

1989

Gold Standard, Inc. v. American Barrick Resources Corporation; Barrick Resources (USA), Inc.; Texaco, Inc.; Getty Oil Company; And Getty Mining Company : Brief of Respondent

Utah Supreme Court

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Gordon L. Roberts, Francis M. Wikstrom; Parsons, Behle and Latimer; Stephen G. Crockett, Robert S. Clark, Jill N. Parrish, Brian J. Romriell; Kimball, Parr, Crockett, and Waddoups; Attorneys for Defendants.

James S. Lowrie, Christopher L. Burton, George W. Pratt, James W. Peters, Deno G. Himonas; Jones, Waldo, Holbrook and McDonough; Attorneys for Appellant.

Recommended Citation

Brief of Respondent, *Gold Standard, Inc. v. American Barrick Resources*, No. 890393.00 (Utah Supreme Court, 1989).
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Texaco Inc., Getty Oil
Company and Getty Mining
Company

IN THE SUPREME COURT OF THE STATE OF UTAH

| | | |
|----------------------------|---|--------------------------------|
| GOLD STANDARD, INC., |) | |
| |) | |
| Appellant, |) | APPENDICES TO BRIEF OF |
| |) | RESPONDENTS AMERICAN BARRICK |
| vs. |) | RESOURCES CORPORATION, BARRICK |
| |) | RESOURCES (USA) INC., TEXACO |
| AMERICAN BARRICK RESOURCES |) | INC., GETTY OIL COMPANY AND |
| CORPORATION, BARRICK |) | GETTY MINING COMPANY |
| RESOURCES (USA) INC., |) | |
| TEXACO INC., GETTY OIL |) | Priority No. 10 |
| COMPANY and GETTY MINING |) | |
| COMPANY, |) | Case No. 890393 |
| |) | |
| Respondents. |) | |

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

JAMES S. LOWRIE
CHRISTOPHER L. BURTON
GEORGE W. PRATT
JAMES W. PETERS
JONES, WALDO, HOLBROOK &
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Corporation and Barrick
Resources (USA) Inc.

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Texaco Inc., Getty Oil
Company and Getty Mining
Company

TABLE OF CONTENTS FOR APPENDICES TO BRIEF
OF RESPONDENTS AMERICAN BARRICK RESOURCES
CORPORATION, BARRICK RESOURCES (USA) INC.,
TEXACO INC., GETTY OIL COMPANY AND GETTY
MINING COMPANY

- ITEM 1: Affidavit of Patrick J. Garver, dated May 24,
1989.
- ITEM 2: Third District Court's Minute Entry, dated July
28, 1989.
- ITEM 3: Third District Court's Order Denying Plaintiff's
Motion to Compel, dated August 14, 1989.
- ITEM 4: Parker v. Kitzhaber, No. 88-1089-JU (D. Or. June
8, 1989) (LEXIS, Genfed library, Dist. file).
- ITEM 5: Excerpt from Deposition of Robert McConnell.
- ITEM 6: Excerpt from Deposition of Stephen Dattels.

Tab 1

CLERK OF THE COURT
1989 MAY 25 PM 1:11
3RD DISTRICT COURT
F

GORDON L. ROBERTS (A2770)
FRANCIS M. WIKSTROM (A3462)
JOHN B. WILSON (A3511)
DEREK LANGTON (A4068)
of and for
PARSONS, BEHLE & LATIMER
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185 South State Street, Suite 700
P.O. Box 11898
Salt Lake City, Utah 84147-0898
Telephone: (801) 532-1234

IN THE THIRD JUDICIAL DISTRICT COURT OF TOOELE COUNTY

STATE OF UTAH

* * * * *

GOLD STANDARD, INC.,)

Plaintiff,)

vs.)

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

Defendants.)

AFFIDAVIT OF
PATRICK J. GARVER

BARRICK RESOURCES (USA) INC.,)

Counterclaim Plaintiff,)

vs.)

GOLD STANDARD, INC.)

Counterclaim Defendant.)

Civil No. CV-86-374

Honorable Frank G. Noel

* * * * *

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

Patrick J. Garver, being first duly sworn, deposes and says:

1. I am a member in good standing of the Utah State Bar and a shareholder in the law firm of Parsons, Behle & Latimer.

2. I was involved in the drafting of a document which is referred to by plaintiff Gold Standard as "a letter addressed to Parsons, Behle & Latimer and signed in counterparts by Texaco, Getty Oil Company, Getty Mining Company, Getty Gold Company, Barrick Petroleum (USA) Inc. and Barrick Resources Corporation".

3. The document was prepared in anticipation of possible litigation to be brought by Gold Standard.

4. The parties who signed the document were made aware that the document was to be treated as work product and kept confidential.

5. The document contains confidential communications.


6. The document contains the substance of discussions concerning legal advice.

DATED this 24th day of May, 1989.



PATRICK J. GARVER

Subscribed and sworn to before me this 24 day of
May, 1989.



NOTARY PUBLIC

My Commission Expires:

Residing at: Salt Lake County, UT

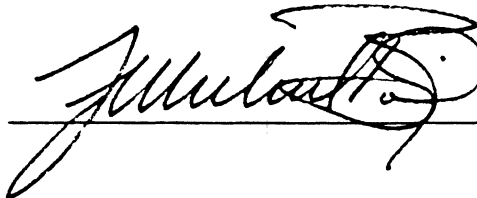
6/19/90

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, a true and
correct copy of the foregoing AFFIDAVIT OF PATRICK J. GARVER to
the following on this 24 day of May, 1989:

James S. Lowrie
Christopher L. Burton
George W. Pratt
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main, #1500
Salt Lake City, Utah 84101

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



314:052289B

Tab 2

FILE NO. 76-2-1

TITLE: (✓ PARTIES PRESENT)

COUNSEL:

(✓ COUNSEL PRESENT)

3RD DISTRICT COURT

American Bank

First Standard

CLERK

REPORTER

BAILIFF

HON. Frank W. Neil

JUDGE

DATE: July 23, 1989

after reviewing p't's motion to compel and to modify the scheduling order, and after reading the parties' memoranda hearing oral argument and taking the matter under advisement the court rules as follows: The court is of the opinion that the agreement of June 11, 1985 is privileged and therefore denies p't's motion to compel. A sealed copy of the agreement may be made a part of the record for appeal purposes.

The court will modify the scheduling order as follows:

1. P't's are to designate expert witnesses by 8/15/89.
2. D't's to designate expert witnesses by Nov. 1, 1989

FILE NO. Local

E: (✓ PARTIES PRESENT)

COUNSEL: (✓ COUNSEL PRESENT)

American Barrick

vs

Gold Standard

CLERK

REPORTER

BAILIFF

HON. Frank H. Neal

JUDGE

DATE: July 28, 1989

All discovery completed by Jan. 12, 1990.

Dispositive motions filed by Nov. 1, 1989

Hearing on dispositive motions in December at a time to be set.

These dates may be subject to some slight adjustment for good cause shown.

The Court is not at this time willing to continue the trial date.

If it appears that a delay of 1 or 2 weeks is in order that may be considered by the Court upon good cause shown.

Counsel for Barrick to prepare an order

FOR

7-28-89

Pls to Counsel 7-31-89

0000000

Tab 3

CLERK OF THE COURT

1999 AUG 24 AM 11: 23

3RD DISTRICT COURT

C/

GORDON L. ROBERTS (A2770)
FRANCIS M. WIKSTROM (A3462)
JOHN B. WILSON (A3511)
DEREK LANGTON (A4068)
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IN THE THIRD JUDICIAL DISTRICT COURT OF TOOELE COUNTY

STATE OF UTAH

* * * * *

GOLD STANDARD, INC.,

Plaintiff,

vs.

AMERICAN BARRICK RESOURCES
CORPORATION; BARRICK MERCUR
GOLD MINES, INC.; TEXACO, INC.;
GETTY OIL COMPANY; GETTY
MINING COMPANY; GETTY GOLD
MINE COMPANY; and
JOHN DOES I-X,

Defendants.

ORDER DENYING PLAINTIFF'S
MOTION TO COMPEL

BARRICK RESOURCES (USA) INC.,

Counterclaim Plaintiff,

vs.

GOLD STANDARD, INC.

Counterclaim Defendant.

Civil No. CV-86-374

Honorable Frank G. Noel

* * * * *


Plaintiff Gold Standard's Motion to Compel was regu-
larly heard on Thursday, July 13, 1989. Gordon L. Roberts and

Francis M. Wikstrom appeared as attorneys for the Barrick defendants; Robert S. Clark and Brian J. Romriell appeared as attorneys for defendants Getty Oil Company and Texaco; and James S. Lowrie, George W. Pratt and Christopher L. Burton appeared as attorneys for plaintiff. After full consideration of the legal memoranda filed by both parties, and arguments of counsel, and for good cause shown,

IT IS HEREBY ORDERED, that plaintiff's Motion to Compel Production of the June 11, 1985 document is hereby denied. A sealed copy of the document shall be made a part of the record for appeal purposes.

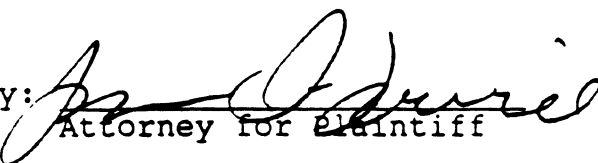
ENTERED this 14 day of Aug, 1989.

BY THE COURT

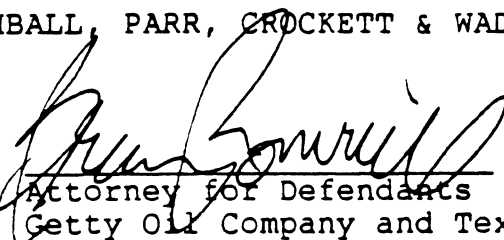

FRANK G. NOEL
District Court Judge

Approved as to Form:

JONES, WALDO, HOLBROOK & McDONOUGH

By: 
Attorney for Plaintiff

KIMBALL, PARR, CROCKETT & WADDOUPS

By: 
Attorney for Defendants
Getty Oil Company and Texaco

CERTIFICATE OF SERVICE

I hereby certify that on the 4 day of August, 1989,
I caused to be hand-delivered, a true and correct copy of the
foregoing ORDER DENYING PLAINTIFF'S MOTION TO COMPEL to the
following parties:

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

James S. Lowrie
Christopher L. Burton
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main, #1500
Salt Lake City, Utah 84101



314:080189A

Tab 4

5TH CASE of Level 1 printed in FULL format.

ROBERT R. PARKER, JR., Plaintiff, v. JOHN KITZHABER, in
his individual and representative capacity, as PRESIDENT OF
THE OREGON STATE SENATE, et al., Defendants

Civil No. 88-1089-JU

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF OREGON

1989 U.S. Dist. LEXIS 6953

June 8, 1989, Decided and Filed

COUNSEL:

[*1]

Robert R. Parker, Jr., Vancouver, Washington, Plaintiff.

Wayne Hilliard, Edwin A. Harnden, Paula A. Barran, Spears, Lubersky, Bledsoe, Anderson, Young & Hilliard, Portland, Oregon, Attorneys for Defendants Burns, Miller, Nash, Mobil Oil Corp., Shell Oil Co., Chevron Industries, Exxon Corporation, Union Oil of California, Atlantic Richfield Co., and Texaco, Inc.

OPINIONBY: FRYE

OPINION:

OPINION

HELEN J. FRYE, UNITED STATES DISTRICT JUDGE

The matter before the court is the motion (#114) of plaintiff, Robert R. Parker, Jr., to compel further responses from defendant John D. Burns to Parker's first set of interrogatories. Parker requests further responses from Burns as to the following interrogatories:

Interrogatory No. 3: This interrogatory seeks a copy of any relevant employment contract or other evidence that defines Burns' relationship with his partnership, defendant Miller, Nash, Weiner, Hager and Carlsen (Miller, Nash). Burns has agreed to provide a copy of "the pertinent segment of the Miller, Nash partnership agreement which defines his relationship with the firm.

Parker contends that the full partnership agreement is relevant to prove the scope and extent of the agency relationship between Burns [*2] and Miller, Nash. However, other portions of the partnership agreement are undoubtedly irrelevant and confidential. Parker's motion is denied as to Interrogatory No. 3.

Interrogatory No. 4: Parker seeks the names, addresses, telephone numbers, titles, and dates of contact with any and all persons in the oil company defendants to whom Burns reported regarding SB 664 or Parker at any time since the legislative session of 1987. Parker also seeks a copy of all retainer agreements between Burns or Miller, Nash and the oil company defendants.

Burns objects on the basis of the attorney-client and work product privileges. The work product privilege is inapplicable since there is no indication that any of the requested information was prepared in anticipation

of litigation.

The attorney-client privilege is inapplicable to the extent that the interrogatory seeks the names, addresses, telephone numbers, titles, and dates of contact with client representatives. The attorney-client privilege does not cover issues relating to the creation or existence of the attorney-client relationship. See *State v. Bilton*, 36 Or. App. 513, 516, 585 P.2d 50 (1978); In *Re Illidge*, 162 Or. 393, 402, [*3] 91 P.2d 1100 (1939). Furthermore, the requested information will not disclose the substance of communications between attorney and client.

As to the request for retainer agreements, these documents may contain discoverable information as well as confidential communications which are covered by the attorney-client privilege. In *United States v. Osborn*, 409 F. Supp. 406, 411 (D. Or. 1975), the court stated that fees paid for legal work and the general nature of legal work performed do not constitute a confidential communication, but that specific descriptions of services necessarily intrude upon the area of confidential communications.

The nature of Burns' representation of the oil companies is unclear. To the extent that his representation was for lobbying purposes, it is arguable that the services rendered are not covered by the attorney-client privilege. The court finds that an in camera review is necessary to ascertain whether the retainer agreements are protected, in whole or in part, by the attorney-client privilege.

Therefore, Parker's motion to compel a further response to Interrogatory No. 4 is granted except as to the retainer agreements. Burns is ordered to produce [*4] the retainer agreements under seal for in camera review. This portion of Parker's motion remains under advisement.

Interrogatory No. 5: This interrogatory asks Burns whether he has represented the legal or legislative interests of any oil company, station owner, petroleum wholesaler, producer or distributor of petroleum products other than the named defendants relative to SB 664. If so, Parker requests the names, addresses, telephone numbers, titles, and dates of any and all individuals in such companies to whom Burns reported.

Burns responds: "As to legislative interests, no." He further responds that he and Miller, Nash represent other individuals who fall within the scope of the interrogatory and objects on the basis of the attorney-client and work product privileges.

It is not clear whether Burns has represented legal, but not legislative, interests of such individuals with respect to SB 664, or whether he has provided only legal representation unrelated to SB 664. If the former is the case, Parker is entitled to the requested information regarding names and dates of contact. If the only representation Burns provided was unrelated to SB 664, Parker has shown no relevance [*5] of the requested information to this action. As discussed above, the work product privilege is inapplicable.

Parker's motion to compel a further response to Interrogatory No. 5 is granted. Burns is ordered to clarify his response. If Burns provided legal representation with respect to SB 664, he is ordered to provide the requested information as to such representation.

Interrogatory No. 6: This interrogatory seeks copies of all letters, memos or reports relative to SB 664 or to Parker that were sent by Burns or any agent of Miller, Nash to any of the individuals named in response to Interrogatory No. 5 or to any agent of the defendant oil companies. Burns objects that this information is protected by the attorney-client and work product privileges and is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 6 seeks information that may be within the scope of the attorney-client privilege. An in camera review is necessary to determine whether any of the exceptions claimed by Parker are applicable. As discussed above, the work product privilege is inapplicable.

Parker's motion to compel a further response to Interrogatory No. 6 is taken [*6] under advisement pending in camera review of the relevant documents.

Interrogatory No. 7: This interrogatory seeks copies of any responses from the defendant oil companies or other persons named in Interrogatory No. 5 regarding the reports described in Interrogatory No. 6. Burns objects on the same grounds as stated above.

The same analysis applies to this interrogatory. An in camera review of the requested documents is necessary to determine whether they are protected by the attorney-client privilege. Therefore, Parker's motion to compel a further response to Interrogatory No. 7 is taken under advisement pending in camera review of the relevant documents.

Interrogatory No. 9: This interrogatory seeks the names, addresses, telephone numbers, and dates of contact with any agents, employees or representatives of any defendant oil companies or any other client named in Interrogatory No. 5 who testified, attended or participated in any way in the legislative proceedings regarding SB 664 in the Oregon Senate or House of Representatives. Burns objects that this interrogatory is overly burdensome, irrelevant and seeks information which is in the public record.

The names [*7] of those who testified in the legislative proceedings are a matter of public record, as accessible to Parker as to Burns. However, Burns may have information which is not in the public record regarding attendance or participation in the legislative proceedings. Parker's motion to compel a further response to Interrogatory No. 9 is granted, and Burns is ordered to provide such information as is available to him which is responsive to Interrogatory No. 9.

Interrogatory No. 1: Parker contends that this interrogatory is still in issue. However, Burns does not object to Interrogatory No. 1 and provides the requested information. Parker's motion to compel is denied as to Interrogatory No. 1.

The court recognizes that some of the information produced for in camera review may contain sensitive and confidential material. The court will enter an appropriate protective order ensuring confidentiality before any such information is released to Parker.

CONCLUSION

Parker's motion (#114) to compel further responses to interrogatories is denied as to Interrogatory Nos. 1 and 3 and is granted as to Interrogatory No. 4, except as to the retainer agreements. Burns is ordered to produce the [*8] retainer agreements under seal for in camera review. The court takes the issue of the retainer agreements under advisement.

The motion is granted as to Interrogatory No. 5. Burns is ordered to clarify his response. If Burns provided legal representation with respect to SB 664, he is ordered to provide the requested information as to such representation.

The motion is taken under advisement as to Interrogatory Nos. 6 and 7. Burns is ordered to produce the requested documents for in camera review.

The motion is granted as to Interrogatory No. 9. Burns is ordered to provide such information as is available to him which is responsive to Interrogatory No. 9.

DATED this 8 day of June, 1989.

Tab 5

COPY

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

-o0o-

GOLD STANDARD, INC.,)
)
 PLAINTIFF,)
)
 VS.)
)
 AMERICAN BARRICK RESOURCES)
 CORPORATION; BARRICK MERCUR)
 GOLD MINES, INC.; TEXACO, INC.;)
 GETTY OIL COMPANY; GETTY)
 MINING COMPANY; GETTY GOLD)
 MINE COMPANY; AND JOHN DOES)
 1-10,)
)
 DEFENDANTS.)

CIVIL NO. 86-374

DEPOSITION OF:

ROBERT S. MCCONNELL

VOLUME II

BARRICK RESOURCES (USA) INC.,)
)
 COUNTERCLAIM)
 PLAINTIFF,)
)
 VS.)
)
 GOLD STANDARD, INC., AND)
 SCOTT L. SMITH,)
)
 COUNTERCLAIM)
 DEFENDANTS.)

-o0o-



**Rocky Mountain
Reporting Service, Inc.**

322 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Phone 801 531-0256

Lisa M. Bernardo, C.S.R., R.P.R.

1 Q OKAY. WAS MY STATEMENT A FAIR
2 CHARACTERIZATION OF WHAT YOU UNDERSTAND THE FACTS TO BE?

3 A FAIR.

4 Q IS IT A COMPLETE STATEMENT OF WHAT THE FACTS
5 WERE?

6 A WELL, I DON'T KNOW. THAT'S HOW I WOULD
7 DESCRIBE IT.

8 Q WOULD YOU ADD ANYTHING TO IT?

9 A OH, I DON'T THINK SO.

10 Q DID THE SCOPE OF YOUR ENGAGEMENT EVER CHANGE
11 FOR GOLD STANDARD?

12 MR. LOWRIE: TO THE EXTENT THAT MAY CALL FOR
13 ATTORNEY/CLIENT PRIVILEGED INFORMATION, I REQUEST THAT
14 YOU RESTRICT YOUR ANSWER IN SUCH A WAY AS TO PROTECT THE
15 PRIVILEGED COMMUNICATION. AND I WOULD SAY, MR. CLARK,
16 THAT THE SCOPE OF ENGAGEMENT, UNLESS THE ENGAGEMENT IS TO
17 ENGAGE IN PUBLIC ACTIVITY, MAY WELL BE CONFIDENTIAL IN
18 AND OF ITSELF, DON'T YOU AGREE?

19 MR. CLARK: I THINK IT DEPENDS ON ENTIRELY
20 WHAT IT IS, AND THE QUESTION I ASKED CAN EASILY BE
21 ANSWERED WITH A YES OR NO ANSWER.

22 MR. LOWRIE: WELL, IF YOU'RE GOING TO STOP
23 THERE, GO AHEAD. BUT YOU'RE NOT GOING TO STOP THERE, ARE
24 YOU?

25 MR. CLARK: I GUESS IT DEPENDS ON WHAT THE

Tab 6

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

GOLD STANDARD, INC.,

Plaintiff,

vs.

Civil No. 86-374

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 1 through 10,

Defendants.

DEPOSITION OF STEPHEN ROLAND DATTELS, Volume II

November 18, 1988

(Pages 169 through 320)

Reported by SUSAN WILCOX KINGSBURY, CSR, RPR
Utah CSR License 96, California CSR License 2758

Kingsbury and Associates Certified Shorthand Reporters

1 because, as I have disclosed for the record, there is an
2 additional document that may come within the purview of that
3 that is covered by the work product privilege. So you are not
4 to answer that question.

5 THE WITNESS: Well, maybe I better talk to you for a
6 second.

7 (Recess.)

8 MR. ROBERTS: We're back on the record.

9 I think the best way to deal with this is
10 this. There is an additional document or documents, and I
11 need to have them in front of me to be certain how to describe
12 them, which I think may come within the scope of your
13 question. However, it is our position and I've so instructed
14 the witness on the record, that those are protected by the
15 work product privilege, and, therefore, I have asked him and
16 instructed him not to respond in connection with those. In
17 terms of foundational information about them, we don't have
18 them with us now but that could be furnished in due course and
19 you can make whatever motion you want to make.

20 Q (By Mr. Burton) Mr. Dattels, you recall earlier I
21 asked you about whether or not there was an indemnification by
22 Texaco to Barrick with respect to Gold Standard's claims
23 discussed during these initial meetings at White Plains in the
24 first part of May. Do you recall that testimony?

25 A Yes.

CERTIFICATE OF HAND-DELIVERY

I hereby certify that I caused to be hand-delivered, four (4) true and correct copies of the foregoing APPENDICES TO BRIEF OF RESPONDENTS AMERICAN BARRICK RESOURCES CORPORATION AND BARRICK RESOURCES (USA) INC., TEXACO INC., GETTY OIL COMPANY AND GETTY MINING COMPANY to the following on this 3rd day of January, 1990:

James S. Lowrie
Christopher L. Burton
JONES, WALDO, HOLBROOK & McDONOUGH
170 South Main, #1500
Salt Lake City, Utah 84101



314:010390A