

1989

Gold Standard v. American Barrick Resources Corporation; Barrick Resources (USA) Inc; Texaco Inc.; Getty Oil Company and Getty Mining Company: Addendum to Appellee's Petition for Rehearing

Utah Supreme Court

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LRIF

REL. NO.

890205

IN THE SUPREME COURT OF THE STATE OF UTAH

GOLD STANDARD, INC.,)	
)	
Plaintiff,)	
vs.	)	Case No. 890205
)	
AMERICAN BARRICK RESOURCES)	
CORPORATION; BARRICK)	
RESOURCES (USA), INC.;)	
TEXACO INC.; GETTY OIL)	
COMPANY; and GETTY MINING	)	Priority No. 11
COMPANY,)	
)	
Defendants.)	

ADDENDUM TO APPELLEES' PETITION FOR REHEARING

APPEAL FROM AN INTERLOCUTORY ORDER OF THE
THIRD DISTRICT COURT OF TOOELE COUNTY,
STATE OF UTAH, THE HONORABLE FRANK G. NOEL

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FILED

OCT 22 1990

Clerk, Supreme Court, Utah

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*This opinion is subject to revision before
publication in the Pacific Reporter.*

IN THE SUPREME COURT OF THE STATE OF UTAH

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Gold Standard, Inc.,
Plaintiff and Appellant,

No. 890205
F I L E D
September 21, 1990

v.

American Barrick Resources
Corporation; Barrick Mercur
Gold Mines, Inc.; Texaco, Inc.;
Getty Oil Company; Getty Mining
Company; Getty Gold Mine Company;
and John Does 1 through 10,
Defendants and Appellees.

Geoffrey J. Butler, Clerk

Third District, Tooele County
The Honorable Frank G. Noel

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STEWART, Justice:

Plaintiff Gold Standard, Inc., obtained interlocutory review of a district court order holding that Gold Standard could make no further use during discovery of two documents of Getty Oil Company and Getty Mining Company because they were subject to the work product privilege. We hold that the documents are not subject to the work product privilege and that even if they were, Getty waived its right to assert that privilege.

I. FACTUAL BACKGROUND

In December 1973, Getty and Gold Standard entered into a joint operating agreement for the development of the Mercur mine in Tooele County, Utah. Getty, as senior partner, held a 75 percent interest in the venture; Gold Standard held a 25 percent participating interest. Under the terms of the agreement, both parties were to pay for a feasibility study during the exploration phase, Phase I, of the project. The purpose of the feasibility study, ostensibly conducted by Bechtel Incorporated, was to determine whether continued development was economically feasible. Upon completion of the feasibility study, which would mark the end of Phase I, Gold Standard was to present the study to financial institutions to finance its interest in the mine during Phase II.

On October 1, 1980, one month before the completion of the feasibility study, Getty transferred its offices for the management of the Mercur mine from Los Angeles to Salt Lake City. The following spring, Getty presented a Bechtel engineering study to Gold Standard, claiming that it formed the necessary feasibility study under the terms of the operating agreement. Although Gold Standard asserts that it did not accept the Bechtel study as the final feasibility study, it paid its portion of the cost.

Both parties proceeded with the development of the mine in 1981, but Gold Standard was unable to finance its interest in the mine. Gold Standard blames this failure on the inadequacy of the Bechtel study as a feasibility study. Under the terms of the operating agreement, Gold Standard's 25 percent interest was converted into a 15 percent net profits interest because it failed to meet the expenses required of it for Phase II. The Mercur mine began production in 1983. In February 1984, defendant Texaco, Inc., acquired the interest of Getty and Getty Mining Co. in the Mercur mine.

On June 28, 1984, Gold Standard President Scott Smith sent a letter to Willis B. Reals, Texaco's senior Vice President, explaining the problems Gold Standard had encountered with Getty with respect to the feasibility study. Smith's letter included a letter dated September 20, 1983, from Gold Standard attorney Robert S. McConnell to Smith. The McConnell letter addressed the alleged unfairness of Getty's prior conduct. Immediately after receiving the letter, Reals wrote to Getty Mining President H. E. Wendt and asked Wendt for his reaction to the Smith letter and for legal advice. Wendt in turn contacted John M. Mintz, Getty's mining manager, for information to formulate a response.

The first of two disputed memoranda was written July 13, 1984, when Charles Kundert, Getty's Los Angeles engineering manager, responded to Mintz's request to review the

Mercur-related records in Los Angeles. Kundert wrote that he knew of no feasibility study completed before the spring of 1981. Getty had submitted the Bechtel study as the feasibility study sometime in the spring of 1981.

The second disputed memorandum, a letter from Mintz to Wendt, was written in response to the Kundert memorandum. On July 16, 1984, Mintz sent a letter to Wendt which stated that he could not find a feasibility study for the Mercur mine in Getty's data room index. The Kundert memorandum was included in Mintz's letter to Wendt. Despite this information, Wendt wrote directly to Gold Standard's Smith on October 25, 1984, and referred to Gold Standard's claim of unfairness as a "lame excuse" because Phase II had been under development for four years with Gold Standard's consent.

During the summer of 1985, defendant American Barrick Resources Corporation ("Barrick"), not a party to this appeal, acquired Texaco's interest in the Getty mine. In December 1986, Gold Standard filed its complaint against defendants, claiming, inter alia, that Getty had breached the operating agreement by not providing a proper feasibility study.¹

In early 1987, Richard Klatt, a former Getty project geologist, delivered the Kundert and Mintz memoranda, the two disputed documents, to Gold Standard. Klatt had copied the memoranda for his personal Mercur file while working in Getty's Los Angeles office. The memoranda were part of a general, nonconfidential reading file which was circulated weekly through Getty's exploration offices in Los Angeles in 1984. Klatt took copies of the memoranda with him when he left Getty's employment. On June 1, 1987, during a meeting with Gold Standard, Kundert signed an affidavit discussing the circumstances surrounding the writing of his memorandum to Mintz, and in September 1987, Getty received a copy of Kundert's affidavit, with the Kundert and Mintz documents, and learned of Klatt's prior ex parte contact with Gold Standard. Getty did not at that time raise any issue as to whether the work product privilege concerned those memoranda.

On December 2, 1987, during Gold Standard's deposition of Kundert, Gold Standard marked the memoranda and had them appended as exhibits to the deposition. Getty's counsel asked Kundert if he knew whether the memoranda had been requested by Mintz's attorney. Kundert responded that he had merely responded to a management inquiry by Mintz. Again, Getty raised no work product issue during the deposition.

1. Gold Standard has also asserted numerous other claims, all of which concern the operation or sale of the mine, against Getty, Texaco, and American Barrick Resources.

In late 1987 or early 1988, Getty delivered the memoranda to Gold Standard under Gold Standard's demand for document production, and the memoranda were again used during four subsequent depositions by Gold Standard. Getty, however, did not mention the work product issue until June 15, 1988, during the deposition of H. E. Wendt, Getty Mining Co. president.

Some eight months after Getty had produced the memoranda during the discovery process, and a year after it knew the memoranda were in Gold Standard's possession and had been used in five different depositions, Getty filed a motion for a protective order on September 26, 1988. In its motion, Getty asserted (1) the memoranda were subject to the work product privilege; and (2) it had not waived the work product privilege. Getty asked the court to order Gold Standard to return all copies of the memoranda and prohibit Gold Standard from using the memoranda during discovery. The trial court granted Getty's motion and ruled that (1) the memoranda were work product prepared in anticipation of litigation; (2) Getty had not waived its right to assert the work product doctrine because it had taken reasonable precautions to prevent inadvertent disclosure and had not acted in a dilatory manner when seeking the return of the documents; and (3) the work product doctrine applied even though Gold Standard had obtained copies of the memoranda through means other than the formal discovery process. The trial court ordered Gold Standard to return all copies of the memoranda to Getty and return Klatt's originals to him and prohibited the further use of the memoranda in the discovery process. This Court granted Gold Standard's petition for an interlocutory appeal of that order.

II. WORK PRODUCT

The genesis of the current work product doctrine is Hickman v. Taylor, 329 U.S. 495 (1947). The Supreme Court held that an attorney could refuse to produce during discovery documents containing statements he had obtained from witnesses. The "work product" of the attorney was not discoverable absent a showing of substantial need. The Court stated: "Not even the most liberal of discovery theories can justify unwarranted inquiries into the files and the mental impressions of an attorney." 329 U.S. at 510. The underlying theme of Hickman is the preservation of the adversarial system by the protection of the privacy of an attorney's files prepared in anticipation of litigation from encroachments of opposing counsel. 4 J. Moore, J. Lucas, & G. Grotheer, Federal Practice, ¶ 26.64[4], at 26-390 (2d ed. 1989).

In 1970, the Hickman doctrine was made a part of the Federal Rules of Civil Procedure in Rule 26(b)(3). The relevant portion of Rule 26(b)(3) states:

(3) Trial preparation: Materials.

Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the party's case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Rule 26(b)(3) of the Utah Rules of Civil Procedure is nearly identical to the federal rule. In construing our rule, we freely refer to authorities which have interpreted the federal rule. Allen Steel Co. v. Crossroads Plaza Assocs., 119 Utah Adv. Rep. 6 (Utah 1989); Olson v. Salt Lake City School Dist., 724 P.2d 960, 965 n.5 (Utah 1986); Pate v. Marathon Steel Co., 692 P.2d 765, 767 n.1 (Utah 1984).

For written materials to fall under the protection of Rule 26(b)(3), three criteria must be met: (1) the material must be documents and tangible things otherwise discoverable, (2) prepared in anticipation of litigation or for trial, (3) by or for another party or by or for that party's representative. City Consumer Servs., Inc. v. Horne, 100 F.R.D. 740, 747 (D. Utah 1983); 8 C. Wright & A. Miller, Federal Practice and Procedure § 2024, at 196-97 (1970). However, even if these requirements are met, the privilege does not apply if the party seeking discovery can show a need for the information and that it cannot be obtained without substantial hardship. Utah R. Civ. P. 26(b)(3); Langdon v. Champion, 752 P.2d 999, 1005 (Alaska 1988). But if the documents convey the mental impressions, conclusions, opinions or legal theories of an attorney or party, the documents will be afforded heightened protection as "opinion work product." Utah R. Civ. P. 26(b)(3). See Toledo Edison Co. v. G.A. Technologies, Inc., 847 F.2d 335, 339-40 (6th Cir. 1988).

In its memorandum decision, the trial court simply ruled, without further elaboration, that "the documents in

question are work product prepared in anticipation of litigation." Gold Standard contests that conclusion on the ground that an attorney must have been involved in the creation of the memoranda for them to be protected as work product. Although Getty's in-house counsel was aware that Getty was preparing a response to Gold Standard's initial letter, the attorney did not request the response, nor did he assist in its preparation. Nothing in the record suggests that the Getty attorney had any knowledge of the Mintz investigation or that the attorney had any contact with either Mintz or Kundert, the management-level Getty employees who prepared the two memoranda. There is no indication that the Getty in-house attorney even saw the memoranda.

Since Getty's attorney had no involvement in the preparation of the memoranda, the memoranda cannot be treated as work product, according to Gold Standard. See Thomas Organ Co. v. Jadranska Slobodna Plovidba, 54 F.R.D. 367, 372 (N.D. Ill. 1972). Getty responds that attorney involvement is only one factor for the court to consider in determining whether a document was created in anticipation of litigation. See Hawkins v. District Court, Fourth Judicial Dist., 638 P.2d 1372, 1377 n.4 (Colo. 1982). We agree that attorney involvement is only a factor to be weighed in reaching the ultimate conclusion.

Hickman did not address the issue of attorney involvement since the facts of that case dealt with statements taken by a lawyer. Proposed Amendments to the Federal Rules of Civil Procedure Relating to Discovery, 48 F.R.D. 487, 499, 501 (advisory committee's note) (1970) [hereinafter "Advisory Committee's Note"]; United States v. Nobles, 422 U.S. 225, 239 n.13 (1975). But after Hickman, the courts disputed whether the work product doctrine extended to trial preparation work by non-lawyers. Advisory Committee's Note, 48 F.R.D. at 499, 501; 8 C. Wright & A. Miller, Federal Practice & Procedure § 2024 at 202-03 (1970). The 1970 codification of the work product privilege in Rule 26(b)(3) ended the dispute by specifically including in the privilege material prepared "by or for another party or by or for that other party's representative." Fed. R. Civ. P. 26(b)(3); Advisory Committee's Note, 48 F.R.D. at 502; Moore v. Tri-City Hosp. Auth., 118 F.R.D. 646, 649 (N.D. Ga. 1988); Mullins v. Vakili, 506 A.2d 192, 195 (Del. Super. Ct. 1986); Eoppolo v. National R.R. Passenger Corp., 108 F.R.D. 292, 295 (E.D. Pa. 1985). Thus, the plain language of the rule does not require that an attorney be involved in the preparation of the material. 8 C. Wright & A. Miller, Federal Practice & Procedure § 2024, at 205-07 (1970); Toledo Edison Co. v. G.A. Technologies, Inc., 847 F.2d 335 (6th Cir. 1988); Duplan Corp. v. Deering Milliken, Inc., 540 F.2d 1215, 1219 (4th Cir. 1976); Scott Paper Co. v. Ceilcote Co., 103 F.R.D. 591, 594 (D. Me. 1984); Thomas Organ Co. v. Jadranska Slobodna Plovidba, 54 F.R.D. 367, 370 (N.D. Ill. 1972); Hawkins v.

District Court, Fourth Judicial Dist., 638 P.2d 1372, 1376-77 (Colo. 1982).

Nevertheless, some courts have held that attorney involvement is required to show that the document was prepared in anticipation of litigation and not in the ordinary course of business. McDougall v. Dunn, 468 F.2d 468 (4th Cir. 1972); Thomas Organ, 54 F.R.D. at 372; Langdon v. Champion, 752 P.2d 999 (Alaska 1988); Henry Enterprises, Inc. v. Smith, 225 Kan. 615, 592 P.2d 915 (1979). The court in Thomas Organ stated:

[A]ny report or statement made by or to a party's agent (other than to an attorney acting in the role of counsellor), which has not been requested by nor prepared for an attorney nor which otherwise reflects the employment of an attorney's legal expertise must be conclusively presumed to have been made in the ordinary course of business and thus not within the purview of the limited privilege of new Rule 26(b)(3)

. . . .

54 F.R.D. at 372 (emphasis in original).

Other courts have rejected the strict approach of Thomas Organ and have used attorney involvement as only one factor in a more fact-specific determination of whether material was prepared in anticipation of litigation. Basinger v. Glacier Carriers, Inc., 107 F.R.D. 771, 773-74 (M.D. Pa. 1985); Scott Paper Co. v. Ceilcote Co., 103 F.R.D. 591, 594 (D. Me. 1984); APL Corp. v. Aetna Casualty & Sur. Co., 91 F.R.D. 10, 18 (D. Md. 1980); Spaulding v. Denton, 68 F.R.D. 342, 345 (D. Del. 1975); Mullins, 506 A.2d at 195-96; Hawkins, 638 P.2d at 1377 n.4; Note, Work Product Discovery: A Multifactor Approach to the Anticipation of Litigation Requirement in Federal Rule of Civil Procedure 26(b)(3), 66 Iowa L. Rev. 1277, 1287 (1981).

The rule that better effectuates the language of Rule 26(b)(3), and its underlying rationale, is that attorney involvement is only one factor to be weighed in determining the applicability of the work product privilege. See Moore v. Tri-City Hosp. Auth., 118 F.R.D. 646 (N.D. Ga. 1988); 8 C. Wright & A. Miller, Federal Practice & Procedure § 2024, at 207 (1970). Moreover, the leading treatises have rejected the Thomas Organ approach. 4 J. Moore, J. Lucas, & G. Grotheer, Moore's Federal Practice ¶ 26.64[2], at 26-360 n.23 (2d ed. 1989); 8 C. Wright & A. Miller, Federal Practice & Procedure § 2024, at 205-06 (1970).

Nevertheless, the fact that no attorney was involved may suggest that a document was prepared in the ordinary course

of business and not in anticipation of litigation. See generally Thomas Organ. But here, there is no indication that Getty's counsel knew either Kundert or Mintz; nor is there any indication he was aware of their preparation of the memoranda. Clearly, there is no evidence that counsel helped to prepare the documents or had any input into the preparation of the documents. Nor is there evidence that he saw the memoranda at the time they were prepared. That the memoranda were written solely at the insistence of management-level employees and with no attorney request or other attorney involvement is strongly persuasive that the memoranda were not prepared in anticipation of litigation.

Furthermore, the evidence is clear that the two memoranda were not prepared "in anticipation of litigation or for trial," and do not satisfy the second element of the work product test, apart from the issue of the attorney's role. An inquiry to determine whether a document was prepared in anticipation of litigation should focus on the "'primary motivating purpose behind the creation of the document.'" United States v. Gulf Oil Corp., 760 F.2d 292, 296 (Temp. Emer. Ct. App. 1985) (quoting United States v. Davis, 636 F.2d 1028, 1040 (5th Cir. 1981)). Under this standard, "if the primary purpose behind the creation of the document is not to assist in pending or impending litigation," then work product protection is not justified. Gulf Oil Corp., 760 F.2d at 296. The mere possibility that litigation may occur or even "the mere fact that litigation does eventually ensue" is insufficient to cloak materials with the mantle of work product protection. Binks Mfg. Co. v. National Presto Indus., Inc., 709 F.2d 1109, 1118 (7th Cir. 1983); see also Janicker v. George Washington Univ., 94 F.R.D. 648, 650 (D.D.C. 1982); Soeder v. General Dynamics Corp., 90 F.R.D. 253, 255 (D. Nev. 1980).

The trial court held that the memoranda were prepared in anticipation of litigation. Mintz's affidavit states that he was told that "Gold Standard was unhappy with the way the project had ended up from their standpoint, and was threatening litigation." Yet the event that all parties agree precipitated the writing of the Mintz and Kundert memoranda, Smith's June 28, 1984 letter to Texaco Vice President Reals does not refer to a threat of litigation. The letter states, in pertinent part:

Gold Standard is still of the view that, as a legal matter, the "feasibility study" which is contemplated by the above-quoted portions of our Agreement with Getty means, and was intended by the parties to mean, a final outside third party, independent feasibility study, one which would be acceptable by the SEC and by the various investment and commercial

bankers as sufficient to support estimates of ore reserves, etc. and upon which statements with respect to technical and economical practicability of the project could be supported. As we see it, Getty Mining Company has failed to provide Gold Standard with such a "feasibility study" as specified by the Operating Agreement, and, legally speaking, the parties are still in "Phase I" under that Agreement. Our views in this regard are well supported by widely accepted published material, banking and other lending institutions, the majors in the mining industry, and a large body of independent mining and financial authorities.

My reason for the foregoing is to advise you of the major problems which exist between Getty Mining and Gold Standard, because we believe these do affect both the worth and sal[e]ability of the Mercur property. Further, we suspect that you might have a legal disclosure responsibility here, and therefore should know the facts as we see them.

Smith's letter also contains an expression of interest in the purchase of the mine and a desire to negotiate toward that end. Gold Standard's lawsuit was filed in December 1986, two-and-a-half years after Smith's letter.

In short, the Mintz and Kundert memoranda were not written to "assist in pending or impending litigation." Generally, a letter whose tone is "threatening" but does not state an intent to pursue litigation is insufficient to allow a party to invoke work product protection to protect an in-house report prompted by the letter. Binks Mfg. Co., 709 F.2d at 1120. That rule applies here. Smith's letter addresses wrongs perceived by Gold Standard, but it does not threaten litigation. In fact, the letter expresses Gold Standard's interest in purchasing the Mercur mine.

The Mintz and Kundert memoranda apparently were written as part of a Getty investigation, prompted by Texaco, to determine whether a feasibility study had been performed. They fall squarely within the holding of Janicker v. George Washington Univ., 94 F.R.D. 648, 650 (D.D.C. 1982): "If in connection with an accident or an event, a business entity in the ordinary course of business conducts an investigation for its own purposes, the resulting investigative report is produceable in civil pre-trial discovery." See also Binks Mfg. Co., 709 F.2d at 1118-21; Scott Paper Co. v. Ceilcote Co., 103 F.R.D. 591 (D. Me. 1984).

In sum, the memoranda are not work product. They were not prepared by an attorney or at the request of an attorney or by someone doing litigation investigation at the request of an attorney; nor were they otherwise prepared to assist in litigation.

III. WAIVER

Gold Standard also argues that Getty waived its work product protection. The trial court held that Getty did not waive its right to assert the privilege either by its own inadvertent disclosure of the documents or by the disclosure of the documents by a former employee. The trial court also held that Getty was not dilatory in asserting its rights. We disagree.

Courts which have dealt with the waiver issue have generally followed one of two lines of analysis. One focuses on the intent of the disclosing party in determining whether waiver has occurred. The other disregards the disclosing party's intent as irrelevant and focuses on the result of the disclosure. If the adverse party has possession of the material, the privilege is waived. We need not now adhere to one or the other position, since under both approaches Getty waived the privilege.

Getty argues that it produced the memoranda inadvertently and that an inadvertent disclosure does not eliminate work product protection. It relies on Mendenhall v. Barber-Greene Co., 531 F. Supp. 951 (N.D. Ill. 1982). A majority of cases, however, either hold or assume that, depending on the circumstances, inadvertent disclosure waives the work product privilege. Hartford Fire Ins. Co. v. Garvey, 109 F.R.D. 323, 329 (N.D. Cal. 1985). Hartford addresses waiver issues under both attorney-client and work product rationales, adopts the case-by-case analysis set forth in Lois Sportswear, U.S.A., Inc. v. Levi Strauss & Co., 104 F.R.D. 103 (S.D.N.Y. 1985), aff'd, 799 F.2d 867 (2d Cir. 1986), and delineates five elements to determine whether a disclosure constitutes waiver:

- 1) the reasonableness of the precautions to prevent inadvertent disclosure; 2) the time taken to rectify the error; 3) the scope of the discovery; 4) the extent of the disclosure; and 5) the "overreaching issue of fairness."

104 F.R.D. at 105. Although Lois Sportswear addresses waiver of the attorney-client privilege, the analysis also applies to instances of work product waiver. Hartford Fire Ins. Co. at 328. The distinction between the two doctrines disappears when the issue is disclosure to the adverse party. Id. See also Hartman v. El Paso Natural Gas Co., 763 P.2d 1144 (N.M. 1988).

Getty knew that Gold Standard had the memoranda in September 1987. Gold Standard obtained the memoranda from a former Getty employee who had copies of the memoranda for legitimate reasons. Getty also voluntarily produced the memoranda in late 1987 or early 1988 in response to Gold Standard's demand for production of documents. The memoranda were used during five different depositions, beginning with the deposition of Charles Kundert on December 2, 1987. Getty voluntarily produced the memoranda soon after the initial deposition, and the memoranda were subsequently used by Gold Standard during the depositions of Robert M. Smith, president of American Barrick, in April 1988; Willis B. Reals on June 14, 1988; John Tumazos, taken in a related action by Barrick against Gold Standard in New York on June 15, 1988; and H. E. Wendt on June 15, 1988. Despite this open and widespread use of the memoranda, Getty did not file a motion for a protective order until September 26, 1988, a full year after it knew that Gold Standard had the memoranda and three months after their last use.

The facts demonstrate much more than inadvertent disclosure, assuming that inadvertent disclosure, by itself, is not enough to constitute waiver. Getty, in effect, ratified plaintiff's use of the memoranda when it failed to assert any work product claims during the numerous depositions which were taken during the summer of 1988. At least eight months passed from the time Getty disclosed the documents to Gold Standard and the time it filed a motion for a protective order. Getty exhibited no discernible expedition in retrieving the memoranda. Gold Standard has used the memoranda as a cornerstone for its breach of contract claim, and it has used the memoranda extensively throughout discovery.

A number of courts have declined to apply a strict "inadvertent" disclosure doctrine in waiver cases and instead have examined intent and precautions of the disclosing party in trying to maintain confidentiality. E.g., International Digital Systems v. Digital Equipment Corp., 120 F.R.D. 445 (D. Mass. 1988). According to this view, work product protection is waived when disclosure "substantially increases the opportunity for potential adversaries to obtain the information." Niagara Mohawk Power Corp. v. Stone & Webster Eng'g Corp., 125 F.R.D. 578, 587 (N.D.N.Y. 1989) (citations omitted). That was the case here. The memoranda were disclosed directly to a known adversary during document production. See Note, Waiver of Work Product Immunity, 1981 U. Ill. L. Rev. 953, 968. Getty allowed the memoranda to become part of a general reading file circulated among its employees without much regard for confidentiality. An employee obtained copies of the memoranda and, some years later, turned them over to Gold Standard.

Under similar circumstances, United States v. Kelsey-Hayes Wheel Co., 15 F.R.D. 461 (E.D. Mich. 1954), held that work product protection was waived:

These particular documents were apparently circulated among the interested officials of [the party] and it does not appear that they resided in . . . counsel's work files They do not, therefore, qualify for the special protection afforded by that rule. In any event, the cloak of privacy having been voluntarily lifted . . . , there is no longer any reason to invoke the rule.

15 F.R.D. at 465.

Finally, for a year after Getty knew that Gold Standard had the memoranda and for several months after Getty surrendered the memoranda, Getty did nothing. The memoranda were used time and again in depositions without objection from Getty. Even after a possible objection was noted, Getty waited over three months to file its motion for a protective order. Delay in failing to object and in failing to move for protection calls into question Getty's assertion that the memoranda are work product. The inaction and delay in filing constitute an independent waiver of whatever right Getty may have been able to assert, and the trial judge should have so found. See, e.g., Shields v. Sturm, Ruger Co., 864 F.2d 379, 382 (5th Cir. 1989); Baxter Travenol Laboratories, Inc. v. Abbott Laboratories, 117 F.R.D. 119, 121 (N.D. Ill. 1987) ("Even where initial production may have been inadvertent, however, delay in claiming the privilege can result in waiver."). Getty's failure to demonstrate any diligence whatsoever in asserting the privilege is itself a waiver.

The trial court's order suppressing use of the memoranda is reversed.

WE CONCUR:

Gordon R. Hall, Chief Justice

Richard C. Howe, Associate
Chief Justice

Christine M. Durham, Justice

Michael D. Zimmerman, Justice

Tab 2

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

GOLD STANDARD, INC.,	:	
Plaintiff,	:	MEMORANDUM DECISION
vs.	:	
AMERICAN BARRICK RESOURCES CORPORATION; BARRICK MERCUR GOLD MINES, INC.; TEXACO, INC., (a severed party); GETTY OIL COMPANY; GETTY MINING COMPANY; GETTY GOLD MINE COMPANY; and JOHN DOES I-X,	:	Civil No. CV-86-374
Defendant.	:	

Now before the Court is defendants, Getty Oil Company and Getty Mining Company (Getty) Motion for a Protective Order pertaining to two documents: a Memorandum from C. J. Kundert to J. M. Mintz dated July 13, 1984 and a Memorandum from J. M. Mintz to H. E. Wendt dated July 16, 1984. After oral argument on November 15, 1988 the Court took the matter under advisement and now rules as follows:

First, the Court is of the opinion that the documents in question are work product prepared in anticipation of litigation.

Second, the Court is of the opinion that defendant Getty has not waived its right to assert the work product doctrine with regard to these documents. In this age of complex commercial litigation where cases such as this involve the production of huge numbers of documents, there must be a

003262

(2)

mechanism and an opportunity for parties, who have taken reasonable precautions to prevent inadvertent disclosure of protected documents to retract such documents that may have been inadvertently produced. This position is all the more compelling under the facts of this case where the documents in question were obtained from Getty's files by a former Getty employee, and thereby ultimately made available to opposing counsel. The Court has previously ruled in this case that plaintiffs' counsel may unilaterally make contacts with former Getty employees. In order for that position to be sound, the Court must be able to enforce the protections of the attorney-client privilege and the work product doctrine where documents falling within those protections are obtained by opposing counsel during those unilateral contacts.

The Court is further of the opinion that defendants have not acted in a dilatory manner either in coming to a knowledge of the importance of the documents in question or subsequently seeking their return.

Lastly, plaintiffs have argued that the work product doctrine is an immunity from discovery and not a "privilege" concept. Presumably the plaintiffs would want the Court to draw the inference that since these documents were not obtained through formal discovery that the doctrine does not apply to give the Court authority to order their return. The Court simply cannot agree with plaintiffs' counsel as that would be conceding that the Court is helpless to enforce the work product doctrine as to any documents that were obtained by whatever means, outside of formal discovery.

The Court grants defendant Getty's Motion for a Protective Order, and will order that plaintiffs' counsel return to Getty the documents in

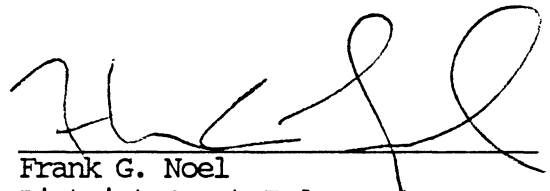
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(3)

question and that they be used no further in discovery.

Getty is to prepare an order consistent with the Court's ruling in this matter and submit it in accordance with the local rules of practice.

Dated this 23 day of November, 1988.



Frank G. Noel
District Court Judge

003260

MAILING CERTIFICATE

I certify that a true and correct, postage prepaid, copy of the foregoing Memorandum Decision was mailed to:

Gordon L. Roberts
Scott M. Matheson
Francis M. Wikstrom
John B. Wilson
of and for
PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898

James S. Lowrie, Esq.
George W. Pratt, Esq.
JONES, WALDO, HOLBROOK & MCDONOUGH
1500 First Interstate Plaza
Salt Lake City, Utah 84101

Stephen G. Crockett, Esq.
Robert S. Clark, Esq.
KIMBALL, PARR, CROCKETT & WADDOUPS
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

Robert M. McDonald Esq.
MCDONALD & BULLEN
American Plaza II
47 West 200 South, Suite 450
Salt Lake City, Utah 84106

Tab 3

AFFIDAVIT OF JEFFREY C. COLLINS

Jeffrey C. Collins, being first duly sworn, hereby deposes and says:

1. I am a resident of Colorado Springs, Colorado. I was an attorney with Getty Oil Company ("Getty") for approximately two years. I left Getty in November, 1984.

2. From 1982 to 1984, I was an in-house attorney for Getty in Salt Lake City, Utah. I reported directly to Mr. Joseph Berg, III, division counsel, and indirectly to Mr. Robert Blanc, District Manager of Getty in Salt Lake City, Utah.

3. Prior to the spring of 1984, I had minimal legal involvement with the Mecur Gold Mine. Prior to the summer of 1984, however, the other attorneys in Getty's Salt Lake Office left, leaving me as the only attorney in the Salt Lake Office. As a result, I was responsible for the legal work involving the Mecur Mine from the summer of 1984 until November, 1984, when I left Getty.

4. In early July, 1984, Robert Blanc gave me a copy of Scott Smith's June 28, 1984 letter, a copy of which is attached hereto as Exhibit A, and Robert S. McConnell's September 20, 1983 letter, a copy of which is attached hereto as Exhibit B. Mr. Blanc asked that I assist in the preparation of a response to Scott Smith's letter. I coordinated this effort with Amy Etherington, an attorney for Texaco in New York.

5. At the time Mr. Blanc made his request, I understood that Gold Standard was threatening litigation on several issues, including whether or not Getty had performed a "feasibility study" as required by the Operating Agreement.

6. I further understood that the reason Getty's management requested my assistance in drafting a response and coordinating my work with Texaco's legal department was because of concern regarding threatened litigation by Gold Standard and the need to consider the legal implications of such response. Getty's response to Scott Smith's June 28 letter, dated October 25, 1984, and signed by Ed Wendt, was intended to serve as a legal document responding to Gold Standard's allegations (copy attached as Exhibit C).

7. I have reviewed the Amended Complaint in Gold Standard, Inc. v. American Barrick Resources, et. al., Civil No. CV-86-374. The issues over which we anticipated litigation in July, 1984, including the dispute over whether or not Getty provided Gold Standard a "feasibility study" as defined in the Operating Agreement, appear to be included as allegations in Gold Standard's Complaint against Getty.

DATED the 21st day of September, 1988.



Jeffrey C. Collins

COUNTY OF EL PASO)
) ss.
STATE OF COLORADO)

Subscribed and sworn to before me this 21st day of September, 1988.



Notary Public

Residing at: _____

My Commission Expires:

My Commission Expires May 29, 1989
8770 Catalpa Drive
Colorado Springs, CO 80907

CERTIFICATE OF SERVICE

I hereby certify that on the 23d day of September, 1988
a true and correct copy of the foregoing AFFIDAVIT OF JEFFREY C.
COLLINS was mailed first class, postage prepaid to the following:

James S. Lowrie, Esq.
JONES, WALDO, HOLBROOK & McDONOUGH
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

Gordon L. Roberts, Esq.
Francis M. Wikstrom, Esq.
PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
Salt Lake City, Utah 84111

Robert M. McDonald, Esq.
47 West 200 South, #450
Salt Lake City, Utah 84101

A handwritten signature in cursive script, reading "Robyn Glungerick", is written over a horizontal line.

Tab 4

Stephen G. Crockett, Esq. (A0766)
Robert S. Clark, Esq. (A4015)
Jill A. Niederhauser, Esq. (A4641)
Brian J. Romriell, Esq. (A4757)
KIMBALL, PARR, CROCKETT & WADDOUPS
185 South State Street, Suite 1300
P.O. Box 11019
Salt Lake City, Utah 84147
(801) 532-7840

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TOOELE COUNTY UTAH

1998 SEP 26 PM 3:03

Doni R. [Signature]
CLERK
3rd JUDICIAL DISTRICT

Mark W. Reinhardt, Esq.
4601 DTC Boulevard
P.O. Box 2100
Denver, Colorado 80237

Attorneys for Defendants Getty
Oil Company and Getty Mining
Company

IN THE THIRD JUDICIAL DISTRICT COURT FOR TOOELE COUNTY

STATE OF UTAH

GOLD STANDARD, INC.,)

Plaintiff,)

vs.)

AMERICAN BARRICK RESOURCES)
CORPORATION; BARRICK MERCUR)
GOLD MINES, INC.; GETTY OIL)
COMPANY; GETTY MINING COMPANY;)
GETTY GOLD MINE COMPANY; and)
and JOHN DOES I through 10,)

Defendants.)

AFFIDAVIT OF
ROBERT S. CLARK
IN SUPPORT OF MOTION
FOR PROTECTIVE ORDER

Civil No. CV-86-374

Judge Frank Noel

Robert S. Clark, being first duly sworn, hereby deposes
and says:

1. I am an attorney licensed to practice law in the
State of Utah, and am one of the counsel of record for defendants

002725

Getty Oil Company and Getty Mining Company (collectively "Getty") in this action.

2. I have assisted in the defense of this action for Getty from February, 1987 to the present time. As counsel for Getty, I have been involved in Getty's production of documents in response to requests of Gold Standard.

3. In September, 1987, we received from Parsons, Behle & Latimer a copy of the Affidavit of Charles J. Kundert, dated June 1, 1987 (the "Kundert Affidavit") (attached to Getty's Memorandum in Support of Motion for Protective Order filed contemporaneously herewith). Attached to the Kundert Affidavit was a copy of a memorandum prepared by Charles J. Kundert addressed to J. M. Mintz, dated July 13, 1984 (the "Kundert Memorandum"), and a memorandum prepared by J. M. Mintz addressed to H. E. Wendt dated July 16, 1984 (the "Mintz Memorandum") (both such memoranda are attached as Exhibits to the Kundert Affidavit). I understand that Parsons, Behle received a copy of the Affidavit from Mr. Kundert within a few days prior to the time it was given to us.

4. In November and December 1987, I assisted in Getty's preparations precedent to producing documents to Gold Standard. At that time, we had over 49,000 pages of documents which were reviewed prior to their production to Gold Standard. A team of attorneys and paralegals participated in screening the documents to select documents that potentially were privileged and/or protected by the work-product doctrine.

5. Following an initial screening, the documents were carefully reviewed and an initial privilege/work product determination was made. We then reviewed the selected documents and consulted with in-house counsel for Getty. We made a final decision regarding privileged and work-product documents and produced a privilege log to reflect those documents which were withheld under the attorney-client privilege and work-product doctrine.

6. On December 29, 1987, we began our production of documents which continued into January of 1988. Throughout this process, Getty always intended to protect and assert its attorney-client privilege and work-product protection to the maximum degree available and has not intentionally waived any of these privileges.

7. Prior to the production of documents, we had read the Kundert Affidavit and the attached Kundert and Mintz Memoranda. The Kundert Affidavit suggests that he prepared the July 13, 1984 Memorandum in response to inquiries from potential buyers of the Mercur Mine. Prior to our production of documents, we had no reason to question this explanation of the purpose and background behind the July 13, 1984 Memorandum. The explanation in the Affidavit of the purpose of Kundert's Memorandum led us to conclude that no attorney-client or work-product protection was available respecting the document. Consequently, the Kundert Memorandum and Mintz Memorandum were produced as part of Getty's production of documents.

8. In June 1988, while in interviews conducted in Houston, Texas in preparation for the depositions of Willis Reals, a Texaco vice president, and Ed Wendt, the former president of Getty Mining Company, it became apparent that a connection probably exists between a request Reals made to Wendt and others on June 29, 1984, for legal advice concerning a perceived threat of litigation, and the preparation of the Kundert and Mintz Memoranda several days later.

9. We promptly informed Gold Standard of this concern and began an investigation into the background behind the documents involved. This investigation has included interviews with former Getty management employees and former Getty attorneys. John M. (Jack) Mintz and Jeffrey C. Collins both appeared to have important knowledge relevant to the issue. Unfortunately, Mr. Mintz was out of the country for an extended vacation when we first attempted to contact him, and Mr. Collins has for the past several weeks been involved in business affairs that take him regularly to Alaska. In my letter of July 6, 1988 to George Pratt (attached), I explained the situation with respect to Mr. Mintz' availability and Getty's position with respect to these documents. We have now received an affidavit from Jack Mintz, and have been told that an affidavit will be sent to us soon by Jeff Collins. Such affidavits detail these individuals' respective understandings of the events relating to Gold Standard's threat of litigation and their personal involvement in responding to that threat in 1984.

10. As a result of this investigation, we have concluded that the Kundert and Mintz Memoranda were in all likelihood prepared as part of a response to a perceived threat of litigation and should be protected from discovery under the work-product doctrine of Utah R. Civ. P. 26(b)(3).

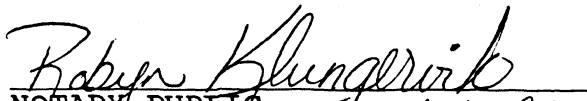
11. In July, 1988, I asked George Pratt, one of the attorneys representing Gold Standard, where they first obtained a copy of the Kundert Memorandum. He told me that they first obtained that document from Richard Klatt.

DATED this 22d day of September, 1988.


Robert S. Clark

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

SUBSCRIBED AND SWORN to before me this 22nd day of September, 1988.


NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:

7-16-91

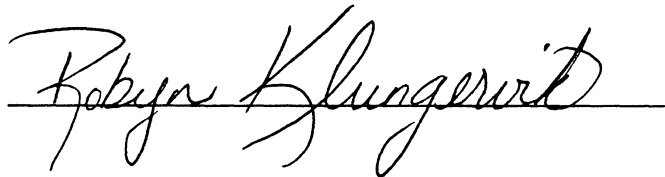
CERTIFICATE OF SERVICE

I hereby certify that on the 23^d day of September, 1988
a true and correct copy of the foregoing AFFIDAVIT OF ROBERT S.
CLARK IN SUPPORT OF MOTION FOR PROTECTIVE ORDER was mailed first
class, postage prepaid to the following:

James S. Lowrie, Esq.
JONES, WALDO, HOLBROOK & McDONOUGH
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

Gordon L. Roberts, Esq.
Francis M. Wikstrom, Esq.
PARSONS, BEHLE & LATIMER
185 South State Street, Suite 700
Salt Lake City, Utah 84111

Robert M. McDonald, Esq.
47 West 200 South, #450
Salt Lake City, Utah 84101

A handwritten signature in cursive script, reading "Robyn Klunger", written over a horizontal line.

LAW OFFICES OF
KIMBALL, PARR, CROCKETT & WADDOUPS
A PROFESSIONAL CORPORATION
SUITE 1300
185 SOUTH STATE STREET
POST OFFICE BOX 11019
SALT LAKE CITY, UTAH 84147
TELEPHONE (801) 532-7840

ROBERT S. CLARK

July 6, 1988

HAND-DELIVERED

George Pratt
Jones, Waldo, Holbrook & McDonough
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101

RE: Gold Standard, Inc. v. American Barrick, et. al.

Dear George:

As a follow-up to this morning's telephone conversation, I am sending this letter to clarify Getty's position on matters which we have discussed.

A. Scheduling of Charles Kundert's Deposition

Although we do not control Mr. Kundert, we object to your attempt to go forward with Charles Kundert's deposition during the week of July 11-15, 1988. On Friday morning, July 1, 1988, prior to the time that Gold Standard served notice of Kundert's deposition, we informed you that Getty would not be in a position to proceed with Kundert's deposition during the week of July 11-15, 1988. We reaffirm that decision.

As we discussed last Friday and in subsequent conversations, there are several reasons for that decision. First, John Ramsey, senior counsel for Texaco, has in-house responsibility for this case and has closely monitored its progress. He needs to attend Kundert's deposition but has prior commitments next week which he cannot alter. In addition, recent events have alerted us that certain documents involving Mr. Kundert are probably protected under the work product doctrine. Getty has reason to believe that Mr. Kundert's Memorandum to J.M. Mintz dated July 13, 1984, was prepared in anticipation of litigation between Gold Standard and Getty concerning issues in this law suit. Getty is researching the

George Pratt
July 6, 1988
Page 2

law and investigating the underlying facts which support its work product claim.

In order to complete our factual investigation, we must contact Mr. J.M. Mintz concerning the documents, the purpose of their preparation, and the relationship of the documents to anticipated litigation and legal advice. Unfortunately, after our conversation this morning, I was informed that Mr. Mintz is out of the country and cannot be contacted until his return. His testimony is critical to this issue.

Until the work product issue is resolved as to Mr. Kundert's Memorandum and related documents, it would be counter productive to both sides to schedule and take his deposition. Furthermore, before his deposition can be taken, we need to meet with him and review the relevant documents. As a result, we will not be in a position to produce Mr. Kundert until the work product issue is resolved and we can schedule time to meet with Mr. Kundert prior to commencing the deposition.

Mr. Kundert has indicated that he is in the process of selling his home and moving, making scheduling later in July or August difficult. He will, however, be available after the first part of September.

B. Motion for Protective Order

As discussed above, we intend to file a motion for a protective order as soon as reasonably possible. Until the factual investigation is completed, however, the motion would be premature. As a result, we will not be able to immediately file the motion. As soon as our factual inquiry can be completed we will file the motion for a protective order.

C. Scheduling and Effect on Toronto Depositions

Gold Standard has indicated its concern that Getty's efforts to protect certain documents under the work product doctrine will impede Gold Standard's ability to depose Peter Bijur in Toronto during the week of July 25-28, 1988, unless the work

George Pratt
July 6, 1988
Page 3

product issue is resolved prior to those depositions. As a result, Getty will stipulate that the documents can be used in the depositions of Messrs. Bijur and Birchall as long as Gold Standard agrees that such use will not prejudice any right on the part of Getty to seek to protect the documents under the work product doctrine. Of course, we are not asking you to concede any arguments you wish to make based upon past use of the documents.

Please contact me if you have questions regarding these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rob Clark", followed by a long horizontal flourish line.

Robert S. Clark

RSC:pls

cc: Fran Wikstrom

tex-g011.pls

Tab 5

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TOOELE COUNTY UTAH

1997 NOV 20 PM 12:07

James S. Lowrie (USB #2007)
George W. Pratt (USB #A2642)
James W. Peters (USB #5131)
JONES, WALDO, HOLBROOK & McDONOUGH
Attorneys for Plaintiff
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE THIRD JUDICIAL DISTRICT COURT
TOOELE COUNTY, STATE OF UTAH

GOLD STANDARD, INC.,	:	
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
AMERICAN BARRICK RESOURCES	:	
CORPORATION; BARRICK MERCUR	:	
GOLD MINES, INC.; TEXACO, INC.	:	
(a severed party); GETTY OIL	:	
COMPANY; GETTY MINING COMPANY,	:	
GETTY GOLD MINE COMPANY; and	:	
JOHN DOES I through 10,	:	
	:	
Defendants.	:	

AFFIDAVIT OF GEORGE W.
PRATT IN OPPOSITION
TO GETTY DEFENDANTS'
PETITION FOR ORDER
TO SHOW CAUSE

Civil No. CV-86-374

Honorable Frank G. Noel

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

George W. Pratt, being duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the
State of Utah, and am one of the counsel of record for the
plaintiff in this case, Gold Standard, Inc.

000903

2. I make this affidavit in opposition to the Getty Defendants' Petition For Order To Show Cause filed by the Getty defendants, and have personal knowledge of the matters testified to herein.

CONTACTS WITH ROBERT L. HAUTALA

3. On April 16, 1987, I received an unsolicited telephone call from Robert L. Hautala, who I understood at the time was a former employee of Getty Oil Company who had worked on the Mercur Project during the early 1980's. Mr. Hautala called to advise me that he had very recently spent a day at the offices of Parsons, Behle and Latimer, at their invitation, reviewing various documents and answering questions with respect to his knowledge and involvement in the Mercur Project. Mr. Hautala told me in a general way what kinds of questions had been asked of him, and the general views he had expressed during this meeting. He told me that lawyers from Parsons, Behle and Latimer, including at least Fran Wikstrom; lawyers from Kimball, Parr, Crockett and Waddoups, including at least Steve Crockett; and that Mark Reinhardt, who he understood to be an in-house lawyer from Texaco, were present at the meeting. He said that in total there were six or seven attorneys involved. Our conversation lasted approximately thirty minutes.

4. Mr. Hautala emphasized to me that he was calling me to let me know he had had this meeting at Parsons, Behle and Latimer because he was "trying to be as impartial as possible" in this litigation. He also said that because he intended to be impartial and even-handed, he would be willing to travel to Salt Lake City to talk with Gold Standard and its lawyers, and I told him I would like to leave this possibility open.

5. In early October, 1987, I telephoned Mr. Hautala, at the geology department of the University of Idaho, to ask him whether he would come to Salt Lake City to meet with Scott Smith, James Lowrie, and I, as he had done previously at Parsons, Behle and Latimer, and as he had told me on April 16 he would be willing to do with the attorneys for Gold Standard. After one or two more phone calls to arrange scheduling, Mr. Hautala finally did fly to Salt Lake City, on or about October 14, 1987. James Lowrie and I, and other non-attorney representatives of Gold Standard, talked with Mr. Hautala for approximately one half day on October 15, 1987 and one half day on October 16, 1987, regarding his involvement at the Mercur Project.

6. At no time did I discuss with Mr. Hautala or in any way seek information concerning any conversation he was a party to, while employed by Getty, involving any of its

attorneys. To the best of my knowledge and belief Mr. Hautala has never revealed to me or any other attorney for Gold Standard the content of any privileged attorney-client communications.

CONTACTS WITH CHARLES J. KUNDERT

7. During May, 1987, Scott L. Smith, the president of Gold Standard, showed me two documents relating to the Mercur Project. He told me the documents had been provided to him by H. Richard Klatt, a former Getty employee who is a geologist that worked on the Mercur Projects during the 1970's and who Scott had worked with extensively during those years. The two memoranda contained information that appeared to me to be very significant to this litigation. True and correct copies of the memoranda provided to me by Mr. Smith are attached hereto as Exhibits A and B.

8. After receiving these memoranda, I discussed with James Lowrie what we should do with them. We determined to contact Mr. Charles J. Kundert, the author of the first of the two memoranda, and interview him with respect to the two memoranda.

9. On May 29 or May 30, 1987, I telephoned Mr. Kundert at his home in Rolling Hills Estates, near Los Angeles, California. I told him that I was a Salt Lake

City attorney representing Gold Standard in litigation against, among others, his former employer, Getty. He told me he was aware of the litigation. I told him I would like to talk to him at his home regarding, among other things, certain memoranda that had come to my attention. He told me in substance he would be happy to talk to me regarding his knowledge as to Getty's relationship with Gold Standard, and regarding the Mercur Project.

10. On June 1, 1987, I travelled to Mr. Kundert's home in Rolling Hills Estates, California. We talked for two or three hours regarding the Mercur Project and Getty's relationship with Gold Standard. We also discussed the memoranda that are attached as Exhibits A and B.

11. During the course of our meeting, Mr. Kundert mentioned that he had spoken with an attorney named John Wilson, with the law firm of Parsons, Behle and Latimer. He said he had met with Mr. Wilson three or four weeks earlier at the Los Angeles Airport. He told me that at that time he provided Mr. Wilson with whatever documents he had relating to the Mercur Project, including the two memoranda attached as Exhibits A and B. He told me he also provided Mr. Wilson with the various "Items" that are referred to in Exhibit A. Mr. Kundert said further that it appeared to him that

Mr. Wilson was unaware of Exhibits A and B at the time Mr. Kundert showed them to him.

12. At the conclusion of our meeting, I asked Mr. Kundert if he would be willing to sign an Affidavit describing the circumstances of the creation of Exhibits A and B, to which he readily agreed. I also asked him if he would sign a letter directed to Mr. Wilson, requesting that copies of the "Items" referred to in Exhibit A be provided to me. He also agreed to do this.

13. That afternoon, I utilized the services of a Los Angeles law firm to prepare an Affidavit for Mr. Kundert's signature, and a letter to Mr. Wilson of Parsons, Behle and Latimer.

14. That evening, I again met with Mr. Kundert at his home with a California notary public. Mr. Kundert executed the Affidavit I had prepared, and signed the letter I had prepared addressed to Mr. Wilson. True and correct copies of the Affidavit of Charles J. Kundert, and his letter to Mr. Wilson, are attached as Exhibits C and D.

15. At no time did I ask Mr. Kundert about, or otherwise seek any information concerning any conversations with attorneys that he had been a party to, while employed by Getty. To the best of my knowledge and belief, Mr. Kundert did

not, during the course of our meeting, reveal to me the content of any privileged attorney-client communications.

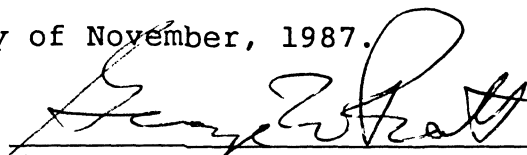
CONVERSATIONS WITH GETTY'S COUNSEL

16. Yesterday, November 18, 1987, I telephoned Stephen G. Crockett, presently counsel for the Getty defendants in this case. I told Mr. Crockett that we felt it might not be necessary to take the discovery sought by Gold Standard's motion to permit limited discovery on the issues raised by Getty's Petition, if Mr. Crockett would agree that we could contact Mr. Kundert and Mr. Hautala, in a conference call involving Mr. Crockett, to ask certain questions regarding the contacts I have described previously in this affidavit, and then possibly obtain their affidavits to use in connection with Gold Standard's response to the Getty Petition. I told Mr. Crockett that by obtaining their statements we might illuminate certain factual questions, specifically (1) the extent of any disclosure of attorney-client communications, and (2) Gold Standard's claim that Getty, by its inaction, has waived the rights asserted in its Petition. I told Mr. Crockett in substance that I thought such telephone interviews, to which Mr. Crockett would be party, might complete the factual picture necessary to permit Getty's

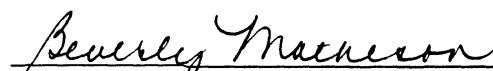
Petition to be heard on Monday, without the need for the deposition discovery sought in Gold Standard's motion.

17. Mr. Crockett took my request under advisement, and telephoned me later that day. When he called back, he declined my request that we jointly speak to Messrs. Kundert and Hautala. Mr. Crockett also mentioned at that time that he had personally been aware of the contact that had been made with Mr. Kundert for about three months, but thought that that contact had been "cut off."

DATED this 19th day of November, 1987.


George W. Pratt

SUBSCRIBED AND SWORN to before me this 19 day of November, 1987.


NOTARY PUBLIC
Residing at: West Valley, Ut

My Commission Expires:

1-20-91

1276P
GWP

Los Angeles, California
July 13, 1984

TO: MR. J. M. MINTZ
FROM: C. J. KUNDERT
SUBJECT: REVIEW OF MERCUR PLANS TO PRODUCTION
FROM MID-1979 TO EARLY 1981

Data in our files show that we shut-down the Mercur Gold Program in 1976 on the basis of an in-house financial analysis. We had placed Mercur Gold in our Minerals Reserves category in the January 1, 1975 and 1976 Reports, prior to the fall in the price of gold. The January 1, 1977 Report shows Mercur Gold as a Paramarginal Resource in which category it remained until the report of January 1, 1982 when Reserve status was again attained.

In September 1979 (Item 2 attached), a proposal for further work on the Mercur Gold Project was made. Work leading to an interim feasibility study by late 1980 prior to pilot plant start-up was recommended. "A Final or Bankable Feasibility Study" would be prepared after drilling is completed and Pilot Plant report completed in the third quarter of 1981. Preparation of the document would take an estimated 12 to 16 weeks placing the date of the availability of the Bankable Document in the last quarter of 1981.

This plan was followed during the course of the Mercur Project under direction from Los Angeles. Bechtel was awarded the contract to do the Engineering and Design work needed for the interim study. The work was to be completed by November 1980. Items 6, 10, 11, 12, and 13 document the selection of Bechtel and work to be performed.

The Agreement with Gold Standard called for notification of commission of a feasibility study and supporting documents to be given to Gold Standard. This was done, see Items 7, 8, and 9.

As of October 1, 1980, the Mercur Project became the responsibility of the Salt Lake City Office, see Item 15.

Bechtel's work proceeded as planned and an Order of Magnitude Estimate for Feasibility Study and a Preliminary Engineering and Cost Estimates of the Mercur Gold Mine and Plant were submitted for review in November, right on schedule, see Item 18. We do not have records of the date of Getty's receipt of Bechtel's Reports after final typing. Please note that the data we do have, Items 18, 19 and 21, support the fact that neither report was intended to be a Final Bankable Document.

To: Mr. J. M. Mintz
Subject: Review of Mercur Plans to Production
From Mid-1979 to Early 1981

July 13, 1984

Page -2-

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I cite Utah's Escondida study as an example. Utah did the reserves and mine planning in-house, but had them reviewed and concurred with by an outside party. Mr. J. P. Davies, who had intimate knowledge of Bechtel's studies, on separate occasions also told Hautala that the Bechtel study was incomplete because the geologic and ore reserves data had not been reviewed and accepted by Bechtel; and economic evaluations had not been prepared by Bechtel.

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C. J. Kunder

CJK:pw
Attachments

Los Angeles, California
July 16, 1984

TO: MR. H. E. WENDT
FROM: J. M. MINTZ
SUBJECT: MERCUR PROJECT

You recently asked about the circumstances of the Mercur Feasibility Study while Mercur was under Los Angeles Production. Mr. C. J. Kundert made a review of the Los Angeles files and his findings are in the enclosed memo.

The first major Mercur work was authorized in the 1980 budget when \$1.4 million was approved with \$1.2 million for drilling, permitting, land purchases and environmental data collecting; and \$200,000 for metallurgical studies. Dr. Muessig wrote Scott Smith on 11/9/79 that funds were being requested to initiate an evaluation program. My follow-up memo to Dr. Muessig, dated 12/11/79, included a schedule that provided for a feasibility study that would allow for a go-no go decision in October 1981. This was to satisfy the requirements of the Mercur agreement with Gold Standard.

Mr. C. E. Knapp of the Los Angeles staff was given the responsibility for coordinating this effort during the 3rd quarter of 1979. His preliminary work was based on a plan that would have a mill that would process both oxide and refractory ore and would payout from the Mercur Hill-Lulu area. Mr. Knapp prepared a cursory financial evaluation based on then available data which indicated the project appeared to have sufficient potential to warrant more detailed study. After several meetings with Gold Standard, my letter of 6/17/80 outlining the program for the feasibility study was sent to Scott Smith. Bechtel was awarded a contract to prepare a preliminary engineering and cost estimate for the mine and mill, which could not be a Final Feasibility Study because of inadequate data on the deposit. Prior to the completion of the Bechtel study, Mr. Knapp was transferred to Petrotomics and Mr. F. Wicks, staff metallurgist, was assigned as his replacement. On 10/1/80, one month before the completion of the Bechtel study, responsibility for the Mercur Project was assigned to the Salt Lake District.

The Los Angeles staff was not involved in the project to any major extent after the project was transferred to Salt Lake City. We did not receive a copy of the Bechtel report or any of the data for changing the mill circuit from that proposed in the Bechtel study. The part that is most puzzling to us is the line item in the enclosed Data Room Index that indicates no feasibility studies for Mercur. //

JMM:mm
Attachments

C. J. Kundert

000002

AFFIDAVIT OF CHARLES J. KUNDERT

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES) ss.

Charles J. Kundert, being duly sworn, deposes and says:

1. I am a resident of the State of California, residing at 12 Silver Saddle Lane, Rolling Hills Estates, California.

2. During the period from January, 1979 through August, 1984, I was employed by either Getty Oil Company or Getty Mining Company, a wholly owned subsidiary, as Minerals Engineering Manager, in the Production Department, at Getty's headquarters in Los Angeles, California.

3. I have personal knowledge of the matters testified to herein.

4. During February, 1984, Getty Oil Company and all its subsidiaries, including Getty Mining Company, were acquired by Texaco, Inc. Shortly thereafter, Texaco decided to sell all mining properties owned by Getty.

5. To facilitate the process of selling the Getty mining properties, Texaco established a "Data Room" to become a repository for all significant documents relating to all Getty mining properties worldwide.

6. In or about June, 1984, under the direction of its investment bankers, First Boston, all the local Getty offices for each of its mining properties, including the local Getty office for the Mercur gold mine property, located in Utah, were instructed to send all documents relating to the respective

mining properties to Getty's headquarters in Los Angeles, to become part of the Data Room.

7. When this information was assembled, the Data Room was then used by Texaco to show prospective purchasers of the various Getty mining properties the assembled data and other documentation relating to the properties.

8. In July, 1984, some of the visiting mining companies that had expressed interest in the properties raised the question why no feasibility study appeared in the Data Room for the Mercur gold mine property, in Utah.

9. When this question was raised, I reviewed the files concerning Mercur that had been maintained at Getty Mining Company's Los Angeles office. I also reviewed the Data Room Index of materials sent by Getty's Salt Lake office for the Mercur property.

10. The results of my review of those documents are summarized in a Memorandum dated July 13, 1984, which I addressed to Mr. J. M. Mintz. Mr. Mintz was my immediate superior at that time, and was the Manager of Mineral Production for Getty Mining. A true and correct copy of my July 13, 1984 Memorandum to Mr. Mintz is attached hereto as Exhibit A.

11. My Memorandum is, I believe, self-explanatory. As I indicate in the Memorandum, my review revealed that neither the Order of Magnitude Estimate for Feasibility Study, nor the Preliminary Engineering and Cost Estimates of the Mercur Gold Mine

and Plant, both prepared by Bechtel Engineering, was intended to be a Final Bankable Document. I understand that Bechtel would not label these documents a "feasibility study" because, in Bechtel's view, a feasibility study must be a bankable document, that is, one that can be used to raise money in the marketplace. Further, as I also indicate in my Memorandum, the Data Room Index of material which had been sent by Getty's Salt Lake office for Mercur, stated "NO FEASIBILITY STUDIES."

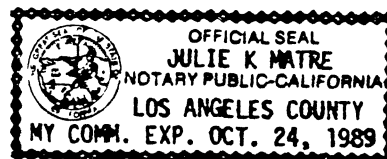
12. After receiving my Memorandum to Mr. Mintz, Mr. Mintz prepared a Memorandum to Mr. H. E. Wendt, who at the time was the President of Getty Mining Company, and Vice President of Getty Oil Company in which Mr. Mintz reports to Mr. Wendt regarding the matters set forth in my previous Memorandum. A true and correct copy of Mr. Mintz's July 16, 1984 Memorandum is attached hereto as Exhibit B.

Executed this 1 day of June, 1987 at
Rolling Hills Estates, California.

Charles J. Kundert
Charles J. Kundert

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 1st DAY
OF June, 1987.

Julie K. Matre
Notary Public
For the State of California



Los Angeles, California
July 13, 1984

TO: MR. J. M. MINTZ
FROM: C. J. KUNDERT
SUBJECT: REVIEW OF MERCUR PLANS TO PRODUCTION
FROM MID-1979 TO EARLY 1981

Data in our files show that we shut-down the Mercur Gold Program in 1976 on the basis of an in-house financial analysis. We had placed Mercur Gold in our Minerals Reserves category in the January 1, 1975 and 1976 Reports, prior to the fall in the price of gold. The January 1, 1977 Report shows Mercur Gold as a Paramarginal Resource in which category it remained until the report of January 1, 1982 when Reserve status was again attained.

In September 1979 (Item 2 attached), a proposal for further work on the Mercur Gold Project was made. Work leading to an interim feasibility study by late 1980 prior to pilot plant start-up was recommended. "A Final or Bankable Feasibility Study" would be prepared after drilling is completed and Pilot Plant report completed in the third quarter of 1981. Preparation of the document would take an estimated 12 to 16 weeks placing the date of the availability of the Bankable Document in the last quarter of 1981.

This plan was followed during the course of the Mercur Project under direction from Los Angeles. Bechtel was awarded the contract to do the Engineering and Design work needed for the interim study. The work was to be completed by November 1980. Items 6, 10, 11, 12, and 13 document the selection of Bechtel and work to be performed.

The Agreement with Gold Standard called for notification of commission of a feasibility study and supporting documents to be given to Gold Standard. This was done, see Items 7, 8, and 9.

As of October 1, 1980, the Mercur Project became the responsibility of the Salt Lake City Office, see Item 15.

Bechtel's work proceeded as planned and an Order of Magnitude Estimate for Feasibility Study and a Preliminary Engineering and Cost Estimates of the Mercur Gold Mine and Plant were submitted for review in November, right on schedule, see Item 18. We do not have records of the date of Getty's receipt of Bechtel's Reports after final typing. Please note that the data we do have, Items 18, 19 and 21, support the fact that neither report was intended to be a Final Bankable Document.

EXHIBIT 'A'

000889

To: Mr. J. M. Mintz
Subject: Review of Mercur Plans to Production
From Mid-1979 to Early 1981
July 13, 1984
Page -2-

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C. J. Kunder

CJK:pw
Attachments

000888

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July 16, 1984

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JMM:mm
Attachments

EXHIBIT 'B'

000857

June 1, 1987

Mr. John Wilson
Parsons, Behle & Latimer
185 South State Street
Salt Lake City, Utah 84111

Dear Mr. Wilson:

When we met at the Los Angeles Airport several days ago, I delivered to you a copy of a Memorandum I had prepared, dated July 13, 1984, and various Items attached to the Memorandum, relating to the Mercur gold mine. As I recall, at that time I asked you to make a copy of those items and send the originals back to me.

I have recently been visited by George Pratt, an attorney for Gold Standard, who has also expressed interest in those Items. I would appreciate your providing copies of those materials to him, if he asks you to do so.

Thank you for your cooperation.

Sincerely,


Charles J. Kundert

CJK:dw

000883

Tab 6

IN THE SUPREME COURT OF THE STATE OF UTAH

GOLD STANDARD, INC.,)	
)	
Plaintiff,	)	Case No. 890205
vs.)	
)	
AMERICAN BARRICK RESOURCES)	
CORPORATION; BARRICK	)	Priority No. 10
RESOURCES (USA), INC.;)	
TEXACO INC.; GETTY OIL)	
COMPANY; and GETTY MINING)	
COMPANY,)	
)	
Defendants.)	

RESPONDENTS' ADDENDUM

APPEAL FROM AN INTERLOCUTORY ORDER OF THE
THIRD DISTRICT COURT OF TOOELE COUNTY,
STATE OF UTAH, THE HONORABLE FRANK G. NOEL

James S. Lowrie
Christopher L. Burton
George W. Pratt
James W. Peters
JONES, WALDO, HOLBROOK &
MCDONOUGH
1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Attorneys for Appellant Gold
Standard, Inc.

Gordon L. Roberts
Francis M. Wikstrom
PARSONS, BEHLE & LATIMER
185 South State Street
Salt Lake City, Utah 84111
Attorneys for American Barrick
Resources Corporation and
Barrick Resources (USA), Inc.
(not parties to the appeal)

Stephen G. Crockett
Robert S. Clark
Jill A. Parrish
Brian J. Romriell
KIMBALL, PARR, CROCKETT &
WADDOUPS
185 South State Street
Suite 1300
Salt Lake City, Utah 84111
Attorneys for Respondents Texaco
Inc., Getty Oil Company, and
Getty Mining Company

AFFIDAVIT OF LOUIS C. ROVE, JR.

AFFIDAVIT OF LOUIS C. ROVE, JR.

STATE OF CALIFORNIA)
 : ss.
COUNTY OF RIVERSIDE)

LOUIS C. ROVE, JR., of lawful age and being first duly sworn upon oath, deposes and states:

1. I am a resident of Palm Springs, California.
2. From October 14, 1968, through May 31, 1985, I was employed with Getty Oil Company ("Getty").
3. From approximately 1980 through the time I left Getty, I was Division Geologist of the Minerals Division of Getty.
4. Through my position as Division Geologist, I became familiar with Getty's policy regarding confidential and proprietary information.
5. At all times, Getty's policy was to protect and preserve confidential and proprietary information.
6. From approximately the summer of 1981 through the time of his departure from Getty in May of 1985, I was the immediate supervisor of Mr. H. Richard Klatt.
7. At the time of his initial employment with Getty, Mr. Klatt signed an Agreement with respect to protecting and maintaining confidential information. A copy of that Agreement is attached hereto and incorporated herein by reference as Exhibit "A".

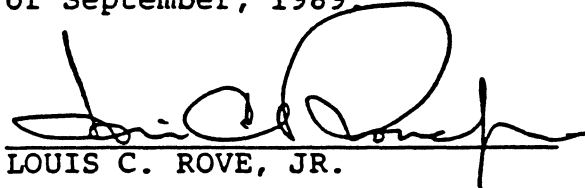
8. At the time Mr. Klatt terminated his employment with Getty, he asked me whether he was free to remove any documents from Getty's offices for his personal files and subsequent use.

9. In response to Mr. Klatt's inquiry, I told him that he could take with him Army Map Service and USGS maps. I also told him that he was free to take a copy of a gold report that he had recently authored.

9. At no time did I authorize Mr. Klatt, nor did Getty's policy allow him, to remove confidential or proprietary information or documents from Getty's offices.

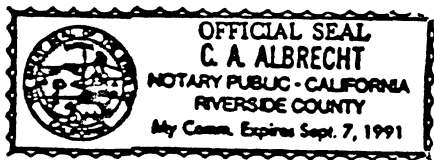
10. As to all matters testified herein, I either have personal knowledge or obtained my knowledge through the business records of Getty.

DATED this 15th day of September, 1989.


LOUIS C. ROVE, JR.

STATE OF CALIFORNIA)
 : ss.
COUNTY OF RIVERSIDE

SUBSCRIBED AND SWORN to before me this 15th day of
September, 1989.



C. A. Albrecht
Notary Public

Residing at: 6000 E. Tahquitz
Palm Springs, Ca. 92262

My Commission Expires:

9/7/91

AGREEMENT

THIS AGREEMENT, made this 10 day of MAY, 19 71, between GETTY OIL COMPANY, a Delaware corporation, herein called "Company", (the word "Company" wherever used herein shall include said Getty Oil Company and all companies which are now or hereafter may be subsidiaries of or controlled by Getty Oil Company), and HEROLD RICHARD KLATT

herein called "Employee",

WITNESSETH:

WHEREAS, Employee is employed by Company and has the opportunity of using Company's tools, facilities and information and is desirous of continuing said employment,

NOW, THEREFORE, in consideration of the premises and of said employment and the salary paid therefor, the parties hereto agree as follows:

1. Employee agrees to use his best efforts and skill during the period of his employment by Company in perfecting and devising processes, apparatus and products relating or applicable in any way to the petroleum industry or to any business or investigation in which Company is, or hereafter may be, engaged or interested, and fully and promptly to disclose all of such processes, apparatus and products which he may conceive, invent or discover during his employment by Company, and any improvements thereof during said employment, in writing to Company, its designated agents or assigns, including any which, either solely or in collaboration with others, he has heretofore devised, conceived, invented or discovered since his employment by Company, or any which he may, solely or in collaboration with others, hereafter devise, invent, conceive or discover during his employment by Company, all of which shall be the exclusive property of Company; and Employee further agrees, on demand by Company and without further consideration, to execute applications thereon for Letters Patent, whether original or substitutes therefor or renewals, divisions, continuations or reissues thereof, of the United States and of any foreign country, together with proper assignments conveying to Company and its assigns the entire right, title and interest thereto, including all such discoveries and inventions, whether patented or not, and all patents and patent or other rights arising therefrom; and if Employee fails or refuses to execute such applications, Company may do so in the name of Employee on behalf of and as agent of the Employee, and for that purpose Employee hereby appoints Company as his attorney in fact to execute such applications and assignments in accordance with the laws of any country wherein any or all of such patent applications shall be filed. All expenses incident to the preparation, prosecution and filing of such applications and assignments shall be borne by Company, but Company shall be under no obligation to protect by patent any such invention, discovery, improvement or device, except at its own discretion and to such extent as Company shall deem desirable. Employee further agrees that all inventions, discoveries, improvements and ideas relating to the above described processes, apparatus and products, patented and unpatented, which Employee has made or conceived, wholly or in part, prior to his employment by Company are listed and described on the reverse side hereof and that there are no others.

2. Employee agrees, on Company's request, to testify in any proceeding or suit which may arise in connection with his sole or joint inventions or other information covered hereby, and to do or cause to be done at the expense of Company any and all acts and to execute any and all documents which Company may deem necessary or desirable for the full protection thereof, both during and after his employment by Company; any expense attendant upon such proceedings, suits or acts to be borne by Company. Company agrees to pay Employee at the rate of one hundred dollars (\$100) per day for time actually given by Employee at Company's request while attending the taking of testimony after termination of his employment by Company.

3. Employee agrees not to use or divulge to any third party, during his employment and thereafter, any confidential, trade secret, or other information, except published information properly in the public domain, obtained by him while in the Company's employment, relating to the business of Company or to any of its processes, apparatus or products, or to any of the inventions, discoveries, processes, apparatus or products covered hereby, except as required in Employee's duties to Company.

4. Upon termination of employment, Employee agrees to turn over to Company all notes, memoranda, notebooks, drawings and records in connection with anything done by him during and in connection with his employment; it being agreed that same and all information contained therein are at all times the sole property of Company.

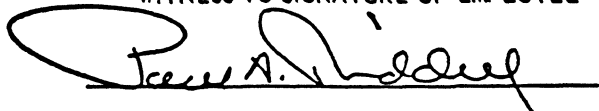
5. This agreement shall inure to the benefit of and shall be binding upon Company and its successors and assigns and Employee, his heirs, representatives, executors, administrators, successors and assigns. Company may assign this agreement or any inventions, applications, patents or patent rights hereunder, either in whole or in part. Wherever necessary to the context, the singular shall include the plural.

IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

EMPLOYEE



WITNESS TO SIGNATURE OF EMPLOYEE



GETTY OIL COMPANY

By _____

VICE PRESIDENT

And _____

SECRETARY

Tab 7

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR TOOELE COUNTY, STATE OF UTAH

-----)	
GOLD STANDARD, INC.,	)	CIVIL NO. CV-86-374
)	
Plaintiff,	)	DEPOSITION OF:
	)	<u>CHARLES J. KUNDERT</u>
vs.)	
	)	TAKEN: DECEMBER 2, 1987
AMERICAN BARRICK)	
RESOURCES CORPORATION;	)	REPORTED BY.
BARRICK MERCUR GOLD	)	RENEE L. STACY, CSR, RPR
MINES, INC., TEXACO, INC.))	
(a severed party), GETTY))	
OIL COMPANY, GETTY MINING))	
COMPANY, GETTY GOLD))	
MINE COMPANY, and JOHN))	
DOES 1 through 10,)	
)	
Defendants.)	
-----)	

COPY

Deposition of CHARLES J. KUNDERT, taken on
behalf of the Plaintiff, at 1500 First Interstate
Plaza, 170 South Main Street, Salt Lake City, Utah,
commencing at 10:00 a.m. on December 2, 1987, before
RENEE L. STACY, Certified Shorthand Reporter,
Registered Professional Reporter and Notary Public
in and for the State of Utah.

* * * *

SEELY, STACY, JONES & ASSOCIATES
800 Boston Building
Salt Lake City, UT 84111
(801) 328-1188

002650

of the affidavit which is Exhibit A to this deposition?

A Yes.

Q What was said in that regard; do you recall?

A We had discussed for an hour or two, a couple hours, some of the language in -- what I intended in this particular attachment here, what it meant, what a feasibility study was, in my opinion. Had a long discussion of what I thought a feasibility study was, and then, as I remember, when he was leaving he wanted to know if I would be -- if I would sign an affidavit and I said, "Sure. As long as it tells the facts as I see them, no problem."

Q Now, would it be fair to say that he then left your home and awhile later you got a call from him and he read to you an affidavit he'd prepared?

A That's correct.

Q And you insisted on changes to that affidavit; isn't that true?

A That's correct.

Q In order that it correctly reflected your view of things?

A Yes.

Q And thereafter he came and brought the affidavit to you that you ultimately signed?

A Yes.

Q And in that, the signing of that affidavit, who was present?

A Mr. Pratt was there and a young lady who was a notary, which -- yes. And I'm not sure whether his brother was there or not. I think he probably was. I think there were three people at that time.

Q I understand his brother who lives in the L.A. area chauffeured him back to the second meeting.

A Correct.

Q Does the affidavit that's before you incorporate the changes that you requested that Mr. Pratt make when you talked to him over the phone between meetings?

A Yes.

Q And did you believe the affidavit to fairly and truly state the matters contained therein when you signed it?

A Yes.

Q And that is your signature, is it not?

A Yes.

1 retirement benefits at this time?

2 A No.

3 Q At the time that you made Exhibit A to
4 Exhibit A, and that is the July 24 -- is it? --
5 1984.

6 MR. PRATT: 13.

7 Q (By Mr. Lowrie) July 13, 1984. I'm
8 sorry. July 13, 1984 memo from you to Mr. Mintz,
9 did you understand that you were doing anything
10 other than answering a management inquiry from Mr.
11 Mintz?

12 A No. That's all it was.

13 Q Now, Exhibit B was something that came to
14 you in the ordinary course of -- Exhibit B to
15 Exhibit A was something that came to you in the
16 ordinary course of the dispersal of information
17 within Getty; isn't that true?

18 A Yes.

19 Q And Exhibit B is the July 16, 1984 memo
20 from Mr. Mintz to Mr. Wendt, right?

21 A Yes.

22 Q At the time you were with Getty, did
23 anyone ever tell you that either of those two
24 memoranda which are attached to your affidavit were
25 part of an attorney-client privileged communication?

1 A No.

2 Q Did you come directly to your deposition
3 this morning or did you meet with anybody first?

4 A Caught a cab right to the door down here.

5 MR. LOWRIE: I believe I am probably
6 through questioning you with respect to the limited
7 purpose of this deposition, but to be on the safe
8 side, I would like to take just a minute and consult
9 with the smarter people on my team and see if I've
10 missed anything.

11 (Recess.)

12 MR. LOWRIE: Mr. Kundert, I'm not going
13 to ask you any more questions unless they bring up
14 something I need to follow up on, but I do want to
15 thank you very much for making your time available
16 to us and for coming up here and meeting with us
17 today.

18 THE WITNESS: You're very welcome. I
19 have no ax to grind one way or the other and I told
20 everybody involved I'll be happy to do whatever I
21 can and say what happened as far as I remember.

22 MR. LOWRIE: All right. Thank you.

23 EXAMINATION

24 BY MR. CLARK:

25 Q Mr. Kundert, my name is Robert Clark and,

1 other than the occasions when you and I spoke on the
2 telephone in an effort to schedule this deposition,
3 have you and I ever met or spoken before?

4 A No.

5 Q Let me begin with a couple of questions.
6 Exhibit B to this deposition, which is a letter
7 dated June 1, 1987 signed by you and addressed to
8 Mr. John Wilson, do you know who typed that letter?

9 A No.

10 Q Was that letter brought to you by Mr.
11 Pratt?

12 A Yes.

13 Q Do you know who dictated the letter?

14 A I would assume he did. But we talked
15 about it. He could well have read it off to me over
16 the phone when he read the other affidavit, as far
17 as I know.

18 Q But in other words, you weren't the one
19 who dictated the letter?

20 A No.

21 Q And did you sign the letter at his
22 request?

23 A Yes.

24 Q Take a look again at Exhibit A to the
25 deposition, and one of the difficult parts of

1 numbering exhibits is that you can sometimes have an
2 Exhibit A to an Exhibit A, which is what we have
3 here. Exhibit A to Exhibit A is your memorandum
4 dated July 13, 1984 to Mr. Mintz. Are you in a
5 position to know for certain, Mr. Kundert, whether
6 or not that memorandum may have been requested by an
7 attorney of Mr. Mintz? In other words, do you know
8 whether or not there was anyone who had asked Mr.
9 Mintz for this kind of information?

10 A No, I don't. One of the attorneys, and
11 I've forgotten which one, that came to see me had
12 also scheduled a meeting, if I remember correctly,
13 with Jack Mintz, and I've forgotten which one it was.

14 Q And with regard to Exhibit B to Exhibit
15 A, which is the July 16 memorandum from Mr. Mintz to
16 Mr. Wendt, do you have any knowledge one way or
17 another about whether that document may have been
18 the result of a higher request or another request
19 from a lawyer?

20 A No, I don't.

21 Q Now, with regard to what you said a
22 moment ago, did Mr. Pratt tell you in the
23 conversation whether he has scheduled other
24 interviews with any former Getty employees?

25 A I frankly don't remember. Either Mr.

1 feasibility study was equated with dollars, the
2 definition of what a feasibility was, and the
3 dollars had been spent, so as far as my personal
4 view was concerned, that was a feasibility study in
5 keeping with the agreement.

6 Q In your own view then, does the Bechtel
7 report satisfy the operating agreement in that
8 particular regard?

9 MR. LOWRIE: That is beyond the scope of
10 the discovery in this deposition.

11 MR. CLARK: I believe that's fairly
12 opened by your questions and, in addition, that
13 would not be beyond the scope of this deposition if
14 he told that to Mr. Pratt.

15 MR. LOWRIE: Well, since there's no judge
16 here, I guess I'll just make my objection. You can
17 govern yourself accordingly. I don't know that I
18 need to fight with you with respect to that.

19 MR. CLARK: You can answer the question.

20 THE WITNESS: (To the Reporter) Would
21 you read the question please?

22 (Question read back by the reporter.)

23 THE WITNESS: As I read the operating
24 agreement, yes, it does.

25 Q (By Mr. Clark) Are you aware that there

1 was both a preliminary Bechtel report and a later
2 final report for Bechtel?

3 A Yes.

4 Q And are you aware of additional
5 information that Getty provided to Mr. Smith at or
6 about the time that the final Bechtel report was
7 given to him?

8 A No, because, as of October 1st, ^{1980,} we had
9 been removed, and this was late_r. I had completed my
10 ore reserve study, I think, in May, and all I can do
11 is assume that the Salt Lake office made these data
12 available. Somebody else may, ^{know.} ~~though~~ I don't.

13 MR. CROCKETT: Do you want to go talk for
14 a second? We may be through.

15 (Discussion off the record.)

16 MR. LOWRIE: First of all, I guess, Mr.
17 Wilson, since you're not a party to this motion,
18 you're not going to ask any questions, right?

19 MR. WILSON: That may not be the reason
20 I'm not going to ask any questions, but I'm not
21 going to ask any.

22 FURTHER EXAMINATION

23 BY MR. LOWRIE:

24 Q Okay. Mr. Kundert, looking at Exhibit A
25 to Exhibit A, which is your memo of July 13, 1984,

AFFIDAVIT OF CHARLES J. KUNDERT

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

Charles J. Kundert, being duly sworn, deposes and says:

1. I am a resident of the State of California, residing at 12 Silver Saddle Lane, Rolling Hills Estates, California.

2. During the period from January, 1979 through August, 1984, I was employed by either Getty Oil Company or Getty Mining Company, a wholly owned subsidiary, as Minerals Engineering Manager, in the Production Department, at Getty's headquarters in Los Angeles, California.

3. I have personal knowledge of the matters testified to herein.

4. During February, 1984, Getty Oil Company and all its subsidiaries, including Getty Mining Company, were acquired by Texaco, Inc. Shortly thereafter, Texaco decided to sell all mining properties owned by Getty.

5. To facilitate the process of selling the Getty mining properties, Texaco established a "Data Room" to become a repository for all significant documents relating to all Getty mining properties worldwide.

6. In or about June, 1984, under the direction of its investment bankers, First Boston, all the local Getty offices for each of its mining properties, including the local Getty office for the Mercur gold mine property, located in Utah, were instructed to send all documents relating to the respective

mining properties to Getty's headquarters in Los Angeles, to become part of the Data Room.

7. When this information was assembled, the Data Room was then used by Texaco to show prospective purchasers of the various Getty mining properties the assembled data and other documentation relating to the properties.

8. In July, 1984, some of the visiting mining companies that had expressed interest in the properties raised the question why no feasibility study appeared in the Data Room for the Mercur gold mine property, in Utah.

9. When this question was raised, I reviewed the files concerning Mercur that had been maintained at Getty Mining Company's Los Angeles office. I also reviewed the Data Room Index of materials sent by Getty's Salt Lake office for the Mercur property.

10. The results of my review of those documents are summarized in a Memorandum dated July 13, 1984, which I addressed to Mr. J. M. Mintz. Mr. Mintz was my immediate superior at that time, and was the Manager of Mineral Production for Getty Mining. A true and correct copy of my July 13, 1984 Memorandum to Mr. Mintz is attached hereto as Exhibit A.

11. My Memorandum is, I believe, self-explanatory. As I indicate in the Memorandum, my review revealed that neither the Order of Magnitude Estimate for Feasibility Study, nor the Preliminary Engineering and Cost Estimates of the Mercur Gold Mine

and Plant, both prepared by Bechtel Engineering, was intended to be a Final Bankable Document. I understand that Bechtel would not label these documents a "feasibility study" because, in Bechtel's view, a feasibility study must be a bankable document, that is, one that can be used to raise money in the marketplace. Further, as I also indicate in my Memorandum, the Data Room Index of material which had been sent by Getty's Salt Lake office for Mercur, stated "NO FEASIBILITY STUDIES."

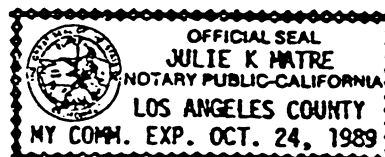
12. After receiving my Memorandum to Mr. Mintz, Mr. Mintz prepared a Memorandum to Mr. H. E. Wendt, who at the time was the President of Getty Mining Company, and Vice President of Getty Oil Company in which Mr. Mintz reports to Mr. Wendt regarding the matters set forth in my previous Memorandum. A true and correct copy of Mr. Mintz's July 16, 1984 Memorandum is attached hereto as Exhibit B.

Executed this 1 day of June, 1987 at
Rolling Hills Estates, California.

Charles J. Kundert
Charles J. Kundert

SUBSCRIBED AND SWORN TO
BEFORE ME THIS 1st DAY
OF June, 1987.

Julie K. Matre
Notary Public
For the State of California



Los Angeles, California
July 13, 1984

TO: MR. J. M. MINTZ
FROM: C. J. KUNDERT
SUBJECT: REVIEW OF MERCUR PLANS TO PRODUCTION
FROM MID-1979 TO EARLY 1981

Data in our files show that we shut-down the Mercur Gold Program in 1976 on the basis of an in-house financial analysis. We had placed Mercur Gold in our Minerals Reserves category in the January 1, 1975 and 1976 Reports, prior to the fall in the price of gold. The January 1, 1977 Report shows Mercur Gold as a Paramarginal Resource in which category it remained until the report of January 1, 1982 when Reserve status was again attained.

In September 1979 (Item 2 attached), a proposal for further work on the Mercur Gold Project was made. Work leading to an interim feasibility study by late 1980 prior to pilot plant start-up was recommended. "A Final or Bankable Feasibility Study" would be prepared after drilling is completed and Pilot Plant report completed in the third quarter of 1981. Preparation of the document would take an estimated 12 to 16 weeks placing the date of the availability of the Bankable Document in the last quarter of 1981. ||

This plan was followed during the course of the Mercur Project under direction from Los Angeles. Bechtel was awarded the contract to do the Engineering and Design work needed for the interim study. The work was to be completed by November 1980. Items 6, 10, 11, 12, and 13 document the selection of Bechtel and work to be performed.

The Agreement with Gold Standard called for notification of commission of a feasibility study and supporting documents to be given to Gold Standard. This was done, see Items 7, 8, and 9. ||

As of October 1, 1980, the Mercur Project became the responsibility of the Salt Lake City Office, see Item 15.

Bechtel's work proceeded as planned and an Order of Magnitude Estimate for Feasibility Study and a Preliminary Engineering and Cost Estimates of the Mercur Gold Mine and Plant were submitted for review in November, right on schedule, see Item 18. We do not have records of the date of Getty's receipt of Bechtel's Reports after final typing. Please note that the data we do have, Items 18, 19 and 21, support the fact that neither report was intended to be a Final Bankable Document. ||

EXHIBIT A

002638

To: Mr. J. M. Mintz
Subject: Review of Mercur Plans to Production
From Mid-1979 to Early 1981

July 13, 1984

Page -2-

During March of 1981, when I began work on the Mercur Ore Reserves, I discussed the Bechtel studies with Mr. R. L. Hautala. Salt Lake was acutely aware of the requirement in the Gold Standard Agreement to have a feasibility study on the Project. I explained to Hautala that, in my view, the Bechtel work could not be used as a final Feasibility Study.. Bechtel had not reviewed the geology and ore reserves because updated data were not available; thus the document was incomplete. ||

I cite Utah's Escondida study as an example. Utah did the reserves and mine planning in-house, but had them reviewed and concurred with by an outside party. Mr. J. P. Davies, who had intimate knowledge of Bechtel's studies, on separate occasions also told Hautala that the Bechtel study was incomplete because the geologic and ore reserves data had not been reviewed and accepted by Bechtel; and economic evaluations had not been prepared by Bechtel.

We have no knowledge of what documents were submitted to Gold Standard to satisfy the requirement of the Agreement. We do know that a Final Document could not have been prepared before May 1981, because the Ore Reserve Study including geologic cross-sections was not completed until then. The original timing (Item 2) for completion of a "Final or Bankable Feasibility Study" in the last quarter of 1981 could have been attained. We do not know whether a document was prepared. We are concerned that Item 23 uses the words "Revised Bechtel Feasibility" and, yet, Item 24, the Data Room Index of material sent by our Salt Lake Office for Mercur, shows NO FEASIBILITY STUDIES under listing, page 34, VIII.A.3. This, of course, is the most current document of the 24 Items attached to this memorandum. ||

C. J. Curdet

CJK:pw
Attachments

002637

Los Angeles, California
July 16, 1984

TO: MR. H. E. WENDT
FROM: J. M. MINTZ
SUBJECT: MERCUR PROJECT

You recently asked about the circumstances of the Mercur Feasibility Study while Mercur was under Los Angeles Production. Mr. C. J. Kundert made a review of the Los Angeles files and his findings are in the enclosed memo.

The first major Mercur work was authorized in the 1980 budget when \$1.4 million was approved with \$1.2 million for drilling, permitting, land purchases and environmental data collecting; and \$200,000 for metallurgical studies. Dr. Muessig wrote Scott Smith on 11/9/79 that funds were being requested to initiate an evaluation program. My follow-up memo to Dr. Muessig, dated 12/11/79, included a schedule that provided for a feasibility study that would allow for a go-no go decision in October 1981. This was to satisfy the requirements of the Mercur agreement with Gold Standard.

Mr. C. E. Knapp of the Los Angeles staff was given the responsibility for coordinating this effort during the 3rd quarter of 1979. His preliminary work was based on a plan that would have a mill that would process both oxide and refractory ore and would payout from the Mercur Hill-Lulu area. Mr. Knapp prepared a cursory financial evaluation based on then available data which indicated the project appeared to have sufficient potential to warrant more detailed study. After several meetings with Gold Standard, my letter of 6/17/80 outlining the program for the feasibility study was sent to Scott Smith. Bechtel was awarded a contract to prepare a preliminary engineering and cost estimate for the mine and mill, which could not be a Final Feasibility Study because of inadequate data on the deposit. Prior to the completion of the Bechtel study, Mr. Knapp was transferred to Petrotomics and Mr. F. Wicks, staff metallurgist, was assigned as his replacement. On 10/1/80, one month before the completion of the Bechtel study, responsibility for the Mercur Project was assigned to the Salt Lake District.

The Los Angeles staff was not involved in the project to any major extent after the project was transferred to Salt Lake City. We did not receive a copy of the Bechtel report or any of the data for changing the mill circuit from that proposed in the Bechtel study. The part that is most puzzling to us is the line item in the enclosed Data Room Index that indicates no feasibility studies for Mercur. //

JMM:mm
Attachments

C. J. Kundert

June 1, 1987



Mr. John Wilson
Parsons, Behle & Latimer
185 South State Street
Salt Lake City, Utah 84111

Dear Mr. Wilson:

When we met at the Los Angeles Airport several days ago, I delivered to you a copy of a Memorandum I had prepared, dated July 13, 1984, and various Items attached to the Memorandum, relating to the Mercur gold mine. As I recall, at that time I asked you to make a copy of those items and send the originals back to me.

I have recently been visited by George Pratt, an attorney for Gold Standard, who has also expressed interest in those Items. I would appreciate your providing copies of those materials to him, if he asks you to do so.

Thank you for your cooperation.

Sincerely,

Chas J. Kundert
Charles J. Kundert

CJK:dw

002625

Tab 8



Getty Oil Company | P. O. Box 15668, 345 Bearcat Drive, Salt Lake City, Utah 84115 • (801) 487-0861

Robert L. Hautala, Production Manager
U. S. District Minerals Exploration and Production

July 6, 1981

Mr. Scott L. Smith
President
Gold Standard, Inc.
1019 Kearns Building
Salt Lake City, Utah 84101

REGARDING: Mercur
Feasibility Study

Dear Mr. Smith:

You were presented a copy of the Mercur Engineering Study, completed by Bechtel on June 24, 1981[^]. The enclosed internal memoranda and attached map will supplement that report and form the Feasibility Study defined in the Operating Agreement. Included in this folio are the following memoranda referring to the Mercur project:

1. Total Reserves
2. Financial Premises
3. Capital Expenditure Schedule
4. Low-Grade Ore Stockpiling
5. Selective Mining Plan

With this compilation of data, the U.S. Mineral District of Getty Oil Company will present a financial review of the Mercur Project to top Getty management on July 8, 1981, and recommend a "GO" Decision.

The supplemental data will be used as follows:

1. Total Reserves

The total Mercur Hill-Lulu, Marion Hill-Brickyard and Golden Gate tailings will be mined in that order. Inferred reserves will be used only in risk and sensitivity analyses.

2. Financial Premises

These are the standards used in our financial analysis. Note that all dollars are based on mid-1981 values. In order to do that, the Bechtel Study numbers were escalated from 1980 dollars.

Gold

Mr. Scott L. Smith
July 6, 1981
Page Two

3. Capital Expenditure Schedule

This schedule shows our estimate of capital by quarters. Beyond 1983, mining equipment will be replaced. This does not include trucks or excavators because the predicted mine life is within the expected life of this equipment.

4. Low-Grade Ore Stockpiling

Work continues in this area and will stand on its own economics. No treatment of low-grade ore is being used in our base premises. If this is viable, at some time in the future, it will only enhance the expected return. Plans have been formulated to separate and stockpile this material.

5. Selective Mining Plan

We are confident that a selective plan to separate high amenable ores from low amenable ores prior to milling is feasible. To that end, a geostatistical study has been commissioned. Our premises address this area by providing a bypass of the autoclave circuit. This bypass will provide the highest availability of the plant at the lowest cost. A stockpile of oxide ore will be maintained for this purpose.

In summary, the case for analyzing the Mercur Project has been established using a conservative approach. Results of ongoing work will enhance the outcome but the project stands on its base case.

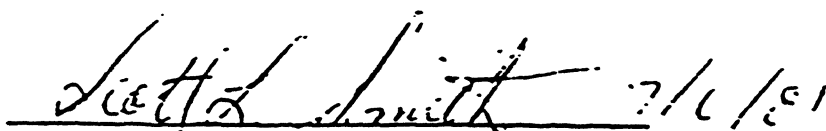
Yours very truly,



ROBERT L. HAUTALA
District Production Manager

RLH:mdc

Receipt of a copy of this letter
is hereby acknowledged:



Tab 9

ATTORNEYS AND COUNSELORS

)= "E2 440 0E5 2E4" 4 445-46-24 3 :
 ;= "E2 440 0E5 2E4" 4 46 4 4

3-22-75 to 24-2-75	075
24-2-75 to 2-3-75	08
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VERNAL OFFICE
33 EAST MAIN STREET
VERNAL, UTAH 84479
TELEPHONE 801-789-664

IN REPLY REFER TO:

Salt Lake City

September 20, 1983

Mr. Scott L. Smith
President
Gold Standard, Inc.
Suite 712 Kearns Building
Salt Lake City, Utah 84101

Re: Mercur Gold Project

Dear Scott:

At your request I have reviewed the various documents, correspondence and materials in my possession relating to your relationship with Getty Mining Company over the last several years. I have done so with the purpose of providing you with an objective view of the basic fairness of the treatment you have received from Getty and with my views as to where you stand with Getty at this time from a general legal point of view. During the last few years the local Getty operation has been known variously as the Minerals Exploration and Production Office of Getty Oil Company, as Getty Mineral Resources Company and, more recently, as Getty Mining Company. In this letter I will refer to the Salt Lake City operation only as "Getty".

One of the first tasks I performed for Gold Standard was to review the December 11, 1983 Operating Agreement between Gold Standard and Getty and to discuss it with you generally. At that time, I remarked to you that in my view it was an

EXHIBIT B

00048699

Mr. Scott L. Smith
September 20, 1983
Page 2

extremely confusing document to understand and that it contained several apparent inconsistencies. Those initial impressions of that agreement have been substantiated by the many disagreements and arguments which have ensued during the last few years over the meaning and intent of various parts of that Operating Agreement. While it would obviously be necessary to focus on the specific language in any given case, it is fair to say that as a general matter if and when any parts of that Operating Agreement were to become in dispute, the ultimate resolution would depend in large part upon the intent of the parties when the document was drafted and upon the spirit and the circumstances in which the document was drafted as well as the way in which the document was carried out by the parties.

You will also recall that on January 21, 1981, after having spent considerable time and effort in the preparation, I filed on behalf of Gold Standard a Form 10 Registration Statement with the Securities and Exchange Commission ("SEC") for the purpose of registering its securities under the Securities Exchange Act of 1934. After considerable discussion with the SEC during the ensuing months, Gold Standard's major difficulty in obtaining the effectiveness of that Form 10 Registration Statement, as well as being the source of considerable subsequent difficulties for the company, was the fact that the SEC would not accept the Bechtel Report and the internal Getty memoranda as a "feasibility study." The "Engineering Study and Cost Estimate of the Mercur Gold Mine and Plant" by Bechtel Civil & Minerals, Inc. dated June, 1981, is herein referred to as the "Bechtel Report." I am attaching to this letter a copy of the October 5, 1981 letter from Mr. V.J. Lavernoch, Branch Chief of the SEC in which he states that the Bechtel Report and the internal memoranda and letter dated July 6, 1981 from Getty to Mr. Scott L. Smith, President Gold Standard, Inc. "is not a comprehensive feasibility study and therefore does not support an ore reserve estimate." The SEC went on to state that "further, the memoranda and the Getty letter without adequate engineering data to support the statements as to reserves, cannot support their commerciality."

I recall vividly that you had complained to Getty on numerous occasions during that time period that the Bechtel Report and the internal Getty memoranda were not sufficient to constitute a formal final feasibility study which could support ore reserve estimates, that you had been so informed by your Technical Committee consisting of extremely experienced mining people, and that you continued to request from Getty additional

Mr. Scott L. Smith
September 20, 1983
Page 3

engineering data to support the statements as to ore reserves and their commerciality. I also recall that Getty, while continuing to express verbally a spirit of cooperation, steadfastly refused to provide you with any additional information and continued to insist that the Bechtel Report and their internal memoranda constituted a feasibility study as contemplated by the December 11, 1973 Operating Agreement. That stubborn and obviously uninformed position by Getty not only caused considerable difficulty with the SEC resulting in your Form 10 and subsequent Form 10K reports being equivocal as to whether or not commercial reserves existed on the property, but also has been the primary source of your inability to obtain any commitments from investment bankers and others to finance your 25% participating interest in the project, about which I will discuss more below.

I sincerely feel that Gold Standard has been seriously disadvantaged by Getty's failure to acknowledge that the Bechtel Report and the internal Getty memoranda do not provide Gold Standard with a "bankable" or, more properly, a final feasibility study which is normal and typical in the mining industry. In the course of your attempts during the last few years to obtain financing for a 25% participating interest in the project, you have been continuously asked by potential investment and commercial bankers to provide them with information which would normally be included in such a final feasibility study and which such financial people require in order to determine ore reserve estimates and upon which statements with respect to the technical and economical practicability of the project could be supported. That information has not been forthcoming from Getty despite your repeated requests. From my point of view, it seems that it would not have been difficult for Getty to provide you with such information but it chose not to do so. Getty therefore, appears to have knowingly pursued a course of action which has been a continuing obstacle to your being able to fund a 25% participating interest in the project. Their conduct has been manifestly unfair under the circumstances and completely contrary to my understanding of the intent of the parties in entering into the Operating Agreement and the spirit of mutual cooperation in which that was done.

Their action may also amount to an interference with your business relationships and a repudiation of the basic Operating Agreement.

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I have not conducted an in-depth legal analysis of the relative positions of Gold Standard and Getty under the Operating Agreement and you have not asked me to do so. However, I have examined certain portions of that Agreement as they relate to the requirement of Getty to provide Gold Standard with a feasibility study. Under that Agreement the term "Phase I" shall mean "that period of time commencing at the date of this Agreement and ending at such time as a feasibility study has confirmed the feasibility of placing in production a specifically delineated reasonably sized contiguous portion of Said Lands pursuant to Section IV of this Agreement." The Agreement also provides in Section III.A that "during Phase I, Gold Standard shall not be required to expend any funds whatever on Said Lands. . .". It is my view that the "feasibility study" which is contemplated by the Agreement means, and was intended by the parties to mean, a final feasibility study, one which would be acceptable by the SEC and by the various investment and commercial bankers as sufficient to support estimates of ore reserves and upon which statements with respect to technical and economical practicability of the project could be supported. I am confident that this position could be substantiated and thoroughly documented by numerous industry experts and through the normal course of business and practice in the mining industry. The full and detailed requirements of a properly developed final project feasibility study are well known and accepted in the industry and the various letters from Gold Standard to Getty in April and November of 1981, as well as the numerous verbal requests referred to above, adequately describe the overall requirements of those portions of the feasibility study which are required by Gold Standard and which have not been forthcoming from Getty.

Even without considering the failure of Getty to provide Gold Standard with a final and usual feasibility study, my file is replete with references to the totally inadequate flow of information and data to Gold Standard which has been requested from Getty during the last few years. Gold Standard specifically requested information in letters of April 3, 1981 and November 27, 1981 and in frequent further telephone and personal requests both before and after those dates. Instead of receiving the requested information in a usable form, Gold Standard has received only bits and pieces of information, most of it oral, and most of which has been more or less continuously revised in such critical feasibility areas as ore reserves, ore grades, mining schedules, metallurgical recovery and other related cost estimates, all of which is the type of information which must be pinned down in a supportable manner

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in a true final feasibility study in order to be of any use to Gold Standard or its bankers in evaluating the project. In this regard, and based upon my review of the Operating Agreement and the facts described above, I am very much of the view that an excellent case could be made that under the circumstances the Bechtel Report, together with the internal Getty memoranda and the related correspondence to date, does not amount to a "feasibility study" as contemplated by the Operating Agreement and that, legally speaking, the parties are still in "Phase I" under the Agreement.

I am also of the view that the correspondence to date between Gold Standard and Getty does not show acceptance by Gold Standard of the combination of the Bechtel Report and the internal Getty memoranda as a "feasibility study" and the fact that Gold Standard paid for its share of the "feasibility study" at the request of Getty would not change my view in that regard in light of the pressure and duress under which Gold Standard was placed by Getty in connection with Getty's insistence that Gold Standard make such payment.

I am attaching hereto a chronological summary of many of the important events which have transpired between Gold Standard and Getty over the last few years. This will give you a handy reference to the various relationships in time during which most of the important events have occurred relating to Gold Standard's efforts to fund its 25% interest in the Mercur Gold Project. I will not discuss each event separately but will comment on some of the more notable events and their significance at this time.

I have already mentioned the events relating to the feasibility study, or the lack thereof. On July 21, 1981 Gold Standard received a letter from Getty approving the "initial mine work plan". That letter was signed by both Getty and Gold Standard. As a condition to that approval, however, Getty retained the option to approve or disapprove the completion of the project at any time prior to March 31, 1982. Getty also "agreed" in that letter not to convert Gold Standard to a 15% net profits interest under the Agreement before January 1, 1982. On December 17, 1981 Bob Blanc of Getty sent a letter to Gold Standard purporting to respond to Gold Standard's previous requests for more feasibility study-type information and in the process Getty extended from January 1, 1982 to February 1, 1982 its agreement not to convert Gold Standard to a 15% net profits interest. At that time, however, Blanc and Getty insisted that Gold Standard confirm in writing to Getty by January 1, 1982

whether Gold Standard intended to be a 25% participating party. Blanc stated that the "local district's present authorizations to proceed" with the project were contingent on Gold Standard being a 25% participating party. In effect, Getty was telling Gold Standard at this time that Getty may not go ahead with the project unless Gold Standard elected to be a 25% party. However, Getty was also saying, in the form of the positions it had taken with respect to the feasibility study information and otherwise, that it would not give Gold Standard sufficient information to determine whether it should be a 25% participating party or be able to fund that 25% interest if it should decide to do so. Getty was also telling Gold Standard at that time that Gold Standard must make its election even before Getty itself decided to proceed with the project. In my view, the position being taken by Getty at that time was manifestly unfair to Gold Standard and was a blatant use of the power which Getty had over Gold Standard as well as a substantial departure from the spirit and intent with which both parties entered into the Operating Agreement originally.

Since that time Getty has maintained essentially the same position vis-à-vis Gold Standard and its attempts to fund the 25% participating interest. On March 2, 1982 you and I on behalf of Gold Standard met with Bob Blanc, Joe Berg and Bob Hautala at Getty's offices to discuss these matters. Among other things, it was determined at that meeting that Getty would continue to full production to be scheduled for July of 1983. Getty's decision was based upon Getty's funding 100% of the project and Gold Standard being in a 15% net profits position effective July 6, 1981. At that meeting, Getty refused to grant Gold Standard any further time to fund its 25% participating interest in spite of having it pointed out to them the basic unfairness in the previous positions which they had taken. Getty agreed, however, that they might recommend to Getty's top management a "reasonable proposal" which Gold Standard might bring to them for funding a 25% interest assuming that it was "mutually agreeable" to both parties. In a subsequent letter from Getty, Getty placed a deadline of December 31, 1982 on its willingness to possibly consider any such proposals from Gold Standard.

Since that time you have been diligently pursuing various alternatives for financing Gold Standard's 25% participating interest. It is obvious, however, that you have been greatly hampered in such efforts by three basic facts:

- (1) Gold Standard has never received a final formal comprehensive feasibility study which it has needed in order to

obtain the necessary financing; (2) Getty's prior insistence that Gold Standard elect between a 25% interest and a 15% net profits interest even before Getty itself made a decision to go ahead with the project and at a time when Gold Standard still had not obtained sufficient information from Getty to accomplish such financing; and (3) Getty's continual and substantial lack of cooperation since that time in connection with Gold Standard's efforts to finance its 25% participating interest. Although there are several, two examples of Getty's continuing lack of cooperation as referred to in (3), above, are as follows:

1. In the fall of 1982 a strong interest was being expressed in assisting Gold Standard in funding its 25% interest from a group of investors from Kuwait. You informed Getty of this interest immediately and a telex was received by Getty on October 7, 1982 seeking some expression of support and cooperation from Getty. Several weeks passed without any response from Getty and you attempted numerous times to determine why Getty had not responded in any manner whatsoever except to delay the matter on an indefinite basis. Approximately one month later Getty responded by questioning certain aspects of their proposal relating to the tax advantages which might possibly be available to Getty in this connection. Thereafter, Gold Standard incurred considerable expense to have the entire situation reviewed by Ron Cutshall of our office, an extremely capable tax attorney. The results of that tax review were transmitted to Getty on or about November 8, 1982 in the form of an opinion that the disproportionate tax allocation in the Kuwait proposal was possible. Once again, there was a lengthy and, in my view, unreasonable delay from Getty until finally on December 13, 1982 Getty acknowledged that the tax proposal would in fact work and that they would receive the proposal and review it while still giving no assurance to Gold Standard that they would recommend it to top management and, of course, as to whether Getty's top management would approve it. By that time Getty's previously established time limit of December 31, 1982 had about expired leaving Gold Standard with very little alternative but the Kuwait proposal. Even so, Getty refused to make any further commitments which, of course, along with the previous delays from Getty and Getty's apparently uncooperative attitude, resulted in the Kuwaits and the broker that was representing them concluding that Getty was not sufficiently interested to justify their further interest in the project and they withdrew any further interest. Although it is difficult to know for certain, it is not difficult to view the

uncooperative nature of Getty and the long delays caused by them as a deliberate attempt to push Gold Standard up against the December 31, 1982 deadline with no further hope of funding the 25% interest.

2. A second example of the frustrations encountered by Gold Standard due to Getty's basic uncooperative attitude involved the interest which surfaced on behalf of Smith Barney, Harris Upham & Co., the nationally recognized investment banking firm, in the spring of 1983. Once again, Getty's local people were giving you verbal assurances that they would be cooperative and expressed a continuing willingness to look at proposals from Gold Standard for funding the 25% interest for an indefinite period. In fact, Getty even signed a letter with Smith Barney and Gold Standard on March 8, 1983 setting forth the basic perimeters of Smith Barney's proposal to assist Gold Standard in funding the 25% interest. Since that time, however, Smith Barney has been totally frustrated in obtaining any specific feasibility study-type information from Getty and by Getty's continuing refusal to make any commitment beyond the previously expressed possibility that it might present a "reasonable proposal" to Getty's top management if Getty's local people felt so inclined to do so.

There have been several other investment banking firms and commercial banks which have expressed serious interest in funding a 25% participating interest for Gold Standard. However, such interest has one by one faded upon learning that no hard facts were available from Getty and that Getty would make no additional commitments. While Getty could obviously see that Gold Standard was attracting serious interest from nationally recognized investment and commercial banking sources, Getty steadfastly refused to give Gold Standard what it needed, that is a commitment that if Gold Standard could obtain the funding Getty would allow Gold Standard back in for a participating interest of some sort.

During the past year or so since the March 2, 1982 decision by Getty to proceed with the project with Gold Standard as a 15% net profits interest, Getty has presented Gold Standard with periodic accountings of "advances receivable and net profits computation on a quarterly basis." The most recent of such statements was received on August 1, 1983 which shows that Gold Standard owes as "advances receivable" plus interest for project expenditures made by Getty on behalf of Gold Standard representing 25% of costs from July 6, 1981 through February 28, 1982 in the amount of \$3,679,968.26.

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Without going into undue detail, suffice it to say that this is an additional example of the unfair exploitation of Gold Standard's situation which has characterized the relationship between the two parties for some time. During the March 2, 1982 meetings it was agreed by all concerned that after Getty's decision to proceed with full production at the Mercur Gold Project, Gold Standard would revert to a 15% net profits interest effective July 6, 1981 and that all the capital expenditures by Getty after July 6, 1981 would be recouped as if Gold Standard's 15% net profits interest had commenced on July 6, 1981. It was specifically agreed that post July 6, 1981 expenditures would not be owing and payable by Gold Standard in a lump sum upon reversion to such 15% net profits interest. This was referred to specifically at that meeting as "double dipping" which was agreed by all present would not take place and was not contemplated by the Operating Agreement. Nevertheless, Getty continues to present statements to Gold Standard demanding that such post July 6, 1981 expenditures be paid up front which is exactly the "double dipping" which was agreed would not take place.

In summary, it is my feeling that Gold Standard has been and continues to be treated unfairly by Getty. Gold Standard has been and continues to be in the position that it is unable to make its own independent assessment of the economic practicability of the project without the final feasibility study called for by the Operating Agreement which it has not as yet received from Getty, as explained above. In addition, that basic unfairness has been compounded time and again by Getty's refusal to give meaningful cooperation to those parties expressing an interest in assisting Gold Standard in its funding efforts and in refusing to make any commitments which were obviously needed by Gold Standard in order to have any success in such financing efforts.

In looking back over this situation I commend you for the abundance of patience which you have shown in the face of the unfairness and lack of cooperation which have been forthcoming from Getty. However, based upon my review it is my feeling that you have good cause to complain about the treatment you have received from Getty and in my view you have the basis of a possible legal action against Getty for the damages Gold Standard has obviously suffered and will continue

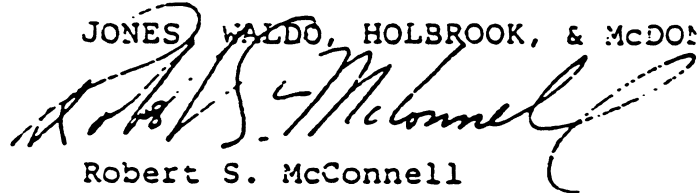
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to suffer as a result of the basic unfairness towards Gold
Standard which I have described above.

Very truly yours,

JONES, WALDO, HOLBROOK, & McDONOUGH

A handwritten signature in dark ink, appearing to read "R. S. McConnell", written over the typed name.

Robert S. McConnell

0152M
RSM

Tab 10

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

James S. Lowrie (USB #2007)
Christopher L. Burton (USB #0511)
George W. Pratt (USB #A2642)
Barry G. Lawrence (USB #5304)
JONES, WALDO, HOLBROOK & McDONOUGH
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1500 First Interstate Plaza
170 South Main Street
Salt Lake City, Utah 84101
Telephone: (801) 521-3200

IN THE THIRD JUDICIAL DISTRICT COURT FOR TOOELE COUNTY
STATE OF UTAH

GOLD STANDARD, INC.,	:	
	:	
Plaintiff,	:	PLAINTIFF'S ANSWERS AND
	:	OBJECTIONS TO TEXACO'S
vs.	:	AND GETTY'S SECOND
	:	SEPARATE SET OF
AMERICAN BARRICK RESOURCES	:	INTERROGATORIES TO GOLD
CORPORATION; BARRICK RESOURCES	:	STANDARD, INC.
(USA), INC.; TEXACO, INC.;	:	
GETTY OIL COMPANY; and GETTY	:	Civil No. CV-86-374
MINING COMPANY,	:	
	:	Honorable Frank G. Noel
Defendants.	:	

Pursuant to Rule 33 of the Utah Rules of Civil
Procedure, plaintiff Gold Standard, Inc. answers and objects to
Texaco and Getty's Second Separate Set of Interrogatories to
Gold Standard, Inc. as follows:

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

Furthermore, the arbitration provisions of §§ VI.A.1. or XII.A. of Exhibit "A" to the Operating Agreement is only predicated upon defaults "with respect to any of the provisions of the agreement." Thus, the default and arbitration provisions of the Operating Agreement are not applicable to disputes between the parties that relate to other than the provisions of the Operating Agreement. In fact, § XII.A.6. of Exhibit "A" to the Operating Agreement limits arbitration to issues arising under § VI.A.1 of Exhibit "A" to the Operating Agreement, § II.11.A. of Exhibit "C" to the Operating Agreement and § IV.A.2. of Exhibit "D" to the Operating Agreement. Accordingly, Gold Standard had no obligation to seek arbitration, even if it had been provided with a proper notice of default by Getty, with respect to at least the following claims: (1) Gold Standard's claim based upon the fraudulent and oppressive behavior by Getty, (2) Getty's breach of the fiduciary duty that it owed to Gold Standard, and (3) the fact that Getty committed a total breach of the Operating Agreement.

INTERROGATORY NO. 23: Identify the approximate date when you first anticipated litigation with any of the defendants regarding any of the issues that are the subject of this lawsuit.

ANSWER: Plaintiff does not presently know the legal definition of the phrase "anticipation of litigation", because

CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER

the true and proper meaning of that phrase is currently being decided before the Utah Supreme Court in an appeal from this case. However, that issue will be resolved before the conclusion of this litigation, and thus, plaintiff reserves the right to supplement its answer when the proper definition of that phrase has been established. In any event, based on plaintiff's belief of what the term "anticipation of litigation" means at this time, plaintiff believes that it anticipated the possibility of litigation sometime prior to August 16, 1984.

INTERROGATORY NO. 24: Identify all reasons or factors that contributed to the fact that you did not file this lawsuit until December of 1986 and, for each reason or factor identified,

a. Indicate the period of time (i.e., approximate beginning and ending dates) as to which each such reason or factor was applicable; and

b. Specify each and every fact known to you relating to your answer; each person known to you that has knowledge of any such facts; and identify each document that supports, evidences, is inconsistent with, or in any way relates to such facts or to the basis for your answer.

ANSWER: Plaintiff objects to this interrogatory to the extent that it is cumulative, unduly burdensome and