Ontario

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

File No. MA 038-99

L. Kamerman) Wednesday, the 6th day
Mining and Lands Commissioner) of December, 2000.

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";

(Amended December 6, 2000)

. . . . 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 contractee 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.

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INTERLOCUTORY JUDGMENT

UPON hearing from the parties and reading the materials filed;

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

3. **THIS TRIBUNAL FURTHER DECLARES** that unless the Respondent, Randsburg International Gold Corporation pays 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 a portion of the interest in the aforementioned Randsburg International Gold Corporation in the Applicant.

THE PARTIES ARE FURTHER ADVISED that, should a valuation of the Mining Claims become necessary, further evidence and submissions will be required to assist the tribunal in reaching its determination as to what portion of Randsburg International Gold Corporation's interest will 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).

Reasons for this Interlocutory Judgment are attached.

DATED this 6th day of December, 2000.

Original signed by

L. Kamerman
MINING AND LANDS COMMISSIONER

Ontario

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(Amended December 6, 2000)

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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 -

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REASONS

The hearing of this matter took place in the Courtroom of the Tribunal, 24th Floor, 700 Bay Street, Toronto, on May 17 through 19 and on June 21, 2000.

The applicant, W. Johnson Mining and Oil Field Services Ltd. ("Johnson") was represented by Mr. Kenneth Fitz, a lawyer whose offices are in Edmonton, Alberta. Mr. Warren Johnson, a principal of Johnson, attended the hearing.

The respondents of the first part, Randsburg International Gold Corporation ("Randsburg") and Lake Superior Resources Corporation ("Lake Superior") were represented by Mr. Timothy Hill and Mr. David Stevens. Mr. James Lenigan of Randsburg attended for portions of the hearing, as did Mr. Michael Opara of Lake Superior.

Glenn Walter Bray, Sharon Adelia Cotton, Fred Ross Swain, 905373 Ontario Limited and Margaret Kaye Montgomery, respondents of the third part, were represented by Mr. Fred Swain and Mrs. Sherry Swain.

Background Facts

This application arises out of an agreement between Randsburg and Johnson which was entered into on July 16, 1999 (Ex. 2, Tab A), pursuant to which Johnson commenced its drilling activities (Hole 01-99, or Johnson's Hole) by drilling at an angle on Mining Claim L-1226882 and under Mining Claim L-1225677. Only one hole was drilled by Johnson.

These two Mining Claims are held by Glenn Walter Bray, Sharon Adelia Cotton, Fred Ross Swain, 903572 Ontario Limited and Margaret Kaye Montgomery (Fred Swain et. al.). The Agreement refers to "the Company's property", the Company being Randsburg, and the property referring to unpatented mining claims within Milner and Van Hise Townships. The agreement specifies a minimum of 20,000 feet of drilling, with no hole to exceed 1000 feet, with certain provisos applying.

Fred Swain et al. entered into an Agreement with Lake Superior Resources Corporation (Lake Superior), dated June 21, 1999, (Ex. 4, Tab 4) whereby Lake Superior purchased the right to a 75 percent interest in a number of mining claims in Van Hise and Milner Townships, comprised of approximately 9000 acres. The mining claim numbers do not appear in the agreement.

Lake Superior entered into an agreement with Randsburg on June 17, 1999 (Ex. 3, Tab 3), whereby Lake Superior and Randsburg entered into a Joint Venture arrangement, each as to a 50 percent interest, in certain mining claims within Van Hise and Milner Townships, said to consist of approximately 16,000 acres (the Joint Venture). The mining claim numbers do not appear in the body of the agreement.

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Johnson experienced considerable difficulty in drilling the Johnson Hole, which reached a depth of 2,062 feet on September 5, 1999. Pursuant to the terms of the Agreement, allowing for time off, Warren Johnson had returned to St. Albert, Alberta just prior to this depth having been reached. In the ensuing period, Randsburg declined to pay certain invoices of Johnson. During late September and October, Johnson refused to return to resume drilling pending the payment of invoices. Eventually, the rig, owned by Johnson, was stripped by persons unknown, after which Mr. Johnson returned to Ontario and arranged for the return of the rig to Alberta. Randsburg did not seek further drilling to be carried out by Johnson, who was asked to remove his rig from the Johnson Hole.

The rig was not fully insured, due to oversight and the losses were not covered, the cost of demobilization, payment for outstanding invoices and compensation for the 17,900 feet not having been drilled form the bulk of the claim advanced by Johnson.

Issues

1. What are the terms of the Agreement, including any ancillary documents, if found to be applicable?

2. Is Randsburg entitled to terminate the Agreement and if so, at what point?

3. How much money is owed, if any, by Randsburg to Johnson?

4. In the event that money is found owing, which Randsburg does not pay, how should section 69 be construed, meaning does it entitle Johnson to an interest in the two Mining Claims upon which his drilling occurred or does it mean that Johnson would be entitled to an interest in all the Mining Claims?

5. If an interest is found owing, would it be a proportionate share or all of the interest in the Mining Claims and is it necessary to value the (2 or all) Mining Claims to determine a proportionate interest would vest in Johnson?

The Mining Claims

The Mining Claims are held by either Swain et al. (9000 acres) or Lake Superior (8,000 acres), in a relatively random configuration as to ownership. All are contiguous and straddle both sides of the boundary between Milner and Van Hise Townships, fanning out from the western boundary of each. Lake Superior has launched another action against Swain et al. (tribunal file MA-007-00), pursuant to section 105 of the **Mining Act**, for a declaration that their agreement is in good standing.

The Section 69 Application

Johnson is seeking a decision of the tribunal as to the amount owing on its agreement with Randsburg. Mr. Fitz has requested that Randsburg be given time to pay any outstanding amounts, failing which 100% interest in the Mining Claims be transferred to Johnson. His position is that Johnson would be entitled to transfer of all interest in all of the Mining Claims.

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Time Leading Up to the Agreement(s)

Warren Johnson, principal of Johnson, was in the business of drilling oil and gas wells, diamond drilling for mining and welding; he also rebuilt diamond drills and offered them for sale. He has over 20 years of experience in these fields. Johnson is located in St. Albert, Alberta, near Edmonton.

Mr. Johnson had prior dealings with James Lenigan, (Lenco Mining and Development) during 1996, in conjunction with gold properties in Columbia, pursuant to an ad placed in the Northern Miner advertising joint venture opportunities. Mr. Lenigan intended to "put Lenco into" Randsburg, which was taking steps during this time frame to acquire properties in Angola. Mr. Lenigan had travelled to Edmonton to view Mr. Johnson's drilling rig, and Mr. Johnson had travelled to Vancouver to discuss becoming a director of Randsburg, offering his drilling expertise. Mr. Johnson also travelled to Florida, considering the sale of his drilling rig for shares in Randsburg, a sale for which money was forwarded, but according to Mr. Johnson, he subsequently pulled out of the deal.

Johnson as Director of Randsburg

There is no agreement between Messrs. Johnson and Lenigan as to whether Mr. Johnson gave his consent to become a Director of Randsburg, although he did agree that he was retained to offer expertise in drilling matters.

Mr. Johnson's name does appear in the Minutes of the Annual General Meeting for several years. The issue of his consenting to act as Director arose in connection with which was the inclusion of his mailing address in documents filed with the Ministry of Finance and Corporate Relations of British Columbia. There was no disagreement that Mr. Johnson did appear to act in the capacity of Director on one occasion, to prevent a takeover of the Board of Directors. Mr. Johnson's account did vary from Mr. Lenigan's on this occasion, but it is clear that his conduct, whether as Director or purported Director, was to assist in preventing the takeover. Mr. Johnson acknowledged his participation, but asserted that he was not comfortable with the situation. At all times, however, it was his position that he declined actual directorship. His reason was that he did not want to be liable for a company which owed hundreds of thousands of dollars.

Events Leading up to Agreement

Mr. Johnson listed his re-built Boyles 37-A diamond drill for sale in the Northern Miner newspaper, being the same drill used for the Johnson Hole. Mr. Opara first contacted him in connection with the ad. Based on these discussions, Mr. Johnson concluded that Lake Superior lacked sufficient funds for its drilling program, either to pay a contractor for drilling or to purchase a drill. Discussions centred around the Firth Lake project in Van Hise and Milner Townships and not other properties held by Lake Superior.

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In a letter dated April 12, 1999 from Lake Superior to Johnson (Ex. 20), Mr. Opara asks whether Johnson would be interested in drilling for cost plus shares at the second line of the first paragraph: "We would be interested in an arrangement for drilling at cost plus shares." Exhibit 20 is comprised of a two-page letter and three-page Fact Sheet on Lake Superior.

The timing of events which followed becomes less clear during this time frame. Mr. Johnson stated that he introduced Messrs. Lenigan and Opara after his first contact with Mr. Opara, although the date was uncertain. Once Mr. Johnson determined that Lake Superior did not have the funds for the drill, he called Mr. Lenigan, suggesting that he look into Lake Superior. It was Mr. Johnson's initial suggestion that the three enter into a joint venture arrangement. Mr. Lenigan initially thought it was April or May of 1999, but then thought it could have been January or February when he first contacted Mr. Opara. The later dates appear correct, as Mr. Opara did not contact Mr. Johnson until April, 1999. After the initial contact and once it was clear that Lake Superior did not have the funds to purchase the drill, discussion took place between Mr. Johnson and Messrs. Lenigan and Opara as to a means of working out an arrangement.

Mr. Johnson was asked to provide a written cost as a drilling contractor involving the Firth Lake Properties (Van Hise/Milner Townships), which is reflected in his hand-written document, found at Exhibit 9, Tab 19 (seven pages in) and Exhibit 3, Tab 7 and while there was some discussion as to whether the quote uses the work "on" or "or". This has been set out in its entirety in Schedule 1 to these Reasons. The quote makes mention of a 5,000 foot or/on a 30 day drill program, showing a per foot cost of $15.66 or a total of $78,300.

In an ensuing discussion, Mr. Opara apparently told Mr. Johnson that he could do the drilling in Ontario for $7 per foot or $25,000 a month. Mr. Opara also brought up the matter of Norex Drilling being able to do the work for $10.50 to $11.00 per foot. It was Mr. Johnson's evidence that Lake Superior should go ahead for that price with an Ontario contractor.

In a fax from Johnson to Lake Superior dated May 30, 1999 (Ex 3, Tab 14), the issue of the purchase price of the rig is addressed:

> Here are some conditions and quote's written in stone. This is what I would require to close a deal. The equipment has been appraised at $138,000 and is in new condition. I think you people are getting a deal on your end, being the way times are in the industry.

It was Mr. Lenigan's evidence that the Joint Venture worked out between Lake Superior and Randsburg would see Lake Superior provide the Van Hise Milner properties and day to day administration of the project, while Randsburg, as a publicly traded company, would raise funds for the venture. Mr. Lenigan indicated that Randsburg relied on Warren Johnson's drilling expertise, and decided to keep the contract within their own group, believing that Johnson's quote of $15.66 would be the top price for drilling. Supervision on the drilling project was shared by Mr. Opara as administrator, Mr. Johnson as drilling supervisor and Frank Puskas as geologist.

Discussions were ongoing and not productive at first. Finally Mr. Lenigan advised that Randsburg and Lake Superior had reached a deal to which Johnson was not a party. However, according to Mr. Johnson, Johnson was to become a third party joint venturer, supplying the equipment, but with costs to be paid by Randsburg. According to Mr. Lenigan, Johnson was included in the negotiations with Opara on the basis that Johnson was a Director of Randsburg as well a technical advisor with respect to drilling matters.

The tribunal concludes that the exact date when Mr. Johnson introduced Messrs. Lenigan and Opara cannot be determined. It may have been some time after Lake Superior's April 12, 1999 letter to Johnson, and perhaps after Johnson's April 25, 1999 quote to Lake Superior, although the tribunal notes, upon the admission of Mr. Lenigan, that Randsburg also received the quote, both from Johnson and Mr. Opara.

It is at this point that the relevance of the issue of Mr. Johnson as a Director of Randsburg arises. Once introduced, it is apparent that discussions took place between Johnson, Lenigan and Opara moving toward agreement(s), with telephone discussions taking place between all of them. What is difficult to determine is the nature of Mr. Johnson's involvement as perceived by Mr. Opara, namely whether Johnson was a Director of Randsburg as opposed to owner of Johnson. Notwithstanding what may have been agreed to as between Randsburg and Johnson, the evidence of Mr. Lenigan was that on the ground drilling was conducted under the joint oversight of Opara, Johnson and Frank Puskas.

It was Mr. Lenigan's evidence that he had virtually no experience with drilling, a fact he made known to Messrs. Johnson and Opara. In this regard, he stated that he relied upon Mr. Johnson as Randsburg's technical advisor and as Director. It is unclear of the extent to which discussions focused on the drilling or on the Joint Venture which ultimately was agreed to by Lake Superior and Randsburg. One cannot but help be left with the impression that the two became inextricably intertwined. However, as discussions seemed to vacillate between joint ventures, purchases, drilling contracts, it becomes clear that so many different proposals were on the table at one point or another that the parties cannot hope to rely on the various positions put forward as might have been favourable to their positions after the fact.

The Agreement

On July 18, 1999, Johnson and Randsburg executed the Agreement for diamond drilling (Ex. 2, Tab 1). Evidence differs as to how the final draft was agreed upon, the number of drafts and the time involved. Johnson's evidence leans towards complex, detailed negotiation and attendant changes. Lenigan's evidence suggests that discussions were cursory. The Agreement was drafted by Mr. Johnson, borrowing from an agreement between Cominco Mines and Tundra Drilling. Mr. Lenigan stated that he had received the contract on a Sunday, and signed as Mr. Johnson was refusing to ship the rig until a deal had been reached.

According to Mr. Lenigan, Johnson's drilling equipment was presented to him as being in excellent condition and that it could achieve 150 to 200 feet per shift per day, so that a hole could be completed in 6 or 7 days (of single shift, making a 1000 foot hole). According to Mr. Lenigan, he had understood that this could be done for the $15 per foot set out in the

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Agreement, based on the earlier quote. Therefore, Mr. Lenigan anticipated that the work could be completed in a month. Mr. Lenigan explained that the $10 in shares per foot was in way of a debt settlement for shares, meaning that for every foot actually drilled, Johnson would be entitled to shares worth $10. It was never his intention, nor that of the Agreement to print 200,000 shares, being 20,000 feet times the $10.

The contract sets out terms of mobilization, demobilization and the scope of activity, made out between "James Lenigan Randsburg International Gold Corporation (the Company) and W. Johnson Mining & Oil Field Services Ltd. (the Contractor). The tribunal has set out a paraphrasing of the Agreement in Schedule 2 to these Reasons.

The contract ends with signatures on behalf of Johnson and Randsburg, Mr. Lenigan having initialled each page. Although page seven implies that there was an eighth page attached, such a page was not filed. Nor was its existence raised.

Initial Meeting at Gowganda

The initial meeting concerning the drilling took place in Gowganda on July 20, 1999, between Messrs. Lenigan, Opara and Johnson, joined by geologist Frank Puskas, and an investor named Freedland. According to Mr. Johnson, the drilling conditions had been presented to him as being good up to this meeting.

Frank Puskas, who had been retained by Randsburg, identified the drilling program he drafted, found at Exhibit 9, Tab 18. Hole FL-00-01 was to be drilled with an Azimuth of 090 with a -50 degree dip. The drilling was to have targeted anomaly E.

The location was the subject of prior drilling by Texmont, in 1966. The two Texmont holes (drill logs found at Ex. 9, Tab 15) were drilled with a size E drill, being smaller than the Johnson BQ drill. According to Mr. Puskas, the Texmont hole encountered sulphides, involving pentalum, which is a nickel bearer, which was necessary to an economic deposit. Mr. Puskas wanted the first hole to duplicate as closely as possible the results from the Texmont hole. The actual cores from the Texmont hole had been stored at Firth Lake and were inspected by those present.

As to the matter of deviation, Mr. Puskas explained that the E size core is smaller than the BQ. A small core is more likely to deviate from the direction it is drilled. It was his belief that an experienced driller using a larger core could avoid the deviation. Mr. Puskas agreed that the matter of deviation had been discussed. In his words at page 240 of the May 19, 2000 transcript, line 18:

> ... we were not committed to drilling and getting a lot of footage. That was not our mandate. The mandate here was to drill a hole and try to hit a target. What is the Target? Anomaly "E".

Mr. Lenigan could not recall whether it was at this meeting or some later time that Frank Puskas indicated that he wanted the hole to go to 2000 feet, although Mr. Lenigan did agree that this was ultimately the case. He also indicated that discussions taking place at the

time regarding the Texmont hole(s) drilled in 1966, was primarily by Mr. Opara, although Puskas was involved. Mr. Lenigan recalls that Mr. Puskas took them through the structure of the deposit they were looking for, discussion of anomalies and a particular kind of conductor. Mr. Lenigan stated that controlled drilling had never been mentioned. His evidence was that he had never heard the term until just prior to the hearing. He would have asked for an explanation, had he heard the term. However, he did recall Mr. Puskas stating that the 50 degree dip was important.

Mr. Johnson's evidence was that he examined the Texmont drill logs with Mr. Puskas and discussed what had taken place. Mr. Johnson stated that the Texmont log for hole #1 which reached 1012 feet showed that the drilling would be in heavily fractured and faulted rock. According to Mr. Johnson, he was questioned by Puskas as to why the two holes were lost. He explained at the time that drilling into soft rock, namely serpentine or soapstone, with the hydraulic force on the drill and bit at a high rate, would cause the drill to deviate its course considerably. This type of drilling cannot be sustained in this type of fractured zone over great distances and resulted in the loss of the two holes.

In view of the two lost Texmont holes and the target of 2000 feet, Johnson told Mr. Puskas and Mr. Opara that he would have to control drill the hole in order to reach this depth without threat of losing it as well. A hole of this depth would have to be drilled straight.

The results of this first hole were important, as they would be used to raise funds for further drilling, according to Johnson. According to Johnson, there was a minimum of funds available at the commencement of drilling and it was imperative that there be success on the first hole to support attempts to raise more capital. Despite the wording of the Agreement as to 1000 foot holes, the target of the Johnson Hole was 2000 feet. Mr. Johnson stated that he had advised that in order to control drill a hole, the feet-rate would have to be cut in half and more time would be involved.

Johnson explained that the way in which a driller can expect to make money on a contract based on footage is to work on drilling as much footage as possible during the time available. Slowing the drill rate to control its direction will impact directly on the footage achieved. This is fine where the holes are short, but once the depth is to go to a depth of 2000 feet, unless the drilling is controlled, the hole will be lost. Mr. Johnson said to do otherwise would be a waste of money to the company paying for the drilling. Mr. Johnson stated that Messrs. Lenigan, Opara and Puskas were all aware that Hole FL-01-99 was a control drilled hole.

Referring to the practices of other drilling companies, Mr. Johnson stated that it is normal practice to obtain 50 per cent of the contract up front. Contracts contain a clause which states that the driller does not have to guarantee the hole. Based upon these type of provisions, the practice is to obtain the maximum footage in the shortest time frame. The deposit provides a cushion for the up-front costs, such as consumables, mobilization and labour. Mr. Johnson stated that he did not obtain a 50 per cent deposit as his arrangement with Randsburg was one of joint venture.

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The Drilling of Hole 01-99

Considerable time was spent giving evidence concerning the drilling which took place on hole 01-99, the only hole drilled by Johnson, during the period of mid-July to September 6, 1999. In addition to the evidentiary review of the Daily Time Reports (found at Ex. 2, Tab 2, Ex. 9, Tab 17), which will be set out in some detail, the tribunal summarized information, such as depth, activity and comments, taken from the Daily Time Reports, and set them out in Schedule 3 to these Reasons. This is a summary of documentary evidence filed, but in the interest of expediency, direct quotes are not noted; much of the information is summarized.

Mr. Johnson stated that Hole FL-01-99 was one of the worst holes he has ever drilled. He characterized it as being very fractured and smashed up. In the first 300 feet of drilling, he did not extract a piece of core larger than a couple of inches. Between 300 and 400 feet, it was very hard to put in a rod too. This caused the rig to bounce around like a jackhammer, which in turn damaged third gear at around the 400 to 500 foot level.

Mr. Johnson went through the drill reports in detail and provided the following explanations. In reaming the casing to 6 feet starting off, a hydraulic fitting on the head was broken, due to the hard, blocky and unstable conditions of the hole. With high vibrations in the hole, the rods were pulled and greased as a means of cutting down on vibrations. The rods are greased with a heavy, environmentally friendly grease and smooths out the vibrations.

The hydraulic lock-up in the drill hole means that the formation, being soft, absorbs the drill fluids and swell, exerting pressure back onto the drill. This was done with an environmentally friendly drilling fluid, which Mr. Johnson said was made of fish scales. At 635 feet Mr. Johnson tried to wash the hole, which he explained means that the string is pulled back 20 to 30 feet, at which point the driller works the fault, namely to wash the fault out, to prevent debris from falling in behind the core barrel, which would lock up the pipe and hole.

According to Mr. Johnson, a driller could easily lose a hole by failing to condition and stabilize. When the rods are pulled, due to it being a fault zone, loose material falls back in and has to be reamed out. At 630 feet, observing that every time they pulled the rods there was material caving back into the hole, which took half a shift to return to hole depth, Mr. Johnson came to the conclusion that he should case more of the hole.

Mr. Johnson suggested to Mr. Lenigan at this point that the hole, or as much of it as possible, should be cased. Mr. Johnson had brought 100 feet of casing with him from St. Albert, based on the assertion by Mr. Opara that drilling conditions would be good and they were not. He told Mr. Lenigan that they would require another 150 feet of casing. It was at this point that he was told they were out of money, being July 31 on the Daily Time Reports as out of money at the time the transmission required replacing.

According to Mr. Johnson, Mr. Lenigan gave his personal guarantee that he would reimburse the cost of the transmission, which Mr. Johnson asked be within 30 days, but the money was never forthcoming. In addition, Mr. Johnson cased 250 feet of the hole, having

purchased an extra 150 feet of casing, which he also was not paid for, although Mr. Lenigan similarly agreed that he would pay. The need for additional casing took place on a weekend. Extra casing jaws were needed to drive the casing for the projected depth, at a cost of $1,100. Mr. Johnson stated that he picked up an extra 600 feet of casing, but due to difficulties in the hole, they only put down 250 feet in total.

Mr. Johnson stated that he removed the core barrel and ran the rods to the bottom of the hole with the bit, then he reamed the casing over top of the string, or drill rod. This was to keep the hole straight and align the casing. He explained that the casing can deviate into the faults and make its own hole, which can eventually break off. There were problems running the casing in and out of the hole, as it was using up casing shoes, due to the depth and absence of water. He could not keep water at the casing shoe bit because there is so much fault that the water runs away from the bit, the cooling bits. Mr. Johnson described steps taken to modify a bit which had been muddied in the waterways, so that better water circulation to the mud rings would be available.

The vibrations were explained by Mr. Johnson as being caused by the string down the hole, causing the bit to bounce around inside the coring tube, so that when trying to pull the core tube, the core size becomes undercut and core is lost. When this happened, it was necessary to use hole stabilization drilling fluid or pull the rods and grease them.

Mr. Johnson explained the terms used in his drilling reports. "Reaming rods" means to ream on the outside of a drill pipe to pilot the casing into the hole. When the rods are pulled to either change a bit or grease the rods and the faulty sections cave in, the driller will ream the rods by having to essentially redrill the same whole through the caved portions to bottom. Hole stabilization involves stabilizing the sides of the hole with drilling muds and drilling fluids. According to Mr. Johnson, for 2000 foot holes, acid tests should not be used over 1,000; rather, a speri-sun test should be used. Mud bombs and drilling fluids are used to attempt to seal off fault zones, without which there is not proper drilling fluid circulation bringing the sludge and drill core to surface and the hole can be lost.

Mr. Johnson ran out of drill rods, due to the fact that he only brought down 1600 feet, and with sorting, perhaps 1500 feet were left. The contract specified 1000 foot holes, and it is Mr. Johnson's evidence that Mr. Lenigan had agreed to pick up the cost of the additional drill rods necessary due to the greater depth sought.

Mr. Johnson explained that when rock that is broken and fractured is drilled, pressure is put on and through the drill pipe, causing a jackhammer effect. The vibration causes damage in the gear of the transmission. The transmission broke down on the Saturday of the August long weekend, but he could not fix the rig until the following Tuesday.

Another unforeseen difficulty was the contaminated oil which caused the drill to be taken off line for several hours of maintenance. The chuck seal also went on the rig, which Mr. Johnson stated was the first one in 4000 feet of drilling, not particularly bad, but possibly caused by the extreme vibrations.

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Mr. Lenigan acknowledged that he regularly received the drill reports and within a few weeks came to realize that there were serious problems on the site. According to Mr. Lenigan, both Mr. Puskas and Mr. Opara were attempting to determine whether other drill companies had problems with this type of serpentine rock. Mr. Lenigan stated that he became very confused during this time. There were fuel problems, labour problems, excessive fuel usage, problems with the rig. All drilling activity seemed to focus on problems, requiring, conditioning and the like.

Mr. Lenigan was led to believe that costs would go down if a second shift was added, several weeks into the drilling. However, it was his belief that Randsburg was only paying for labour at the first instance, due to the fact that Mr. Johnson was at the site, and unable to facilitate payments in a timely manner.

Mr. Puskas had been on thousands of drill sites, for which he was hired to examine the cores, had been involved in this kind of work for more than one hundred in Northern Ontario. With respect to the drilling done by Johnson, the core recovered was in small pieces, which was surprising to Mr. Puskas. The sedimentary rock involved is of a type which causes few drillers to have problems. It took Mr. Puskas a long time to fit the pieces together while logging, as he essentially had to perform the reassembly of the core himself, matching the joints. He stated that many pieces were put in backwards, as opposed to matching so as to reproduce their sequence in the hole.

As to the contents of the core, Mr. Puskas explained that the presence of pulverite, which is a gritty talcum-like powder, would denote the possibility of a fault. He explained that a fault is something which cuts across the rock, whether in a predictable pattern or randomly. It is through looking at the breaks in the core, namely pulverite, which shows the potential existence and location of faults. However, there is also a phenomenon known as veining which is like a band through the core, which can break off the rock. Asked whether as an experienced geologist he could identify where faults occurred, including the number and extent of faults, Mr. Puskas indicated that the driller would have to assist with the identification process. If there is a fault shown by a gouge in the core, the drilling fluid return may wash out the gouge, so that the driller needs to put in a spacer, showing that there is an area of poor recovery at a specific depth.

Mr. Puskas stated that he did not see any indication of faulting, nor any gouge; nothing to indicate severe faulting. There was nothing in the nature of material recovered from the hole drilled by Johnson to indicate that anything unusual was present. Mr. Puskas was able to compare the Johnson core with that drilled by Norex. The core recovered was identical in nature. Mr. Puskas compared the Johnson recovery with that he had seen in Thompson, Manitoba, namely measured in inches as opposed to near half to two-thirds metre long pieces, attributable to faulting of a type called listric faulting, located in a tectonically disturbed area, with high grade of metamorphose.

Mr. Puskas described another problem encountered with the core recovered from the Johnson drilling. The core was impregnated with a grease containing a brownish, copper metal, showing metal flecks which did not come out despite numerous washings. It had the

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appearance of mineralized rock, and yet it was artificial in nature. This ultra mafic grease has never, in his experience, been used in conjunction with this type of drilling as it defeats the purpose, namely the drilling for ultra mafic mineralizations. Having such grease imported into the core through drilling interferes with the subsequent analysis and vector projections used to determine the actual underground structures. The flecks looked as though they were part of the core, but Mr. Puskas stated that they would come off with a knife.

Mr. Puskas gave his opinion that the reason the rock was coming out of the Johnson hole was not due to the nature of the rock encountered. Working back, looking for possible variables, he would have to look to the driller or the drilling assemblage as the source of the problem. In Mr. Puskas' opinion, which was speculative at best, Johnson was drilling in this type of rock for the first time, or some other drilling difficulties were attributable to Mr. Johnson's drilling. However, during cross-examination, he agreed that he never reduced his concerns in writing to any one of Johnson, Randsburg or Lake Superior.

The Johnson hole hit disseminated sulphides and the Norex hole (see below) also showed disseminated sulphides, despite the direction. Mr. Puskas concluded that, with the different directions, the entire cone-like structure he postulated exists below the surface, is comprised of this compound. However, according to the assay results, on the information available thus far, it is not in paying quantities. What an exploration company is looking for is for an area of coagulation of the disseminated sulphides in a discrete geometry which can be extracted.

Mr. Puskas was referred to paragraph 32 of the Statement of Claim which states,

> "... when it became apparent from the core samples obtained that the drilling conducted by Johnson had been successful in locating a significant mineral deposit ..."

Mr. Puskas referred to the chemical analysis by Chemex Labs Ltd. (forming part of Exhibit 14) to state that the foregoing was not correct. However, he would have characterized the drilling as a technical success, having hit mineralization in three quadrants, based upon which it is possible to project that where they join, there may well be a significant deposit on site.

After the Johnson Hole was completed, Johnson did not return immediately to Ontario, as many of his bills were outstanding, not being paid by Randsburg. There was little discussion of any conversations which took place during this time, although there appear to have been threats and accusations. Essentially, Johnson never returned to drill, his rig was ultimately stripped by persons unknown, and subsequent drilling of Firth Lake was performed by an arm's length drilling company, Norex Drilling Limited ("Norex").

Norex Drilling

Norex drilled four holes in the area. The first was 600 feet west of Johnson's hole, but while Johnson drilled east, Norex drilled north. The first Norex hole, which was lost, fell short of the target by about 14 feet.

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Mr. Gagnon, owner of Norex Drilling, could not offer direct evidence concerning either the drilling performed by Johnson, nor that of his own company, with respect to conditions. Most of the work done by the company is in Ontario and Northern Quebec, and Mr. Gagnon had been drilling since 1956.

Average prices per foot in the Gowganda area would be $11.00 to $12.00 for BQ size diamond drilling, excepting the cost of acid tests and core trays. This would include mobilization and demobilization. In actual fact, his company charges by the metre, with net prices ranging from $35 to $38 per metre, which translates to between $11 and $12 a foot. This price includes labour, machine time and all consumables. He also stated that the first 50 feet of overburden is charged out at $11.50 per foot, and it increases by $2.50 per foot between 50 and 100 feet, which is normally enough to cover the cost of additional additive or shoes or for time in overburden. Drilling through clay can be very quick and easy, but drilling through sand, gravel and boulders is time consuming and more expensive for the reasons set out above. The cost quoted would cover the normal kinds of holes, but he did acknowledge that "you can get terrible ones". He clarified that this was not the case on the Firth Lake holes drilled by Norex.

Norex performed 6,086 feet of drilling. The first hole stopped at 453 metres because the drill got stuck, in its attempt to reach 1500 feet, being approximately 14 feet short of its goal. Mr. Gagnon gave his opinion that this occurred because his drillers were not careful enough. He speculated that they might have drilled too quickly or that they did not clean the hole well enough, so that the core barrel, being the last portion of the drill string, got stuck. However, the client, Randsburg, indicated that it had all of the information it needed out of the hole and it was satisfied. This being the case, Norex did not redrill the hole, but simply unscrewed the core barrel and pulled off the hole. Mr. Gagnon indicated that Randsburg was not charged for the drilling of this hole, being number DDH2.

Mr. Gagnon stated that it took approximately 42 days to drill 6,083 feet. All invoices were duly paid, and Mr. Gagnon confirmed the amounts listed, stating that the value of the work was in excess of $89,000.

Mr. Gagnon confirmed that it is often a standard practice to require a deposit for work to be carried out. It is a very common practice, particularly working for people not known to his company. Many in the drilling The purpose is to mitigate risk and ensure being paid. In this case, $38,000.00 was received.

Referring to the drill log prepared by Newman Drilling in 1966 in reference to the Texmont hole, Mr. Gagnon identified the reference to "lost core" as meaning that there is no sample for those depths. He could not tell from the record whether it was due to a void, was grounded or that there was clay which had been washed out. There are some holes for which a driller does not get 100 percent recovery. But such good recovery occurs in silicious rocks. He estimated that 75 percent of the time, a driller incurs losses.

Mr. Gagnon was asked by the tribunal to explain the following provisions in the letter agreement between Norex and Randsburg:

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> We cannot garantie (sic) the direction of the drill hole beyon[d] the collar but will exercise all precaution to minimize hole deviation.

Mr. Gagnon stated that Norex might have to control drill, whereby the penetration rate is slowed to allow the hole to maintain a straighter projection. In diamond drilling, the faster one drills, the more likely it is to flatten and go to the right, due to the clockwise rotation of the drill, and it cannot be guaranteed as the ground will affect the deviation of the hole.

Drill Program and Report

Referring to Tab 10 of Exhibit 9, Mr. Puskas stated that the original draft drilling program changed. The Norex holes drilled over by the Serpentine are a considerable distance from that of Johnson, about three-quarters of a mile.

The changes to the draft were that the holes were prioritized differently. However, upon cross-examination, Mr. Puskas conceded that the FL-02 hole (Norex's first hole) (formerly borehole 3 on the draft) also changed direction. When the Johnson hole took so long to drill, and was a drain on funds, it became necessary to change the direction of bore hole 02. While a visual examination serves to clarify this point, Mr. Puskas did concede that the original drill program would have seen the second hole to be drilled in the same direction as that of Johnson. In the draft drill program, both the second and third holes were to have been drilled from the same point, with 2 going east and 3 going north. However, in the revised program, only the northbound hole was drilled. Mr. Puskas explained that it achieved ostensibly the same result; rather than drilling through the extension of Anomaly C towards Anomaly E, it drilled through a different part of the extension of Anomaly C towards an extension of Anomaly E and E-1.

Mr. Puskas described the broken lines on the government geological map (also in Exhibit 9, Tab 18) as depicting suggested breaks, stating that , where a lake has a long linear shape, it is not uncommon for the government geologist to put a line through, suggesting a crack in the rock. Mr. Puskas stated that this would not denote a major fault, but a crack. In cross-examination, it was pointed out that while the Johnson line heads towards the crack, the Norex hole FL-02 ran parallel to the apparent crack, namely parallel to the trend of Firth Lake.

Referring to the results for the Texmont hole, Mr. Puskas agreed that it was important to bring the results to Johnson's attention, as the hole increased six degrees for every 500 feet, having steepened 12 degrees over 1000 feet, something Mr. Puskas could not explain. Normally, holes will flatten, rather than steepen. However, Mr. Puskas was evasive when asked whether this was unusual, making reference to being asked to explain something two-dimensionally for a three-dimensional situation. However, he did agree that this was the first time in his experience he encountered the hole steepening rather than flattening.

Referring to the Summary Report for ... Milner and Van Hise Townships Property dated September 25, 1999 (forming part of Exhibit 17), of which Mr. Puskas was the author, the third and fourth paragraphs under the heading "Property Exploration" on page 5 states:

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> The first borehole, FL-99-01, ... on the west shore of Firth Lake. The hole was located in the immediate vicinity of the Texmont number one hole and was intended to replicate or twin the Texmont results. FL-99-01 was drilled at an azimuth of 090 and at an angle of -50 degrees.
>
> This hole was considered a technical success having intersected 78 feet (from 1973 to 2051 feet) of interstitial to net textured sulphides (pyrrhotite-pyrite-chalcopyrite) up to five to seven percent. These sulphides were found to be hosted by a medium grained hornblende-rich ultramafic, an apparent border facies or zone to the main dunitic ultramafic.

Mr. Puskas explained that he was trying to replicate the discovery of presence of sulphides, namely the mineral pentlandite. Referring to the drill log for the Texmont hole (Ex. 9, tab 15) Mr. Puskas explained the notations of "lost core" as denoting that the driller either didn't get core or it is not showing up in the core tray at the particular interval. Agreeing that this would mean that a solid stem of core was not recovered from the drill, there would be a break in the core, that the drilling procedure was inadequate so that no core was recovered. This could be attributable to deficient drilling or the condition of the rocks. However, he agreed that, looking at the core log, he could not discern whether the problem of lost core is due to driller error or a problem in the hole.

Mr. Puskas indicated that he was retained in July, 1999, so that he was not privy to either the discussions or the decision leading to the reference in the Randsburg/Lake Superior Memorandum of Understanding (Ex. 3, Tab 3) that $160,000 (Canadian) was to be spent during the first year of a drill program. His own recommendation in the September 25, 1999 Report was for drilling at a cost of $75 per metre, which would be approximately $25 per foot, not a going rate of $12.50 to $15.00, as he had suggested. Mr. Puskas clarified that this amount would include mobilization, demobilization, core boxes.

Asked to refer to paragraph 32 of the Statement of Claim, wherein it states essentially that it is apparent from the core samples drilled by Johnson that the "drilling ... had been successful in locating a significant mineral deposit...", and the Conclusions of the September 25, 1999 Report, in the second paragraph, where Mr. Puskas wrote:

> These drill results should expand on the technical success already achieved by borehole FL-99-01...
>
> ...
>
> Borehole FL-99-01 should be deepened by approximately 100 feet to ensure the five feet of mineralized (recrystallized) cherty sediment represents bonafied footwall and not an inclusion or part of a footwall breccia zone underlain by massive sulphides.

Mr. Puskas reiterated his position that the hole was a technical success and not that there was a significant find. Mr. Puskas also confirmed that there had never been any ground geophysics applied to borehole FL-99-01, owing to the fact that drilling was being done, to target an airborne anomalies, the highest rating of 12 channel, which is depicted as a black hole. The airborne geophysics serves to create dots (either a "zero", depicting low priority, partially filled in or fully blackened - the 12 channel), and the question becomes, how to join the dots. Ground geophysics can give confirmation of how the anomalies depicted by dots should be joined, in part giving further information between the flightlines of the airborne. In other words, ground geophysics gives another set of data. It was not done in this case.

Explanation of Billing and References to Agreement

Mr. Johnson explained that field rates for overburden penetration and setting casing charged at footage rate and field rate is a rate usually agreed to by the contractor and company when difficult drilling conditions are encountered, meaning that footage was not being accomplished. This rate reflects a cost plus rate set. Mr. Johnson stated that he advised Mr. Lenigan that, with progress not being made, Johnson would be charging half its normal field rate, namely $170.00 per hour, being $85.00, reflecting rig hours for such items as conditioning the hole or stabilizing the hole. The half rate reflects the fact that Randsburg was to be picking up the fuel, labour, bits and casing costs. As set out in Invoice 1g, 180 rig hours were billed at $16,391.00. This amount has never been paid by Randsburg.

Mr. Johnson explained his understanding of the $15.00 per foot cost in the Agreement. He stated that $5.00 reflects an equipment wear factor, such that once 20,000 feet have been drilled, such items as the drill string would need to be replaced and maintenance is necessary to keep the drill operating and to buy parts to accomplish the 20,000 feet. The $10.00 per foot in shares was to reflect, based on a minimum of 20,000 feet of core, although not specifically stated by Mr. Johnson, was a gamble on his part, both on the value as to the shares at the future point in time, as well on the fact that he would leave the money in Randsburg, freeing up capital to continue drilling.

From Mr. Johnson's evidence, it appeared that he was expecting these shares up-front, either prior to the work commencing or during the drilling, as had been explained by Mr. Lenigan as a debt settlement process, whereby debt incurred by Randsburg on account of drilling footage would be retired through the issuance of shares.

Mr. Johnson stated that he had not been paid for the drillers and helpers wages, as that was not what was agreed to; such wages were Randsburg's direct responsibility. Randsburg did not pay for these expenses until after Johnson was off the site, within the time when his rig was stripped. Evidence of expenses paid was filed with Exhibit 19, which shows that drillers (Mike Harrington/Patrick Harrington, Mark Rondeau, Darren Lippett, Jason Swain and DW Drilling/Delton Steele) were paid on October 12, 1999. Other expenses picked up by Randsburg directly include Imperial Oil for fuel, the Lakeview Motel and Northern Pines for accommodation and food, as well as Bullock's. Mr. Lenigan made a comment in passing, during his evidence, that questioned how anyone could run up bills of hundreds of dollars a day

at a store that sells only pop and beef jerky. In point of fact, Bullock's offers a wide range of grocery items, as was evidenced by Exhibit 28, downloaded from their website, which shows a markedly larger store than Mr. Lenigan suggested. The payment to Bullock's was $4,170.52, having also been paid on October 12.

Actual Expenses

The tribunal had been asked to delay the hearing of this matter, pending an examination for discovery on the invoices. The tribunal refused, suggesting that an informal discussion of the expenses would suffice, given the lateness of the request. However, in point of fact, the invoices and bookkeeping throughout are, if not confusing, at the very least, intertwined. A simple examination discloses that Johnson purported to bill Randsburg for everything purchased. This is in keeping with Mr. Johnson's evidence, that Randsburg had agreed to pay all expenses plus $15 per foot in cash and shares.

A summary of the invoices, including the one which pre-dates the agreement, has been prepared by the tribunal, being Schedule 4 to these Reasons. The intention is to not itemize each item, as this would be unnecessarily long. However, the summary does serve to indicate, not only what was billed to Randsburg, but the range of goods and services included. These were highlighted during the evidence and cross-examination of Mr. Johnson.

Randsburg paid $36,079.15 directly to Johnson between July 13 and October 13, 1999, in four payments. In addition, on or about October 12, 1999, Randsburg paid directly all outstanding labour bills to those individuals named above, in the amount of $18,463.97; all outstanding accommodation and provision bills, $9,278.30; fuel and supplier charges of $3,096.50; and Edge Transpo (discussed below), $3,852.00.

Press Releases

The Press Releases which were issued by Randsburg were filed and drawn to the attention of the tribunal. Their significance appears to be in support of credibility of the witnesses, the outward state of Randsburg's financial position at certain relevant times, and the matter of the success or not of the drilling of Hole FL-01-99, the Johnson Hole. Information is set out:

July 12, 1999 — Drill Program to begin on Milner and Van Hise Township Joint Venture/ July 12, 1999

> "... is pleased to announce that it is beginning a drill program on its Milner and van Hise Township nickel bearing sulphide joint venture with Lake Superior Resources Corporation the week of July 19. ..."

August 3, 1999 — Incomplete Preliminary Results on Borehole 99FL 01

> "The Hurnian sediments capping the target mafic/ultramafic yielded bedded siltstones with acicular arsenoyrite from 73 feet (22.2 metres) to

91 feet (27.7 metres). The mineralization will be evaluated as either: a) A newly identified, potentially auriferous setting in the Heronian sediments or b) An arsenopyrite halo to yet to be identified nickel-cobalt-silver vein system characteristic of the Cobalt-Gowganda Silver Camp."

September 10, 1999 Private Placement

"...negotiating a private placement of its securities which will consist of the sale of 1,430,000 units at $0.35 each, each unit consisting of one common share and none two-year...."

September 13, 1999 Drill Hole BH FL 99 01

"is pleased to announce that drill hole BH-FL-99-01, drilled on its 50% Joint venture with Lake Superior Resources, has successfully intersected 78 feet (1973 -2051 feet) of interstitial to net textured sulphides (pyrrhotite-pyrite-chalcopyrite). These sulphides are hosted by a medium grained, hornblende-rich ultramafic, an apparent boarder zone to the main mass dunitic ultramafic, which based upon air magnetic appears to be elliptical in plan, and 42 square kilometres. The disseminated sulphides, up to 7 percent, also include think, introduced or remobilized vein emplacement."

October 20, 1999 Drilling Update

"... is pleased to announce it is resuming its drilling on drill hole BH-FL-99"

November 30, 1999 Early Exploration Results on Borehole FL 99 02B

"Borehole FL-99-02 collard approximately 50 metres to the south, was abandoned short of the target depth in dunitic ultramafic in a structural zone with cave.
Borehole FL-00-2B duplicated the success achieved by borehole FL-00-01. This hole was drilled approximately 220 metres north-northwest of hole FL-99-01 to a depth of 675 metres. The results established the presence of an ultramafic (dunite) laccomorhpic intrusion at least 2000 feet thick. On both holes, a marginal zone, at least 80 feet thick, is composed of peridotite/pyroxenite with up to 5-7 percent disseminated interstitial magmatic sulphides (pyrrhotite, trace chalcopyrite). ...This marginal zone is considered the spatial and temporal loci for potentially economic, massive Ni-Cu-PGM bearing sulphides. With no evidence to the contrary these "target" sulphides remain the probable source of the 11-12 channel airborne anomalies identified in the north and east portion of the Firth Lake claim group."

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January 31, 2000 Risk Advisory Team recommends

> "... Results from the drill program recently conducted on the Company's Milner and Van Hise Joint venture project in Ontario will be forthcoming in due course".

It is noted that three press releases refer to several attempts to raise funds, but it actually only proceeded with one; funds, according to Mr. Lenigan, were used for the Firth Lake project as well as activity in Angola.

Demobilization

Mr. Johnson was advised by Mr. Lenigan in late October that his rig had been stripped and to have it removed from the site. Although there was an OPP investigation, the actual thief was never uncovered. Up until he was told to remove his rig, Mr. Johnson was of the belief that, once his invoices were paid by Randsburg, he would continue drilling.

In order to remove his rig, Mr. Johnson rented a hydraulic boosting unit and bought a battery. He hired a helper and went into the bush. He charged his system, broke the pipes and withdrew 2,300 of rods out of the hole, leaving some in the ground, for which he billed Randsburg. He cleaned up the drill site, packed his rig and equipment and had it hauled to the main road, where it was loaded by a 35 ton crane onto the truck. Mr. Johnson stated that his crane came from Engleheart and the D-6 cat and float from eight hours away, which explains the proportionally higher costs for demobilization. He was able to get a good rate on trucking back to St. Albert as the truck was doing a loop.

Mr. Johnson stated that, owing to the outstanding unpaid bills in the community, he could not get anyone locally to assist him in demobilization. Instead, he hired from towns 100 to 200 miles away, thereby adding to his costs. Including his airfare, the helper and accommodation, his total demobilization costs were $13,937.45. Included in this amount was a cost for downhole casings and joints of $1,467.98, which he left behind in the hole. It was also pointed out that the costs shown on Invoice 1m were included in the tally for Invoice 11, so that the additional amount of $3,764.26 should be disregarded.

These costs were incurred between October 28 and November 8, 1999 and remain unpaid. Mr. Johnson confirmed that the $5,000 in trust for demobilization was never received.

Observations of Norex Drilling by Mr. Johnson

Mr. Johnson stated that he saw Norex drilling at Firth lake while he was busy with demobilization. Their hole was spotted by Frank Puskas approximately 600 to 800 feet west of the Johnson hole. According to Mr. Johnson, Norex overshot its target; it missed where it was supposed to be drilling. Mr. Johnson observed that he saw Norex doing uncontrolled drilling without fluids, so that their bit and pipe could deviate uncontrolled from its target. He conceded that Norex did not encounter any of the faults encountered by Johnson, given that they were able to do 300 foot shifts. Ultimately, Norex lost this first hole.

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Uninsured Losses

Johnson also claims $18,153.39 for uninsured losses on his rig. The insurance contract contained a clause indicating that only 80 percent of the value of the rig was insured. The loss to the rig was $63,355, plus tools in the amount of $3,620. Under questioning, Mr. Johnson did agree that he had offered the rig for sale for $138,000. Mr. Hill questioned the varying amounts.

Budget Truck

Johnson rented a truck from Budget when he arrived in Sudbury to use for getting to the site, driving core to Mr. Puskas in lively and as general transportation, as it turned out, for getting the considerable parts and supplies required. After he returned to Edmonton for his contracted ten days off, it was kept on at the site in the charge of either Mike Harrington or Delton Steele. However, once drilling was completed, it was alleged that Mr. Harrington chose to not return it to Sudbury until he received payment for his labour, which was not forthcoming until October 12. The truck was returned at that time.

At the hearing a more complete accounting of truck rental charges was filed, being two invoices for $2100.01 and one for $7,166.01, which included milage. The total claimed was $11,366.03.

Footage in Agreement Not Drilled by Johnson

Johnson has also claimed payment for the amounts not drilled, being in the order of just under 18,000 feet at the rates of $10.00 per foot in shares and $5.00 rig wear factor. It was Johnson's position that Randsburg was not entitled to terminate the Agreement and payment for the footage specified in the Agreement was owing.

Submissions

In Mr. Fitz' submission, this matter arises out of a breach of contract. There is no dispute that there is an Agreement. As to the matter of privity, Randsburg is a direct party, and while Lake Superior is not, in his submission, nothing turns on it. There is no disagreement with the fact that Johnson was presented with the complete picture, namely information on the Texmont holes, after he arrived in Gowganda.

The evidence shows that Johnson was expected to go to Gowganda for a period of a year, pursuant to an Agreement which contemplates 1000 foot holes. Nothing turns on the fact that the first hole went beyond that limit, as Mr. Puskas directed Johnson to keep drilling.

According to Mr. Johnson, he had entered a joint venture Agreement with Randsburg and Lake Superior. To this Agreement, each brought their own special attributes: Lake Superior had a direct or indirect interest in the properties involved and also brought its administrative skills and day to day support in the person of Michael Opara; Randsburg brought access to public funds and although this was its first major drill program, it had the existing mechanisms to raise funding; Johnson brought with it a drilling rig and expertise in drilling.

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Mr. Johnson's evidence is clear that all of his costs would be reimbursed. Randsburg and Lake Superior were short of the kind of funds required to pay an up front drilling deposit, and were hoping that the results of the first hole would go a long way towards raising the necessary capital.

To merely reimburse Johnson for his costs would not have provided Johnson with any kind of incentive to ship out the rig. Rather, it is his evidence that a portion of the footage was to have been paid for in shares in Randsburg. The tribunal has heard evidence that the shares of Randsburg were trading at 50 cents.

The reason that Lake Superior and Randsburg agreed to this arrangement was that they lacked the up front fees required by drilling companies. The tribunal has heard the suggestion from Mr. Swain during questioning of Johnson and Lenigan, that only $25,000.00 was available for drilling initially. Therefore, engaging a contractor in the traditional sense was not an option.

As to the April 12 letter (Ex. 20), the terms of the Agreement do not ignore the quote given (Ex. 3 Tab 7 and Ex. 9, Tab 19)). This correspondence merely contemplates another structure of Agreement and demonstrates that discussions were ongoing as to how the drilling could be achieved. It is not a case of the traditional money for services; Mr. Lenigan indicated that he could source drilling for cheaper in Ontario. However, Randsburg could not engage a driller without paying for some of the costs up front. Randsburg required someone knowledgeable and experienced on tough holes, something which it and Lake Superior were aware of. They also required someone with their own rig.

Mr. Fitz submitted that the Agreement was not ambiguous and that the intention of the parties is discernable. The conduct of Randsburg supports the position that all costs would be covered; why else would it have paid out invoices for a fire extinguisher, small tools, insurance, courier, phone expenses and rainsuits? Similarly, why pay the $300/day consulting fee if the expense was to be included under clause 3b?

Mr. Fitz referred to **Reddy v. Strople** [1911], 44 S.C.R. 256, in reference to the interpretation of the Agreement, where the Court states at page 257:

> There is a further rule which must be applied in this case, and that is, (I state it in the words of Coleridge J., in *Shore v. Wilson*[1], at page 525), that where the language used in the deed in its *primary meaning is unambiguous*, and that meaning is not excluded by the context, and *is sensible with reference to the extrinsic circumstances*, then such primary meaning must be taken conclusively as that in which the words are used.

The only thing which is not found in the Agreement is the $85/hour rig charge. This was added on when the situation became apparent, namely that there were considerable difficulties in drilling the Texmont holes which Johnson was not told about in advance and the

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[1] 9 Cl. & F. 355.

fact that Johnson was no longer put into the situation of drilling quickly in an uncontrolled manner. Mr. Puskas stated that he had never seen results like those of Texmont, despite experience with thousands of drilling sites. The rig hour cost is merely a recognition that Johnson was sitting on the hole at Randsburg's request, not achieving the kind of footage promised when the Agreement was negotiated.

The conditions of the Agreement were changed, despite whether Mr. Lenigan had ever heard the term controlled drilling or not. The fact is that there was a target, Mr. Johnson assumed part of the risk and achieved the target. He had never been told of the true drilling conditions. Mr. Puskas was directing him to control drill. Nor did Randsburg nor Lake Superior raise questions regarding Johnson's competence along the way, which would have been their right had they believed it to be the case.

In **The Toronto Railway Company v. The City of Toronto** [1906] 37 S.C.R. 430 at pages 434 and 435 discusses the consideration of facts in respect to which an instrument is framed is discussed:

> In construing an instrument in writing, the court is to consider what the facts were in respect to which the instrument was framed, and the object as appearing from the instrument, and taking all these together it is to see what is the intention appearing from the language when used with reference to such facts and with such an object, and the function of the court is limited to construing the words employed; it is not justified in forcing into them a meaning which they cannot reasonably admit of. Its duty is to interpret, not to enact. It may be that those who are acting the matter, or who either framed or assented to the wording of the instrument, were under the impression that its scope was wider and that it afforded protection greater than the court holds to be the case. But such considerations cannot properly influence the judgment of those who have judicially to interpret an instrument. The question is not what may be supposed to have been intended, but what has been said. More complete effect might in some cases be given to the intentions of the parties if violence were done to the language in which the instrument has taken shape; but such a course would on the whole be quite as likely to defeat as to further the object which was in view.

Any comparison between the drilling of Johnson and that of Norex is irrelevant. Norex did not drill into the fault, but rather drilled parallel to it. The evidence of Mr. Puskas cannot be considered as wholly impartial, as he was given incentive options.

The tribunal is also invited to prefer the evidence of Mr. Johnson over that of Mr. Lenigan. It is pointed out that the latter's comments with respect to the very limited goods available at Bullock's were inaccurate and Mr. Fitz submitted that this evidence must be taken as going to credibility. Mr. Lenigan was not on site beyond the first day or so; rather, Mr. Opara was present. Yet, he did not take the stand and the tribunal should draw an adverse inference from the fact that Mr. Opara did not give evidence as to what had been agreed to during the course of the drilling.

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A discussion of the applicable principles of adverse inference is found in **Iaquinto v. Guardian Insurance Co. of Canada** [1981] O.J. No. 1035, (Ont. S.C.- H.C.J), J. Holland J. states at paragraph 33:

> P33 Determination of this issue requires that inference be drawn from the facts and evidence and again helpful direction binding upon me is to be found in the Bernardi case, supra. At page 4208 is found:
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> Counsel for the appellants went further in his argument and contended that an **adverse inference** should be drawn against the respondent from his failure to do so. where a party has an evidentiary burden of establishing an issue, his failure, in circumstances, to call necessary evidence to support his case justifies a court in drawing the inference that the evidence of the witness who might have been called would have been unfavourable to him. The broad principle on which the rule is based is stated in Widmore on Evidence, (3rd ed.) Vol II, p. 162, as follows:
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> > The failure to bring before the tribunal some circumstance, document or witness, when either the party himself or his opponent claims that the facts would thereby be elucidated, serves to indicate, as the most natural inference, that the party fears to do so, and this fear is some evidence that the circumstance or document or witness, if brought, would have exposed facts unfavourable to the party. These inferences, to be sure, cannot fairly be made except upon certain conditions; and they are also open always to explanation by circumstances which make some other hypothesis a more natural one than the party's fear of exposure. But the propriety of such an inference is general is not doubted.
> >
> > The nonproduction of evidence that would naturally have been produced by an honest and therefore fearless claimant permits the inference that its tenor is unfavourable to the party's cause.
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> Many examples of the operation of this rule are to be found in the cases. Its clearest application is against parties themselves who fail to give evidence to negate crucial facts proven against them. But the application of the rule is not limited to parties or to employees or other persons whom they control. Failure, for example, to call medical evidence as to a party's pre-existing condition before an automobile accident was taken by the Supreme Court of Canada by Pigeon, J. to mean that the court "must presume that such evidence would adversely affect her case": Levesque and **Levesque v. Comeau et al.**, [1970]

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S.C.R. 1010 atpp. 1012-13. In that case, the Court held that even the absence of the witness from the jurisdiction was not sufficient to rebut the inference because of the availability of evidence by letter rogatory. See also **Dowsett v. Dowsett**, [1942] O.W.N. 593 (O.C.A.). An adverse inference was drawn in two cases where a party filed to call a former employee who had an intimate knowledge of the matter in question: **Keelan et al. v. Norray Distributing Limited et al.** (1967) 62 D.L.R. (2d) 466 and **Diederichs v. Metropolitan Stores Ltd.** (1956), 6 D.L.R. (2d) 751.

The fundamental condition for the operation of the rule is that it applies only to issues material to the determination of a case and only where the case made against the party is of such strength that it calls for a reply. **Cross on Evidence**, (4th ed.) p.44, states this proposition as follows:

> The absence of an explanation of facts which tell against a party should only be treated as evidence against him when the facts in question constitute a prima facie case in the sense that they worn justify, without in any way necessitating, a finding of liability. Even then, the absence of an explanation is only significant when the party against whom the prima facie case is proved can reasonably be expected to give an innocent explanation if there is one. When these requirements are satisfied, the failure to give and explanation will support an inference against the party who does not produce one.

The rule follows the shifting evidentiary burden in a case and does not apply solely to the party encumbered with the ultimate burden of proof. It is thus stated by Sopinka and Lederman in **The Law of Evidence in Civil Cases** at p. 537:

> The rule is not restricted in its application to the plaintiff or other party who has the ultimate burden of proof. Failure on the part of a defendant to testify or to call a witness once a prima facie case has been made out against the defendant, may be the subject of an **adverse inference**. While such a failure will not, in itself, fill a gap in the case of the party who has the burden of proof, when sufficient evidence has been produced by the latter, so as to create a secondary burden on the opposite party, failure by such party to testify or to call on a witness strengthens the case against him.

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> The party against whom the inference operates may explain it away by showing circumstances which prevented the production of the witness.

> In my view, the fundamental conditions of the operation of the rule are satisfied in this case. There is nothing to indicate that the friends of the respondent were not available as witnesses and no explanation was given as to why they were not called. Failure to call them not only left an important part of the respondent's case unsupported, but because of the strength of the case against him, led to the **inference** that their evidence would have been **adverse**. I do not regard the establishment of this inference by itself as determinative of the result in this case. it is only one of the many factors to be considered in the balancing of probabilities.

Mr. Fitz submitted that the issue of Johnson's putative directorship in Randsburg is nothing but a red herring and he would not deal with it. The fact is, Randsburg did not receive Johnson's consent to act, evidenced by the documentation filed.

Finally, Mr. Fitz submitted that, in determining whether subsection 69(2) of the **Mining Act** would entitle the applicant to an interest in only those two Mining Claims upon which his drilling occurred, the tribunal should consider the wording of subsection 66(3) which allows for assessment work performed on a mining claim to be applied to all contiguous mining claims. To read subsection 69(3) narrowly would be inconsistent with the purpose of the **Act**.

Referring to page 264 of the discussion in Sullivan, R, **Driedger on the Construction of Statutes** (3rd. ed.) (Toronto: Butterworths, 1994) concerning the purpose statements, which can be summarized as stating that a clause should be construed with the purpose of the legislation in mind.

For a discussion of the purposive approach, Mr. Fitz drew the tribunal's attention to the Supreme Court of Canada decision in **R. Hasselwander** [1993] 2 S.C.R. 398, involving a determination of whether a gun which could be easily converted from semi-automatic to fully automatic was a prohibited weapon within the meaning of subsection 84(1) of the Criminal Code, where Cory, J. states:

> He [Lacourciere J.A.] observed that it would be contrary to the purpose of the legislation if, by removing a portion of the weapon, a person could render his or her weapon inoperable and thereby avoid conviction.

> Thus it appears that in the majority of the decided cases the courts have properly considered the purpose of the legislation. that purpose is to protect the public from these dangerous weapons that are designed specifically to kill or maim people. Where a weapon can be quickly and readily converted to automatic status, then that weapon must fall within the definition of "prohibited weapon:. To come to any other conclusion would undermine the very purpose of the legislation.

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If read narrowly, section 66 would allow a claim holder more freedom on how to apply assessment work than a successful section 69 applicant.

In conclusion, Mr. Fitz submitted that this had been a promising property. Randsburg found a driller to assume a participatory role, but without telling him the whole story. The hole drilled by Johnson was successful, as can be seen from the Press Releases, allowing for the raising of an additional $350,000 to $400,000. Why had Randsburg terminate the Agreement. In the words of Mr. Swain, Mr. Lenigan realized that it had promised too much and would be liable to give away too much of the company.

In **Cornwall Gravel Co. Ltd. v. Purolator Courier Ltd. et al.** (1978) 83 D.L.R. (3d) 267 (O.H.C.J.), sets out a discussion of appropriate damages:

> It seems to me looking at the sections as set out above as a whole that there is a distinction between loss, damage or injury on the one hand and delay on the other and that the limitation of liability of $1.50 per pound applies only to loss, damage or injury to the goods themselves. The word "injury" may seem strange but I suppose could well apply to a shipment of livestock. Liability is excluded for delay under para. 5 in certain circumstances set out therein. None of these circumstances existed in the present case. i therefore conclude on the wording of the sections of the Schedule itself that a limitation of liability in this case only applied to the goods being transported and did not cover any consequential loss due to ***[page 274]*** delay. In coming to this conclusion I have not construed any of the provisions contra proferentum since it was an Act of the Legislature that included the words :in the contract": Madill v. Chu, [1977] 2 S.C.R. 400, 71 D.L.R. (3d) 295, 12 N.R. 187.
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> There remains the question whether or not this loss was in the contemplation of the parties and this takes us back to Hadley v. Baxendale et al. (1854), 9 Ex. 341, 156 E.R. 145. At pp. 354-5 Alderson, B said this:
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> Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered arising naturally, i.e., according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it. Now, if the special circumstances under which the contract was actually made were communicated by the plaintiffs to the defendants, and thus known to both parties, the damages resulting from the breach of such a contract, which they would reasonably contemplate, would be the amount of injury

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> which would ordinarily follow from a breach of contract under those special circumstances, so known and communicated. But, on the other hand, if those special circumstances were wholly unknown to the party breaking the contract, he, at the most, could only be supposed to have had in his contemplation the amount of injury which would arise generally, and in the great multitude of cases not affected by any special circumstances, from such a breach of contract. For, had the special circumstances been know, the parties might have specially provided for the breach of contract by special terms as to the damages in that case; and of this advantage it would be very unjust to deprive them.
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> In the present case Purolator, through its employee, Boisvenue, knew that the item to be transported was a tender and that it was required to be delivered by 12 noon on October 2, 1973. Boisvenue was told of the importance of the document and must have realized that if delivered late the tender would be worthless and a contract could well be lost. In these particular circumstances it is my opinion that "the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant" and the damage which in fact flowed from the branch of such contract was damage "which they would reasonably contemplate ... which would ordinarily follow from a breach of contract under those special circumstances, so known and communicated".

Mr. Hill submitted that the notion that Johnson got a special deal because he was prepared to assume risk in an after the fact, false version of what happened. This idea relies on the fact that Norex required an up front 50% deposit can be dispelled by looking at Norex's contract, which only required $38,000, and comparing it with the $16,000 initially received by Johnson, followed by a payment of $6,000, for a total of $22,000 before the end of July. Therefore, in order to save between $10,000 and $15,000 at the outset, Randsburg and Lake Superior are said to have agreed to a contract which is totally out of whack with not only the industry standard, but with what Johnson himself had quoted, is not founded.

The Agreement does not require the payment of all Johnson's costs and the per foot payment. Johnson must explain to the tribunal why an insider of Randsburg would foist an agreement which is out of line and unreasonable.

Reviewing the issue of Johnson's Directorship in Randsburg, Mr. Hill submitted that the evidence given demonstrates that Johnson was in a position of trust with Randsburg and its representatives. The evidence shows that he participated in the capacity of Director and offered drilling expertise. Mr. Puskas states that Johnson was introduced as a Director, yet he did nothing to dispel this impression. And yet, he participated in a meeting whose sole purpose was to fraudulently outvote other directors and have them removed from the Board. This demonstrates the lengths that Mr. Johnson will go to deceive, be it the Board of Directors, and the tribunal. Mr. Hill submitted that Johnson has always been perceived as a director, to other directors and lawyers. The story he now tells that he never was a director must be treated with extreme caution.

Turning to the Agreement and its interpretation, Mr. Hill submitted that the tribunal should take into account the factual matrix and interpret it to give effect to the parties' reasonable expectations. In **KFC v. Scotts** (Ont. C.A., Nov 2, 1998), p. 51 Gowge, J sets out:

> ... While the task of interpretation must begin with the words of the document and their ordinary meaning, the general context that gave birth to the document or its "factual matrix" will also provide the court with useful assistance. In the famous passage in ***Reardon Smith Line v. Hansen-Tangen***, [1976] 1 W.L.R. 989 (U.K. H.L.) at 995-95 Lord Wilberforce said this:
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> > No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as "the surrounding circumstances" but this phrase is imprecise: it can be illustrated but hardly defined. In a commercial contract it is certainly right that the court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, the market in which the parties are operating.
>
> The scope of the surrounding circumstances to be considered will vary from case to case but generally will encompass those factors which assist the court "...to search for an interpretation which, from the whole of the contract, would appear to promote or advance the true intent of the parties at the time of entry into the contract."...

Mr. Hill submitted that the factual matrix in this case started with the quote sent to Michael Opara in April, setting out a footage cost of $15.66, inclusive of labour and material. It is pointed out that Lake Superior was a complete stranger to Johnson at this point. Prior to entering into the Agreement, it is important to take into account that Randsburg had been looking at competing quotes and received assurances that Johnson could do the job inclusively for $15.00 per foot. This reflects the industry standard, according to Messrs. Gagnon and Puskas as it is customary to include all costs in the price.

When Johnson assured Mr. Lenigan that the drilling could be completed for $15.00 per foot, he would not move his rig until he had they money for the first invoice. As an insider, johnson was in a position of trust, and as such, should not be allowed to foist upon Randsburg an obligation to pay amounts in excess of industry standards, namely the footage cost plus each and every one of Johnson's costs. Mr. Hill submitted that the Agreement is confusing, and Johnson is seeking to take advantage of the ambiguities in his drafting to reap a windfall at the expense of Randsburg.

Another interpretation of the Agreement, which Mr. Hill suggested would be more reasonable, would be that Johnson is entitled to remuneration paid plus reasonable additional costs. Looking to the overall scheme of the Agreement, paragraph 3 sets out the obligations of the contractor, Johnson. Paragraph 5 starts out with the company, Randsburg. Anyone reading the Agreement would expect to find the respective obligations in the appropriate paragraph.

However, Johnson founds the bulk of his claim on paragraph 3c, but he never provided evidence giving an explanation of why this obligation is found here, particularly one as important as this, virtually involving all conceivable costs. Mr. Hill submitted that Johnson sought to deliberately deceive Randsburg and hide this clause. In the alternative, one can read the exact words, involving an assurance that no liens would attach, which is a typical owner-protection clause. It is the owner, or in this case the company, Randsburg, which is seeking assurance that no liens will be registered against the Mining Claims. To do so, it must ensure that the contractor, Johnson, pays all of its suppliers and subcontractors. If it was the owners obligation to pay these costs, there would be no need to insert such a clause into the Agreement. Plus, in addition to receiving the $15 footage and $300/day field cost, it cannot mean that Randsburg is responsible. None of the costs listed are directly incurred by Randsburg. Rather, they are all costs incurred by Johnson.

Mr. Hill stated that Randsburg has always been willing to pay what is reasonable, according to industry standards. A literal reading does not require Randsburg to pay all of Johnson's costs. There is no fairness and justice in the way Johnson is asking that the Agreement be read. Mr. Hill submitted that paragraph 4a has specifically been inserted to protect Johnson when he runs into a difficult hole, namely that it could be abandoned or, if requested, could continue to drill it at field rate costs. At no time did Johnson invoke this clause, therefore, at no time did he feel that the hole was of sufficient difficulty to fit that description.

Keeping in mind that, upon cross-examination it was demonstrated that there was no cost which Johnson did not try to pass on, and if the tribunal accepts that items in paragraph 5 are exceptions to the $15 per foot rule of the Agreement, and that paragraph 3c does not entitle Johnson to additional reimbursement, it becomes apparent that the bulk of the items claimed by Johnson fall within paragraph 3a. The analysis done on behalf of Randsburg (Tab 1 of Accounting Tables) shows that $20,923.91 falls within 3c; $12,896.48 within 5l; and $166.58 within 5m. A calculation of charges improperly paid on account by Randsburg (Tab 2) shows that $9,891.54 should be credited to Randsburg. Also, there are calculations of Randsburg's payments to third parties on behalf of Johnson (Tab 3), which total $27,742.27. These amounts include labour, room, board and fuel. Finally, nowhere in the Statement of Claim are the actual payments made by Randsburg to Johnson factored in; these total $19,634.23 (Tab 4). As for the cost of the budget truck, drilling stopped on September 3, 1999, yet was not returned until November 1st. If the tribunal concludes that Randsburg was responsible for this cost, then the amount should only be up to and including September 3rd.

As for uninsured losses, $18,000 is the adjusted number, based on Tabs 7d, 8 and 13 of Exhibit 9. Paragraph 5j does set out that Randsburg is responsible for non-insured losses, but this refers to loss or damage, and is not, in Mr. Hill's submission, intended as insurance for theft by third parties. There is no such obligation on the part of Randsburg. Randsburg had been reasonable in its expectation that Johnson would be getting 100 percent coverage in insurance. The shortfall in coverage should not be borne by Randsburg. If anything, Johnson should be seeking redress through his broker for this. However, Mr. Hill submitted that there was in fact no real loss to Johnson. The insurer paid $48,000 for parts missing from the rig: Johnson still has the rig itself. Johnson had earlier offered to sell it for $60,000, and even though he tried to argue that this did not include all of the equipment, Mr. Johnson was evasive

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when questioned on this. Mr. Hill submitted that there is a significant betterment factor in the position taken by Johnson. He concluded by submitting that the claim should be disallowed in its entirety.

The $85 per hour rig charge does not appear in the Agreement: it is a cost which appears out of thin air. Norex mentioned difficult drilling in its contract, where an additional $2 per foot would be charged in overburden or in using casing. This amount should be reduced significantly. This is in fact a field cost, set out as $300 per day, so that the rig cost should be based on this at $30 per hour.

As to the demobilization, Mr. Hill invited the tribunal to compare these costs with those of mobilization and submitted that they are excessive. Evidence of this is also found in the bond amount set aside in trust, namely of $5,000.

The guaranteed minimum footage of 20,000 feet, even with the $5 rig wear and tear amount taken out, sees Johnson as asserting that Randsburg has no right to terminate the Agreement, regardless of what work is actually carried out. It is, however, clear that continued work would be contingent on earlier success. Johnson knew that if there were no such success, there would be no drilling in addition to the initial 10,000 feet which was to have been the first phase. Even if the tribunal were to find that there were a guarantee of 20,000 feet, Randsburg would nonetheless be entitled to terminate the Agreement for cause. In this case, there is substantial cause. Mr. Hill referred to the improper invoices as being evidence of gross overcharging in a drill program which went way overbudget. It was this overcharging that caused Randsburg to halt drilling to investigate what was going on.

Notwithstanding Johnson's best efforts in drilling the hole, there is strong evidence to suggest that he was way over his head. One need only compare Johnson cost of 2000 feet at a cost of $99 per foot, compared with Norex's drilling of 6,500 at $89,000, which is less that $14 per foot.

Johnson has maintained that this was a difficult hole. Mr. Puskas' evidence is that there was nothing exceptional with this hole, no unusual faults in the core. If it had been unusual, there would have been voids in the core. There was no such thing. Mr. Puskas gave evidence that in such cases the fault must be traced back and attributed to the driller. Johnson was inexperienced and sloppy, with poor safety practices. The core itself was of poor quality, broken and in short lengths; also, Johnson improperly used fluids with copper in them, thereby creating the impression that mineralization had been encountered. Mr. Johnson has had a varied career. He is a welder and does not have the expertise to handle this drilling job.

After the hole was completed, Randsburg took stock and confirmed that the overruns were due to inexperience. There was evidence to support this conclusion, namely poor performance and substantial overrun. When Randsburg raised these questions, Mr. Johnson had threatened to destroy the hole. As to why Randsburg had not put their concerns in writing, it can be seen from Johnson's letter of August 7, that he was writing in response to concerns which had been conveyed to him over the phone. (see tab 19, ex. 9 and tab 11).

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As to the issue of lost profits, even if Randsburg had no right to terminate, Johnson must show that damages were sustained and demonstrate all steps taken to mitigate. If Johnson failed to secure other contracts, then he has failed to show mitigation. The onus was on him to prove damages. Mr. Hill submitted that the only proper inference to draw is that he had fully mitigated his losses.

Mr. Hill referred to the onus involving a claim to prove damages, found in **100 Main Street v. W.B. Sullivan Construction Ltd.** (1978), 88 D.L.R. (2d) 1 (Ont. C.A.), where Morden J.A. states at page 22:

> ... The basic principal is that the onus is on the plaintiff to prove its damages on a reasonable preponderance of credible evidence.

and further in **Prenor Trust Co. of Canada v. Nunn**, [1998] 6 W.W.R. 635 (Alta. Q.B.), Fruman J. stated at page 642:

> The general principal governing the calculation of damages for breach of contract is that the plaintiff is to be put in the same position, so far as money is able, as he would have been had the contract been performed; ... The plaintiff has the onus of proving that position:...
>
> In an action for breach of contract the plaintiff is ordinarily required to prove damages on a balance of probabilities:...

Finally, the damages claimed further demonstrate that Johnson is continuing to overvalue his claim pursuant to the Agreement. Even though the cost is $10 per foot now, it does not take into account his costs for labour and materials, being all costs other than those in paragraph 51. Only then could one arrive at the loss figure.

In **British Westinghouse Electric and Manufacturing Company, Limited v. underground Electric Railways Company of London, Limited**, [1912] A.C. 673 (H.L.) Haldane, V. stated at page 689:

> The fundamental basis is thus the compensation for pecuniary loss naturally flowing from the breach; but this first principle is qualified by a second, which imposes on a plaintiff the duty of taking all reasonable steps to mitigate the loss consequent on the breach, and debars him from claiming any part of the damage which is due to his neglect to take such steps. In the works of James L.J. in ***Dunkirk Colliery Co. v. Lever*** (1), "The person who has broken the contract is not to be exposed to additional cost by reason of the plaintiffs not doing what they ought to have done a s reasonable men, and the plaintiffs not being under any obligation to do anything otherwise than in the ordinary course of business."

> As James L.J. indicates, this second principle does not impose on the plaintiff an obligation to take any step which a reasonable and prudent man would not ordinarily take in the course of his business. But when in the course of his business he has taken action arising out of the transaction, which action has diminished his loss, the effect in actual diminution of the loss he has suffered may be taken into account even though there was no duty for him to act.

Turning to the issue of how to apply the test in section 69, Mr. Hill submitted that once the tribunal calculates all moneys owed, those credited, the tribunal should come to the conclusion that there is nothing owing to Johnson in this matter. At most, he submitted, it should be a small fraction of the claim. However, if the tribunal does make a determination that there is money owing, his client asks for 90 days to make the payment before any such vesting order is issued.

Further, section 69 vesting orders must be limited by the language of the section, which clearly provides that the interest to be vested is that of the claims upon which work directly took place. While there is incongruity between subsection 66(3) regarding assessment work, when the legislature turned its mind to section 69, it is clear that on the plain meaning of the words, it means only those claims where work was performed. The legislature could have easily included the words to encompass contiguous claims.

Referring to Sullivan, R., **Driedger on the Construction of Statutes** (Butterworths: Toronto, 1994) (3rd ed.), Mr. Hill drew the attention of the tribunal to discussion at pages 168:

> IMPLIED EXCLUSION (*EXPRESSIIO UNIUS EST EXCLUSIO ALTERIUS)*
>
> *Governing Principal.* One of the so-called maxims of statutory interpretation is *expressio unius est exclusio alterius*: to express one thing is to exclude another. This maxim reflects a form of reasoning that is widespread and important in interpretation. Cote refers to it as the *a contrario* argument [2] The term "implied exclusion" has been adopted here.
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> An implied exclusion argument lies whenever there is a reason to believe that if the legislature had meant to include a particular thing within the ambit of its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature's failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied. The force of the implication depends on the strength and legitimacy of the expectation of express reference

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[2] R. Dickerson, *The Interpretation and Application of Statutes* (Boston: Little Brown & Co., 1975), p. 234.

> The better the reason for anticipating express reference to a thing, the more telling the silence of the legislature.
>
> ...
>
> Some common forms of the implied exclusion argument are examined below under the headings (1) failure to mention comparable items and (2) failure to follow an established pattern.

at page 170:

> ***Failure to follow an established pattern.*** One of the most striking features of legislative drafting is its avoidance of stylistic variation. As much as possible, drafters strive for uniform and consistent expression. Once a pattern of workds has been devised to express a particular purpose or meaning, the pattern is used for this purpose or meaning each time the occasion arises. This practice of consistent expression creates expectations in the reader that may form the basis for implied exclusion argument.[3]

Mr. Hill submitted that the tribunal should conclude that section 69 grants jurisdiction to vest only claims upon which work has been performed.

Finally, Lake Superior is not a party to the Agreement; only Randsburg is named in that document. If it should be determined that an amount is owing and if Randsburg fails to pay, Mr. Hill requested the opportunity to make submissions on the value of the claims, so that the vesting order will apply to a portion of the claims commensurate with the amount owing.

As to any adverse inference in not calling Mr. Opara, the Agreement is between Johnson and Randsburg. However, Mr. Puskas was called, having the expertise to give credence to his observations. Mr. Johnson candidly acknowledged that he does not do accounting. However, no one is asking the tribunal to draw an adverse inference from his not having called the individual who did do it.

Mr. Fitz responded that the factual matrix should be started from April 12, when the letter was issued asking for all costs to be covered. As to the cost of drilling, Mr. Puskas admitted that costs can go up to $35 per foot, depending on what is involved. Again, many of the costs claimed by Johnson, such as travel, insurance, mobilization to and from Alberta, were not included in such calculations by Norex. As to sneaking in clause 3c, Mr. Lenigan held himself out as experienced in heading up a public company. It would be absurd to suggest that one could slip a cost by him. As to the budget truck, Harrigan was not paid until October 19, so the fault cuts both ways.

As to insurance, Lenigan never asked for a copy of the insurance coverage once it was received. The costs also were not excessive, given the circumstances. Similarly, the failure to lead evidence on mitigation is based on the fact that the rig is stripped, and until Johnson can rebuild it, he cannot mitigate his losses. 35

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[3] For discussion of the presumption of consistent expression, see *supra* at pp. 163-168.

As for privity and legal interest in section 69, it does not say legal interest; it is unfounded that privity does not apply in this case. Mr. Fitz finally concluded that no more than 30 days should be allowed for payment, given that the clock is ticking with respect to assessment work.

Findings

Capitalization

Much was made at the hearing of the allegation that Randsburg did not have sufficient funds at the time to hire a local drilling contractor, which in turn forms the basis for the unusual provisions of the Agreement which are advanced by Johnson, that Randsburg was freed from providing the up-front capital necessary to a comprehensive drilling program at a time when it did not have the where with all to raise funds, being limited to no more than $25,000 initially.

Mr. Johnson was emphatic that the Agreement was for all drilling costs plus issuance of shares. The value of this approach, when examined through the limited lens of the Norex Agreement, advanced by Mr. Hill, leads to the question of what Randsburg stood to gain by agreeing to pay a per foot charge as well as all associated expenses. Mr. Fitz has argued that this is irrelevant, but given the wide disparity between the respective claims, namely holding at $15 per foot all inclusive, to $15 per foot plus all expenses, losses, and damages for lost opportunity to drill an additional 18,000 feet, it would appear to be most relevant.

The tribunal has considered the pattern of payments actually made and finds that the results received from the drilling of the FL-99-01 hole did materially affect the ability of Randsburg to raise capital. The tribunal further finds that this did not take place until after mid September, when the results were analyzed and the Press Release of September 13 was issued. And it is noted that bills were paid on October 12 and drilling was slated to resume October 20.

The tribunal finds that the evidence shows that not only was Randsburg undercapitalized until it was able to issue its press release of September 13, but that Johnson was also undercapitalized. Although a more complete analysis occurs below, many of the items billed by Johnson in the July 12 unnumbered invoice on account of consumables are in fact part of machinery and equipment.

This under capitalization on both their parts has led to rash promises being made or perceived. However, there is insufficient evidence upon which to make findings to vary the terms of the Agreement with regard to the ongoing costs incurred by Johnson to keep the rig up and running, ant the tribunal finds that it must rely on the Agreement, however poorly written, as governing the relationship between the parties initially, not accepting the position of Johnson that it was a drilling for shares plus all costs arrangement.

Johnson's Competence

It becomes necessary from the outset to determine whether the difficulties experienced by Johnson in drilling hole FL-99-01 were due to incompetence or ground conditions. The tribunal has heard the evidence of Johnson, Lenigan, Puskas and Gagnon and in particular considered evidence relating to the Texmont hole and first hole drilled by Norex.

The tribunal finds that the formations involved sedimentary rock with gneissic rocks, chert, broken or blocky serpentine. Broken faulty conditions are noted on the Johnson Daily Time Reports as early as July 23, 1999, when drilling commenced from a 6 foot depth. The Texmont Drilling Logs are replete with notations of lost core, which at 510 to 524 feet of the second hole has the comment, "As above, badly broken core". The Norex Foreman's Daily Report notes blocky conditions commencing on November 6.

Mr. Gagnon was quick to state that there was no charge for this hole and in his cross-examination by Mr. Fitz it was pointed out that another drilled was brought in. The tribunal has conducted a review of the drill reports up to the time the first hole was lost which reveals that, indeed, the conditions described were similarly blocky. As Mr. Johnson pointed out, there had been no attempt to control the direction of the drilling, a point which the tribunal finds it agrees with and Mr. Johnson's fears with regard to his own hole were realized with respect to that of Norex.

Notwithstanding that Norex did not stick to the original drill program designed by Mr. Puskas, namely in that Puskas either abandoned his second drill hole or changed its direction, what is clear is that Norex commenced drilling with a BQ size drill. The first drill hole took from November 3 to 9, namely seven days until the Norex operator experienced considerable problems and was forced to pull the rods. The core lifter apparently remained in the hole and the tube broke, causing the drill to get stuck. All efforts to get it out failed, as set out in the Foreman's Daily Report, found at Tab 12, Exhibit 3, for November 9, 1999. Problems continued on November 11, when, in attempting to unscrew the rods, the clutch broke, noting that the alternator had already been replaced the day before. November 12 shows further difficulties, with the core barrel tube still in the hole, which was caving in.

It was Mr. Gagnon's evidence that Norex determined that it would not charge the cost of drilling the hole (453 metres) to Randsburg. There was no agreement between the various witnesses as to whether what happened constituted the hole being lost or merely abandoned, but the tribunal finds that this is not the point. The point was, and the tribunal so finds, that the first Norex hole was a great deal of trouble. This is, notwithstanding that it was **not** control drilled, as the evidence of both Mr. Gagnon, Puskas and Johnson clearly indicate, that of Mr. Gagnon having been in a general sense, according to the agreement, as he had no personal knowledge of conditions encountered. From a review of the invoices filed (Ex. 3, Tab 11), although there may be some confusion between whether the first invoice is numbered 257 (actual invoice) or 258 (Norex accounting), **indications are that Randsburg was indeed charged for the first hole.** In total, Randsburg was billed $86,103.43 for the Norex drilling.

There are many reasons why the problems in the hole could have occurred, namely substandard equipment or fittings, improper pressure, speed, too much or too little water, inadequate greasing of rods or washing away of grease. Operator error or inexperience can also be a factor. However, problems can also be attributable to the type of ground encountered, with broken and blocky ground or schisted and gneissic rocks involved.

The tribunal finds that the evidence supports the view that Mr. Johnson drilled to the best of his ability, which is found to be that of a knowledgeable and competent driller with considerable experience in dealing with both straightforward and difficult drilling situations, rock which was blocky and full of faults. The measures taken by Mr. Johnson are reasonable and adequate in the circumstances to this case. His attempts to overcome the vibrations in the hole, the tightness experienced and the like, were reasonable and reflect those of a competent and knowledgeable driller. Greasing rods is found to be standard practice where faults are incurred. Similarly, the difficulties experienced with the drill itself are those which are associated with wear of a drill encountering what at the time appear to be insurmountable difficulties.

The tribunal finds that it was impressed by Mr. Johnson's description of his rig, its assessed value and his own reputation in rebuilding rigs to as new condition, something which he clearly was doing to have sold numerous rigs which he rebuilt. Moreover, the tribunal found Mr. Johnson to have been a credible witness with respect to his troubleshooting efforts and was impressed by the various measures he took to ensure that the hole was not lost and progressed.

There is nothing in steps taken to suggest that Mr. Johnson did not know what he was doing, but rather, if this were indeed the worst hole anyone had ever seen in their career, and Mr. Puskas's drilling exposure although not expertise, ranged in the thousands, then it must be concluded that it was the ground conditions which were at fault and perhaps even insurmountable with the BQ drill.

The tribunal notes that the evidence of Mr. Puskas was that he had never seen drilling like was done on FL-99-01 and when the problem was not the drill or the ground it had to be the driller, as the only logical conclusion. Perhaps this logic applies to virtually all holes having been drilled in Mr. Puskas' experience, but the tribunal finds that the facts in this case support the existence of unusual and difficult rock.

While the evidence of Lenigan and Puskas puts into some question the degree of competence of Mr. Johnson, the tribunal finds that, rather than being conclusively persuasive in this regard, their evidence rather is self-serving, as interested parties to the outcome in favour of Randsburg, of which Mr. Puskas, if not a Director, is a consultant standing to gain considerably by the discovery to be made.

The evidence which is the most persuasive in assisting the tribunal in reaching its findings as to Johnson's competence was the evidence filed concerning Norex, which performed drilling operations in November, 1999 after the Johnson drill had been stripped, along with data from the Texmont holes. Although Mr. Gagnon gave evidence as to standard practices, and what may have been happening on the ground, it is the actual Norex drilling reports and invoices which are the most informative.

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What was not discussed by Mr. Gagnon, nor picked up by counsel, was the fact that the second drill, which completed a further three holes between November 13 and December 11. What has been discerned through a request for post-hearing evidence, was that Norex's three holes were drilled a size NQ, as shown on the invoices. NQ size drill bits are in fact a size up from the BQ size drill bit, which in turn is two sizes larger than the E size used by Texmont in 1966.

The significance of the NQ size drill brought in is simply this. If the problems experienced by Johnson were due to the size of the drill, and the experience of Norex on its first hole supports this position, then all of the solutions posed by Mr. Johnson could not solve the ultimate problem of vibrations in the hole, namely that given the conditions of the bedrock, they were due to the size of drill, a problem which was visibly cured by the use of a larger bit. The tribunal finds that no fewer than three drillers experienced difficulties drilling in this rock and the best solution, indeed the only solution, was to increase the size of the drill.

Drilling to Target

Circumstances occurred in this matter which had cause to change the conditions under which the Agreement had been arrived at. The tribunal finds that Mr. Johnson had been led to believe that drilling conditions were good, prior to the execution of the Agreement and in particular, before arriving at Gowganda. Although it did not hear from Mr. Opara, the tribunal finds that it will rely on the evidence of Mr. Johnson in this regard, that the drafting of the Agreement was based upon what was expected to be good and fast drilling, so that footage could be easily achieved.

The tribunal finds that matters materially changed once Johnson arrived in Gowganda. First, Johnson became aware of the Texmont drilling and results, which were cause for concern to any prospective driller. The logs clearly showed considerable lost core, and Mr. Puskas' evidence was that there was considerable and unexplained deviation from target.

In Mr. Puskas' own words, footage was not what they were after; what they wanted were results. These results could only be achieved through the controlled drilling process, whether or not anyone chose to call it by that name. Randsburg could have done well to have consulted with Mr. Puskas more extensively prior to negotiating the Agreement, as he had considerable influence in the actual drilling which was to take place. This drilling seems to bear little resemblance to what had been agreed upon ahead of time.

Similarly, on the very first hole to be drilled, the maximum depth of the Agreement was discarded in favour of moving to a target depth in excess of 2,000 feet. It is clear that Mr. Johnson did not get this in writing, but Mr. Lenigan was present at Gowganda for the commencement of drilling. Mr. Johnson would not have had access to his own office and despite it perhaps being unwise to have done so, took Mr. Lenigan at face value that the target depths had been changed for this first hole.

The tribunal finds that Randsburg acquiesced to Mr. Puskas' judgment regarding the target, depth and manner of drilling. Having done so, it caused Mr. Johnson to slow his drilling considerably. While the conditions for drilling in excess of 1000 feet were in the Agree-

ment at clause 4a, and notwithstanding that there was no written agreement to this effect, Randsburg through Mr. Lenigan left Messrs. Opara and Puskas dictating conditions, if not in charge. Mr. Puskas wanted his 50 degree hole. Mr. Puskas stated that footage production was not the key, they needed results. Mr. Opara did not give evidence as to what he may have told Mr. Johnson to do and so the tribunal finds that it prefers the evidence of Mr. Johnson as to the directions he received. Through the actions of Randsburg, particularly through Puskas, the tribunal finds that Johnson was directed to continue drilling beyond 1000 feet, and is entitled to be paid a reasonable amount towards his costs and profits. The tribunal also points out that it is clear that Johnson did not have available to him the ability to write out an amending agreement in the bush, barely being able to fax reports on a daily or weekly basis. However, there was telephone contact.

Also, the tribunal notes that Mr. Hill submitted that Randsburg was prepared at all times to pay what was a fair amount for the drilling conducted by Johnson. Relying on its jurisdiction under section 121 of the **Mining Act** to make a decision on the real merits and substantial justice of the case, the tribunal finds that equity demands that overruns beyond 1000 feet be adequately compensated to cover Johnson's expenses in continuing to drill beyond the depth contemplated by the Agreement. This will include cost of labour, additional rods and other expenses which are discussed in detail below.

Relevance of the April 26 Quote

The quote is based on a 5000 foot or 30 day drill program. The tribunal finds its relevance to be limited. The wages for 30 days of drilling single shifts are $36,584, and are converted to a rate per foot. The other factors, including a $3 per foot wear and tear factor, factor in the cost of truck rentals (2) as well as fuel, and consumables.

This is contrasted with the terms of the Agreement. In it, the amounts listed in clause 5 are separate and distinct. There is a footage rate, a completely different wear and tear factor of $5 per foot and provision for both mobilization and demobilization. In addition, and listed as separate provisions, are that Randsburg will supply fuel, lubes, diamond bits, casing shoes and wireline equipment (clause 5l). Similarly, Randsburg is to provide room and board (5n), Johnson's airfare and a daily rate of $300 (5o).

The tribunal finds that the Agreement, despite it being poorly drafted, goes so far as to bear little or no relationship to the quote. Whatever purpose the quote served, the tribunal finds that Mr. Lenigan was an experienced businessman and if he had wanted the Agreement to proceed along the lines of the earlier quote, there were sufficient inconsistencies, if in fact no relation at all, that he would have spoken up.

The April 12 Cost Plus Letter

The letter of April 12, 1999 from Lake Superior to Johnson (Ex. 20) states, "We would be interested in an arrangement for drilling at cost plus shares." Enclosed is information on Lake Superior, and the letter itself goes on to discuss the area involved, and the Lake Superior team, including Frank Puskas, where Mr. Opara has stated that Mr. Puskas has

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agreed to become a director. The tribunal finds that Mr. Opara might have been the best witness to shed light on the matter of who may have been a director of which company, perhaps from the perspective of where some of the allegations may have arisen.

This letter is from Opara and makes no mention of Randsburg. Undoubtedly, the matter of drilling for cost plus shares arose at this point in discussions between Johnson and Lake Superior, but ultimately, Lake Superior did not engage Johnson, nor enter into the Agreement. While drilling for shares did form part of the Agreement, given that Randsburg was not mentioned and may not have even been known to Lake Superior at the time of writing, this April 12 letter is only indicative of some of the discussions which took place leading up to the Agreement between Johnson and Randsburg. Just as the quote does not represent what was ultimately put into the Agreement, the tribunal concludes and finds that the cost plus shares was one of the options considered by Lake Superior in attempting to find a way to be able to afford to drill the Firth Lake properties, namely the Mining Claims. The tribunal finds that it is not persuaded on this evidence that Johnson and Randsburg had agreed to the arrangement set out in the proposal contained in this letter.

Findings Concerning the Agreement

Clause 3a stipulates that Johnson will provide **all required** drilling machinery and associated tools, which is to include the drill itself, support equipment, mud tanks, mixing equipment and hand tools. Clause 3c purports to stipulate that Randsburg will **be responsible for** labour, machinery, tools and supplies. Clause 51 stipulates that Randsburg will supply drilling mud, salt, additives, fuel, lubes, diamond bits, casing shoes and wireline equipment. Many of the terms set out are discrete, such as the actual drill, fuel, lubes, diamond bits and the like. Others, frankly, are sufficiently vague and moreover, appear to be overlapping. This being the case, the tribunal finds that such items will be construed against Johnson, who drafted the Agreement.

The drilling machinery in clause 3a includes the diamond drill while clause 51 encompasses wireline. Drill rods, bits and core barrel form part of the underground workings. The wireline works in conjunction with the underground fittings; it is noted that the core barrel assembly and core tube will be different when the wireline method of core extraction is used than if the older method of recovery of pulling all of the rods out of the hole. Therefore, the tribunal finds that clause 51 includes such items as core tube, barrel assembly and rods in addition to the bits and wireline.

As to what support equipment in clause 3a can mean is open to question. Conceivably, it could be the skidder used to transport the drill or the lumber which was actually purchased to stabilize the rig; it could mean whatever trucks are used in support of the drilling operation, going so far as to include the rental truck used to support the drillers in their operations at the site, including driving to town for supplies or bringing the core to the geologist in Lively.

As to the purported supply by Randsburg of machinery in clause 3c, it could mean the Honda pumps used for the water, although the actual mixing equipment and mud tanks are part of clause 3a. The machinery as used in clause 3c could mean the winch used in connection with the wireline.

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Taking clause 3c, its drafting appears to include items encompassed in clause 3a; it leads to the question of whether tools are different from associated tools and hand tools. In the final analysis, the drafting is so confusing, with overlapping meanings, that the tribunal finds it must construe clause 3c against Johnson in favour of Randsburg. The drafting of the clause is suggestive of the fact that Mr. Johnson simply interchanged the word, "Contractor" with "Company" in an attempt to ensure that labour and all other expenses were paid by Randsburg. However, the effect is such as to create uncertainty and the clause cannot be applied against Randsburg.

In the absence of direction elsewhere in the Agreement as to labour, given that it is clear that Johnson bears the expense of machinery and support equipment, the tribunal finds that Johnson is responsible for labour up to an including the daytime shift of the 14th of August, when 1000 feet was achieved, as clause 1 deals with this directly, specifying that the hole not exceed 1000 feet. The tribunal further finds that on that date, Johnson would have been well within his rights to refuse to drill any further and in being required to do so by Randsburg, which clearly needed the hole, according to Puskas and supported to some extent by Mr. Lenigan, the tribunal finds that Randsburg will be responsible for reasonable labour costs commencing from the daytime shift of August 14.

In so making this finding, the tribunal is applying rules of equity and fairness. To have allowed Johnson to continue drilling a hole which was obviously not to his benefit financially, given the terms of the Agreement, to require Johnson to pay for labour from this date forward is found to be giving Randsburg the opportunity to take advantage of the fact that Johnson could not make good footage on this hole with control drilling.

The tribunal can only wonder at the various scenarios referred to during the course of entering into the Agreement, but in the end, Mr. Lenigan is found to be an experienced businessman and Mr. Johnson is found to be drilling contractor whose livelihood must depend on the contracts involved. Both share responsibility in the Agreement varying from what they each discussed in numerous conversations which were outside the period when this Agreement was being finalized between them.

Receipts and Daily Time Reports

Sorting through the various receipts and Daily Time Reports in support of Johnson's invoices proved to be the most difficult task in reaching a decision, although counsel for Randsburg has done considerable work to assist in this regard. Considerable time and effort has been spent, notwithstanding the cross-examination of Mr. Johnson, in attempting to determine the exact nature of the parts and or equipment involved.

The tribunal recognizes that Mr. Hill had attempted to adjourn the hearing of this matter, pending Discoveries of Mr. Johnson on the various invoices. The tribunal must state that time and effort saved in disallowing that request has only added to the time required to write this Judgment. In retrospect, while it would have added considerably to the costs born by the parties, it would have resulted in the tribunal spending considerably less time pouring over bills and a more timely decision. However, given that Mr. Johnson is in St. Albert and has had financial concerns since the stripping down of his drill, which has not been fully replaced, the tribunal accepts responsibility for the delay in issuing this Judgment.

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The tribunal finds that the Johnson invoices show that it was seeking to pass along each and every expense incurred to Randsburg right from prior to the signing of the Agreement. The specifications are sufficiently technical in nature so as to have hampered the exercise of attributing parts to the various possible headings. Examples of this are numerous: gaskets from Frontier Equipment Ltd.; 26 carbide grippers from Ruden Manufacturing and Consulting Inc. (likely in connection with the recarbiding of the chuck jaws); various male spud nuts, a ball valve, fem spud fitting, red coupling, hose clamps wood handles with casting, and the like from Gregg Distributors Co. Ltd.; nc gr5 c/s zinc and nc finished hex nut zp from The Bolt Supply House Ltd. are just several. It is unclear as to whether these belong to the drill, wireline, machinery, support equipment, drill bits, hand tools, tools or associated tools, mud tanks, mixing equipment.

The tribunal finds that any difficulty it has had in breaking down the various costs into the groupings (assuming that they were unambiguous) between clauses 3a, 3c and 51 does not appear to be due to a deliberate attempt on the part of Mr. Johnson to pad his accounts or mislead Randsburg; rather, the tribunal is satisfied that Mr. Johnson genuinely believed that he had entered into a cost recovery plus shares arrangement. However, the Agreement does not provide for such an arrangement. Johnson must recognize that it also had obligations under the Agreement, and was liable to pay for ongoing costs.

Virtually every cost incurred by Johnson was encompassed into the various invoices. The tribunal has observed in the invoice which pre-dates the signing of the Agreement, a number of expenses were passed on to Randsburg, including the purchase of a Honda pump (included in the heading "consumables"), the purchase of a sloop along with parts and labour for reconditioning and the cost of parts and labour for recarbiding the chuck jaws. These items clearly fall within clause 3a, being support equipment. Also, the tribunal notes that Johnson has also claimed a $300 per day (see invoice 2) for the time spent coordinating the drill program from St. Albert; it raises the question of whether labour for recarbiding chuck jaws and reconditioning the sloop was attempted to be charged twice. Randsburg presented figures for items which should not have been charged, and asked for credit. The tribunal finds, after its review, that this is a reasonable request, although it will use its own figures in this regard.

Unnumbered Invoice

With regards to the July 12, 1999 invoice in the amount of $16,454.92 paid in full by Randsburg, the tribunal finds that $4,121.07 should properly have been paid by Johnson on account of clause 3a. This includes the recarbiding of the chuck jaws and parts purchased, the purchase of the honda pump, the purchase and reconditioning of the rod sloop and that portion of the Westcoast invoice which mentions burlap bundles. The tribunal notes that airfare is properly charged, but is credited below, in the amount of $619.53. The remaining costs have been examined and properly form part of clause 51, being for bits and lubes. It is noted that Johnson billed some of the bits according to what he had on hand, based on a quote and discounted the amounts claimed. The net amount on this invoice properly to be paid by Randsburg is $11,714.32.

Footage Rate $15 per Foot for Actual Drilling

The findings concerning amounts owing under the Agreement must be qualified with the proviso that the tribunal's findings are not meant to indicate that the expenditures will be allowable costs for purposes of prescribed assessment work. The **Mining Act** will recognize the cost of operation of a drilling rig, but will not recognize capital expenditures. When an independent drilling contractor is hired by a mining claim holder, the costs of drilling provided by the contractor will have built into them the capital depreciation and replacement factors and will be recognized. However, the same cannot be said for a drill rig owned and operated directly by the mining claim holder; the standard set in the regulation is for that of credit at a value based on industry standards for similar work.

The tribunal finds that the Agreement provides for a $15 per foot charge for drilling, of which Johnson actually did 2062 feet. Although Johnson did receive money from insurance for stolen parts, the tribunal nonetheless considers the $5 foot charge to be an allowable cost, given that Johnson has been found to be responsible for many of the costs which he attempted to bill Randsburg. He may well be replacing parts which he bought during the drilling, but that is what insurance is for. The tribunal will allow $10,270 on account of equipment wear factor.

The Agreement also provides for $10 in shares. The tribunal finds that this cost is owing. It also accepts evidence that the shares were trading at the time of the making of the Agreement at $.50. Therefore, the tribunal will allow either $20,620 or 41,240 shares of Randsburg stock.

Mobilization and Demobilization.

Mobilization costs are found in invoice 2 (man hours of $280 = GST =) of $299.60, with Johnson's time noted below, and portions of invoice 1a (of 593.03 for crane) for a total of $892.63, as being on account of mobilization pursuant to clause 5a. This does not include the amount for Johnson's time on invoice 2, which is dealt with under a separate heading.

The tribunal was unable to find a trucking cost in the invoices submitted; examining the amounts paid directly by Randsburg, there is an Edge Transpo cheque in the amount of $3852.00. This is comparable to the amount shown by Johnson for demobilization, being $3967.56, for which no invoice is shown in support. In the absence of better information, the tribunal must assume that Randsburg has already paid for trucking costs from St. Albert directly. [The remaining items listed on invoice 1a are dealt with below.]

The fact that the demobilization was costly was due to the failure on the part of Randsburg to ensure that certain bills in the area for which it was responsible were paid on time. The tribunal finds that Johnson's actual costs in this regard were not unreasonable, having been the actual costs experienced. Airfare, vehicle rental, accommodation and meals were also not necessary for mobilization from Mr. Johnson's home base in Alberta. The attempted comparison of totals becomes distorted through their inclusion.

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Included will be Johnson's airfare, helper, accommodation and meals, rentals and contractors, along with costs of casings left in the hole (invoice 1k). The tribunal finds that it will allow costs of $15,405.43 for demobilization as set out in clause 5a. The amount for telephone bills (invoice 1l) is not allowed.

Johnson's Daily Rate and Airline

Aside from the amount already allowed for demobilization, the tribunal finds that Johnson is entitled to the $300 daily rate specified in clause 5o, as well as his airline ticket. The submitted amount, being the total of part of invoice 2, and invoices 3 through 8, as well as the unnumbered invoice dated July 12, 1999, is $15,385.53.

However, an examination of the Daily Time Reports and corresponding dates on the invoices reveals the following:

> Unnumbered invoice as to airline: $619.53
>
> Invoice 2, although dated July 20, refers to work performed in St. Albert, although Mr. Johnson actually travelled on July 19.
>
> Invoice 3 (July 26), must necessarily include paid travel time, as per clause 5o, being July 19 to 25 for $2247. + travel
>
> Invoice 4 (August 4) includes July 26 to August 1 for $2247.
>
> Invoice 5 (August 9) includes August 2 to August 8, but the Daily Time Reports show no charge for this day, so the amount on this invoice is calculated downward ($300/day + GST) to $1926.
>
> Invoice 6 (August 16) includes August 9 to 15 for $2247.
>
> Invoice 7 (August 23) purports to include August 16 to 22 for $2247.
>
> Invoice 8 (August 30) includes August 23 to 26, for $1284.

The total is $12,817.53.

Labour

The tribunal has determined above that Johnson is responsible for labour under the terms of the Agreement up to the daytime shift on August 14. The calculations for amounts owing by Johnson and Randsburg will the reflect number of hours or days worked up to August 14 and thereafter.

There are interesting problems with the Daily Time Reports commencing on August 22. The last noted report including Johnson ends on August 21. This is perplexing, given that Johnson did not leave until August 26, clearly noted in the Daily Time Reports, where

Delton Steele indicates that he drove Johnson to Sudbury. This is also in keeping with Johnson's evidence, and frankly, up until it came time to perform and itemize its calculations, the tribunal was not aware that this was an issue. However, time is running on having the allowable work for the Mining Claims recorded as to a 100 percent as may be allowed under the regulation, and the interests of all will not be served in delaying this matter further for additional information. Pursuant to the provisions set out in section 117, the tribunal would be prepared to make adjustments, should this be an issue. Given the larger numbers involved in the initial claim, this should not be a pressing issue.

An examination of the Daily Time Reports also indicates other anomalies. Johnson drilled first with Mike Harrington to August 3. On August 4, he commenced drilling with Patrick Harrington. On August 22, when Johnson's name no longer appears, Patrick Harrington is listed as the driller for one day only, whereupon on August 24, Mike Harrington reappears as the driller, as opposed to the helper for the day shift. Mike Harrington continues as a driller until Delton Steele leaves possibly due to an injury, although the Daily Time Reports merely indicate that he quit, under Patrick Harrington's signature, on September 1. Thereafter, Patrick Harrington appears to have signed all the Reports, but it is Mike who continues appearing as the Driller or Driller-Foreman up to and including September 4. Patrick Harrington reappears during the final two days, September 6 & 7, along with D. Embrley who makes his first appearance September 3.

The tribunal finds that it forced to make certain conjectures regarding the labour for the time frame commencing August 22. First of all, at no time do Mike Harrington and Patrick Harrington work at the same time. It is unknown, from the evidence given, as to whether there is one individual involved (ie. Patrick Michael Jr. Licence K23069) or two (namely the aforementioned Harrington and Patrick J. Licence K18623). Frankly, there could also be another individual involved, related or otherwise, who does not hold a licence.

The most important problem is that on August 22 through 26, Johnson has billed a per diem of $300 when Randsburg has also paid drillers wages for Mike Harrington at $250 per day from August 16 to and including September 3. It is noted that in addition, Randsburg made out helpers cheques to both Patrick and Mike Harrington for the periods commencing July 22, although at no times do the dates for payment overlap. Given that it is Mr. Johnson's evidence that he hired Mike Harrington at the recommendation of Michael Opara, the tribunal finds that it will allow the payment to Mike Harrington commencing August 16 at a rate of $250 a day to remain Randsburg's responsibility.

Of the wages paid by Randsburg to the Harringtons, a total of $8036.49, converting one payment in US dollars to Canadian by the factor shown in Exhibit 19 of .6725. Given that there is no overlapping of time and the amounts will be taken as indicative of one person, Johnson must provide credit to Randsburg from July 22 to and including August 14, which is calculated to be 244 hours at $14 per hour, in the amount of $3,416. It is noted that Mike Harrington was paid the rate of $250 per day commencing on the 16 of August. Randsburg's share of the total paid is $4,620.49 for the 254 hours after the day shift of August 14th.

The tribunal further notes that neither Patrick nor Mike Harrington were paid for September 4 through to and including the 7, at a rate of $250 per day, or $1000.

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Jason Swain was paid $2142 directly by Randsburg in October for 153 hours at $14 per hour. The tribunal notes from the daily logs that Jason Swain spent 42 hours working on the road, Randsburg's responsibility. From the day the drilling started, Patrick Harrington was also listed as a helper. After the 1 of August, Jason Swain's time sheets are at an end. The tribunal finds that Johnson is not responsible for Jason Swain's labour. It was suggested in the hearing that Johnson was being asked to train the Swains. Whatever the arrangement, the tribunal finds that Jason Swain did not add to the adequate assistance as a helper provided by Mike Harrington.

On or after the day shift of August 14th, Delton Steele ((D.W. Drilling Consultants) worked a total of 217 hours, whereas between August 10 and 13 he worked 48 hours (or 4 days and 17 days respectively, with 2 double shifts for driving in the latter number). With Randsburg having paid D.W. Consultants a total of $3605, this amounts to approximately $171.66 per day, not including the double shift. Taken another way, Randsburg is found to be responsible for $2,918.33, with Johnson being responsible for $686.67.

Mark Rondeau similarly started on August 10 and worked to and including September 4. Johnson is responsible for 48 of his 282 hours, or 234, at a rate paid of $14 per hour. It is noted that Randsburg paid up to and including September 3, with 10 hours unaccounted for on the 4th. (Actually, Randsburg appears to have averaged a daily maximum of 12 hours, despite what may have actually been worked.) Also, despite calculating 274 hours at $14 per hour, the total paid by Randsburg is $2828, and not the $3836 which should have been paid for 274 hours, let alone the $3948 for 282 hours. Johnson is found to be responsible for $672 of the $2828 actually paid by Randsburg, so that Randsburg's responsibility is $2156. There remains $1008 outstanding, which is Randsburg's responsibility.

Finally, Darrel Limpett worked 156 hours, although he is shown by Randsburg to have worked 122. Randsburg paid him $1708, but with long days and several double shifts involved in driving core, plus having worked on September 4th, which Randsburg did not account for, he is apparently owed $2184. Of the amount Randsburg did pay, Johnson was responsible for 48 hours or $672, leaving Randsburg's responsibility to be $1034. There remains $476 outstanding, which is Randsburg's responsibility.

Also, for some unknown reason, a D. Embrely appears on the scene on September 3. This individual was not paid, but for purposes of Mr. Johnson's claim, it would be their responsibility to deal directly with Randsburg, as it occurs after August 14th.

Room and Board

According to clause 5n, Randsburg has agreed to provide room and board for the drilling camp. It is noted that these amounts were never billed by Johnson. Randsburg included these items in the amounts it was seeking as a credit to any amounts owing. For purposes of ease of calculation, the amount is set out as $8,521.30.

Fuel, Lubes, Diamond Bits, Casing Shoes and Wireline

According to clause 5l, Randsburg has agreed to pay for these items. In addition, the tribunal considered the itemization elsewhere in the Agreement.

. . . . 47

From above, the amount properly reflecting Randsburg's responsibility for the July 12th invoice is $11,714.32.

Invoice 1a sets out charges from a variety of suppliers, and totals $3127.44, which was paid to Johnson by Randsburg. Of the amounts shown, and in addition to the amounts allowable for mobilization, the tribunal has determined that $369.40 are allowable on account of clause 5l. This includes several of the amounts for shipping, but does not include the long distance charges, safety equipment, tarp and other hardware. As Randsburg has paid the full invoice of $3,127.44, there is a $2,758.04 to be credited to Randsburg on this invoice, due to the operation of clauses 5l and 5a.

For invoice 1b, $346.15 is allowed from the Temiskaming receipt, disallowing the rainsuit; and the JKS Boyles bill of $1,545.18 is allowed, pursuant to evidence given by Johnson under cross-examination, that a deeper hole required another set. The total payable on account of 5l for this invoice is $1,891.33.

For invoice 1c, $1,899.68 is allowed; all fuel charges are allowed, notwithstanding that they may be for the rental truck and not the rig, as the term fuel is considered to be sufficiently vague. Also, distance to suppliers and in particular ferrying core is a factor taken into account by the tribunal. The Canadian Tire invoices are reduced to $81.50; the entire invoice from Co-operative Regionale is disallowed as is the driller's, that is Delton Steele's, airline ticket.

For invoice 1d, the JKS Boyles bill for $3,166 is disallowed, properly being the responsibility of Johnson either under clause 3a or under the rig wear and tear charges under 5b; the Boart Longyear bill for $630.49 is allowed; the hydraulic mud mixer from Westcoast is properly Johnson's responsibility; the Hobic bill in the amount of $435.49 is allowed; the courier, telephone and Temiskaming charges are disallowed. The total allowable under this invoice is $1,065.98.

For invoice 1e, the casing shoes and rods from Boart Longyear are allowable in the amount of $7,322.69. The budget truck will be dealt with under a separate heading.

Budget Truck

The total amount claimed for the budget truck rental is $11,266.04. The Agreement is silent as to any provision for rental trucks. Frankly, given the cost of mobilization and demobilization allowed, and the fact that most drilling companies use their own trucks, which travel around the country much as their rigs do, there it little direction to assist with this charge.

It must be noted that Randsburg already paid $1552 on account of the Budget truck in listed in the July 12 invoice.

The fact is that Mr. Harrington held this truck hostage pending the payment of his wages, which Randsburg only facilitated on October 12, and it is noted that the truck was returned the 13th of October. Randsburg is at least responsible for those days in September after activity ceased, being September 8 to October 13, or 36 of 86 days, being $4,7160.02.

. . . . 48

Uninsured Losses

The cost of insurance must be properly borne by Johnson as its cost of doing business, given that the tribunal has not found in its favour regarding total cost pass through.

The uninsured losses are found to be $18,153.39, based upon the oral evidence given by Mr. Johnson at the hearing of value of rig and tools. The total parts submitted in the bills is $65,482.08. Mr. Johnson's evidence was that the cost of tools and equipment missing off the rig was $67,000. Given the inexact nature of this calculation, with Mr. Johnson performing much of the necessary work himself, the tribunal accepts the figure of $65,482 according to what was accepted by the insurance company. Any discrepancy between this amount and that of the original quote to Mr. Opara in the range of $75,000, or the value on the insurance forms of $120,000, is found to be attributable to the rig itself, which also must be given a value. Also, the tribunal finds that it believes the evidence of Mr. Johnson that he was willing to give Mr. Opara a deal. Although not stated by Mr. Johnson, the evidence of Mr. Puskas was that the economic conditions for drillers were not the best during this period and Mr. Johnson may have been unwilling to have capital tied up in a rig which was not being used at the time he made the quote.

The uninsured losses, frankly, arise in part out of a poor business practices on the part of Mr. Johnson and in part as Johnson's rig was allowed to sit, unattended, for a period of at least six weeks or more unprotected, as a result of Randsburg's ongoing failure to resolve the billing difficulties with Johnson.

The tribunal finds that it will apportion liability equally as to the uninsured losses of the rig, each being found to be equally responsible, Johnson for inadequate insurance and Randsburg for prolonging an untenable situation, caused in large part by its under capitalization of the project. Therefore, Randsburg is found to be responsible for $9,076.70.

Rig Charge of $85 per Hour

The tribunal finds that the controlled drilling of the hole by Johnson was imposed on him after he arrived in Gowganda. Flowing from this was the need to drill to target and not make good footage. For Johnson, opportunity to perform the terms of the Agreement was severely hampered by this. As a result, the footage and the footage rate he was able to achieve went down. Given that Randsburg, through Puskas if not Opara, led Mr. Johnson to continue drilling in this matter to his financial detriment, the tribunal finds that he should be adequately compensated for the time spent engaged in slow drilling. The claim of $15,300 is allowed, representing 180 hours during which the rig was engaged in activity other than drilling, at a rate of $85 per hour.

Claim for 20,000 Feet of Drilling - Minimum Footage

Although the Agreement contemplates a minimum of 20,000 feet, the tribunal recognizes that, in keeping with exploratory drilling programs of this nature, the footage set out does not necessarily indicate what will take place, once events occur on the ground. Aside from

the facts of this case, it is recognized by the tribunal that ongoing drilling programs proceed on the basis ongoing results obtained and the ability to secure funding to continue. In some cases, results may show that no additional drilling in an area is warranted, as none of the hoped for results are realized.

The tribunal finds that the drilling in and around Firth Lake was exceedingly difficult by virtue of the nature of the ground encountered. This was true of all three known drillers: Texmont, Johnson and Norex. Added to this difficulty for Johnson was the requirement to control drill, which added noticeably to the driller's ability to make quick progress. At all times during Johnson's drilling, the target was the key.

When Norex was hired to commence drilling, it is clear that it was not required to control drill its first hole, which at least in part explains the greater footage achieved over a shorter time. Another reason for the somewhat greater ease of drilling is that Norex was not drilling into the formation as Johnson and Texmont had done, which is found by the tribunal to have been fraught with difficulties not attributable to the competence of the driller.

After Norex withdrew from its first hole, having experienced mechanical problems with its drill not unlike those experienced by Johnson, it brought in an NQ drill. While Norex may have continued to drill in an uncontrolled fashion, the tribunal finds that the greater ease of drilling was due to the increased size of the drill employed. Although there is no evidence that a conscious decision had been made by either Randsburg, Norex, or Mr. Puskas for that matter, the increased drill size was a material change in the contract conditions. The tribunal finds that, at this point Randsburg was entitled to terminate its Agreement with Johnson, as Johnson only had access to one drill, the BQ size drill. While arguably, Johnson could have continued drilling beyond this point with the BQ drill, the tribunal finds that it would be unfair to Randsburg to require it to continue its drilling program with a drill size which has demonstrably been unable to handle the ground involved.

Therefore, the tribunal finds that Randsburg is liable to Johnson above and beyond amounts owing for actual drilling by Johnson in the amount of $10 per foot for the 1485 feet for $14,850. The tribunal finds that it would be unfair to allow Johnson to recover the $5 per foot wear and tear factor for drilling which was not performed. Based on evidence as to the value of the shares being $.50 at the time of the Agreement, they payment may be made either as cash, $14,850 or in shares, being 29,700.

The discussions concerning the requirement to mitigate damages are found not to be relevant to the findings and facts of this case. At the point when Norex completed its first hole, in whatever shape, it should have become patently obvious to all that a larger drill was required. Johnson would have been unable to provide another drill.

Although the tribunal has made its findings concerning the point at which Randsburg could reasonably terminate the Agreement, and therefore, damages claimed by Johnson for the full 20,000 feet are not allowed, the tribunal notes that Johnson would not have been in a position to mitigate its position, as it was unable to get the rig up and running and perform further drilling contracts in the time elapsed.

Accounting Summary

Randsburg owes to Johnson Directly:
$10,270.00 (wear factor for Johnson hole)
$20,620.00 worth of shares, being 41,240 shares (shares for hole)
$15,405.43 Demobilization
892.63 Mobilization
$12,817.53 Johnson's daily rate and air
$ 1,891.33 }
$ 1,065.98 } Supplies and some parts
$ 7,322.69 }
$ 4,716.01 Truck
$ 9,076.70 Uninsured Losses
$15,300.00 Rig Hour charge
$14,850.00 or 29,700 shares
$114,228.30 or 78,758.30 plus 70,940 Randsburg shares

Randsburg paid to third parties (found properly paid and not owing to Johnson:
$ 3,852.00 Edge Transpo
$ 9,278.30 Accommodation and provisions
$ 3,096.50 Fuel and supply charges

Wages all paid by Randsburg:

Randsburg Payment	Johnson's share	Randsburg's Share	Outstanding
$ 2,142.00	$ 0.00	$ 2,142.00	
$ 3,605.00	$ 686.67	$ 2,918.33	
$ 2,828.00	$ 672.00	$ 2,156.00	$ 1,008.00
$ 1,708.00	$ 672.00	$ 1,034.00	$ 476.00
$ 8,035.00	$ 3,416.00	$ 4,620.49	$ 1,000.00
$18,318.00	$ 5,447.67	$12,870.82	

Therefore, Randsburg must be credited $5,447.67

Of Invoices Paid directly to Johnson:

Randsburg Paid	Johnson's Share	Randsburg's Share
$16,454.92	$4,121.07	$11,734.32
$ 3,127.44	$2,758.04	$ 369.40
$19,582.36	$6,879.11	$12,103.72

In addition, Randsburg Paid $16,496.64 in two further payments, not applied to any particular invoice.

Of the $114,228.30 (or $78,758.30 + shares) owed by Johnson to Randsburg, credit must be given to amounts paid on Johnson's behalf, namely $5,447.67:

$108,780.63 or $73,311.63 + shares

Also, Randsburg has paid $19,582.36 to Johnson, for which Johnson must further credit Randsburg $6,879.91:

$101,909.72 or $66,431.72 + shares

Also, Randsburg must be credited for $16,494.64 paid on account:

$85,415.08.08 or $49,937.08 + shares

The tribunal concludes that $85,415.08 or alternatively $49,937.08 and 70,940 shares in Randsburg is owed to Johnson.

Time to Pay

The time for the assessment work being given full eligibility for being applied to the Mining Claims continues to run. While Randsburg has requested ninety days to pay, the tribunal has determined that time is of the essence in this matter. Therefore, Randsburg will be required to pay $85,415.08 within 30 days of the issuance of this Order.

Application of Section 69

Section 69 on a narrow reading provides for vesting of a portion or all of the interest in a mining claim in a contractor who has not been paid for work. The changes made to the **Mining Act** effective on June 3, 1991, were substantial and their impact has been felt during the last ten years. Problems have arisen with changes to multiple unit stakings from single mining claims, not the least of which has been the problem with overlapping claims. The legislation was changed to allow for recording of non-overlapping portions in certain circumstances, to prevent large stakings from being wholly disallowed.

There has not been awareness that the application of section 69, for which no changes were made effective in 1991. This application is the first case heard pursuant to this section since that time. The ability to distribute assessment work to adjoining claims is also new. To allow a vesting of all or a portion of the interest in , in this case two, mining claims in satisfaction of $85,415.08 worth of work is absurd. Were Johnson to attempt to apply the allowable portion of the total amount paid on account of this work, the total being in the neighbourhood of $184,000, the result would be absurd. Johnson would have some $97,741.86, less portions disallowed by the Ministry of Northern Development and Mines, to apply to 21 units. With annual requirements of $400, this is sufficient to keep the Mining Claims in good standing for eleven years. Taken to its logical conclusion, no additional work would be necessary for some time.

Similarly, if Randsburg and Lake Superior were to lose their interest in the two Mining Claims, despite having performed additional assessment work by Norex, they would not have and interest in the actual claims upon which to file the assessment work. Given the amount

of work and money expended on these claims, and recognizing that it would be in the best interests of all to retain the block as a unit, in keeping with the purpose of the legislation, to explore and develop, to narrowly construe section 69 is found to lead to an absurd result.

It is pointed out that Lake Superior holds a large number of the Claims, as does the Swain et al. group; Randsburg does not have anything more than the right to acquire up to a 75 percent interest, to be split with Lake Superior, if the Swain action is not successful in seeking a declaration that the Memorandum of Understanding between them and Lake Superior is at an end.

The tribunal finds that, using the purposive approach is appropriate to the facts of this case, and that it is the interest of Randsburg in all of the Mining Claims which may be vested pursuant to section 69. Given that Randsburg has not yet successfully earned its 50 percent interest in that portion of the Mining Claims which Lake Superior is able to bring to that Joint Venture, the tribunal finds that the value of the Mining Claims becomes obscured, particularly with further litigation hanging over them.

There are approximately 400 units in this block; keeping them in good standing for a single year requires $160,000 in assessment work. The amount owed by Randsburg is approximately half that amount. This is insufficient information upon which to establish a value for the Mining Claims.

The tribunal will require additional evidence concerning the value of the Mining Claims, if it should become necessary. It would be the intention of the tribunal to facilitate either a hearing or written submissions on this issue, as soon as possible after the expiry of the 30 days set out above, should it become necessary.

SCHEDULE 1
Exhibit 9, Tab 7 May 30 Quote

Mike, here are your drilling costs on 5000 ft of drilling on/or 30 day drill program. This quote is a full blown drill program. Costs could be cut going to a day shift operation. The difference only would be production. I haven't been in touch with Jim Lenigan, hopefully he can do something for you people.

Anyway here is a rough copy on incurring costs

Drillers Wages			
ST	18.00 per hour	18 x 56 hrs.	1008.00
OT	24.00 per hour	24.00 x 28 hrs.	672.00
		per week	1680.00
		x 2 =	3360.00
		x 4 =	13,440.00
Helper Wages			
ST	14.00 per hour	14.00 per hr x 56 hrs =	784.00
OT	21.00 per hour	21.00 per hr x 24 hrs =	504.00
		per wk	1,288.00
		x 2 =	2,576.00
		x 4 =	10,304.00
Footage bonus paid to drill crew 50 [cents] per ft x 5,000			
		=	2,500.00
Worker's Compensation			2,500.00
1 drill supervisor field man			
	20.00 per hour	20.00 x 56 hrs=	1,120.00
	30.00 per hour	30,00 x 28 hrs=	8,40.00
		per wk	1,960.00
		x 4	7,840.00
Wages based on 30 days of drilling			36,584.00
			/5000
			wages 7.31 per ft.

<u>Total Labour Costs</u>	
Down hole consumables	
Wire line consumables	
Bits and casing shoes drilling muds and additives	<u>2.50 per ft.</u>
Fuel and lubes (Project) Budget 3000.00	<u>1.60 per ft.</u>
#2 drill tucks (30 days) budget 4000.00	<u>1.25 per ft.</u>
Pump & water line	
Boyles 37 drill (wear & tear factor)	
Drill rods and casings	<u>3.00 per ft.</u>
Total Cost	<u>15.66 per ft.</u>
This quote is based on 30 day drilling operation	78,300.00

Schedule 2
Tribunal's Paraphrasing of Agreement
with Certain Portions Reproduced

1. Scope of Work: a series of drill holes, total minimum footage of 20,000 feet, with the BQ drill, cores of 1 3/8 inches, depth between 200 feet and 1000 feet.

2. Work is seven days a week, operating 1 shift, with one Boyles 37-A diamond drill.

3. Commencing with the words, "The contractor hereby covenants and agrees", clauses (a), (b) and (d) through (f) set out Johnson's obligations, including the supply of "all of the required drilling machinery and associated tools, including #1 B B S 37 diamond drill, support equipment, mud tanks, mixing equipment, hand tools." Clause (c) is an anomaly, being set into the paragraph dealing with Johnson. It is set out:

   3(c) The Company shall be responsible for, and will pay promptly all costs And charges, incurred by itself for labour, machinery, tools and supplies Used in completing the work, hereunder so that no lien or other such Charge relative to the CONTRACTOR, may be registered against the COMPANY or the property.

4. Access and rights of way to lands as necessary is to be provided to the drill site; clause (a) states that where there is loose or caving ground, excessive flows of water or gas, the hole may be abandoned by mutual consent with Johnson to be paid for the footage accomplished; however, should Randsburg wish to have the drilling on such a hole continue, the work is to be done at what is called "field cost rates".

5. a) Mobilization from St. Albert, Alberta to Firth Lake, at cost

   Demobilization from Firth Lake to St. Albert, Alberta, at cost

   "b) Drilling rates:

   BQ Size Core 0 - 1000 ft $15.00 a foot

   $5.00 per ft. equipment wear factor
   $10.00 per ft paid in shares. Based on minimum 20,000 ft core drilling. shipping bond $5000.00 held in trust by Randsburg International Gold Corporation. For demobilization of drilling equipment to point of hire St.Albert, Alberta."

   "c) Overburden Penetration and Setting Casing: At Footage Rate & Field Cost."

   d) Hole depth measurement taken from ground surface of drill hole.

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"e) Reaming: Reaming hole in bedrock when required, and approved by the COMPANY'S representative. Reaming rates are to be charged only (w)hen the diameter of the hole is being increased. Field Cost"

"f) Casing of Hole, if required: Casing off a reamed section of the hole or installing casing inside a cased section of the hole, Field Cost."

"g) Testing, or delay time through no fault of the CONTRACTOR'S or other time during the CONTRACTOR'S crews are performing services for the COMPANY not otherwise covered herein, at Field Cost."

h) Cementing of holes and redrilling of cemented section, at field cost.

i) Water supply [n/a as water sourced directly from Firth Lake]

"j) CONTRACTOR drilling equipment broken lost or damaged will be at COST plus 15%."

j)(**sic**) Moving of equipment between holes at field cost

"k) Casing and casing shoes left in holes at the COMPANY'S request;"

"l) Drilling Mud and Salt and Additives shall be supplied by the COMPANY. The COMPANY shall supply fuel and Lubes. Diamond Bits and Casing Shoes and Wireline Equipment shall be supplied by the COMPANY."

"m) Core Boxes: shall be supplied by the COMPANY".

"n) Camp: The COMPANY will provide Room & Board to the CONTRACTOR."

"o) Field Costs: Where applicable, 300.00 per day including travel, base on 30-day period and 12 day leave of Absence. Air Fare travel to Sudbury Ontario return to Edmonton, Alberta."

[6] <u>INSURANCE AND GENERAL</u>

a) The contractor does not guarantee the drilling of any hole to a specified depth, but will use best efforts to complete all holes to the company's satisfaction.

b) Invoicing semi-weekly and due in 15 days.

Schedule 3
Summary of Daily Drill Reports

Date	Depth	Hours/Activity	Comment
Jul 16 to 19		Road flagging	mobilization
Jul 20		Build road	
Jul 21		Build Road	move drill & set up
Jul 22	6 '	6 overburden	set up
Jul 23	49'(to 55)	6 coring	hard blocky conditions. faulty; hydraulic fittings on drill broke
Jul 24	100'(to 155)	11 coring	hard, blocky drilling conditions; faulty; unstable hole conditions; high vibrations
Jul 25	120 (to 275)	10 coring	
Jul 26	82' (to 357)	8 coring	high vibration; pulled grease rods at
		2 hole stabilization	300 '; rods back in to ?; 50' show blocky drilling; fault; 30' good drilling; better conditions
Jul 27	90' (to 447)	11 coring	tube sanded in; stuck in hole; got it lose; conditions scap stone broken; faulty conditions; slow drilling
Jul 28	90' (to 537)	11 coring	blocky; serpentine rock; faulty
Jul 29	80' (to 617)	11 coring	slow; high vibration some turpentine; from 607 to 617 2 feet mineralization (solids) interesting
Jul 30	13' (to 630)	2 coring	
	300 to 500	4 ream casing	200 foot fault zone; correct 13' high
		4 hole stablizing	vibration; pull 620' rods grease; start drilling hydraulic lock up in drill hole. fract. formation; pull rods; check bit reamed; back down to 500'; must run light env. friendly mud hole stabilizer GS- 550
		4 reaming rods	Rig hours
		4 hole stabilization	Rig hours
Jul 31	5' (to 635)	2 coring	not a good hole full of fault. drill in
	500 to 630	drill cement	fault zone. Mixed up mud reamed rods to BHD 630' Started coring bad fault rods getting tight. tried wash hole no luck. Stoped drill hole. require casing hole to 630' tight hole
		2 hole stabilizing	Rig hours and Drillers
		6 reaming rods	Rig hours and Drillers
Aug 1	0 to 70	6 ream casing	pull 630' rods out of hole; mix up mud
		2 pull rods	start trieoning(sp) to 70'; out of casing.
		1 hole stabilizing	told drill was good didn't require much casing; never judge conditions before you drill them; drilling though fault zones
		6 ream casing	Rig hours
		2 pull rods	Rig hours
		1 hole stablizing	Rig hours
Aug 2			Drive to Kirkland Lake to locate drill casing, found 200' but 50% worn out not interested. Picked up other consumables required for rig. Civic holiday
"No charge labour!!" is written across the daily time report			
Aug 3			Drive to North Bay JKS Boyles pick up BW casing jaws. Purchase 600' BW casing return with 200' in back of truck. Load on pontoon boat ship up to end of Firth Lake following morning
Aug 4	0 to 100	4 overburden	Rig hours
		8* overburden	Drillers
	0 to 635	8 ream casing	Rig hours
		8 ream casing	Run BQ rods to bottom of hole with starting barrel. ream in 100' of BW casing

*This may be in error, as total hours worked per driller shows up as 12 hours

Aug 5			barge up 400 BW casing pack up hill to drill. Go to Elk lake for deep hole casing shoes. to drive casing to 635' depth
Aug 6	0 to 190	11 ream casing	Rig hours
		1 ream casing	Ream casing from 0 to 190; slow faulty cave conditions; serpentine soapy hard to penetrate casing shoe; bit wants to mud up; hole conditioned; stabilized; going good; no torque on casing free.
Aug 7	190 - 243	6 ream casing	Rig Hours
		2 hole stablizing	Rig Hours
		6 ream casing	ream casing;ream saing to 43' casing
			shoe wore out; pull casing change casing shoe; start reaming; going good; hard conditions; transmission making noised ... 3rd gear hammered out caused by hole conditions; ...
Aug 9		repairs and mtce	Travel to Sudbury for transmission parts. Install transmission to get rig going
Aug 10	220 to 222	1 ream casing	Rig hours
		4 reaming rods	Rig hours
		6 hole stabilizing	Rig hours
		1 ream casing	Couldn't get casing to go any more; getting tight reaming rods out
		4 reaming rods	and back in & conditioning holes. Lots of faults; rods back at
		6 hole stablizing	bottom
Aug 11	to 667 (30')	5 coring	Tube stuck in rod at 500'; pull rods remove bad rod; clean cut hole
		4 pull rods	start coring full circulation free hole
		1 hole stabilizing	
		4 pull rods	Rig hours
		1 hole stablizing	Rig hours
night	to 717 (50')	12 coring	could not push at all in rock; wants to mud bit in (very slow drilling)
Aug 12	to 777 (60')	10.5 coring	soapy hard coring slow bit penetration; adjusted chain in draw work case ; run some hydraulic hoses
night	to 847 (70')	11 coring	Acid test at 807'
Aug 13	to 867 (20')	3 coring	Cored 5' run into fault bit mudded in water ways pulled rods at 852'
		4 pulled rods	modified water ways on bit went back down to bottom of hole
		4 hole stabilizing	reamed out fault; clean hole started coring hard & soapy conditions
		4 pulled rods	Rig hours
		4 hole stablizing	Rig hours
night	to 947 (80')	12 coring	
Aug 14	to 1026 (79')	11.5 coring	good drilling hard to med full circulation
night	to 1057 (31')	5 coring	bad fuel ...
Aug 15		repairs and mtce	Bad fuel in fuel tank at .. camp. possible old winter ruel contaminated. Kirkland Lake for fuel; none available Sunday in Gowganda
night	to 1107 (50')	9.5 coring	put more wireline on & changed oil and filter on drill. rock has
		.5 t-driving	changed at 1107 full circulations
Aug 16	to 1156 (49')	10.5 coring	hard slow drilling; vibration in hole; gear down to 3rd full circulation
			(other) ? fuel to drill move rods from rig to shore line
night	to 1192 (35')	8.5 coring	very rock ground (& lightening storm)
Aug 17		8.5 pull rods	Rig hours
		1 reaming rods	Rig hours
		2 hole stabilizing	Rig hours
		8.5 pull rods	had trouble getting hole started fault send down mud bomb
		1 reaming rods	high water pressure hole hydraulic locking but mudded in pull rods
		2 hole stabilizing	clear bit; water way grease rods; reamed to bottom
night		3.5 pulled rods	Rig hours - 600 feet out
		2 reaming rods	Rig hours
		6 hole stabilizing	Rig hours
		3.5 pulled rods	pulled half the rods out 600' then could get water but hole is
		2 reaming rods	squeezing. reamed rods back to bottom. rods got tight again 18 '
		6 hole stabilizing	from bottom couldn't get water gy; nee to pull rods back again to water by hole hydraulic locking

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Aug 18	to 1217 (25')	6 coring	pull rods back 30' off bottom to regain circulation ream to bottom of
		2 reaming rods	hole. Bad fault drilled out mud bomb sealed fault go hole going
		3.5 hole stabilizing	started coring back in better rock. hole stabilized and conditioned
			move one
		2 reaming rods	Rig hours
		3.5 hole stabilizing	Rig hours
night	to 1287 (65')	11.5 coring	
Aug 19	to 1342 (55')	10 coring	rig up mud mixer maintenance on drill clean up drill site
			environmental people on their way up
night	to 1417 (75')	11 coring	Changed gasket on pressure pump. hit fault from 1407 to 1417
Aug 20	to 1437 (20')	3 coring	Drilled 20' cutting into lake - require second pump to pump cutting
			300' from shore line. 20 environmentalists on their way up to
			Gowganda checking lake's .. concern. (problem solved) also ran
			short of drill pipe. Longyear did not deliver pipe or commitment
			date. 600 ft of BQ pipe had to have ... from New Liskeard
night		standby	run to lister for fuel; standby for rods 8 hrs.
Aug 21	to 1497 (60')	9 coring	
night	to 1537 (40')	11. 5 coring	hard blocky conditions; slow drilling
Aug 22	to 1555 (18')	2 coring	Core lifter springs out of carrier case. cause high water pressure in
		10.5 hole stabilizing	hole. diller pulled rods grease rods changed bits
		10.5 hole stabilizing	Rig hours
night	to 1627 (72')	11.5 coring	
Aug 23	to 1677 (50')	10. 5 coring	soapy blocky drilling
night	to 1730 (53')	9 coring	fault at 1717 to 1727. 2 hrs hole stabilizing ground real soft wants
			to squeeze on rods
Aug 24	to 1742 (12')	2 coring	piece of core in barrel hammered out of barrel take locked drill
		2 reaming rods	threw fault slow drilling (reaming) vibration in hole pull rods to
		7.5 hole stabilization	grease for hole stabilization
		2 reaming rods	Rig hours
		7.5 hole stabilization	Rig hours
night	to 1747 (5')	1 coring	finish pulling rods out greased rods put rods back to bottom hit faulty
		4.5 reaming rods	cave at 1717 had to ream 13' to bottom drilled 5 feet hole squeezing
		6 hole stabilization	had to pull back to 1717' and ream in and out of fault at 1717 and
			1232 hole is stabilized
		4.5 reaming rods	Rig hours
		6 hole stabilization	Rig hours
Aug 25	to 1783 (36')	8.5 coring	reamed rods washed fault up and down stabilize drill hole rods
		2 reaming rods	tearing up switch over to benite mud must continue to use benite ..
		1 hole stabilization	to complete drill hole to desired depth possible 2000 to 2500
		2 reaming rods	Rig hours
		1 hole stabilization	Rig hours
night	1785 (2')	. 5 coring	drilled two feet. check seal went leaking bad have to wait until
		7 standby	morning to get parts
		8 standby	Rig hours
Aug 28		8 standby	I drove Warren to (Sudbury) airport at 3:00 a.m. & drop core off at
			Lively. then drove to North Bay for parts at JKS Boyles. then drove
			New Liskeard for Bentonite then drove back to Gowganda then went
			to the drill to fix chuck seals but I couldn't get chuck apart need slice
			hammer to get keys out of chuck. too late for slide hammer, have to
			wait until morning for stores to open.
		8 standby	Rig hours
night		8 standby	No night shift ...
Aug 27		6 standby	drove to N.L. for tools to get 2 keys out of chuck. Hard time to get
		6 repairs & mtce	last one out of starter. To get chuck apart broke snap ring on chuck.
			Chuck fixed but need snap ring
night		8 standby	wait for snap ring
Aug 28		8 standby	Mike drove to get part from KL, but had to wait until evening for
			part because of it being the weekend. nothing open. Got part from
			Heath & Sherwood drilling

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night		4 reaming rods	put chuck back together 3 hrs had problems putting keys in chuck.
		8 hole stabilizing	conditioning & stabilizing hole very high water pressure pulled back
		3 repairs & mtc.	to 1717 seam back through fault. bad mud seam get back to bottom pulled tube out. pump next tube down hole squeezed again from pumping tube down to ... couldn't drill again because water pressure at 1000 lbs pressure. tried mixing bentonite in hole no good
		4 reaming rods	Rig hours
		8 hole stabilizing	Rig hours
Aug 29	to 1796 (11')	2 coring	pulled rods back until out of fault at 1717 reaming back to bottom
		4.5 reaming rods	change muds & stabilizing hole. rock changed to grey with black
		5 hole stabilization	specs and sulfides
		4.5 reaming rods	Rig hours
		5 hole stabilization	Rig hours
night	1817 (20")	4 coring	slow drilling had problems with tubes getting stuck in core. barrel broke wireline shevwheel. when trying to fix it hurt wrist. Drove to hospital
Aug 30	to 1847 (30')	6 coring	had pulled 500' of rods out borke wireline off in hole still slow drilling same rock tube. stuck in barrell
night		8 standby	Doctor wanted me to take one day off and do light duty work for a week. Tore muscle in wrist
Aug 31(no record)			
Sept 1		4 hole stabilizing	Try fishing core out of hole. no luck. Pull all of rods and ...
		8 pull rods & ...	1200 feet in hole. had to ream past fault at 640'
		4 hole stabilizing	Rig hours
		8 pull rods	Rig hours
night		8 (standby? 1 driller)	driller quit no night shift
		8 "	Rig hours
Sept 2	to 1925 (48')	9 coring	... rest of rods to bottom of hole had to ream & stabilize hole
		2 reaming rods	through fault a 1717 - 1737. hard & blocky ground. ...
		1 lower rods	Go to Elk Lake for wireline not in yet
		2 reaming rods	Rig hours
		1 lower rods	Rig hours
Sept 3		10	Went to Sudbury and delivered core. ... Come back and check on
		1 (wash hole?)	wireline at Elk Lake. Wash hole out and ready for n. shift.
night	to 1969 (44')	10 coring	2 hrs drilling fault; blocky ground bad fault
		2 hole stabilizing	
		2 hole stablizing	Rig hours
Sept 4	to 2002 (33')	9 coring	blocky ground had to ream and stabilize hole above fault repair
		3 reaming rods	wireline
night	to 2054 (52')	12 coring	wire line slow going down to bottom of hole
Sept 5	to 2062 (13')	3 coring	repair wireline and clean up. out of rods and wireline
Sept 6			Clean Environmental clean up around rig

Schedule 4
Summary of Bills in Support
of Invoices Submitted by Johnson

unnumbered	July 12	**16,454.92**	
Hobic Bit		4,759.29	Bits for the 10,000 foot program
Westcoast Drilling		1,669.41	Pipe wrench jaws ie. tooling
Boart Longyear		1,512.78	Down-hole wireline equipment to be consumed in the drilling of the hole, followed by pipe wrench, jaws, hooks, heels, pins, just basically miscellaneous (the invoice actually shows big bear rod grease, 5 gallon pails (perhaps of liquid polymer) and burlap in bundles of 10)
"Consumables for drill program"		6,432.00	Johnson recarbided the chuck jaws - standard procedure - when drilling, necessary to re-carbide the jaws that bite the pipe to make the force to fight down to drill with. Purchase and recondition rod sloop, which held the pipe on, so the pipe would not go all over the place, this being an old sloop.
Actually consisted of:			
Boart Longyear		3,448.12	
Johnson		535.00	Johnson supply and recarbide jaw sets for chuck
Johnson		1,350.00	Johnson purchase and recondition rod sloop
Honda		674.10	Honda Pressure pump
Hobic Bits		quotes only	This is a quote only, with two cost totals written on top of the fax cover sheet, for $3,980 and $1020.00, respectively.
Westcoast		quotes only	shows quotes for liquid polymer, big bear rod grease and burlap, corresponding to items shown for Westcoast invoice for 1669.41 above
	total:	6,007.22	
Budget Truck		1,552.00	Booked in Sudbury from Edmonton [check invoices for Budget]
Airline Ticket		619.53	
invoice 2	Jul 20	**2,921.10**	300/day + 1 man + truck rental
invoice 3	July 26	**2,247.00**	300/day for 7 days
invoice 4	Aug 2	**2247.00**	300 day for 7 days
invoice 5	Aug 9	**2247.00**	300 day for 7 days
invoice 6	Aug 16	**2247.00**	300 day for 7 days
invoice 7	Aug 23	**2247.00**	300 day for 7 days
invoice 8	Aug 30	**1284.00**	300 day for 4 days
invoice 1A	July 16	**3,127.44**	misc
Frontier Equipment		17.27	Gaskets
United Farmers of Alta		87.31	Oil
Firemaster Safety		93.19	Fire Extinguishers
Bumper to Bumper		75.68	Fuel oil filters

Loomis Courier	12.27	Sending Cheque to Westcoast Drilling
Points North	53.50	Transportation costs for shipping from Boart Longyear
Greyhound	25.78	2 invoices COD shipping form Ruden Mnfg
Dacapa Crane & Rigging	593.03	Travel to site and loading of drill rig to skid
CanFab Products	301.74	TG tarp as per sketch block
Sprucelane Insurance	489.00	Insurance
Ruden Manufacturing	173.34	36 carbide grippers
Tellus communication	22.25	Telephone charges to Chesterton, New York
Bolt Supply House	81.91	Work gloves, electrical ape, dead blow hammer, slip joint pliers, finished hex nut, nylon locknut bag.
Gregg Distributors	1,101.17	7 invoices largely illegible, but including, rig fuel filter, t off water line, envoro wipe, honda supply pump, rod sloop, rig gloves, drill pipe dope, flash lite, water block filter element, 54" wood handle castings, 21" rig scrub brush, 400 lb. ball valve, long L-key set, metric L-key set, 20 lb cotton rags, water suct. hose, fuel hand piston pump, coupling, spud fitting, 1 1/2 " & 1 3/4" prolok hose clamps, flexwing S&D hose, alumiium oval sleeve, male spud nut, prrough service bulbs, lined pvc gauntlet gloves, rainsuits, spark plug ear plugs, kopr cote, heavy duty lantern.
invoice 1B Aug 16	**1,545.18**	
Temiskaming Industrial	362.83	additive, betonite and rainsuit ($14.50)
JKS Boyles	1,182.35	casing jaw set
invoice 1C Aug 27	**4,333.71**	
Acklands Grainger	71.34	grease, threadlocker, extractor screw
	176.55	roll oil sorbent
Yamaha	28.49	fittings
Grant Lumber (DomTar)	301.88	Lumber to level rig (July 27)
Temiskaming Industrials	428.99	bolt pails and 6" block w/ hook, suspension and safety latch kit (set out as "rig consumables")
JKS Boyles	660.10	BO Tuff Loc/cplg; Drive tube bush; BO Rod Box to BW csg pin
Canadian Tire (3 invoices)	348.62	Tarp Poly; ten 2" by 45 yds. duct tape for core boxes; three 3/16" ropes, batteries; tie down; (last illegible, but 23 items listed - "adapter" "plug", "nipple", "funnel" "coupling" and "file" can be made out) Mr. Johnson advised that this included a barbecue for cooking food and propane tanks

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Driller Airline ticket	603.48	Reciept at ex. 9, tab 23
Misc. gas	298.91	Gas for rental truck
Deleans Gas bar	171.20	Fuel for rig
invoice 1D Aug 27	**5,000.34**	
JKS Boyles	3,166.13	transmission
Temiskaming Industrial	96.00	burlap squares; 12' hacksaw blades
Hobic	435.49	casing shoes
Boart Longyear	630.49	BW casing shoes
Westcoast Drilling	593.85	hydraulic mud mixer; JIC adapter
Telus	74.55	long distance
	6.00	courier
invoice 1E Aug 30	**9,432.71**	
Boart Longyear	7,332.69	Casing, casing shoes and rods (originally $12,101.74, with 4769.05 credit)
Budget	2,100.00	truck rental
invoice 1F Sept 14	**11,058.00**	per foot at $5
invoice 1G Sept 14	**16,391.00**	for 180 drill hours at 180/hr
invoice 1H Sept 14	**20,670.00**	per foot shares at $10

[not Invoiced by Johnson, but invoices:

Temiskaming	24.26 x 15%	ear muffs
Temiskaming	71.74	hydraulic adapters, tork mechanic flexi box paper; starter cord
Temiskaming	140.26	black pipe tee, weldon tank flange; plain combin nipple; hubber suction hose; punch lok clamp
Temiskaming	221.00 x 15%	super gel-x bentonite
Temiskaming	340.00 x 15%	super gel-x bentonite
Temiskaming	157.50	chainsaw file, industrial tarps, plastic gas can
Temiskaming	275.25	mechanic's black wire; electric sump pump, magnus machinery shampoo; black/red start rope
Temiskaming	674.88	Honda water pump; rubber suction hose; steel basket strainer; part-c camlock; plain comb nipple, reducer; coupling punch lok clamp; Part F camlock
Temiskaming	1,361.83	poly mud (reduced price); 20 lt. matex polymer; 1 1/2" full port ball valve
Temiskaming	60.49	hydraulic stem; hydraulic hose

invoice 1I Nov 10	**16,212.13**	(amount revised) for demobilization\ (13,937.45* with new amounts)
airline travel	662.00	

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rent of truck		1,065.66 (tab 10)
lodging and meals Oct 29	Lakeview Motel	837.81
fuel		379.63
D-6 cat & Float	Wilfred Parement Sons	1,521.00
35 ton crane	Grant Forest Products	1,046.00
trucking to Alta	Nov 12Edge Transpo	3,967.56
Labour Costs		3,764.26
35 ton crane	Decapa Crane	543.03

* Mr. Fitz advised at the commencement of the hearing that the $3,764.26 for labour set out in 1M is included in this total. [NB: this is not correct - with labour the invoice should be 17,701.71

invoice 1K	Nov 10	**1,467.98**	downhole casings
(no invoices)	#5 BQ Rods Belled rods (72.00 ea)		360.00
#7 BW casing 10 ft			784.00
# 1 2' casing joint			49.00
15% shipping			178.95
7% taxes			96.03
invoice 1L	Sept 17	**325.00**	tellus phone charges
invoice 1M	Nov 10	**3,764.26**	demobilization costs - labour
driller supervisor	10 days x $300 =	3,000	pull drill pipe, rig out drill rig
helper	14.00 x 37 hrs	518.00	
tax	7%	246.26	