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The Mining and Lands Commissioner
Le Commissaire aux mines et aux terres

File No. MA 038-99

L. Kamerman	)	Tuesday, the 13th day
Mining and Lands Commissioner	)	of February, 2001.

THE MINING ACT

IN THE MATTER OF

Mining Claims L-1225677 and 1226882, both recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, situate in the Township of Van Hise, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims Drilled by Johnson";

AND IN THE MATTER OF

Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1224217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the name of Lake Superior Resources Corporation, hereinafter referred to as the "Superior Mining Claims";

AND IN THE MATTER OF

Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199, 1227255 and 1234970, situate in the Township of Van Hise,in the Larder Lake Mining Division, recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, hereinafter referred to as the "Swain Mining Claims";

AND IN THE MATTER OF

A Joint Venture Agreement between Randsburg International Gold Corporation and Lake Superior Resources Corporation involving lands in Milner and Van Hise Townships and alleged to include the Mining Claims;

B E T W E E N:

W. JOHNSON MINING AND OIL FIELD SERVICES LTD.
Applicant

- and -

RANDSBURG INTERNATIONAL GOLD CORPORATION and LAKE SUPERIOR RESOURCES CORPORATION
Respondents of the First Part

- and -

GLENN WALTER BRAY, SHARON ADELIA COTTON, FRED ROSS SWAIN, 903573 ONTARIO LIMITED and MARGARET KAYE MONTGOMERY
Respondents of the Second Part

AND IN THE MATTER OF

An agreement dated the 16th day of July, 1999, between Randsburg International Gold Corporation, as company and W. Johnson Mining and Oil Field Services Ltd. as contractor for drilling and other services on lands in Milner and Van Hise Townships and alleged to be on the Mining Claims;

AND IN THE MATTER OF

An application under section 69 of the **Mining Act** for the vesting of ownership of the Mining Claims Drilled by Johnson from the Respondents of the Second Part, Bray, Cotton, Swain, 903573 Ontario Limited and Montgomery and a vesting of the interest in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims from the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, to the Applicant, by reason of default in payment for work performed by the said Applicant and such other relief as the tribunal deems just.

ORDER TO SUPPLEMENT AND AMEND INTERLOCUTORY JUDGMENT

NOTICE & DIRECTION

WHEREAS an Interlocutory Judgment was issued by this tribunal on the 6th day of December, 2000 **AND WHEREAS** the aforementioned Interlocutory Judgment contained an error and **FURTHER** failed to make determinations with regard to the Respondent, Lake Superior Resources Corporation;

1. THIS TRIBUNAL ORDERS that Paragraph 1 found on page 2 of its Interlocutory Judgment dated the 6th day of December, 2000, be amended:

(a) on the second line, by deleting the word "Respondent" and replacing it with the word "Respondents"; and

(b) on the second and third lines, by adding the words "and Lake Superior Resources Corporation," after the words "Randsburg International Gold Corporation".

2. THIS TRIBUNAL FURTHER ORDERS that Paragraph 2 found on page 2 of its Interlocutory Judgment dated the 6th day of December, 2000, be amended:

(a) on the first line, by deleting the word "Respondent" and replacing it with the word "Respondents"; and

(b) on the second line, by adding the words "and Lake Superior Resources Corporation," after the words "Randsburg International Gold Corporation".

3. THIS TRIBUNAL FURTHER ORDERS that the Paragraph 3 found on page 2 of its Interlocutory Judgment dated the 6th day of December, 2000, be amended:

(a) on the first line, by deleting the word "Respondent" and replacing it with the word "Respondents";

(b) on the second line, by adding the words"and Lake Superior Resources Corporation" after the words "Randsburg International Gold Corporation";

(c) on the second line, by deleting the word "pays" and replacing it with the word "pay";

(d) on the fourth line, by inserting after the word "vest" the words "all or";

(e) on the fourth line, by deleting the word "interest" and replacing it with the word "interests"; and

(f) on the fifth line deleting the words "in the aforementioned Randsburg International Gold Corporation" and replacing them with the words "of the aforementioned Randsburg International Gold Corporation and Lake Superior Resources Corporation in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims".

AND WHEREAS the tribunal has determined that additional time is necessary to allow Lake Superior Resources Corporation to determine together with Randsburg International Gold Corporation Limited whether they will pay the money or money and shares declared owing;

4. **THIS TRIBUNAL FURTHER ORDERS** that the time for the amount of money or money and shares declared owing shall be extended to an additional 30 days from the date of this Order to Supplement and Amend Interlocutory Judgment.

THE PARTIES ARE FURTHER ADVISED that the failure to pay the money or money and shares declared owing within 30 days of the date of this Order to Supplement and Amend Interlocutory Judgment will result in an Order vesting all or some portion of the interests of the aforementioned Respondents of the First Part in the Mining Claims Drilled by Johnson, the Superior Mining Claims or the Swain Mining Claims within five days from the expiry of the 30 days, on the 15th day of March, 2001;

THE PARTIES ARE FURTHER GIVEN NOTICE that, notwithstanding that the money or money and shares owing may be paid within the 30 days allowable, in the interests of expediency and in view of the fact that no money or money and shares were paid within 30 days of the Interlocutory Judgment, the tribunal will receive and consider all written evidence and submissions regarding the valuation and apportionment of the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims [for purposes of this Notice and Direction and unless otherwise specifically stated, the "Mining Claims"], including but not limited to the cost of staking and recording mining claims, whether done by the holders themselves or by a third party staker; the value of all prospecting, drilling and surveying work performed on the Mining Claims, and notwithstanding the generality of the foregoing to include work done by W. Johnson Mining and Oil Field Services Ltd., Norex Drilling Limited, other drilling contractors, geologist consulting services provided by Frank Puskas or other geologist(s), expenditures for road building and any or all other work, whether it may be qualified as assessment work; and any other factors or expenses which, in the opinion of any of the parties, will have a bearing on the valuation of the Mining Claims and submissions concerning the proportion of interest in the Mining Claims;

TOGETHER WITH written submissions regarding how the Order vesting the interests of Randsburg International Gold Corporation and Lake Superior Resources Limited should be apportioned between the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims, including a characterization of the interest to be vested;

5. **THIS TRIBUNAL FURTHER DIRECTS** the Applicant, W. Johnson Mining and Oil Field Services Ltd., the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Limited, and the Respondents of the Second Part through their representative, Fred Swain, to serve on the tribunal and deliver to the other parties, no later than the 28th day of February, 2001, their respective position with respect to:

(a) the valuation of the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims;

(b) detailing actual expenditures or estimated value of in-kind costs for staking, assessment work [as may have been found in the Interlocutory Judgment or other such costs incurred within the knowledge of the respective party] and consulting fees, and notwithstanding the generality of the foregoing, any other or additional factors which, in the party's submission may have an impact on the valuation, including, but not limited to goodwill, mining activity in the area, including producing mines,

(c) along with submissions as to what proportion of the Respondents' of the First Part interest in the Mining Claims Drilled by Johnson should be vested in the Applicant, including characterization of those interests;

(d) what proportion of the Respondents' of the First Part interest in the Swain Mining Claims should be vested in the Applicant, including characterization of those interests;

(e) what proportion of Randsburg International Gold Corporation's interest in the Superior Mining Claims should be vested in the Applicant, including characterization of that interest; and

(f) what proportion of Lake Superior Resources Corporations's interest in the Superior Mining Claims should be vested in the Applicant.

THIS TRIBUNAL FURTHER ADVISES that pursuant to subsection 129(4) of the **Mining Act** as amended, a copy of this Order shall be forwarded by this tribunal to the Provincial Mining Recorder **WHO IS HEREBY DIRECTED** to amend the records in the Provincial Recording Office as necessary and in accordance with the aforementioned subsection 129(4).

A CONSOLIDATED COPY of body of the Interlocutory Judgment of the 6th day of December, 2000, as amended and supplemented by this Order, is attached hereto as Schedule A, with changes noted in italics.

Reasons for this Order to Supplement and Amend Interlocutory Judgment are attached. Reasons for the Rescinded Interlocutory Judgment continue to apply and should be read in conjunction with these Reasons.

DATED this 13th day of February, 2001.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

SCHEDULE A

CONSOLIDATED PROVISIONS OF THE INTERLOCUTORY JUDGMENT DATED THE 6TH DAY OF DECEMBER, 2000 AS AMENDED*

1. **THIS TRIBUNAL DECLARES** that the Applicant, W. Johnson Mining and Oil Field Services Ltd. is owed $85,415.08 by the Respondent*s* of the First Part, Randsburg International Gold Corporation *and Lake Superior Resources Corporation,* on account of drilling on Mining Claims L-1225677 and 1226882.

2. **IN THE ALTERNATIVE, THIS TRIBUNAL FURTHER DECLARES** that the Applicant, W. Johnson Mining and Oil Field Services Ltd. is owed $49,937.08 and 70,940 shares in Randsburg International Gold Corporation by the Respondent*s* of the First Part, Randsburg International Gold Corporation *and Lake Superior Resources Corporation,* on account of drilling on Mining Claims L-1225677 and 1226882.

3. **THIS TRIBUNAL FURTHER DECLARES** that unless the Respondents, Randsburg International Gold Corporation *and Lake Superior Resources Corporation* pay to the Applicant, W. Johnson Mining and Oil Field Services Ltd. either the amount set out in Paragraph 1 or the amount and shares set out in paragraph 2 hereto within a period of 30 days, the tribunal will vest *all or* a portion of the *interests* of the aforementioned Randsburg International Gold Corporation *and Lake Superior Resources Corporation in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims* in the Applicant.

4. ***THIS TRIBUNAL FURTHER ORDERS*** *that the time for the amount of money or money and shares declared owing shall be extended to an additional 30 days from the date of this Order to Supplement and Amend Interlocutory Judgment.*

*Amendments noted in italic

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The Mining and Lands Commissioner
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File No. MA 038-99

L. Kamerman
Mining and Lands Commissioner)

Tuesday, the 13th day
of February, 2001.

THE MINING ACT

IN THE MATTER OF

Mining Claims L-1225677 and 1226882, both recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, situate in the Township of Van Hise, in the Larder Lake Mining Division, hereinafter referred to as the "Mining Claims Drilled by Johnson";

AND IN THE MATTER OF

Mining Claims L-1076976, 1221753, 1223175, 1223921, 1223939, 1223942, 1224210, 1224235, 1224237 to 1224239, both inclusive, 1224293 to 1224295, both inclusive, 1227201 and 1238906, situate in the Township of Milner; and 1207053, 1223905, 1223906, 1223932, 1224216 and 1224217, and 1238902 to 1238905, both inclusive, situate in the Township of Van Hise, situate in the Township of Van Hise, in the Larder Lake Mining Division, recorded in the name of Lake Superior Resources Corporation, hereinafter referred to as the "Superior Mining Claims";

AND IN THE MATTER OF

Mining Claims L-1225672 situate in the Township of Milner; and 1225673 to 1225676, both inclusive, 1225678, 1226881, 1227025, 1227027 to 1227029, both inclusive, 1227048, 1227049, 1227199, 1227255 and 1234970, situate in the Township of Van Hise,in the Larder Lake Mining Division, recorded in the names of Glenn Walter Bray, as to a 32% interest, Sharon Adelia Cotton, as to a 24% interest, Fred Ross Swain, as to a 20% interest, 903573 Ontario Limited, as to a 16% interest and Margaret Kaye Montgomery, as to an 8% interest, hereinafter referred to as the "Swain Mining Claims";

2

AND IN THE MATTER OF

A Joint Venture Agreement between Randsburg International Gold Corporation and Lake Superior Resources Corporation involving lands in Milner and Van Hise Townships and alleged to include the Mining Claims;

B E T W E E N:

W. JOHNSON MINING AND OIL FIELD SERVICES LTD.
Applicant

- and -

RANDSBURG INTERNATIONAL GOLD CORPORATION and
LAKE SUPERIOR RESOURCES CORPORATION
Respondents of the First Part

- and -

GLENN WALTER BRAY, SHARON ADELIA COTTON,
FRED ROSS SWAIN, 903573 ONTARIO LIMITED and
MARGARET KAYE MONTGOMERY
Respondents of the Second Part

AND IN THE MATTER OF

An agreement dated the 16th day of July, 1999, between Randsburg International Gold Corporation, as company and W. Johnson Mining and Oil Field Services Ltd. as contractor for drilling and other services on lands in Milner and Van Hise Townships and alleged to be on the Mining Claims;

AND IN THE MATTER OF

An application under section 69 of the **Mining Act** for the vesting of ownership of the Mining Claims Drilled by Johnson from the Respondents of the Second Part, Bray, Cotton, Swain, 903573 Ontario Limited and Montgomery and a vesting of the interest in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims from the Respondents of the First Part, Randsburg International Gold Corporation and Lake Superior Resources Corporation, to the Applicant, by reason of default in payment for work performed by the said Applicant and such other relief as the tribunal deems just.

REASONS

Preliminary Comments

In the Reasons of December 6, 2000, the Applicant was referred to as Johnson, the Respondents of the First Part as Randsburg and Lake Superior, and the Respondents of the Second Part as Swain et al. This will continue for purposes of these Reasons. Also, Counsel for Johnson is Mr. K. Fitz and Counsel for Randsburg and Lake Superior were Mr. T. Hill and Mr. D. Stevens. Mr. F. Swain represented Swain et al.

There are three groups of mining claims identified in the Title of Proceedings: the Mining Claims Drilled by Johnson, being the two on or under which drilling actually occurred and which are recorded in the name of Swain et al., the Superior Mining Claims which are recorded in the name of Lake Superior, and the Swain Mining Claims, which are recorded in the name of Swain et al. Within these three groups is a further distinction. Both the Mining Claims Drilled by Johnson and the Swain Mining Claims are the subject matter of an agreement (subject matter of another action between Lake Superior and Swain et al. tribunal file MA 07-99) which, if found to be in effect, would allow Lake Superior to earn a 75 percent interest, which it has in turn contracted to split 50/50 with Randsburg. Under the same agreement with respect to the Superior Mining Claims, Randsburg would be entitled to a 50 percent interest of the whole, as Lake Superior is the recorded holder. For purposes of clarity, the various mining claims will be referred to either as being of the three subgroups identified in the Title of Proceedings, or collectively as the "Mining Claims".

Background Leading up to Issuance of Supplementary and Amending Order

This tribunal issued its Interlocutory Judgment with Reasons attached on December 6, 2000. Paragraphs 1, 2 and 3 contain declarations involving one of the Respondents of the First Part, Randsburg. Nowhere in the Declaratory Judgment or Findings portion of the Reasons is the issue of the liability of the other Respondent of the First Part, Lake Superior mentioned.

The tribunal also noted that an error was made in the third Paragraph of its Order, where it failed to note what interest would be vested in the Applicant, by specific reference to the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims. The wording of the provision suggests that it is the interest in the corporate entity, Randsburg International Gold Corporation, which would vest, which is clearly an error.

While the Judgment is Interlocutory in nature, the tribunal was concerned that there was no means available to supplement its findings and amend its Interlocutory Judgment accordingly. However, it has determined, without the benefit of hearing from the parties, that such power does exist.

In **Paper Machinery Limited et al. v. J.O. Ross Engineering Corporation et al.** [1934] S.C.R. 186, Rinfret, J. stated the principal to be followed at page 188:

> The question really is therefore whether there is power in the Court to amend a judgement which has been drawn up and entered. In such a case, the rule followed in England is, we think, - and we see no reason why it should not also be the rule followed by this Court - that there is no power to amend a judgement which has been drawn up and entered, except in two cases: [1]Where there has been a slip in drawing it up, or [2]Where there has been error in expressing the manifest intention of the court (*In re Swire*[1]; *Preston Banking company v. Allsup & Sons*[2]; *Ainsworth v. Wilding*[3]. In a very recent case, (*MacCarthy v. Agard*[4], the authorities were all reviewed and the principle was re-asserted. In that case, although indeed all the judges expressed the view that the circumstances were particularly favourable to the applicant, but because neither of the conditions were present, the Court of Appeal came to the conclusion that it had no power to interfere. (the rule as stated was approved by the Privy Council in *Firm of R.M.K. R.M. v. Firm of M.R.M. V.L.*[5]
>
> The respondent's application does not come under the so-called slip rule. *Nor is it apparent that some matter which should have been dealt with in the reasons has been overlooked; ... (emphasis added)*

The tribunal has made both kinds of errors in its Interlocutory Judgement. The error which fits into the so-called slip rule is found in paragraph 3, where it states, "... the tribunal will vest a portion of the interest in the aforementioned Randsburg International Gold Corporation in the Applicant." The paragraph should have read, in part, "the tribunal will vest all or a portion of the interest of the aforementioned Randsburg International Gold Corporation *in the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims* in the Applicant." The Interlocutory Judgement will be changed accordingly.

Case Against Lake Superior Resources Corporation

The Interlocutory Judgement made no findings with respect to the liability, if any, of Lake Superior Resources Corporation to Johnson for the cost of drilling. There was no

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[1] [1885] 30 Ch. D.239.

[2] [1895] 1 Ch. 141.

[3] [1896] 1 Ch. 673.

[4] [1933] 1 K.B. 417.

[5] [1926] A.C. 761 at 771-772.

dispute that the Agreement for drilling services was entered into by the Applicant, W. Johnson Mining and Oil Field Services Ltd. and one of the Respondents of the First Part, Randsburg International Gold Corporation. There was evidence before the tribunal concerning the relationship of Lake Superior to this matter, found in the Memorandum of Understanding dated the 17th day of July, 1999 (Ex. 3, Tab 3), and in the pleadings, at paragraph 15 of the Respondents of the First Part's Response, which started with the words, "By a memorandum of understanding dated June 17, 1999 Superior and Randsburg agreed to work together, on an equal basis..."

Mr. Johnson gave evidence to the effect that he was expecting and fully believed the drilling to be undertaken with him in a joint venture with Randsburg and Lake Superior. This was his belief, notwithstanding that his Agreement was signed with only Johnson and Randsburg as parties.

The issue of Lake Superior's liability was touched upon briefly in argument. It was left to the tribunal to make findings with respect to Lake Superior's liability. However, the tribunal did not make any findings relating to Lake Superior in its original Interlocutory Judgment dated the 6th day of December, 2000.

The Memorandum of Understanding between Randsburg and Lake Superior is in letter form, addressed to Lake Superior by James Lenigan on behalf of Randsburg. It has five paragraphs, and commences in part with the words, "... we have concluded the following deal structure for the agreement ...". The following is taken from the letter:

> 1. Lake Superior will Joint Venture with Randsburg on a 50/50 percent basis its properties ...[the "Mining Claims" by which is meant the Mining Claims Drilled by Johnson, the Superior Mining Claims and the Swain Mining Claims]
>
> 2. [deals with documentation regarding ownership of the Mining Claims, to be free from encumbrances].
>
> 3. Randsburg will spend over a 12 month period $160,000 CDN. This will be accomplished through a drill program and other exploration services that have been approved by Randsburg and Lake Superior in advance before services begin.
>
> 4. Lake Superior will raise the necessary funds to conduct the drilling program by using, "free trading" shares in Randsburg. These shares will be available through a "gypsy swap" which will be sold at a discount to the market of up to 20%. The maximum number of shares available for this funding method will be 250,000 shares of Randsburg. Lake Superior upon execution of this contract will begin this process by purchasing Randsburg's shares via a "gypsy swap" in the amount of $25,000 CDN. This will be the cost of the first month of the drilling program.

> 5. Randsburg will issue Lake Superior 75,000 common shares in Randsburg after the completion of the 2nd month drilling program. If the drill results are not favourable to Randsburg, then Randsburg will issue 40,000 shares to Lake Superior. These shares will be issued upon the approval of the Vancouver Stock Exchange.

The letter bears the signature of James Lenigan, on behalf of the Board of Directors of Randsburg, and of Michael Opara on behalf of Lake Superior Resources. There is no corporate seal visible on the photocopy which was filed.

There was no evidence to suggest that this "letter agreement" was committed to a more formally drawn up contract.

In the pleadings, at paragraph 5 of Johnson's, it states:

> 5. According to press releases [attached] issued by Randsburg, Randsburg and Superior (collectively the "First Respondents") are parties to a Memorandum of Understanding dated June 17, 1999 whereby the First Respondents acquired interests in mineral claims located in the Van Hise and Milner Townships, in the province of Ontario which interest apparently include the Mineral Claims.
>
> 6. The terms of the Memorandum of Understanding between Randsburg and Superior were not disclosed by Randsburg or Superior to Johnson. However, at all material times Randsburg held itself out to Johnson as the party charged with operational authority to develop the Mineral Claims and the other mineral claims in the Milner and Van Hise Townships held by the First Respondents (the "Firth Lake Project").

The Press Release referred to is found at Tab 5 of Exhibit 2:

> Randsburg International Gold Corp. ("RGZ") - Property-Asset Acquisition. The Vancouver Stock Exchange has accepted for filing a Memorandum of Understanding dated June 17, 1999 between the Company and Lake Superior Resources Corp. (Howard Barrie, Michael Opara, Ralph Boers and Fred Swain) whereby the company has acquired a 50% joint venture interest in 470 mineral claims located in the Van Hise Township, Ontario. Consideration is comprised of $160,000 in exploration expenses and the issuance of 75,000 common shares upon completion of 2 drill programs. (or 40,000 shares if the results are unfavourable from the 2nd drill program).

In its Response, Lake Superior and Randsburg deny the allegations contained in the preceding paragraphs. At paragraph 15 of the Response, information regarding the Memorandum of Agreement is set out:

15. By a memorandum of understanding dated June 17, 1999, Superior and Randsburg agreed to work together, on an equal basis, on Superior's claims in the Milner and Van Hise Townships (the "Joint Venture Agreement"). Superior's claims are stated to comprise approximately 16,000 acres and include both the Superior Claims and the Swain Claims ("the Firth Lake Project"). One of the terms of the Joint venture Agreement is that Randsburg would spend certain monies on drilling and other exploration services at the Firth Lake Project.

Findings

According to the letter agreement, it is Randsburg which is to spend money for the drilling program. However, the raising of funds for that spending was to take place through the joint efforts of Randsburg and Lake Superior. Randsburg was to provide up to 250,000 of its shares to Lake Superior which in turn was to "raise the necessary funds" through its use of these shares. In other words, Lake Superior was to market Randsburg shares in order that Randsburg would be able to raise funds to pay for the drilling.

The letter agreement sets out, and the tribunal finds, that Lake Superior was to provide the land. In return, after the second month of drilling, whether successful or not, Lake Superior was to have received either 40,000 or 75,000 shares in Randsburg.

The letter agreement states that Randsburg will spend money on drilling and exploration. However, the tribunal finds that this money is raised by Lake Superior. Randsburg, a publicly traded company, provides its shares to Lake Superior to market, this being the mechanism by which capital is to be raised.

The tribunal finds that the financing of the Johnson contract by Randsburg is dependent upon the requirement that Lake Superior meet the terms of the agreement involving the free trading shares in Randsburg available for a gypsy swap, to be sold at a discount in the market up to 20 percent. The initial funds available for drilling are the $25,000 which Lake Superior was to have paid in exchange for Randsburg shares. This amount was discussed during the hearing. Incidentally, it was the evidence of Mr. Johnson that there was only $25,000 available for drilling until such time as the results of the first hole came in.

The tribunal heard no evidence concerning the letter agreement, so an explanation of the "gypsy swap" was not given. It is, therefore, not clear whether this "deal structure" involves sale of shares in Lake Superior, enabling it to in turn purchase the Randsburg shares set aside for this purpose, or whether Lake Superior was to have acted as a broker for the Randsburg shares.

The tribunal finds that it is reluctant to analyze or characterize the entire arrangement in great detail. However, the only thing which is essential to the issue before the tribunal in determining Lake Superior's liability to Johnson, for purposes of this Order to Supplement and Amend it Interlocutory Judgment, is its role in the financing of the drilling. In attempting to construe the arrangement with respect to this financing, the tribunal has

considered the law of contracts, agents and principals, partnerships, fiduciary obligations, good faith dealings and fair dealings. It must be stated that a joint venture does not have one simple common law meaning, but different meanings may be attributable to the use of the term, depending on whether it is used in Canada, Britain, the United States, Australia or New Zealand. In addition, the governing provisions are not consistent as between industries within a jurisdiction. An example would be that the Canadian Association of Petroleum Landmen's *CAPL Operating Procedure*, 1990 is a standardized form in common use in the oil and gas industry, with the comment that the format does not lend itself to mineral exploration which is more diverse in all its aspects [see footnote 64 in B. Barton, **Canadian Law of Mining** (Calgary: Canadian Institute of Resources Law, 1993, at page 446)].

The matter of joint ventures is discussed in Chapter 18, entitled "Mining Agreements" in Barton's **Canadian Law of Mining**. Part of the commentary is reproduced, commencing at p. 443:

> **5. Joint ventures**
> a. General
> i. *Use*
>
> Joint venture agreements are common in the mining industry. They permit mining companies to spread their financial exposure to exploration risks and to broaden their participation in different geographical areas a spheres of activity, while optimizing their tax positions. [54] .... There is a considerable body of writing on the law of joint ventures generally, but little on the mining context. [56]Here, the focus is on joint ventures for mineral exploration on specific properties.
>
> *ii. Nature*
>
> At the core of a mineral joint venture is an agreement to engage in a common undertaking to generate a product to be shared amount the participants.[57] The parties are tenants in com-

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[54] Previously a new company was incorporated; see Part 3 above. The joint venture permits each participant to claim its own tax deductions for exploration and development expenditures and mine financing costs against its existing taxable income., instead of having them applied to the business of the jointly-held subsidiary company. Each party can use the depreciation rates that suit its own income position.

[56] See Bennett Jones Vercher and N.C. Bankes *Canadian Oil and Gas*, 2d ed. (Toronto: Butterworths, 1993); and A.R. Lucas and C.D. Hunt, *Oil and Gas Law in Canada* (Toronto: Carswell, 1990). For Australian law, see B.H. McPherson, "Joint Ventures" and R.A. Ladbury "commentary in P.D. Finn, ed., *Equity and Commercial Relationships* (Sydney: law Book Co., 1987) 19 and 37; and M. Crommelin, "The Mineral and Petroleum Joint Venture in Australia" (1986) 4 J.E.R.L. 65.

[57] Crommelin, *ibid.*, For a discussion of the elements of a joint venture and tax cases on them, see *Re Milbourne* (1977), 4 B.C.L.R. 245 (S.C.), aff'd. *Commissioner of Income Tax v. Milbourne* (1978), 7 B.C.L.R. 357 (C.A.) without discussing these matters.

mon with several liability as between themselves, and their rights and duties to each other are fixed by the contract. This agreement seeks to avoid joint liability and to avoid partnership. This is done for tax reasons and for liability reasons in an attempt to confine each participant's liability to the agreed shares. The participants usually agree to take their benefits in kind in the form of minerals or concentrates, not as cash, although participants may enter into agency sale arrangements.[58]

There is little case law on the efforts of joint venture agreements to avoid joint liability and partnership. In relation to third parties, participants may not succeed in limiting their liability to several proportionate liability, especially where the liability arises from the actions of an operator who holds specific powers to act on behalf of the other participants. *Petrocan Exploration Co. v. Cadillac Explorations Ltd.*[59] concerned such a joint venture and held that the Labour Standards Board of the Northwest Territories did not err in holding that the participants were "employers" and that all were liable for unpaid wages. The Board was not obliged to apportion the indebtedness between the participants[60]. The joint venture agreement contained a clause (by no means uncommon in these agreements) declaring that it was not to be construed as creating any principal-agent relationship, but the Court held that general disclaimer had to be interpreted in the light of subsequent clauses empowering the operator to do certain things on behalf of the joint venturers.

[58] Harries, *supra* note 52 at 173; The right to take shares of the product separately without having to account to the others can assist larger players with smelters that require feed, and can enable parties to negotiate their own commodity-backed loans or hedging arrangements: G.C. Stevens, "Joint Venture Agreements - Part I" in *Mining Seminars* (Vancouver: Lang Michener Lawrence and Shaw, 1990) at 2 [unpublished].

[59] [1985] N.W.T.R. 153 (S.C.).

[60] Cases may arise where it may be agreed that third parties familiar with mining industry customs and practice are bound by the limitations on liability if the limitations could be proved to be the ordinary industry custom: K.J.C. Harries, "Practices in Partnership" (November 1990) Northern Miner Magazine 12. *Cusac Industries Ltd. v. Erickson Gold Mining Corp.* (26) September 1988), Vancouver CA 009580 (C.A.), however, ruled inadmissible expert evidence of custom and usage in the mining industry as to the meaning of "commercial production" in an option agreement. There was no ambiguity or need to imply a term into the contract. The test to apply was that "the custom and usage must be reasonably certain and so notorious and so generally acquiesced in that it may be presumed to form an ingredient of the contract": *Georgia Pacific Construction co. v. Pacific Great Eastern Rwy.*, [1929] S.C.R. 630 (b.C.). Also see G.H.L. Fridman, *The Law of Contract in Canada*, 2nd ed. (Toronto: Carswell, 1986) at 455.

There is, however, no standard relationship that the courts will be prepared to assume because the term "joint venture" has been used. The form and the language used to not prevent the courts from ascertaining the substance of the transaction. In each case, the rights and liabilities must be construed from the provisions agreed to[61]. This is strongly shown by *Share Mines & Oils Ltd. v. Western Nuclear Inc.*[62] *where* Share Mines contributed the property to a 50-50 joint venture and Western Nuclear built the mine. Western Nuclear contributed the first $1,000,000 of expenditure under the agreement, but could treat the rest of its payments as a loan to the joint venture to be recouped out of profits. However, there were no profits and the mine soon closed. On the sale of the mill and equipment, the parties disagreed about whether the proceeds should go to Western Nuclear to enable it to recouped its investment, or whether they were to be divided equally between the venturers. It was conceded that the agreement gave each party an undivided one-half interest in the claims, mill and equipment. No clause covering disposal of assets was included in the agreement, nor was Western allowed to recoup its loan from anything but profits. The Court refused to imply a term to this effect in favour of Western Nuclear. It was not *necessary* to do so to give business efficacy to the contract, even if it was a term that would have been adopted by the parties as reasonable business people if it had been suggested to them.

In the application under consideration, Randsburg and Lake Superior have a contractual relationship whereby Lake Superior has given to Randsburg a right to enter upon the Mining Claims and perform a drilling program on behalf of the joint venture. As stated in the commentary by Barton, above, their obligations to one another may seek to avoid the joint and several liability of a partnership, but with respect to third parties, in this case the drilling contractor, Johnson, this may not be possible.

Due to the fact that the money with which Randsburg is to pay for the drilling comes from the sale of Randsburg's shares either to or by Lake Superior, the tribunal finds the contractual agreement by Randsburg with Johnson is on behalf of the joint venture created by the letter agreement. Only through the separate, but related, activities of each, can the free-trading shares be sold to or by Lake Superior to raise money to conduct the drilling. Therefore, the spending of the $160,000 Canadian by Randsburg will depend upon the fundraising conducted by Lake Superior. While Lake Superior is not named in the contract with Johnson, Randsburg is contracting on behalf of the joint venture. While the letter agreement is not so sophisticated or detailed as to name Randsburg as the Operator, it is quite clear that the drilling operations are being undertaken for the benefit of the joint venture and not for the benefit of Randsburg acting alone.

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[61] *UDC v. brian Pty Ltd.* (1985), 57 C.L.R. 1 (Aust.); P.D. Finn, "Case note on *Lac minerals Ltd. v. International Corona Resources Ltd.*" (1989) A.M.P.L.A. Bulletin 143; Bennett Jones Verchere and bankes, *Supra not 56 at paras. 149, 149AA.*

[62] (1974), 49 D.L.R. (3d) 456 (Sask. C.A.).

The tribunal finds that the joint venture, if not in fact a partnership, attracts the same reciprocal duties and liabilities as are imposed on partners for purposes of dealing with third party contractors. As such, Randsburg and Lake Superior are found to be in a fiduciary relationship with one another regarding the raising of funds for the financing of the drilling operation. Therefore, although Randsburg had the obligation to contract and pay for drilling services, the tribunal finds that it did so effectively in the role of Operator on behalf of the joint venture. Moreover, the financing of the drilling services was to take place through the marketing of Randsburg's shares by Lake Superior. The tribunal finds that the contracting out of drilling services is an activity of mutual confidence on the parts of Randsburg and Lake Superior, to be carried out for the joint advantage of both.

The tribunal concludes that, for purposes of raising money for drilling operations, that the letter agreement creates joint and several liability in Randsburg and Lake Superior, requiring the payment by the former, from funds raised by the latter through sales of Randsburg's shares. While Randsburg entered into the Agreement with Johnson for drilling services, it did so on behalf of the Joint Venture in which it was to share 50/50 with Lake Superior. Although the money to be raised, arguably, was dependent on the existence of shares in Randsburg which were to be sold, it is clear that Randsburg had no responsibility for selling the shares.

The tribunal finds that the money, or in the alternative money and shares, found owing in its December 6, 2000 Interlocutory Judgment by Randsburg to Johnson is owed by Lake Superior on a joint and several basis. The Judgment will be supplemented and amended accordingly.

Drilling Results

The tribunal finds that Randsburg contracted for drilling on the Mining Claims pursuant to the joint venture letter agreement with Lake Superior. Without that relationship and agreement, Randsburg would have had no interest in the Mining Claims and no reason to contract for drilling. Randsburg has possession of the drilling results, as is evident from the various press releases. The tribunal finds that the drilling results are held by Randsburg in trust for the joint venture.

The tribunal has no information as to whether Lake Superior successfully marketed Randsburg's shares, according to the terms of the letter agreement. The tribunal did hear from Mr. Lenigan that Lake Superior was not successful in this regard, but no evidence was provided as to the particulars regarding how many of the up to 250,000 shares of Randsburg were sold.

A further accounting may be required between Randsburg and Lake Superior, concerning their interest in the Mining Claims flowing from what actually took place financially between them pursuant to the letter agreement. However, such an accounting is beyond the scope of this action by Johnson.

Conclusions

The Interlocutory Judgment will clearly state that it is a portion of the interests in the Mining Claims of Randsburg and Lake Superior which will be vested in the Applicant, Johnson, if the amounts owing or shares and amounts owing are not paid.

For purposes of the drilling contract (the "Agreement", as described in the Reasons to the Interlocutory Judgment dated the 6th of December, 2000) between Randsburg and Johnson, a third party contractor, the tribunal has concluded that Randsburg contracted on behalf of its joint venture with Lake Superior. Money or money and shares owing are found to be jointly and severally owing between Randsburg and Lake Superior to Johnson. Therefore if the amounts owing are not paid, a portion of the interest of Lake Superior, as well as Randsburg, in the Mining Claims, will vest in the Applicant.