns Goldstrike? Who owned Goldstrike
15 in 2009?

16 MR. PETROGEORGE: Are you referring to the
17 mine site?

18 MR. BRUST: I'm referring to the company.

19 THE WITNESS: It was a Barrick Gold operation
20 that reported up through the -- the Barrick Gold North
21 America business unit.

22 Q. (BY MR. BRUST:) Do you know who -- which entity
23 owned the actual company?

24 A. No.

25 Q. What is the -- or in 2009, what was the business

1 of Barrick Goldstrike?

2 A. The business of Barrick Goldstrike was to safely
3 produce gold.

4 Q. From?

5 A. From the deposit at the -- at -- you know --

6 Q. Out in Carlin?

7 A. Out in Car- -- well, yeah, in that area.

8 Q. Okay. And what was the business of Barrick Gold
9 North America in 2009?

10 MR. PETROGEORGE: I'm just gonna object. I
11 think this goes beyond the scope of what he's been
12 designated to testify to.

13 I'm going to give you a little leeway.

14 MR. BRUST: Okay.

15 MR. PETROGEORGE: But I'm not going to let
16 you go very far.

17 MR. BRUST: Okay.

18 THE WITNESS: Could you repeat the question?

19 Q. (BY MR. BRUST:) Yes.

20 What was the business of Barrick Gold North
21 America in 2009?

22 A. The business of Barrick Gold North America, as I
23 saw it, was to manage the eight or nine mines that
24 reported up through the Salt Lake City office.

25 Q. And when you say "...up through...", it was up

1 through the Salt Lake office up to Barrick Gold in
2 Toronto, correct?

3 A. No. It was basically to the Barrick Gold of
4 North America office to Greg Lang who was the -- the
5 president.

6 Greg Lang reported to Peter Kinver.

7 THE REPORTER: "Peter" --

8 THE WITNESS: Kinver, I think, back then.

9 Q. (BY MR. BRUST:) And when you went to work for
10 Barrick Gold North America, I think you said were you
11 required to move to Salt Lake?

12 A. I did.

13 Q. Okay. Did you ever work out of the Shared
14 Business Center -- I think is what they call it -- in
15 Elko?

16 A. I never worked out of there, no.

17 Q. In 2009, were you aware of any employees from
18 Goldstrike who were working in Salt Lake City?

19 A. No.

20 Q. Was it your understanding in 2009 that all of
21 the employees of Goldstrike were working in Nevada?

22 A. Yes.

23 Q. Were there -- was it your understanding in 2009
24 that there were any Barrick Gold North America employees
25 working in Nevada?

1 A. To my recollection, no.

2 Q. Do you -- and I'm entitled to estimates. You
3 don't have to give me an exact number.

4 A. No problem.

5 Q. But if you don't know, you're not required to
6 guess, okay?

7 But this next question is probably gonna
8 re- -- elicit an estimate. How many employees did
9 Goldstrike have in 2009?

10 A. I'm estimating 1,600.

11 THE REPORTER: -- "1,600"?

12 THE WITNESS: Yeah.

13 MR. BRUST: Okay.

14 Q. (BY MR. BRUST:) And how many did it have in
15 2004 when you left Goldstrike?

16 A. About the same. I don't think there was too
17 much difference.

18 Q. In 2009, did you -- were you required to go
19 visit any of the mines in Nevada?

20 A. Absolutely.

21 Q. Okay. And how often did you visit Goldstrike in
22 2009?

23 A. I would say at least once a quarter. So at
24 least four times.

25 Q. Okay. And what was the purpose of those visits?

1 A. We provided technical support to the mine, so we
2 would bring a subject matter expert in to support the
3 operation and to look at various initiatives to improve
4 the operation.

5 Q. And did you -- were -- were you in communication
6 in 2009 with personnel from Goldstrike?

7 A. Absolutely.

8 Q. Who would you mostly be in communication with?

9 A. The general manager and the technical leads in
10 the mining and processing areas.

11 Q. Do you remember who the general manager was in
12 2009?

13 A. I believe it was John Mansanti.

14 Q. And did you communicate with Mr. Mansanti --
15 well, let me ask you this. How did you communicate with
16 Mr. Mansanti?

17 A. The normal ways would either be by phone --

18 Q. Uh-huh.

19 A. -- or email.

20 Q. And did you save any of those emails that you
21 had with Mr. Mansanti?

22 A. I don't think so.

23 Q. Okay. And then what about who were the tech
24 leads that you communicated with?

25 A. You know, I -- I don't recall. I think Steve

1 Yopps was in the process area, but I -- I can't recall
2 who was in the -- in the mine.

3 Q. Approximately how many times a month would you
4 communicate with Mr. Mansanti in 2009?

5 A. I'd say four times a month.

6 Q. Okay. And then approximately how many times a
7 month would you communicate with Mr. Yopps in 2009?

8 A. Similar.

9 Q. Did you ever have communications with Barrick
10 Gold in Toronto in 2009?

11 A. I do not believe so.

12 Q. Let me see here. Where was Goldstrike's leach
13 pad in 2009?

14 A. Well, the leach pad was closed.

15 Are you talking about the heap leach pad?

16 Q. Yes.

17 A. The heap leach pad was just adjacent to the
18 autoclave facility.

19 Q. And what different Barrick entities were using
20 that leach pad in 2009?

21 A. I have no idea.

22 Q. Who was in charge of that in 2009?

23 A. In charge of what?

24 Q. The leach -- the leach pad -- the heap leach
25 pad.

1 MR. BRUST: Here's Exhibit Number 7 which --
2 I'm sorry. I need it back to staple it.

3 Okay. We'll leave it like that.

4 Here you go. So Exhibit Number 7 is an EEO
5 filing.

6 Q. (BY MR. BRUST:) And my question here is do you
7 know who Steve Larson was?

8 MR. PETROGEORGE: Objection. Mr. Bolland has
9 not been designated to testify on EEO filings.

10 But you can go ahead and answer that
11 question, if you want.

12 MR. BRUST: I thought that he was.

13 MR. PETROGEORGE: That's also Mr. Haddock.

14 THE WITNESS: I do not know who Steve Larson
15 is.

16 MR. PETROGEORGE: Requests relating to EEOC
17 stuff is Request Number 7.

18 And the only designated witness is Rich
19 Haddock.

20 MR. BRUST: Do you want me to ask Haddock?

21 Okay.

22 (Whereupon Exhibit 8 was marked
23 for identification.)

24 MR. BRUST: Here's Exhibit Number 8.

25 Q. (BY MR. BRUST:) We spoke a little bit earlier

1 about the fact that Barrick Gold Corporation would
2 sometimes issue policies. Is this the type of policy
3 that Barrick Gold Corporation would issue globally for
4 all of the companies, Exhibit Number 8?

5 A. Yes.

6 THE REPORTER: Counsel, wait. There's a
7 sticker under there.

8 MR. BRUST: Oh, thanks.

9 (Whereupon Exhibit 9 was marked
10 for identification.)

11 Q. (BY MR. BRUST:) And Exhibit Number 9, is
12 that -- here, Counsel -- is Exhibit Number 9 another
13 policy that would -- that was issued from Barrick Gold
14 Corporation for all of the Barrick family companies in
15 2009?

16 A. It appears to be, yes.

17 (Whereupon Exhibit 10 was marked
18 for identification.)

19 Q. (BY MR. BRUST:) And Exhibit Number 10, same
20 question, is that another policy issued by Barrick Gold
21 Corp. that would have applied to all of the Barrick
22 families -- companies?

23 A. It appears so, yes.

24 I haven't seen these before, though.

25 Q. And the date where it says, "Issued: August 3,

1 2009," that would indicate that that came out in 2009,
2 correct?

3 (Unintelligible.)

4 THE REPORTER: I didn't hear you, sir.

5 Q. (BY MR. BRUST:) Up top where it says,
6 "Issued:". In 2009?

7 A. Is that -- is this a -- an intelligence quest,
8 or what?

9 Q. Every once in a while someone will say, "No, it
10 wasn't 2009. That date's wrong. I remember it came out
11 in 2008."

12 A. Well, it says "2009"; I guess that's when it
13 came out.

14 MR. BRUST: All right.

15 (Whereupon Exhibit 11 was marked
16 for identification.)

17 Q. (BY MR. BRUST:) Exhibit 11 looks like an
18 organizational structure.

19 At the top of it, it says "Barrick Gold..."
20 Corp.

21 And my question is do you know who Bill Upton
22 is?

23 A. Yes.

24 Q. Was Mr. Upton in Toronto?

25 A. We -- no. He was in Salt Lake City, to my

1 knowledge.

2 Q. Okay. Were any of the people on this document
3 in Toronto in 2009, to your knowledge?

4 A. To my knowledge, no.

5 Q. Were all of them in Salt Lake, to your
6 knowledge, in 2009?

7 A. I don't know -- it looks like we -- yes, they --
8 they were in Salt Lake City.

9 Q. Do you know if any of them worked for Barrick
10 Gold Corp.?

11 A. I believe that the -- they reported up to
12 Barrick Gold Corp., yes.

13 MR. BRUST: Okay. All right. All right.

14 Before I mark these, these are the paycheck
15 stubs.

16 MR. PETROGEORGE: (Nods head.)

17 MR. BRUST: Is he going to know about this or
18 is there somebody better to talk to about this?

19 And basically all I want to ask is some
20 questions about some of the designations on here,
21 Counsel.

22 For example, "GS Administration," I'm
23 assuming that's Goldstrike Administration; "SLC
24 President," what that means; and if there's an indication
25 on here from whom -- from which company the checks are

1 being paid.

2 MR. PETROGEORGE: So I don't know that he's
3 been specifically designated on that.

4 I'll let you ask him and if he knows he can
5 answer it.

6 I just don't know what he's gonna know on
7 that issue.

8 MR. BRUST: Is there somebody who would be
9 better designated?

10 Because I don't want to mark it and then have
11 to make new copies and all of that.

12 MR. PETROGEORGE: Well --

13 MR. BRUST: That's what I'm trying to avoid.

14 MR. PETROGEORGE: -- Blake Measom was the
15 CFO, so --

16 MR. BRUST: Yeah.

17 MR. PETROGEORGE: -- he might have better
18 knowledge.

19 MR. BRUST: I -- I'll ask you --

20 (Simultaneous colloquy.)

21 MR. PETROGEORGE: Not knowing exactly what
22 you're gonna ask as far as --

23 MR. BRUST: I'm gonna give it to him before I
24 mark it.

25 MR. PETROGEORGE: Okay.

1 MR. BRUST: Okay?

2 MR. PETROGEORGE: That's fine.

3 Q. (BY MR. BRUST:) So --

4 A. I'm pretty sure --

5 Q. -- go ahead and take a look at that.

6 And so, for example, on the first page which
7 I handed you which is BAR-J- -- sorry.

8 MR. PETROGEORGE: No. You're okay.

9 MR. BRUST: You want it?

10 -J0043890, this looks like a paycheck stub to
11 me.

12 Q. (BY MR. BRUST:) Is that what it is, to your
13 knowledge?

14 A. Yes.

15 Q. And did you get these biweekly when you were
16 working for Barrick?

17 A. I believe I did.

18 Q. Okay.

19 A. But my CFO took care of 'em.

20 Q. All right. So do you know anything about these,
21 about the language and what it means or the codes and
22 what they mean on these?

23 A. Which codes?

24 Q. So if you look right here, it says
25 "GS Administration." What does that refer to?

1 A. That would infer that that is in the Goldstrike
2 Administration Department, to my knowledge.

3 Q. And "Advice Number" up in the upper left-hand
4 corner, do you know what that refers to?

5 A. No idea.

6 Q. Do you -- can you tell by looking at this
7 document which company paid this paycheck?

8 A. It's not my area. I -- I really wouldn't --
9 wouldn't know.

10 MR. BRUST: Okay. All right.

11 I'll save these.

12 MR. PETROGEORGE: I think Blake might be able
13 to answer those better.

14 MR. BRUST: All right.

15 THE WITNESS: He's the guy.

16 MR. BRUST: Thank you.

17 Let me just take a few minutes --

18 MR. PETROGEORGE: Do you want to --

19 MR. BRUST: -- and --

20 MR. PETROGEORGE: -- take a break?

21 MR. BRUST: -- confer.

22 And we'll take a break.

23 MR. PETROGEORGE: Okay. You got it

24 (Recess from 10:09 a.m. until 10:26 a.m.)

25 MR. PETROGEORGE: We ready?

1 MR. BRUST: Yes.

2 MR. PETROGEORGE: So you are done?

3 MR. BRUST: I am.

4 MR. PETROGEORGE: All right.

5 EXAMINATION

6 BY MR. PETROGEORGE:

7 Q. Mr. Bolland, I think you testified that the
8 directors and managers located in Salt Lake City were
9 employed by Barrick Gold of North America; is that
10 correct?

11 A. Sorry. Say that again, Mike.

12 Q. Were the directors and managers located in
13 Salt Lake City -- I think you said they were all employed
14 by Barrick Gold of North America --

15 A. Yes --

16 Q. -- right?

17 A. -- yes, absolutely.

18 Q. But as a director, you still had oversight and
19 responsibility over the Barrick Goldstrike Mines entity,
20 correct?

21 A. Yes, we did.

22 Q. And if you were working on something that
23 involves -- involved the Goldstrike Mine in Nevada, you
24 were working on that for and on behalf of Goldstrike --
25 Barrick Gold Mines, Inc., right?

1 A. Absolutely, yes.

2 Q. In fact, there were employees of BGNA that had
3 officer titles but were located -- officer titles for
4 BGMI and were located in Salt Lake, correct?

5 A. Yes. I think Blake, Greg, and Mike Feehan, Rich
6 Haddock.

7 Q. Where did you consider the executive loca- --
8 the executive-level functions of Barrick Goldstrike
9 Mines, Inc. to be located in 2009?

10 A. In Salt Lake City, for sure.

11 Q. And that's even though the BGMI payroll
12 employees were located in Nevada?

13 A. Yes.

14 Q. And even though the technical employer of the
15 Salt Lake executives was Barrick Gold North America?

16 A. Yes.

17 Q. How frequently would Barrick Gold Mines --
18 Barrick Goldstrike Mines' employees in Nevada interact
19 with the executive-level employees based in
20 Salt Lake City?

21 A. Almost daily.

22 Q. I want to talk a little bit more about the mine
23 plan that was discussed. Who had ultimate oversight and
24 responsibility for that mine plan?

25 A. Ultimate responsibility was with the general

1 manager. He would -- the mine plan would generate a
2 budget that would be presented to Salt Lake City. If the
3 budget needed improvements, then Salt Lake City would
4 advise the general manager to go back and -- and look at
5 what opportunities there were with the mine plan.

6 Q. Would the GM of Goldstrike ever implement a mine
7 plan over the objection of the executives located in
8 Salt Lake?

9 A. No.

10 Q. I want to talk to you a little bit in comparing
11 the relationship that existed between Toronto and Barrick
12 Gold of North America as compared to the relationship
13 between Barrick Gold of North America and Barrick
14 Goldstrike Mines.

15 A. Sure.

16 Q. Did Toronto have as much oversight and control
17 over Barrick Gold North America as Barrick Gold North
18 America had over Barrick Goldstrike Mines?

19 A. No, definitely not.

20 Q. Okay. If someone -- and we can take a quick
21 look at Exhibit 4 just to bring this question a little
22 bit.

23 This was the email relating to the "Betze Pit
24 Expansion Project..." --

25 A. Yeah.

1 Q. -- and permitting issues related to that.

2 If someone employed by Barrick Gold of North
3 America -- I'll let you get there -- is attending a
4 meeting on something that is involving Goldstrike
5 permitting, would they be there as a representative of
6 Goldstrike Mines?

7 A. Absolutely.

8 Q. And did the Barrick Gold of North America
9 employees have authority to work for and on behalf of
10 Barrick Goldstrike Mines when dealing with Barrick
11 Goldstrike Mines' business?

12 A. Yes.

13 Q. Did you, as a Barrick Goldstrike of North
14 America employee, have authority to work for and on
15 behalf of Goldstrike -- Barrick Goldstrike Mines when
16 dealing with technical services that impacted the
17 Goldstrike Mine?

18 A. Absolutely, yes.

19 MR. PETROGEORGE: No further questions.

20 EXAMINATION

21 BY MR. BRUST:

22 Q. How many different companies did you have that
23 type of authority to act on behalf of?

24 A. All of the mines that reported up through
25 Barrick Gold of North America. So the nine mines that --

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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BULLION MONARCH MINING, INC.,)
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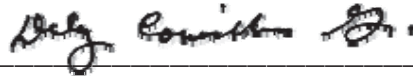
REPORTER'S CERTIFICATE
I, Deby Couvillon Green, Certified Shorthand
Reporter for the State of Texas CSR No. 8929 and for the
State of California CSR No. 2791, and for the State of
Utah CSR No. 10611481-7801, Registered Professional
Reporter and Registered Merit Reporter, do hereby
certify:
That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;
That the testimony of the witness, the
questions propounded, and all objections and statements
made at the time of the examination were recorded
stenographically by me and were thereafter transcribed;
That a review of the transcript by the
deponent was requested;

1 That the foregoing is a true and correct
2 transcript of my shorthand notes so taken.

3 I further certify I am not a relative or
4 employee of any attorney of the parties, nor financially
5 interested in the action.

6 I declare under penalty of perjury under the
7 laws of Texas that the foregoing is true and correct.

8 Dated this 28th day of March, 2018.

9
10 



11 DEBY COUVILLON GREEN, Texas CSR No. 8929
12 Expiration Date: 12-31-2019
13 California CSR No. 2791
14 Expiration Date: 8-31-2018
15 Utah CSR No. 10611481-7801
16 Expiration Date: 5-31-2020
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19 Expiration Date: 12-31-2019
20 500 North Brand Boulevard
21 Glendale, California 91203
22 (818) 551-7300

23
24
25 FILE NO.: AC02625

EXHIBIT K

DECLARATION OF DANA STRINGER

I, Dana Stringer, hereby declare as follows:

1. I am Vice-President, Corporate Secretary and Associate General Counsel of Barrick Gold Corporation ("Barrick Gold") and have knowledge of the facts of this affidavit and will competently testify to same if called upon to do so.

2. In November 2018, Barrick Gold continued as a corporation organized under the laws of the Province of British Columbia, Canada. Previously, Barrick Gold was a corporation organized under the laws of the Province of Ontario, Canada.

3. Barrick Gold's headquarters is located at Brookfield Place, TD Canada Trust Tower, 161 Bay Street, Suite 3700, Toronto, Ontario, M5J 2S1. Barrick Gold's registered office is 925 West Georgia Street, Suite 1600, Vancouver, British Columbia, V6C 3L2.

4. In December 2018, Barrick Gold's executive officers were John Thornton, the Executive Chairman of the Board of Directors, who resided in Florida; Kevin Thomson, Senior Executive Vice President, Strategic Matters who resided in Toronto, Canada; Catherine Raw, Executive Vice President and Chief Financial Officer, who resided in Toronto, Canada; Darian Rich, Executive Vice President, Talent Management, who resided in Toronto, Canada; Robert Krcmarov, Executive Vice President, Exploration and Growth, who resided in Toronto, Canada; Mark Hill, Chief Investment Officer, who resided in Toronto, Canada, Kathy Sipos, Chief of Staff, who resided in Toronto, Canada; and Greg Walker, Senior Vice President, Operational and Technical Excellence, who resided in Toronto, Canada.

5. In December 2018, none of Barrick Gold's executive officers resided in Nevada.

6. In December 2018, Barrick Gold had thirteen members on its Board of Directors. Three of Barrick Gold's directors lived in Toronto, Canada; two lived in Nevada; five lived in other areas of the United States (Florida, New York, California, Colorado, and Pennsylvania), and three resided outside of the United States and Canada (Argentina, Chile and the Dominican Republic).

7. In 2018, the Board of Directors held all of its meetings in Toronto, Canada.

8. Barrick Gold's corporate records are maintained in Toronto, Canada.

1 9. Barrick Gold exists as a parent company, managing its investments and interests in
2 various wholly and partially owned subsidiary companies.

3 10. Although most of Barrick Gold's subsidiary companies are involved in the gold
4 mining industry, Barrick Gold holds a diverse portfolio of interests and investments.

5 11. Barrick Gold's subsidiary companies operate in numerous countries throughout the
6 world and operate and exist under the laws of those jurisdictions.

7 12. Barrick Gold is not registered to do business as a foreign corporation in Nevada
8 under NRS 80.060 because it does not own any property in Nevada and does not conduct any
9 business in Nevada.

10 13. Barrick Gold has never registered to do business as a foreign corporation in Nevada,
11 and therefore has never appointed a registered agent under Nevada law, because it has never owned
12 any property in Nevada and has never conducted business in the state.

13 14. Prior to December 2018, Barrick Gold had never directly participated in a joint
14 venture or partnership owning properties in Nevada.

15 15. Barrick Gold has never designed, manufactured, advertised, delivered, or sold any
16 goods, services, or products in Nevada.

17 16. Barrick Gold does not have any employees in Nevada.

18 17. Barrick Gold does not have an office or telephone listing in Nevada.

19 18. Barrick Gold does not have any bank accounts in Nevada.

20 19. Barrick Gold does not pay any taxes in Nevada or to any Nevada taxing authority.

21 20. Barrick Gold does not have any license or distribution agreements involving
22 Nevada.

23 21. As of December 2018, Barrick Gold had no presence in Nevada, except through a
24 lengthy chain of separately incorporated U.S. subsidiaries. Barrick Gold was the ultimate parent
25 company of several companies that operate in Nevada. For example, in December 2018 the
26 Goldstrike mine, which is located near Elko, Nevada, was owned by Defendant Barrick Goldstrike
27 Mines, Inc. ("Goldstrike"), a Colorado corporation. Goldstrike is a subsidiary of Defendant Barrick
28 Gold Exploration, Inc. ("Exploration"), a Delaware corporation, which is, in turn, a subsidiary of

1 Defendant ABX Financeco, Inc. ("ABX"), a Delaware corporation, which is a subsidiary of Barrick
2 Gold.

3 22. Barrick Gold does not itself engage in mining or processing activities, operate
4 mining or processing facilities within Nevada or the United States. Barrick Gold does not itself own
5 any equipment or facilities to conduct mining or processing activities in Nevada or the United
6 States.

7 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
8 is true and correct.

9 DATED this 11th day of October 2019.

10
11 

12 DANA STRINGER

EXHIBIT L

DECLARATION OF DANA STRINGER

I, Dana Stringer, hereby swear under the penalties of perjury that the following assertions are true and correct:

1. I am Vice-President, Corporate Secretary and Associate General Counsel of Barrick Gold Corporation ("Barrick Gold") and have knowledge of the facts of this affidavit and will competently testify to same if called upon to do so.

2. Barrick Gold is a corporation organized under the laws of the Province of British Columbia, Canada with headquarters located in Toronto.

3. Barrick Gold exists as a parent company, managing its investments and interests in various wholly and partially owned subsidiary companies.

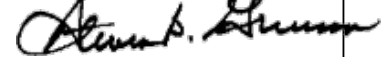
4. Although most of Barrick Gold's subsidiary companies are involved in the gold mining industry, Barrick Gold holds a diverse portfolio of interests and investments.

5. Barrick Gold's subsidiary companies operate in numerous countries throughout the world and operate and exist under the laws of those jurisdictions.

6. Barrick Gold does not itself engage in mining or processing activities, operate mining or processing facilities within Nevada or the United States. Instead, Barrick Gold is the ultimate parent company of several companies that operate in Nevada.

7. For example, Defendant Barrick Goldstrike Mines, Inc. ("Goldstrike"), a Colorado corporation, is a subsidiary of Defendant Barrick Gold Exploration, Inc. ("Exploration"), a Delaware corporation. Exploration, in turn, is a subsidiary of Defendant ABX Financeco, Inc. ("ABX"), a Delaware corporation, which is a subsidiary of Barrick Gold.

8. Nevada Gold Mines LLC ("Nevada Gold Mines"), a Delaware limited liability company, is a joint venture. Nevada Gold Mines is 61.5% owned by a Barrick Gold subsidiary, Barrick Nevada Holding LLC ("Barrick Nevada"), with Newmont USA Limited holding the remaining 38.5% of the joint venture. In turn, various U.S. subsidiaries of Barrick Gold own certain percentages of Barrick Nevada.



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201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Telephone: (801) 532-1234
BMark@parsonsbehle.com

Attorneys for Defendant Barrick Nevada Holding LLC

DISTRICT COURT
CLARK COUNTY, NEVADA

BULLION MONARCH MINING, INC.,
Plaintiff,

v.

BARRICK GOLDSTRIKE MINES, INC.;
BARRICK GOLD EXPLORATION INC.;
BARRICK GOLD CORPORATION;
NEVADA GOLD MINES, LLC; BARRICK
NEVADA HOLDING LLC; and DOES 1
through 20,

Defendants.

Case No.: A-18-785913-B
Dept. No.: XI

**APPENDIX TO BARRICK NEVADA
HOLDING LLC'S MOTION TO DISMISS
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

Ex.	Description	Page Nos.
A	Complaint filed in <i>Bullion Monarch Mining, Inc. v. Newmont USA Limited, et al.</i> , Case No. 3:08-cv-00227-ECR-VPC on April 28, 2008	001-012
B	Amended Complaint filed in <i>Bullion Monarch Mining, Inc. v. Newmont USA Limited, et al.</i> , Case No. 3:08-cv-00227-ECR-VPC on June 22, 2009	013-053
C	Minutes of Telephonic Status Conference in United States District Court, District of Nevada dated October 19, 2009	054-056
D	Order filed in Case No. 3:08-cv-00227-ECR-VPC on September 15, 2010 (FILED UNDER SEAL)	057-082
E	Implementation Agreement between Barrick Gold Corporation and Newmont Mining Corporation dated March 10, 2019	083-273
F	Barrick Gold Corporation, Barrick Nevada Holding LLC, Newmont Goldcorp Corporation, Newmont USA Limited, and Nevada Gold Mines LLC Amended and Restated Limited Liability Company Agreement of Nevada Gold Mines LLC dated July 1, 2019	274-463
G	Declaration of Paul D. Judd dated August 6, 2020	464-466

DATED this 6th day of August, 2020.

By: /s/ Dustun H. Holmes
James J. Pisanelli, Esq., Bar No. 4027
Debra L. Spinelli, Esq., Bar No. 9695
Dustun H. Holmes, Esq., Bar No. 12776
PISANELLI BICE PLLC
400 South 7th Street, Suite 300
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Michael R. Kealy, Nevada Bar No. 971
Ashley C. Nikkel, Nevada Bar No. 12838
Brandon J. Mark (*Admitted Pro Hac Vice*)
PARSONS BEHLE & LATIMER
50 West Liberty Street, Suite 750
Reno, Nevada 89501

Attorneys for Barrick Nevada Holding LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Pisanelli Bice PLLC, and that on the 6th day of August, 2020, I filed a true and correct copy of the foregoing **APPENDIX TO BARRICK NEVADA HOLDING LLC'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT** with the Clerk of the Court through the Court's CM/ECF system, which sent electronic notification to all registered users as follows:

Brandon J. Mark, Esq.
PARSONS BEHLE & LATIMER
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

Michael R. Kealy, Esq.
Ashley C. Nikkel, Esq.
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50 West Liberty Street, Suite 750
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Clayton P. Brust, Esq.
ROBISON, SHARP, SULLIVAN & BRUST, P.C.
71 Washington Street
Reno, NV 89503

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169

/s/ Kimberly Peets
An employee of Pisanelli Bice PLLC

EXHIBIT A

Clayton P. Brust, Esq. (SBN 5234)
ROBISON, BELAUSTEGUI, SHARP & LOW
71 Washington Street
Reno, Nevada 89503
(775) 329-3151
Attorneys for Plaintiff
Bullion Monarch Mining, Inc.

Electronically Filed: 04/28/08

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BULLION MONARCH MINING, INC., a **CASE NO.**
Utah corporation,

Plaintiff,

vs.

COMPLAINT
[Jury Trial Demanded]

NEWMONT USA LIMITED, a Delaware
corporation, d/b/a **NEWMONT MINING**
CORPORATION, and DOES I-X,
inclusive,

Defendant(s).

Plaintiff as its complaint alleges:

1. Bullion Monarch Mining ("Bullion"), is a Utah corporation doing business in the State of Nevada at all times relevant hereto.
2. Newmont USA Limited, a Delaware Corporation, dba Newmont Mining Corporation (herein after "Newmont") is a Delaware Corporation doing business in the State of Nevada at all times relevant hereto.
3. The true names or capacities, whether individual, corporate,

1 associate, or otherwise, of Defendants designated as DOES I through X are
2 unknown to Plaintiff and therefore Plaintiff sues these Defendants by fictitious
3 names. Plaintiff will amend this Complaint to show the true names and capacities
4 of these Defendants when they have been ascertained.
5

6 **FACTS**

7 4. On or about May 10, 1979, Bullion's predecessor in interest, Bullion
8 Monarch Company, and Newmont's predecessors in interest, Universal
9 Explorations, Ltd. and Universal Gas, Inc., entered into a royalty agreement
10 ("Agreement") whereby Bullion was to receive a royalty based on production from
11 any mining operations within the Subject Property as described in Exhibit A-1 to the
12 Agreement and the "Area of Interest" described in Exhibit A-2 to the Agreement. A
13 true and correct copy of the Agreement is attached hereto and incorporated herein
14 as Exhibit 1. The term of the Agreement is 99 years.
15
16

17 5. The Area of Interest provision applies to all mining interests acquired
18 by the other parties to the Agreement, or their successors in interest, within the
19 Area of Interest whether by "leasing or purchase of private lands and minerals, or
20 unpatented mining claims." All of such acquired mining interests become subject
21 to the terms and conditions of the Agreement. The Area of Interest is located in
22 Eureka and Elko Counties in the State of Nevada.
23

24 6. Further, in the event a mining interest from within the Area of Interest
25 was or is used to acquire mining interests outside the Area of Interest, Bullion's
26 royalty interest would also follow to the new property. Upon information and
27 belief, this has occurred.
28

1 7. Paragraph 18 of the Agreement provides that the terms of the
2 Agreement are binding upon the successors of the parties to the Agreement.

3 8. Newmont has recognized that it is obligated to pay royalties pursuant
4 to the Agreement and is currently paying Bullion a royalty on those mining claims
5 designated in Exhibit A-1 to the Agreement. However, when Bullion requested a
6 detailed accounting of the royalties being paid by Newmont in or about August of
7 2007, Newmont refused to provide detailed accounting for the royalty it is
8 currently paying pursuant to the Agreement, initially claimed it was not governed by
9 the Agreement, and demanded that Bullion employees only contact Newmont
10 through counsel regarding any royalties Newmont may owe. These claims and
11 demands by Newmont violated the Agreement which allows for Bullion to inquire
12 about the royalty owed and requires Newmont to provide detailed accountings of
13 its mining activities so that Bullion may verify the accuracy of the royalty being paid
14 by Newmont.
15
16
17

18 9. Bullion also inquired about whether Newmont was involved in any
19 mining activities in the Area of Interest in or about August of 2007. Until that
20 time, Newmont had failed to reveal that it was involved in any mining activities in
21 the Area of Interest and had concealed such activities from its "reports" of its
22 mining activities to Bullion. Again, Newmont refused to provide any accounting for
23 mineral production from within the Area of Interest and claimed it was not subject
24 to the Agreement (despite having paid certain minimal royalties pursuant to the
25 Agreement for years). Several weeks later, in September of 2007, Newmont
26 changed its position, provided an entirely different excuse for refusing to pay a
27
28

1 royalty upon its mining activities in the Area of Interest, tacitly admitted that it was
2 subject to the Agreement, but still refused to provide any information regarding its
3 activities in the Area of Interest and refused to pay any royalties based upon
4 Newmont's operations in the Area of Interest. Newmont's failure and refusal to
5 provide accountings of its activities in the Area of Interest has prevented Bullion to
6 from ascertaining its rights and determining the exact timing and amount of
7 royalties Newmont owes Bullion arising from Newmont's activities in the Area of
8 Interest.
9

10
11 10. Bullion and Newmont are citizens of different states. The amount in
12 controversy in this matter exceeds \$75,000.00. Further, a substantial part, if not
13 all, of the relevant events in this matter occurred in the State of Nevada and all of
14 the property that gives rise to this action is located in the State of Nevada.
15 Accordingly, jurisdiction and venue of this matter are properly in this Court.
16

17 **FIRST CLAIM FOR RELIEF**
18 **(Declaratory Judgment)**

19 11. Plaintiff incorporates the allegations contained in paragraphs 1-10 as if
20 set forth verbatim.

21 12. An actual legal controversy exists between Plaintiff and Defendant as
22 to whether Newmont owes Bullion a royalty and/or compensation for mining
23 activities and production of minerals from property in the Area of Interest.
24

25 13. Bullion and Newmont have adverse legal positions with respect to their
26 existing legal controversy and Bullion has a legally protectible interest as to whether
27 it is entitled to a royalty and/or compensation for mining activities and production
28

1 from within the Area of Interest.

2 14. The existing legal controversy between Plaintiff and Defendant is ripe
3 for judicial determination.

4 15. As a result of the parties' dispute as to whether Bullion is entitled to
5 royalties, Bullion seeks a declaratory judgment from this Court declaring that Bullion
6 is entitled to the royalties from Newmont for production from within the Area of
7 Interest.
8

9
10 **SECOND CLAIM FOR RELIEF**
(Breach of Contract)

11 16. Bullion incorporates the allegations contained in paragraphs 1-15 as if
12 set forth verbatim.

13 17. Newmont is obligated to pay Bullion royalties on mining activities
14 pursuant to the parties' Agreement as described above.

15 18. Newmont has materially breached the terms of the Agreement.

16 19. As a direct and proximate result of Newmont's breach, Bullion has
17 suffered general and special damages in excess of \$75,000.00.
18

19 20. Bullion has also been forced to retain counsel to pursue this action,
20 and has incurred attorney's fees as a result of Newmont's breach.
21

22 **THIRD CLAIM FOR RELIEF**
23 **(Breach of the Covenant of Good Faith and Fair Dealing)**

24 21. Bullion incorporates the allegations contained in paragraphs 1 through
25 20 as if set forth verbatim.

26 22. Nevada law implies into each contract or agreement a covenant of
27 good faith and fair dealing.
28

1 23. The Agreement which Bullion has with Newmont includes an implied,
2 if not express, covenant of good faith and fair dealing.

3 24. The acts and omissions of Newmont, as described above, has
4 deprived Bullion of benefits which Bullion had bargained for with Newmont's
5 predecessors in interest.
6

7 25. As a sole, direct and proximate result fo the foregoing, Bullion has
8 been damaged in a sum in excess of \$75,000.00, to be more precisely proven at
9 trial.
10

11 **FOURTH CLAIM FOR RELIEF**
12 **(Unjust Enrichment)**

13 26. Bullion incorporates the allegations contained in Paragraphs 1 through
14 25 as if set forth verbatim.

15 27. Bullion allowed Newmont and Newmont's predecessors in interest to
16 explore and mine in areas where Bullion had established claims and refrained from
17 further exploration and mining activities in the Area of Interest as described above.
18

19 28. Newmont and Newmont's predecessors in interest accepted Bullion's
20 property rights and agreement to refrain from further exploration/mining activities
21 and enjoyed their use.

22 29. In exchange for relinquishment of such property rights and exploration
23 and mining rights pursuant to the Agreement, Bullion expected to be paid and is
24 entitled to be paid its royalty for production from the Area of Interest.
25

26 30. Bullion has not been paid for the amount it has enriched Newmont.

27 31. Newmont has been unjustly enriched by Bullion.
28

1 32. Bullion is entitled to compensation for the amount Newmont has
2 been unjustly enriched.

3 33. Bullion has also been forced to retain counsel to pursue this action
4 and has incurred attorney fees as a result of Newmont's actions.
5

6 **FIFTH CLAIM FOR RELIEF**
7 **(Accounting)**

8 34. Bullion incorporates the allegations contained in paragraphs 1 through
9 33 as if set forth verbatim fully herein.

10 35. Bullion seeks an accounting of all royalties owed to Bullion for mining
11 activities of Newmont in the Area of Interest as described above.

12 36. Bullion has made a demand upon Newmont to provide accounting
13 records for Defendant's mining activities in the Area of Influence and Defendant
14 has refused same.
15

16 37. Bullion seeks an order from this Court directing Defendant to provide
17 an accounting of same.
18

19 38. Bullion has been required to engage legal counsel to prosecute this
20 action and is entitled to its costs incurred and reasonable attorney's fees.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Bullion prays for judgment against Newmont, as follows:

23 1. For declaratory relief declaring Newmont's obligation to pay
24 royalties based upon production from within the Area of Interest as provided by the
25 Agreement;
26

27 2. For special and general damages in an amount in excess of seventy-
28

1 five thousand dollars (\$75,000.00) according to proof at trial;

2 3. For prejudgment interest;

3 4. An order directing Newmont to provide an accounting;

4 5. For reasonable attorney fees and costs of suit incurred herein;

5 6. A jury trial on all issues so triable; and

6 7. For such other and further relief as the Court determines to be
7 appropriate under the circumstances.
8

9 DATED this 25th day of April, 2008.

10 ROBISON, BELAUSTEGUI, SHARP & LOW

11
12 By 

13 Clayton P. Brust, Esq.

14 Attorneys for Plaintiff
15 Bullion Monarch Mining, Inc.
16
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JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Bullion Monarch Mining, Inc.

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Clayton P. Brust, Esq., Robison, Belaustegui, Sharp & Low
71 Washington St., Reno, NV 89503; 775.329.3151

DEFENDANTS

Newmont USA Limited dba Newmont Mining Corporation

County of Residence of First Listed Defendant Denver County, Denver
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

Matthew B. Hippler, Esq.
5441 Kietzke Lane, Flr. 2, Reno, NV 89511; 775.327.3000

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input checked="" type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332(a)

Brief description of cause:
Claim for unpaid mining royalty

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

excess of \$75,000.00

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

04/25/2008

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 1/90) Summons in a Civil Action

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BULLION MONARCH MINING, INC., a Utah Corp.

SUMMONS IN A CIVIL ACTION

v.

CASE NUMBER:

NEWMONT USA LIMITED, a Delaware corp.,

TO: (Name and Address of Defendant)

NEWMONT USA LIMITED
c/o CSC Services of Nevada, Inc.
502 East John Street
Carson City, NV 89706

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiff's attorney (name and address)

Clayton P. Brust, Esq.
Robison, Belaustegui, Sharp & Low
71 Washington Street
Reno, NV 89503

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

CLERK

DATE

BY DEPUTY CLERK

PA 0586

AO 440 (Rev. 1/90) Summons in a Civil Action

RETURN OF SERVICE		
Service of the Summons and Complaint was made by me ¹	DATE	
NAME OF SERVER (PRINT)	TITLE	
<p><i>Check one box below to indicate appropriate method of service</i></p> <p><input type="checkbox"/> Served personally upon the defendant. Place where served:</p> <p><input type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.</p> <p style="padding-left: 40px;">Name of person with whom the summons and complaint were left:</p> <p><input type="checkbox"/> Returned unexecuted:</p> <p><input type="checkbox"/> Other (specify):</p>		
STATEMENT OF SERVICE FEES		
TRAVEL	SERVICES	TOTAL
DECLARATION OF SERVER		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> <p><i>Date</i></p> </div> <div style="text-align: center;"> <p>_____ <i>Signature of Server</i></p> </div> </div> <div style="text-align: center; margin-top: 10px;"> <p>_____ <i>Address of Server</i></p> </div>		

¹ As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

EXHIBIT B

1 Clayton P. Brust, Esq. (SBN 5234)
2 **ROBISON, BELAUSTEGUI, SHARP & LOW**
3 71 Washington Street
4 Reno, Nevada 89503
5 (775) 329-3151
6 Attorneys for Plaintiff
7 Bullion Monarch Mining, Inc.

8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10
11 BULLION MONARCH MINING, INC., a
12 Utah corporation,
13 Plaintiff,

CASE NO. CV-N-08-00227-ECR-VPC

14 vs.

15
16 NEWMONT USA LIMITED, a Delaware
17 corporation, d/b/a NEWMONT MINING
18 CORPORATION, BARRICK GOLD
19 CORPORATION, BARRICK
20 GOLDSTRIKE MINES, INC and DOES I-
21 X, inclusive,

AMENDED COMPLAINT
[Jury Trial Demanded]

22 Defendant(s).
23 _____/

24 Plaintiff as its complaint alleges:

25 1. Bullion Monarch Mining ("Bullion"), is a Utah corporation doing
26 business in the State of Nevada at all times relevant hereto.

27 2. Newmont USA Limited, a Delaware Corporation, dba Newmont Mining
28 Corporation (herein after "Newmont") is a Delaware Corporation doing business in
the State of Nevada at all times relevant hereto.

2A. Barrick Gold Corporation is a Canadian company and has been doing business in Nevada at all times relevant hereto and Barrick Goldstrike Mines, Inc. (collectively referred to as "Barrick") is a Colorado corporation and has been doing business in Nevada at all times relevant hereto.

3. The true names or capacities, whether individual, corporate, associate, or otherwise, of Defendants designated as DOES I through X are unknown to Plaintiff and therefore Plaintiff sues these Defendants by fictitious names. Plaintiff will amend this Complaint to show the true names and capacities of these Defendants when they have been ascertained.

FACTS

4. On or about May 10, 1979, Bullion's predecessor in interest, Bullion Monarch Company, and Newmont's predecessors in interest, Universal Explorations, Ltd. and Universal Gas, Inc., entered into a royalty agreement ("Agreement") whereby Bullion was to receive a royalty based on production from any mining operations within the Subject Property as described in Exhibit A-1 to the Agreement and the "Area of Interest" described in Exhibit A-2 to the Agreement. A true and correct copy of the Agreement is attached hereto and incorporated herein as Exhibit 1. The term of the Agreement is 99 years.

5. The Area of Interest provision applies to all mining interests acquired by the other parties to the Agreement, or their successors in interest, within the Area of Interest whether by "leasing or purchase of private lands and minerals, or unpatented mining claims." All of such acquired mining interests become subject to the terms and conditions of the Agreement. The Area of Interest is located in

1 Eureka and Elko Counties in the State of Nevada.

2 6. Further, in the event a mining interest from within the Area of Interest
3 was or is used to acquire mining interests outside the Area of Interest, Bullion's
4 royalty interest would also follow to the new property. Upon information and
5 belief, this has occurred.
6

7 7. Paragraph 18 of the Agreement provides that the terms of the
8 Agreement are binding upon the successors of the parties to the Agreement.
9

10 8. Newmont has recognized that it is obligated to pay royalties pursuant
11 to the Agreement and is currently paying Bullion a royalty on those mining claims
12 designated in Exhibit A-1 to the Agreement. However, when Bullion requested a
13 detailed accounting of the royalties being paid by Newmont in or about August of
14 2007, Newmont refused to provide detailed accounting for the royalty it is
15 currently paying pursuant to the Agreement, initially claimed it was not governed by
16 the Agreement, and demanded that Bullion employees only contact Newmont
17 through counsel regarding any royalties Newmont may owe. These claims and
18 demands by Newmont violated the Agreement which allows for Bullion to inquire
19 about the royalty owed and requires Newmont to provide detailed accountings of
20 its mining activities so that Bullion may verify the accuracy of the royalty being paid
21 by Newmont.
22

23 9. Bullion also inquired about whether Newmont was involved in any
24 mining activities in the Area of Interest in or about August of 2007. Until that
25 time, Newmont had failed to reveal that it was involved in any mining activities in
26 the Area of Interest and had concealed such activities from its "reports" of its
27
28

1 mining activities to Bullion. Again, Newmont refused to provide any accounting for
2 mineral production from within the Area of Interest and claimed it was not subject
3 to the Agreement (despite having paid certain minimal royalties pursuant to the
4 Agreement for years). Several weeks later, in September of 2007, Newmont
5 changed its position, provided an entirely different excuse for refusing to pay a
6 royalty upon its mining activities in the Area of Interest, tacitly admitted that it was
7 subject to the Agreement, but still refused to provide any information regarding its
8 activities in the Area of Interest and refused to pay any royalties based upon
9 Newmont's operations in the Area of Interest. Newmont's failure and refusal to
10 provide accountings of its activities in the Area of Interest has prevented Bullion to
11 from ascertaining its rights and determining the exact timing and amount of
12 royalties Newmont owes Bullion arising from Newmont's activities in the Area of
13 Interest.
14
15

16
17 9A. On or about December 23, 1991, High Desert Mineral Resources of
18 Nevada, Inc. entered an agreement with Newmont by which High Desert Mineral
19 Resources of Nevada, Inc. and Newmont agreed to share responsibility for any
20 royalties and obligations due to Bullion pursuant to the Agreement.
21

22 9B. Barrick, through a succession of companies, including, but not limited
23 to Barrick HD Inc. and Barrick Goldstrike Mines, Inc. (a Colorado corporation), is
24 the successor in interest to High Desert Mineral Resources of Nevada, Inc. for
25 purposes of the December 23, 1991 agreement between High Desert Mineral
26 Resources of Nevada, Inc. and Newmont. Further, Barrick is the corporate
27 successor to High Desert Mineral Resources of Nevada, Inc. and, upon information
28

1 and belief took over all responsibilities of High Desert Mineral Resources of Nevada,
2 Inc. in approximately 1995, thereby making Barrick responsible for any royalties
3 and obligations due Bullion pursuant to the Agreement that are not owed by
4 Newmont.
5

6 10. Bullion, Barrick and Newmont are citizens of different states. The
7 amount in controversy in this matter exceeds \$75,000.00. Further, a substantial
8 part, if not all, of the relevant events in this matter occurred in the State of Nevada
9 and all of the property that gives rise to this action is located in the State of
10 Nevada. Accordingly, jurisdiction and venue of this matter are properly in this
11 Court.
12

13 **FIRST CLAIM FOR RELIEF**
14 **(Declaratory Judgment)**

15 11. Plaintiff incorporates the allegations contained in paragraphs 1-10 as if
16 set forth verbatim.

17 12. An actual legal controversy exists between Plaintiff and Defendants as
18 to whether Defendants owe Bullion a royalty and/or compensation for mining
19 activities and production of minerals from property in the Area of Interest.
20

21 13. Bullion and Defendants have adverse legal positions with respect to
22 their existing legal controversy and Bullion has a legally protectible interest as to
23 whether it is entitled to a royalty and/or compensation for mining activities and
24 production from within the Area of Interest.
25

26 14. The existing legal controversy between Plaintiff and Defendants is ripe
27 for judicial determination.
28

1 15. As a result of the parties' dispute as to whether Bullion is entitled to
2 royalties, Bullion seeks a declaratory judgment from this Court declaring that Bullion
3 is entitled to the royalties from one or both of the Defendants for production from
4 within the Area of Interest.

5
6 **SECOND CLAIM FOR RELIEF**
7 **(Breach of Contract)**

8 16. Bullion incorporates the allegations contained in paragraphs 1-15 as if
9 set forth verbatim.

10 17. Defendants are obligated to pay Bullion royalties on mining activities
11 pursuant to the parties' Agreement as described above.

12 18. Defendants have materially breached the terms of the Agreement.

13 19. As a direct and proximate result of Defendants' breach, Bullion has
14 suffered general and special damages in excess of \$75,000.00.

15 20. Bullion has also been forced to retain counsel to pursue this action,
16 and has incurred attorney's fees as a result of Defendants' breach.

17
18 **THIRD CLAIM FOR RELIEF**
19 **(Breach of the Covenant of Good Faith and Fair Dealing)**

20 21. Bullion incorporates the allegations contained in paragraphs 1 through
21 20 as if set forth verbatim.

22 22. Nevada law implies into each contract or agreement a covenant of
23 good faith and fair dealing.

24 23. The Agreement includes an implied, if not express, covenant of good
25 faith and fair dealing.

26 24. The acts and omissions of Defendants, as described above, has
27
28

1 deprived Bullion of benefits which Bullion had bargained for with Defendants'
2 predecessors in interest.

3 25. As a sole, direct and proximate result fo the foregoing, Bullion has
4 been damaged in a sum in excess of \$75,000.00, to be more precisely proven at
5 trial.
6

7 **FOURTH CLAIM FOR RELIEF**
8 **(Unjust Enrichment)**

9 26. Bullion incorporates the allegations contained in Paragraphs 1 through
10 25 as if set forth verbatim.

11 27. Bullion allowed Defendants and Defendants' predecessors in interest
12 to explore and mine in areas where Bullion had established claims and refrained
13 from further exploration and mining activities in the Area of Interest as described
14 above.
15

16 28. Defendants and Defendants' predecessors in interest accepted
17 Bullion's property rights and agreement to refrain from further exploration/mining
18 activities and enjoyed their use.
19

20 29. In exchange for relinquishment of such property rights and exploration
21 and mining rights pursuant to the Agreement, Bullion expected to be paid and is
22 entitled to be paid its royalty for production from the Area of Interest.

23 30. Bullion has not been paid for the amount it has enriched Defendants.

24 31. Defendants have been unjustly enriched by Bullion.
25

26 32. Bullion is entitled to compensation for the amount Defendants have
27 been unjustly enriched.
28

1 33. Bullion has also been forced to retain counsel to pursue this action
2 and has incurred attorney fees as a result of Defendants' actions.

3 **FIFTH CLAIM FOR RELIEF**
4 **(Accounting)**

5 34. Bullion incorporates the allegations contained in paragraphs 1 through
6 33 as if set forth verbatim fully herein.

7 35. Bullion seeks an accounting of all royalties owed to Bullion for mining
8 activities of Defendants in the Area of Interest as described above.

9 36. Bullion has made a demand upon Newmont, and hereby makes a
10 demand upon Barrick, to provide accounting records for Defendants' mining
11 activities in the Area of Interest and Newmont has refused same.

12 37. Bullion seeks an order from this Court directing Defendants to provide
13 an accounting of same.

14 38. Bullion has been required to engage legal counsel to prosecute this
15 action and is entitled to its costs incurred and reasonable attorney's fees.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Bullion prays for judgment against Defendants, as follows:
18

19 1. For declaratory relief declaring Defendants' obligation to pay
20 royalties based upon production from within the Area of Interest as provided by the
21 Agreement;
22

23 2. For special and general damages in an amount in excess of seventy-
24 five thousand dollars (\$75,000.00) according to proof at trial;
25

26 3. For prejudgment interest;
27
28

4. An order directing Defendants to provide an accounting;
5. For reasonable attorney fees and costs of suit incurred herein;
6. A jury trial on all issues so triable; and
7. For such other and further relief as the Court determines to be appropriate under the circumstances.

DATED this 22nd day of June, 2009.

ROBISON, BELAUSTEGUI, SHARP & LOW

By 

Clayton P. Brust, Esq.

Attorneys for Plaintiff
Bullion Monarch Mining, Inc.

CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of ROBISON, BELAUSTEGUI, SHARP & LOW, and that on this date I caused a true copy of **AMENDED COMPLAINT [Jury Trial Demanded]** to be served on all parties to this action by:

☐ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ personal delivery/hand delivery

☐ facsimile (fax)

☐ Federal Express/UPS or other overnight delivery

☐ Reno Carson Messenger Service

Holland & Hart, LLP
Matthew B. Hippler, Esq.
Shane Biornstad, Esq.
5441 Kietzke Lane, 2nd Flr.
Reno, NV 89511

Dated this 22nd day of June, 2009.

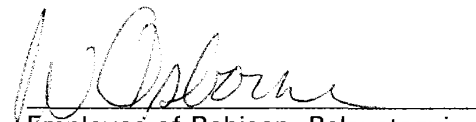

Employee of Robison, Belaustegui,
Sharp & Low

EXHIBIT "1"

EXHIBIT "1"

AGREEMENT

THIS AGREEMENT is made and entered into as of the 10th
day of May, 1979 by and between the following parties:

BULLION MONARCH COMPANY, a Utah corporation (BULLION);

POLAR RESOURCES CO., a Nevada corporation (POLAR);

UNIVERSAL GAS (MONTANA), INC., a Montana corporation,
and UNIVERSAL EXPLORATIONS, LTD., a Canadian corporation
(UNIVERSAL);

CAMSELL RIVER INVESTMENTS, LTD., a Canadian corporation
(CAMSELL);

LAMBERT MANAGEMENT LTD., a Canadian corporation (LAMBERT
and

ELTEL HOLDINGS LTD., a Canadian corporation (ELTEL);

W I T N E S S E T H:

WHEREAS the parties hereto would all profit from the
mining of and production of certain mining properties located in
the Lynn Mining District, Eureka County, Nevada, more fully des-
cribed in Exhibit A-1 attached hereto and incorporated herein by
reference, hereinafter collectively referred to as the "Subject
Property;" and

WHEREAS the parties have interest in exploring a wider
range of mineral properties in which the Subject Property is em-
bedded, hereinafter referred to as the "Area of Interest," more
fully described in Exhibit A-2 attached hereto and incorporated
herein by reference; and

WHEREAS the parties hereto are desirous of developing the
Subject Property's mineral potential by building adequate milling
facilities and developing a mine ("the Project"); and

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WHEREAS BULLION purports to own a royalty interest in and to the Subject Property as is more fully set forth in Exhibit A-1; and

WHEREAS POLAR purports to own a 100% interest in and to part of the Subject Property as is more fully set forth in Exhibit A subject to possible outstanding interests and royalties, purports to own a 100% interest in and to other portions of the Subject Property as is more fully set forth in Exhibit A-1, and has under a Lease and Option a 77½% interest to other portions of the Subject Property; and

WHEREAS CAMSELL, LAMBERT and ELTEL are interrelated organizations acting in concert as to the Subject Property, collectively being referred to hereinafter as "CAMSELL" unless specifically referred to otherwise, and have invested monies in the development of the Subject Property to date, their interest and relationship to the Project being governed by that certain Letter Agreement with POLAR dated March 14, 1979, as amended by the letters of March 16, 1979, April 6, 1979 and April 10, 1979, attached thereto, all attached hereto as Exhibit B; and

WHEREAS UNIVERSAL GAS (MONTANA), INC. is presently financing further development of the mining and production potential of the Subject Property, primarily for the production of precious metals basically under the terms of that certain Agreement with POLAR dated March 14, 1979 attached hereto as Exhibit C; and

WHEREAS UNIVERSAL EXPLORATIONS, LTD. is prepared and able to guarantee the financial obligations of UNIVERSAL GAS (MONTANA), INC. contained herein, both corporations will be collectively referred to as UNIVERSAL herein with the understanding amongst the

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parties hereto that UNIVERSAL GAS (MONTANA), INC. will be the active participant referred to as UNIVERSAL while any reference to UNIVERSAL EXPLORATIONS, LTD. under the collective term UNIVERSAL speaks only to its financial backing of the UNIVERSAL obligations recited herein;

NOW THEREFORE, in consideration of the conditions, covenants, promises, obligations, payments and agreements herein contained, the parties agree as follows:

1. SOLE AGREEMENT: That as between the parties hereto this Agreement shall be the sole and only agreement governing the ownership, operations and payment from the Subject Property, cancelling, revoking, rescinding and terminating any and all other deeds, conveyances, contracts or agreements between the parties hereto, or any combination thereof, affecting the Subject Property, except any agreement that may exist between CAMSELL, LAMBERT and ELTEL as to investment in Subject Property development and divisions of proceeds received therefrom, and except any agreement, contract or deed specifically preserved by the terms hereof. Should the terms of any agreement, letter agreement or other document or understanding preserved by specific reference herein be in conflict with this Agreement the terms of this Agreement shall control.

2. OWNERSHIP OF SUBJECT PROPERTY: That as between the parties hereto it is understood and agreed that the ownership of the Subject Property as presently constituted is as set forth in Exhibit A attached hereto, subject only to the terms and conditions of this Agreement specifically referred to herein. In addition, it is understood, agreed and warranted amongst the parties hereto that except

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for agreements, deeds and other documents specifically mentioned herein that none of the parties hereto, individually, in combination or collectively, have conveyed or encumbered the Subject Property.

A. Simultaneously herewith, BULLION shall execute and deliver a Grant Deed to UNIVERSAL conveying all of its right, title and interest in the Subject Property to ~~UNIVERSAL~~. Such interest of BULLION conveyed to UNIVERSAL shall be subject to the payment provisions of Paragraph 4, infra. . Also see paragraph 6

B. Simultaneously herewith, POLAR shall execute and deliver a Grant Deed to UNIVERSAL conveying all of its right, title and interest in the Subject Property to UNIVERSAL, subject to the terms and conditions of the March 14, 1979 POLAR - UNIVERSAL Agreement.

C. Simultaneously herewith, CAMSELL shall execute and deliver a Quitclaim Deed to UNIVERSAL conveying and quitclaiming all of its right, title and interest in the Subject Property to UNIVERSAL.

D. At all times pertinent hereto, UNIVERSAL shall have the right to pledge or otherwise hypothecate the titles to any portions, or the whole of, the Subject Property for the purpose of obtaining financing for development of the Subject Property, except that no more than a total of FIFTY PERCENT (50%) of the then current market value of such property shall be so hypothecated or encumbered. At the time, under the March 14, 1979 Agreement, Exhibit C, UNIVERSAL reaches the "earning point", its conveyance to PO of 50% interest shall be unencumbered.

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3. UNIVERSAL AS OPERATOR: That on March 14, 1979 POLAR and UNIVERSAL entered into an Agreement, a copy of which is attached hereto as Exhibit C and incorporated herein by reference, whereby UNIVERSAL, under the terms and conditions thereof, was to become the sole and only operator of the mineral production from the Subject Property as of March 1, 1979, and that all of the parties hereto agree to the terms of said Agreement allowing UNIVERSAL the sole and only control over further development and production from the Subject Property pursuant to the March 14, 1979 Agreement and ratify the same as if they had been signatory thereto.

4. PAYMENTS TO BULLION:

C.A. Commencing May 1, 1979, ~~UNIVERSAL~~ shall pay to BULLION an advance minimum royalty of \$2,500.00 each and every month through October of 1979 or until gross production sales from the Subject Property have reached the amount of \$62,500.00 per month, whichever comes first.

C.B. Commencing on November 1, 1979, UNIVERSAL shall pay to BULLION an advance minimum royalty of \$5,000.00 each and every month until gross production sales from the Subject Property has reached the amount of \$125,000.00 per month, or until BULLION has received an aggregate of \$250,000.00 under these subparagraphs, A and B.

^{NOT}
~~NOT~~ C. BULLION shall receive a FOUR PERCENT (4%) gross smelter return from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) until BULLION has received an aggregate of \$500,000.00 under these subparagraphs, A, B and C.

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^{net} D. Thereafter BULLION shall receive a TWO PERCENT (2%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) until BULLION has received an aggregate of \$1,000,000.00 under these subparagraphs, A, B, C and D.

^{net} E. Thereafter BULLION shall receive a ONE PERCENT (1%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated).

"Gross smelter return," as used above, shall mean the amount of earned revenues, as used in accordance with generally accepted accounting principles, payable to UNIVERSAL by any smelter or other purchaser of metals, ores, minerals or mineral substances, or concentrates produced therefrom for products mined from the Subject Property.

Upon SIXTY (60) days' written notice by BULLION to UNIVERSAL, BULLION may elect to take any monthly production royalty in kind but will be totally responsible for all loading and transportation and the costs thereof. BULLION agrees not to materially interfere with UNIVERSAL's operations should it elect to receive payment in kind, and will hold all the remaining parties hereto harmless from its actions in loading and transporting the in kind payments.

All advance royalty payments shall be due on the first day of each month and all production royalties shall be due no later than FORTY-FIVE (45) days after the date payment for production sales is received by UNIVERSAL.

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5. OBLIGATIONS OF BULLION AND POLAR: BULLION and POLAR shall assume and retain all obligations that they have independently incurred by virtue of their activities on and for the Subject Property prior to the date of this Agreement and, in particular, BULLION shall assume and retain the obligation of that certain Deed of Trust made in favor of Ira J. Jaffee, Trustee, as Beneficiary, recorded in the Official Records of Eureka County, Nevada, Book 41, Page 362. At all times pertinent hereto, UNIVERSAL shall have the unqualified right to direct any and all funds due BULLION or POLAR hereunder to remove any obligations of BULLION or POLAR, respectively, secured by the Subject Property, or any portion thereof, and such will be credited toward the payment schedule due BULLION or POLAR. See Paragraph 4, supra.

6. PURCHASE OF BULLION'S INTEREST: That at the time BULLION has received an aggregate of \$1,000,000.00 under the terms and conditions of Paragraph 4, supra, BULLION will have been deemed to have sold and UNIVERSAL and POLAR deemed to have purchased all of BULLION's right, title and interest in the Subject Property (50% each, subject to the terms and conditions of the March 14, 1979 Agreement, Exhibit C) and forever relieving UNIVERSAL and POLAR from any contractual commitment to BULLION by virtue of UNIVERSAL's or POLAR's actions or operations on the Subject Property, save and except for the ONE PERCENT (1%) gross smelter return royalty from production from the Subject Property (based on 100% operating interest in UNIVERSAL, otherwise prorated) set forth in Paragraph 4(E), supra. At that time, UNIVERSAL and POLAR will execute and deliver

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to BULLION a Royalty Deed forever evidencing such royalty interest, ONE-HALF PERCENT (1/2%) being chargeable each against UNIVERSAL and POLAR.

7. DEFAULT OF OBLIGATIONS TO BULLION: If, at any time, UNIVERSAL is in default of its payment obligations to BULLION, BULLION, upon FORTY-FIVE (45) days' written notice to all of the parties hereto, may terminate this Agreement and demand that UNIVERSAL execute and deliver to BULLION a Quitclaim Deed of all of its right, title and interest to that portion of the then Subject Property that is specifically listed in Exhibit A-1 attached hereto, but not the additional properties added to the Subject Property list subsequent to the date of this Agreement. During the notice period, UNIVERSAL, or any other party hereto not BULLION, or anyone on their behalf, may pay such obligation to BULLION and cure such default.

8. PRODUCTION EXPENSE OVERRUN: Pursuant to the terms of the Letter Agreement between POLAR and CAMSELL dated March 14, 1979, Exhibit B, POLAR and CAMSELL agree to share in cost overruns incurred by UNIVERSAL in bringing the Project into production should UNIVERSAL's initial development costs prior to production exceed ONE MILLION TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,250,000.00), or should UNIVERSAL's initial development costs and production costs exceed \$1,250,000.00 at any time after production commences but production expenses exceed production payments or revenues.

The parties agree to share in cost overruns in excess of \$1,250,000.00 commitment of UNIVERSAL in the following percenta

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UNIVERSAL 50%
POLAR-CAMSELL 50%

Except as herein outlined, the terms, conditions and penalties for cost overruns and the non-participation in such overruns are governed by Clause 10(D), Schedule B, POLAR - UNIVERSAL Agreement of March 14, 1979.

9. DIVISION OF PROCEEDS: The proceeds of production shall be governed by the terms of this Agreement only (except for the CAMSELL, LAMBERT and ELTEL arrangements). As operator under the March 14, 1979 Agreement (see Paragraph 3, supra), UNIVERSAL shall have the right to pay all normal operating and production expenses, including insurance and taxes (excepting income taxes accruing to the individual parties hereto, but specifically including net proceeds of mine taxes, real and personal property taxes associated with mining and income taxes accruing to the venture), pursuant to normal and usual accounting practices and the terms of the March 14, 1979 Agreement from production payments received. In addition, UNIVERSAL shall be able to treat as production expenses and deduct from production payments received all rentals, advance royalties and production royalties paid to BULLION, the Poulsen Group and any others. The amounts received from products produced from the Subject (production payments) less the production expenses, as defined herein and in the March 14, 1979 Agreement between POLAR and UNIVERSAL, shall be the net production receipts.

As between the parties hereto, the net production receipt shall be divided as follows:

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A. BULLION: none, being only entitled to the payments set forth above in Paragraph 4;

B. UNIVERSAL: FIFTY PERCENT (50%); and

C. POLAR, CAMSELL: FIFTY PERCENT (50%), pursuant to that Letter Agreement between POLAR and CAMSELL dated March 14, 1979, Exhibit B.

Nothing herein shall be construed as prohibiting POLAR-CAMSELL from taking their interest in kind provided that they give UNIVERSAL SIXTY (60) days' written notice of such election. POLAR-CAMSELL will be totally responsible for all loading and transportation and the costs thereof. POLAR-CAMSELL will not materially interfere with UNIVERSAL's operations should it elect to receive payments in kind and will hold all the remaining parties hereto harmless from its actions in loading and transporting the in kind payments. It is understood and agreed that all such in kind payments are net, after deduction of the proportionate amount of mining and operation costs.

10. TERMINATION BY UNIVERSAL: UNIVERSAL's participation in the Project is governed by the terms and conditions of the POLAR - UNIVERSAL Agreement of March 14, 1979, Exhibit C, except as specifically modified herein. Upon fulfilling its obligations thereunder, UNIVERSAL has the right to terminate its position as Project Operator and to terminate its further participation in Project development and expenses thereof. Such termination is governed by the terms and conditions of the March 14, 1979 UNIVERSAL - POLAR Agreement and, in particular, Schedule B attached thereto.

11. ADDITIONAL PROPERTY ACQUISITIONS: UNIVERSAL, as operator, shall have the exclusive right to acquire additional

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RENO AND ELKO, NEVADA

mineral properties within the Area of Interest on behalf of the parties hereto, be such acquisition by virtue of the rights and privileges under the 1872 Mining Law, or the leasing or purchase of private lands and minerals, or unpatented mining claims. All parties hereto agree to immediately quitclaim and assign to UNIVERSAL any and all other real property or interest in such that they may have within the Area of Interest, Exhibit A-2, as of the date of this Agreement, subjecting the same to the terms and conditions of this Agreement, excepting any interest of BULLION in and to those properties presently being worked by Western States Minerals (Pancan

Upon acquiring such properties within the Area of Interest, UNIVERSAL shall offer to include such into the Subject Property upon payment by POLAR-CAMSELL of FIFTY PERCENT (50%) of all acquisition costs incurred in acquiring such properties. Acquisition costs shall include, but are not limited to, purchase price, rental fees, real estate or finder's commissions, legal fees, closing costs, title examinations, appraisal fees and costs incurred by UNIVERSAL in otherwise evaluating the property to be acquired.

Should POLAR-CAMSELL reject such offer or fail to pay or reach agreement for paying such acquisition costs within FORTY-FIVE (45) days of such offer by UNIVERSAL, then such properties within the Area of Interest shall not become part of the Subject Property as they apply to POLAR-CAMSELL and will remain the sole property of UNIVERSAL without any obligations to POLAR-CAMSELL, but subject to the royalty interest of BULLION.

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BOOK 71 PAGE 19

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

05/11/79

PA 0610

However, should POLAR accept such offer and pay or reach an agreement with UNIVERSAL for paying such acquisitions costs, the newly acquired properties shall become part of the Subject Property and will be treated thereafter under the terms of this Agreement pertaining to the Subject Property.

12. POULSEN LEASE AND OPTION: The parties hereto recognize the Lease and Option of POLAR with the Poulsens, a copy of which is attached hereto as Exhibit D. UNIVERSAL shall make all payments due thereunder and shall credit such as a development or production expense.

*What are
The Poulsen
Properties?*

While under Lease, the Poulsen properties shall be, and are, part of the Subject Property, however, at any time, UNIVERSAL may elect to exercise the purchase option. Upon doing so, UNIVERSAL shall offer such to POLAR-CAMSELL under the terms of Paragraph 12, supra. Failure of POLAR-CAMSELL to participate in the acquisition (purchase) costs shall remove such properties from Subject Property status as the same applies to POLAR-CAMSELL.

13. TERM: The term of this Agreement, as it affects the continuing contractual relationships between the parties hereto, is for a period of NINETY-NINE (99) years commencing on the date hereof, unless sooner terminated, surrendered or forfeited.

14. TITLE PERFECTION: The parties hereto recognize that title to the Subject Property, or portions thereof, may contain certain imperfections, clouds thereon or outstanding interests that may require acquisition, clearing or otherwise perfecting. UNIVERSAL shall, in its discretion, seek out such imperfections and cure the same. All expenses incurred by UNIVERSAL in investi-

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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

BOOK 71 PAGE 20

05/11/79

PA 0611

gating title to the Subject Property from March 1, 1979, and curing imperfections or acquiring outstanding interests in the same shall be treated as a development or production expense by UNIVERSAL pursuant to the March 14, 1979 POLAR - UNIVERSAL Agreement.

15. INSPECTION, RECORDS: At all times pertinent hereto, the non-operating parties shall have the right to reasonable inspection of the Subject Property and all geological and production records upon giving FIVE (5) days' written notice to UNIVERSAL. Such inspection shall be at the Subject Property or at any offices of UNIVERSAL in the Elko-Carlin, Nevada area. Personal inquiry by the parties hereto directly to UNIVERSAL shall be made only to the following UNIVERSAL officers and employees, and no others:

Joseph A. Mercier
Dan Mercier
Don Hargrove

or their nominees.

Monthly, on the monthly anniversary of this Agreement, UNIVERSAL shall prepare and deliver to the parties hereto a summary report of development on the Subject Property, including building construction, geological finds, etc., and setting forth production and development expenditures.

16. NOTICES: All notices required herein shall be in writing by certified or registered mail, (United States or Canada, as the case may be), return receipt requested (or the Canadian equivalent of such service), to the addresses listed below. Service of such notice is to be deemed accomplished as of the date of mailing:

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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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05/11/79

BULLION MONARCH COMPANY
Attention: R. D. Morris
Henderson Bank Building
Elko, NV 89801

UNIVERSAL GAS (MONTANA), INC.
Attention: Joe Mercier, President
640 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 1G7

With a copy to: UNIVERSAL GAS (MONTANA), INC.
Attention: John C. Miller, Esq.
Blohm Building, Suite 201
Elko, NV 89801

POLAR RESOURCES CO.
Attention: C. Warren Hunt
1119 Sydenham Road, S. W.
Calgary, Alberta
CANADA T2T 0T5

CAMSELL RIVER INVESTMENTS
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

LAMBERT MANAGEMENT LTD.
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

ELTEL HOLDINGS LTD.
Attention: K. H. Lambert
808 Home Oil Tower
324 8th Avenue, S. W.
Calgary, Alberta
CANADA T2P 2Z2

17. RECORDATION: This Agreement may be recorded into the Official Records of either Eureka County of Elko County, Nevada or both, by any one of the parties hereto.

18. BINDING EFFECT: The terms and conditions of this Agreement shall inure to the benefit of, and be binding upon, the successors and assigns of the parties hereto.

05/11/79

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HOY & MILLER, CHARTERED BOOK 71 PAGE 22
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

19. ASSIGNABILITY: The respective positions and interests of the parties hereto shall be freely assignable except that such assignment shall not be binding on or affect the remaining parties hereto in any manner, unless and until such assignment is noted in writing to UNIVERSAL, or any successor Operator.

IN WITNESS WHEREOF, the parties hereto set their hands as of the day and year first above written.

BULLION MONARCH COMPANY, a Utah corporation

BY: R. D. Monix
TITLE: PRESIDENT

POLAR RESOURCES CO., a Nevada corporation

BY: [Signature]
TITLE: President

UNIVERSAL GAS (MONTANA), INC. a Montana corporation

BY: [Signature]
TITLE: President

CAMSELL RIVER INVESTMENTS Ltd. a Canadian corporation

BY: K. H. Lambert
TITLE: President

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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

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05/11/79

PA 0614

LAMBERT MANAGEMENT LTD., a Canadian corporation

BY: K.H. Lambert
TITLE: President

ELTEL HOLDINGS LTD., a Canadian corporation

BY: K.H. Lambert
TITLE: Director + Secretary

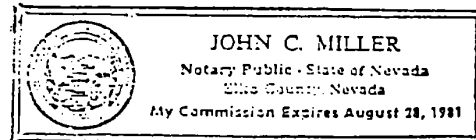
UNIVERSAL EXPLORATIONS, LTD. a Canadian corporation

BY: [Signature]
TITLE: [Signature]

STATE OF Nevada)
COUNTY OF Elko) SS.

On May 11, 1979, personally appeared before me, a Notary Public, R.O. Morris, a duly qualified and acting officer of BULLION MONARCH COMPANY, who acknowledged to me that he executed the above instrument in that capacity.

[Signature]
NOTARY PUBLIC



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HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

05/11/79

PA 0615

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On _____, 1979, personally appeared before me, a Notary Public, C. WARREN HUNT, a duly qualified and acting officer of POLAR RESOURCES CO., who acknowledged to me that he executed the above instrument in that capacity.

NOTARY PUBLIC

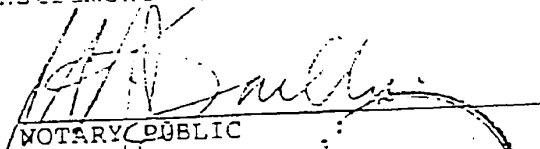
PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 28, 1979, personally appeared before me, a Notary Public, Joseph A. Mercier, a duly qualified and acting officer of UNIVERSAL GAS (MONTANA), INC., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC

PROVINCE
STATE OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of CAMSELL RIVER INVESTMENTS, INC., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC

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BOOK 71 PAGE 25

05/11/79

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

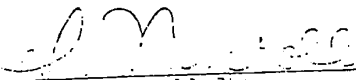
PA 0616

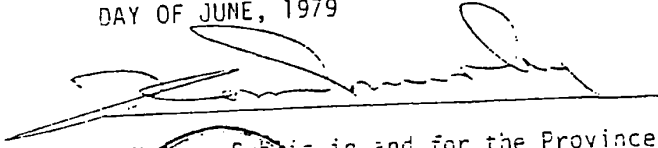
AFFIDAVIT OF EXECUTION

I Susan Lee Nicholl of the City of Calgary, in the Province of Alberta, make oath and say that:

1. I was personally present and did see Mr. C. Warren Hunt named in the within or in annexed instrument who is personally known to me to be the person named therein, duly signed and executed the same for the purposes named therein.
2. That the same was executed at the City of Calgary, in the Province of Alberta and that I am the subscribing witness thereto.
3. That I know the said Mr. C. Warren Hunt and he is, in my belief, of the full age of twenty-one years.

SWORN BEFORE ME AT THE CITY OF CALGARY,
IN THE PROVINCE OF ALBERTA, THIS 7th
DAY OF JUNE, 1979


SUSAN LEE NICHOLL



A Notary Public in and for the Province of Alberta



BOOK 71 PAGE 26

PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

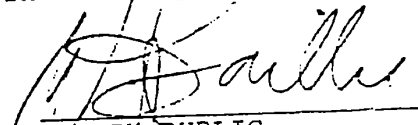
On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of LAMBERT MANAGEMENT LTD., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC



PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

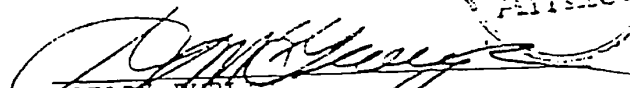
On MAY 17, 1979, personally appeared before me, a Notary Public, KENNETH H. LAMBERT, a duly qualified and acting officer of ELTEL HOLDINGS LTD., who acknowledged to me that he executed the above instrument in that capacity.

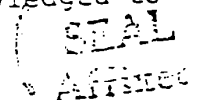

NOTARY PUBLIC



PROVINCE
~~STATE~~ OF ALBERTA)
COUNTY OF _____) SS.

On MAY 17, 1979, personally appeared before me, a Notary Public, Joseph A. Mercier, a duly qualified and acting officer of UNIVERSAL EXPLORATIONS, LTD., who acknowledged to me that he executed the above instrument in that capacity.


NOTARY PUBLIC



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BOOK 71 PAGE 27

05/11/79

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

PA 0618

EXHIBIT A-1SUBJECT PROPERTY

The following described unpatented and patented mining claims generally located in Sections 1, 2, 10, 11 and 12 of Township 35 North, Range 50 East, M.D.B.&M., Lynn Mining District, Eureka County, Nevada:

<u>Unpatented Claims</u>	<u>Polar</u>	<u>Bullion</u>
	100%	Royalty
Big Jim	"	"
Big Jim 1 to 31, inclusive	"	"
Cracker Jack	"	"
Cracker Jack 1 to 5, inclusive	"	"
Yellow Rose 6 to 21, inclusive	"	"
Polar 1 to 20, inclusive	"	"
Hill Top	"	"
Hill Top 1 to 2, inclusive	"	"
Hill Top Fractional	"	"
Hill Top 1 to 4 Fractional	"	"
RJV	"	"
Unity 1	"	"
Unity 2	"	"
Badger	"	"
Badger 1	"	"
Compromise 4 to 7, inclusive	"	"
Lamira	"	"
Junction	"	"
Paragon	"	"
Paragon 2	"	"
Paragon 4	"	"
Paragon Fractional	"	"

Patented Claims (Poulsen Lease and Option)

	<u>U.S. Patent No.</u>	<u>U.S. Survey No.</u>	<u>Polar</u>	<u>Bullion</u>
			77%	Royalty
Big Six No. 3	783757	4332	"	"
Holt	881735	4422	"	"
July	935874	4528	"	"
Great Divide	945439	4393	"	"
Bald Eagle	046758	4527	"	"

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

EXHIBIT A-1

BOOK 71 PAGE 29

EXHIBIT A-2

AREA OF INTEREST

check + verify

All those lands contained in the Sections and Townships listed below approximately encompassing the area EIGHT (8) miles in a northerly direction, EIGHT (8) miles in a southerly direction, EIGHT (8) miles in an easterly direction and EIGHT (8) miles in a westerly direction from Section 10, Township 35 North, Range 50 East, M.D.B.&M., Eureka County, Nevada.

Township 34 North, Range 49 East
Sections: 1-5, 8-17 and 20-24

Township 35 North, Range 49 East
Sections: 1-5, 8-17, 20-29 and 32-36

Township 36 North, Range 49 East
Sections: 1-5, 8-17, 20-29 and 32-36

Township 37 North, Range 49 East
Sections: 32-36

Township 34 North, Range 50 East
Sections: 1-24

Township 35 North, Range 50 East
Sections: All

Township 36 North, Range 50 East
Sections: All

Township 37 North, Range 50 East
Sections: 31-36

Township 34 North, Range 51 East
Sections: 3-10 and 15-22

Township 35 North, Range 51 East
Sections: 3-10, 15-22 and 27-34

Township 36 North, Range 51 East
Sections: 3-10, 15-22 and 27-34

Township 37 North, Range 51 East
Sections: 31-34

HOY & MILLER, CHARTERED
ATTORNEYS AT LAW
RENO AND ELKO, NEVADA

EXHIBIT A-2

BOOK 71 PAGE 28

PA 0620

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
HOME OIL TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-26
13716 - 101 AVENUE,
EDMONTON, ALBERTA
CANADA T5N 0J7

March 14, 1979

Polar Resources Co.
1119 Sydenham Road, S. W.
Calgary, Alberta
T2T 0T5

Attention: Mr. Warren Hunt

Dear Sirs:

RE: Gold Claims Lynn Mining District
Eureka County, Nevada

As you are aware, since early 1976 Camsell River Investments Ltd. has entered into several agreements with you relating to the Bullion Monarch Company gold claims in Nevada and has also entered into agreements relating to the same properties with Bullion Monarch Company. As a result of these agreements, Camsell and its silent coventurers, Lambert Management Ltd. and Eltel Holdings Ltd. have advanced about \$505,000. U.S. to you and \$300,000. U.S. to Bullion Monarch Company and have expended a further \$10,000. U.S. or so on drilling invoices and other expenses relating to the properties.

Our mutual files on this matter are extensive and the legal determination of the various agreements would undoubtedly take more time and effort to resolve than is prudent under the circumstances. We have always maintained that we do not wish to hamper your efforts to put the properties into production so long as an equitable arrangement can be reached between us. Based on the proposed agreement you have negotiated with Universal Gas (Montana) Inc. (hereinafter called the "Mill Agreement") and our meetings and telephone conversations of March 10, 11, 12 and 13, we believe we have reached an agreement acceptable to you and the parties we represent. This agreement between you and the "Camsell Group" would enable Universal to obtain the interest it has bargained for in the Mill Agreement and would resolve our diverse interests in an amiable fashion.

/2

BOOK 71 PAGE 30

EXHIBIT f

The Agreement is as follows:

- 1) All of the interests of any nature whatsoever of Polar Resources Co. and those of other parties represented by Polar Resources Co. (hereinafter called the "Polar Group") and all of the interests of any nature whatsoever of Camsell River Investments Ltd. and those of the parties represented by Camsell River Investments Ltd. (hereinafter called the "Camsell Group") in "The Mining Properties" as defined in the Mill Agreement shall be pooled and then reallocated 50% to Universal Gas (Montana) Inc. pursuant to the Mill Agreement and 50% collectively to the Polar Group and the Camsell Group (hereinafter called the "Polar-Camsell Group").
- 2) The Camsell Group will receive 100% of the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties until the Camsell Group has received an amount equivalent to its expenditures relating to the Mining Properties before interest as established by independent audit. This amount is about \$815,000 U.S.
- 3) After the Camsell Group has received the amount indicated in paragraph 2 above, the Polar Group will receive 100% of the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties until the Polar Group has received an amount equivalent to its expenditures relating to the Mining Properties before interest as established by independent audit. This amount is about \$450,000. U.S.
- 4) After the Polar Group has received the amount indicated in paragraph 3 above, the Polar Group and the Camsell Group will split the cash flow from the Polar-Camsell Group's 50% interest in the Mining Properties on a 50-50 basis until the Camsell Group has received an amount equivalent to the amount of interest the Camsell Group would have paid to its banker calculated on all Camsell Group advances to Polar Resources Co. and Bullion Monarch Company from the dates of advance at the Canadian Imperial Bank of Commerce prime rate from time to time plus 2% per annum, compounded semi annually. Any cash received by the Camsell Group pursuant to this agreement would be credited to the "phantom bank account" on the date of receipt in order to determine the amount to be ultimately received by the Camsell Group pursuant to this paragraph 4.
- 5) After the Camsell Group has received the amount calculated pursuant to paragraph 4 above, the Polar-Camsell Group's interests shall be divided and an undivided 30% of the interest shall be transferred to the Camsell Group and an undivided 70% shall be transferred to the Polar Group.

/3

BOOK 71 PAGE 31

6) Title to the Polar-Camsell Group's interest in the Mining Properties shall be held in trust by Polar Resources Co. pursuant to the terms of this Agreement and this Agreement or its successor shall be filed against the title to the Mining Properties in the appropriate offices in the state of Nevada. Polar shall deliver to the Camsell Group a legal opinion from a Nevada attorney stating that the terms and conditions of this Agreement are enforceable by the Camsell Group as against Polar Resources Co. and that the Camsell Group's interests have been adequately registered to protect its interests as against third parties.

7) The proceeds Polar Resources Co. receives from Universal Gas (Montana) Inc. on the sale of the assets listed in the Mill Agreement shall be distributed as follows:

- a) The Polar Group shall receive 100% of the proceeds from the sale of assets acquired after December 31, 1976.
- b) The Camsell Group shall receive 80.4% of the proceeds from the sale of assets acquired prior to January 1, 1977 and the Polar Group shall receive the balance.
- c) Polar Resources Co. shall account to the Camsell Group for any assets held on December 31, 1976 which have been disposed of by Polar Resources Co. subsequent to December 1, 1976 but prior to the execution of the Mill Agreement. The Camsell Group shall receive an amount equal to 80.4% of such disposition proceeds from Polar Resources Co. and the source of funds for such payment shall be the Polar Group's share of the proceeds of the sale of assets pursuant to the Mill Agreement.

8) The Polar-Camsell Group recognizes a fee of \$1,500. per month payable to Polar Resources Co. from the cash flow generated by the mill for the services of Warren Hunt from the date of commencement of milling operations and also recognizes the need to employ a full time representative at the mine as soon as gold production commences in meaningful amounts.

9) In the event of cost overruns beyond the \$1,250,000. U.S. stated in the Mill Agreement, the Polar-Camsell Group acknowledges that it will be responsible for 50% of such overruns. These overruns shall be allocated as between the Polar Group and the Camsell Group as follows:

- a) For exploration, mine development, and mine operation expenses on the Big Jim claims 24 and 25 and for mill development expenses related to that mine, 50% shall be paid by the Polar Group and 50% shall be paid by the Camsell Group.

/4

BOOK 71 PAGE 32

- b) For all other expenses 70% shall be paid by the Polar Group and 30% shall be paid by the Camseil Group.

10) This Agreement is subject to the execution of the Mill Agreement and is subject to revision of the method contemplated in paragraph 1 to arrive at the interests outlined in paragraphs 2, 3, 4 and 5 if subsequent investigation reveals that the tax consequences of such method are adverse. The intent is that the Agreement will be structured so as to minimize adverse tax implications in Canada and the United States for all parties concerned while at the same time arriving at the same distribution of cash flow from the Mining Properties:

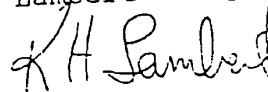
11) This Agreement shall be interpreted in accordance with the laws of the Province of Alberta.

12) Each of the parties shall execute any further agreements required by legal counsel for any party to implement the terms or intent of this Agreement.

If you agree with the above terms and conditions please indicate your acceptance on the copy of this letter enclosed.

Yours very truly,

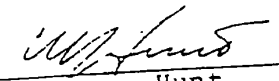
Lambert Management Ltd.


K. H. Lambert
President

/mjm
encl:


Accepted this ~~17~~ day of March, 1979

Polar Resources Ltd.


C. Warren Hunt
President

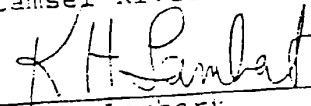
Accepted this 14th day of March, 1979

Eltel Holdings Ltd.


K. H. Lambert
Secretary

Accepted this 14th day of March, 1979

Camseil River Investments


K. H. Lambert
President

BOOK 71 PAGE 33

Telephone: (403) 233-0047
808 HOME OIL TOWER
324 - 8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403)
13716 - 101 AVE
EDMONTON, AL
CANADA T5N

March 16, 1979

Polar Resources Co.
1119 Sydenham Road, S. W.
Calgary, Alberta
T2T 0T5

Attention: Mr. Warren Hunt

Dear Sirs:

RE: Gold Claims - Lynn Mining District
Eureka County, Nevada

Further to our letter of March 14, 1979 and the writer's meeting with your Messrs. Hunt and Ross Hamilton on March 14, 1979, we wish to confirm that the agreement contained in the said letter is amended by adding the following:

- 9.1(a) Any funds advanced pursuant to sub paragraph 9(a) shall be repaid pro rata from the Polar-Camsell Group's first cash flow from the mill prior to the commencement of payments to the Camsell Group pursuant to paragraph 2.
- 9.1(b) Any funds advanced pursuant to sub paragraph 9(b) shall be repaid pro rata from the Polar-Camsell Group's cash flow from the mill after the obligations to the Camsell Group outlined in paragraph 1 have been satisfied.
- 9.2 The penalty provisions in the Mill Agreement shall apply mutatis mutandis to the Polar Group and the Camsell Group in the event of a default by either Group on an obligation to advance further funds pursuant to paragraph 9.

If you agree with the above additional terms and conditions please indicate your acceptance on the copy of this letter enclosed.

Yours very truly,

Lambert Management Ltd.

K. H. Lambert
K. H. Lambert

/mjm

71 34

Attachment to: Polar Resources Co.
March 16, 1979

Accepted this day of March, 1979

Polar Resources Co.

C. Warren Hunt
President

Accepted this 16th day of March, 1979
Eltel Holdings Ltd.

K. H. Lambert
Secretary

Accepted this 16th day of March, 1979
Camsel River Investments Ltd.

KH Lambert
KH Lambert
President

1070 SILVER STREET
ELKO, NEVADA 89801

(702) 738-8712

April 6, 1979

Mr. K. H. Lambert
Lambert Management Ltd.
5908, 324 8th Ave. S.W.
Calgary T2P 2Z2

Dear Sir:

Your letter of March 16 1979 is acknowledged and a copy returned herewith signed as requested.

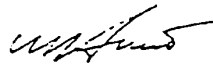
In accordance with our telephone conversation this morning, in which the writer pointed out that clauses 7b and 7c of the letter agreement of March 14, 1979 were unduly broad in that they might be construed to include Polar's assets which had not been acquired by the joint venture nor in the period of the joint venture, April 1 - Nov. 30, 1976, the following is proposed:

Clause 7 subclause b is amended so that the words "prior to Jan. 1, 1977" are replaced by "between April 1, 1976 and November 30, 1976".

Clause 7 subclause c. The meaning of the word "assets" as used in this subclause is understood to mean properties and equipment acquired by the joint venture or charged by Polar to the joint venture so as to establish equity of contributions of the members of the joint venture, that is to say, Polar Resources Co. and Camels River Investments Ltd.

If the foregoing meet with your approval, kindly sign a copy hereof and return for our files.

Yours truly,
Polar Resources Co.



C. Warren Hunt, Pres.

*See qualifications in
letter of April 10/79
Lambert Management
per K H Lambert*

BOOK 71 PAGE 36

LAMBERT MANAGEMENT LTD.

Telephone: (403) 233-0047
808 HOME OIL TOWER
8 AVENUE S.W.
CALGARY, ALBERTA
CANADA T2P 2Z2

Telephone: (403) 454-261
13716 - 101 AVENUE
EDMONTON, ALBERTA
CANADA T5N 0J7

April 10, 1979

Polar Resources Co.
1119 Sydenham Road S.W.
Calgary, Alberta
T2T 0T5

ATTENTION: Mr. Warren C. Hunt

Dear Sirs:

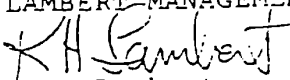
RE: Gold Claims Lynn Mining District
Eureka County, Nevada

Further to your letter of April 6, 1979, we wish to confirm our agreement that clauses 7b and 7c of our letter agreement of March 14, 1979 have not been drafted to contemplate assets to be sold under the Mill Agreement. We agree that the language should be changed.

We are prepared to accept your suggested change for sub clause 7b provided that the 80.4% figure is changed to reflect the actual percentage of the total funds used by Polar between April 1 and November 30, 1976 which was injected by the Camsell Group. Your auditor could provide us with that percentage.

We accept your clarification of the word "assets" in sub clause 7c and would also suggest that the 80.4% figure used in sub clause 7c should be changed to the same percentage as will be used in subclause 7b.

If the foregoing meets with your approval, kindly sign the enclosed copy of this letter and return it for our files.

Yours very truly,
LAMBERT MANAGEMENT LTD.

K.H. Lambert
President

KHL/rs

Enc.

Accepted this 11th day of April, 1979

POLAR RESOURCES LTD.

PER: 

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EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
RENO, NEVADA

BULLION MONARCH MINING, INC.,

Plaintiff,

03:08-CV-227-ECR-VPC

03:09-CV-612-ECR-VPC

vs.

MINUTES OF COURT

NEWMONT USA LIMITED, and
BARRICK GOLDSTRIKE MINES, INC.,

Date: October 19, 2009

Defendants.

_____ /

PRESENT: Edward C. Reed, Jr., Senior U.S. District Judge

Courtroom Deputy: Colleen Larsen; Court Reporter: Kathy French

Counsel for Plaintiff: Clay Brust; Tom Belaustegui

Counsel for Defendant: Matthew Hippler; Frank Wikstrom; Michael Petrogeorge

MINUTES OF TELEPHONE STATUS CONFERENCE:

At 10:10 A. M. Conference commences.

Court and counsel confer to determine further proceedings in respect to defendant Barrick Goldstrike Mines pursuant to the order of this Court (#118), granting severance of claims.

The action of plaintiff against defendant Barrick having been severed upon stipulation of the parties, **IT IS ORDERED** that the action against defendant Barrick will be re-numbered with a number to be assigned by the Clerk. A copy of the amended complaint in this case will be placed in the new file. The new case number will be 03:09-CV-612-ECR-VPC.

All discovery for the case 03:08-CV-227, shall be filed and may be used in the sub-case. Defendant in the sub-case, Barrick, may conduct appropriate additional discovery in the sub-case, as may be appropriate.

03:08-CV-227-ECR

October 19, 2009

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IT IS FURTHER ORDERED that the sub-case, 03:09-CV-612-ECR-VPC, is referred to the Magistrate Judge for purposes of issuing a scheduling order. The parties shall submit to the Magistrate Judge a proposed scheduling order for the sub-case.

Discovery in the main case may not be used in the sub-case unless Barrick has a meaningful opportunity to conduct additional discovery with respect to any such witness.

The parties anticipate filing a confidentiality agreement for approval by the Magistrate Judge in respect to the plaintiff and defendant Barrick.

A copy of the answer filed in the main case 03:08-CV-227-ECR-VPC, by defendant Barrick, will be filed by the Clerk in the sub-case, 03:09-CV-612-ECR-VPC.

The caption for the sub-case, 03:09-CV-612-ECR-VPC, will be Buillion Monarch Mining, Inc. vs. Barrick Goldstrike Mines, Inc.

The docket , up to this point used in the main case 03:08-CV-227-ECR-VPC, will be used and adopted for the sub-case, 03:09-CV-612-ECR-VPC.

The parties advise the Court that a prompt ruling on dispositive motions filed in the main case 03:08-CV-227, will assist in narrowing discovery in the sub-case, 03:09-CV-612.

At 10:40 A. M. Conference concludes.

LANCE S. WILSON, CLERK

By _____/s/_____
Deputy

EXHIBIT D

**APPENDIX IN SUPPORT
OF PETITIONER
BARRICK GOLD
CORPORATION'S
PETITION FOR WRIT OF
PROHIBITION**

**PA 0633-0658
FILED UNDER SEAL**