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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

E. RAY COWDEN and
RUTH REED COWDEN,

Plaintiffs,

vs.

ELWOOD WRIGHT, et al.,

Defendants.

No. 22363

No. 22571

DEPOSITION OF E. RAY COWDEN

Phoenix, Arizona
November 1, 1962

COPY

RYAN, POWERS & RYAN
COURT REPORTERS
412 SECURITY BUILDING
PHOENIX 4, ARIZONA
TELEPHONE ALPINE 8-6064

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I N D E X

| <u>Witness</u> | <u>CROSS</u> | <u>REDIRECT</u> | <u>RECROSS</u> |
|----------------|--------------|-----------------|----------------|
| E. Ray Cowden | 3 | 51 | 52 |

| <u>Exhibits</u> | <u>For Identification</u> |
|-----------------|---------------------------|
|-----------------|---------------------------|

| | |
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STIPULATION

IT WAS STIPULATED by and between the parties to the above-entitled cause that the deposition of E. Ray Cowden may be taken upon cross examination before Richard H. Ryan, a notary public in and for the County of Maricopa, State of Arizona, on the 1st day of November, 1962, commencing at the hour of 2:00 o'clock p.m., at the offices of Messrs. Snell & Wilmer, 400 Security Building, Phoenix, Arizona.

It was further stipulated that all objections except as to form of questions or answers and except as to errors which might be obviated or cured at the time of the taking of the deposition are reserved until the time of trial. All other formalities required by law for the taking and returning of depositions, including the signature of the witness, are waived.

1 E. RAY COWDEN,
2 being first duly sworn by the notary, testified
3 as follows:

4
5 CROSS EXAMINATION

6 BY MR. PARSONS:

7 Q What is your full name for the record?

8 A E. Ray Cowden.

9 Q You are married?

10 A Yes, sir.

11 Q Your wife's name?

12 A Ruth Reed Cowden.

13 Q Do you have any children?

14 A No, sir.

15 Q You own what is known as the Cowden Ranch?

16 A Yavapai Ranch.

17 Q That was formerly in the name of the
18 Yavapai Ranch Company, is that correct?

19 A That is correct.

20 Q That encompassed the area in which the
21 mining claims here in dispute are located?

22 A Yes, sir.

23 Q Who owns the fee land presently?

24 A I do.

25 Q It's not in trust?

26 A No, sir.

1 Q It's in your name as a single person or
2 rather separate property?

3 A It's in myself and my wife's names.

4 Q When did you acquire the ranch?

5 A Cowden Livestock Company acquired a portion
6 of the ranch in 1945, the part that the mining
7 claims are located on, and the southeast part of
8 it in 1947 or '48, I have forgotten which.

9 Q What was the status of the area in which
10 the mining claims were located at the time you
11 acquired the ranch?

12 A Oh, there were some old diggings there
13 where there had been some exploration work years
14 before that.

15 Q You don't know when?

16 A I have been told that some of it was in
17 the early 1900's, some of it was in the early
18 1940's, but not to my own knowledge.

19 Q There had been no production from the
20 claims?

21 A None that I know of.

22 Q Well, there was no excavation that
23 appeared that material had been removed and taken
24 off the ranch?

25 A Well, some small indications of that but
26 not large amounts.

1 Q I take it the land was deeded by the
2 Yavapai Ranch Company to you and your wife, is
3 that correct?

4 A Yes, sir.

5 Q When did that take place?

6 A Cowden Livestock Company to my wife and I.

7 Q When did that happen?

8 A I can't tell you exactly without checking
9 my record, but sometime after the lease was made
10 with Mr. Campbell.

11 Q Do you have those records with you?

12 A I think there is something. I think I
13 noticed a notice to Mr. Campbell.

14 Q Would you look, please?

15 A Yes. Well, I do not find this notice
16 there readily now, but I am sure it was in early
17 1958.

18 Q The Iron Chancellor Claim I understand
19 was a patented claim on the premises?

20 A Yes, sir.

21 Q Who was the owner of that claim?

22 A A gentleman from Philadelphia was the
23 owner. I can't remember his name.

24 Q He was the owner at the time you purchased
25 the ranch?

26 A Yes, sir.

1 Q I hand you what is entitled at the top
2 "Lease Agreement" dated the 31st day of May, 1956.
3 Is that the lease between Yavapai Ranch Company
4 and Mr. E. P. Campbell?

5 A Yes, sir.

6 Q This is a true copy of the lease, is it?

7 A Yes, sir.

8 MR. PARSONS: With the exception of the
9 recording data this is a true copy to be attached
10 to the deposition.

11 MR. PERRY: May the record show that the
12 original lease which you first showed Mr. Cowden
13 contains the following information on it: "State
14 of Arizona. County of Yavapai. 3841. I do
15 hereby certify that the written instrument was
16 filed and recorded at the request of E. P.
17 Campbell on April 27 A.D. 1960 at 8:55 a.m.,
18 Book 183, Official Records, page 127-143
19 (inclusive), records of Yavapai County, Arizona.
20 Witness my hand and official seal, the day first
21 above written, Frank C. Bauer, County Recorder,
22 by Doris L. Gillis, Deputy. Indexed. Paged.
23 Photostated. Book 183, page 127."

24 (Defendants' Exhibit 1-Cowden was marked
25 for identification by the reporter.)

26 Q BY MR. PARSONS: Your answer was that that

1 is a true copy that we have now marked Exhibit
2 1-Cowden, is that right?

3 A Yes, sir.

4 Q Is it your understanding that there was
5 a provision in there with respect to the Iron
6 Chancellor mining claim?

7 A Yes, sir.

8 Q In fact, that was for E. P. Campbell to
9 purchase it for your benefit?

10 MR. PERRY: Just a minute. The lease
11 speaks for itself. If you want to read from the
12 lease into the record, we have no objection, but
13 we don't want Mr. Cowden to give his opinion about
14 what is a legal document.

15 Q BY MR. PARSONS: Is that your understanding?

16 MR. PERRY: Don't answer the question.

17 MR. PARSONS: If you want to prolong it, why,
18 we will do it that way.

19 MR. PERRY: O.K.

20 Q BY MR. PARSONS: Paragraph IV of the lease
21 provides:

22 "Lessor presently holds an option
23 from the owner thereof whereby the said
24 Iron Chancellor can be purchased for the
25 sum of Five Thousand Dollars (\$5,000.00).
26 The Lessee agrees to purchase said Iron

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Chancellor Mining Claim in the name of Lessor and that upon the purchase thereof by said Lessee the same shall be and become the property of Lessor and subject to all of the terms and conditions of this lease as if owned by Lessor at the time of the execution thereof."

Did Mr. Campbell pay the \$5,000 and purchase that for your benefit?

A He purchased the claim.

Q He exercised the option provided?

A Yes, sir.

Q I believe also there is a provision in the lease that calls for additional mining claims surrounding the mining claims included within the lease to be located in your name?

A If I requested it, yes.

Q Did you make such a request?

A Yes, sir.

Q Do you know how many mining claims were involved?

A I don't remember whether it's 12 or 15, but it's one or the other.

Q Those were so located for your benefit?

A Yes, sir.

1 Q In addition to that I believe there is a
2 provision by which Mr. Campbell was to drill a
3 water well for you if the well then existing
4 became unusable, is that right?

5 A That is correct.

6 Q Did he drill another well for you?

7 A Yes, sir.

8 Q Are you acquainted with the old well?

9 A Yes.

10 Q Is that still in good condition?

11 A No, sir.

12 Q It's not usable at this time?

13 A No, sir.

14 Q Why not?

15 A Because they excavated and cut out where
16 the well was.

17 Q What is your business, Mr. Cowden?

18 A Cattle business, farming.

19 Q What is your education?

20 A Pardon me?

21 MR. PERRY: Just a minute. We are going to
22 object on the ground that this is completely
23 immaterial. Mr. Cowden, you are not required to
24 answer these questions unless you want to, but
25 they are not relevant to the issues before the
26 court.

1 Q BY MR. PARSONS: What is your education?

2 A High school.

3 Q Have you ever had any experience in mining?

4 A No, sir.

5 Q Will you in chronological order as you
6 remember it following the execution of the
7 Campbell lease tell us what efforts that you know
8 of were made with regard to mining the mining
9 claims?

10 A Starting at the time the lease was made
11 in '56?

12 Q Yes.

13 A I would have to go through the file to
14 carefully do that or I might overlook some of it.

15 Q Would you do that?

16 A I will do the best I can from memory, but
17 I don't know as I have all the information in the
18 file. They did some work, I don't know just how
19 much, in 1956. In '57 they did some more, and
20 either late in that year or early in 1958 they
21 shipped a carload of ore so Mr. Wright told me to
22 Bradley & Eckstrom, which I later found out was
23 shipped to C. K. Williams. In 1957 they damaged
24 this well that was located on the mining property,
25 and they drilled the other well in August of that
26 year.

1 Q Did they drill that at a location pointed
2 out by you?

3 A Yes, sir. In 1957 they moved some over-
4 burden and began to show some of the ore, put
5 some on the stockpile, and from that stockpile
6 they shipped this first carload of ore.

7 Q How much did you say that was?

8 A One carload.

9 Q Do you know how many tons?

10 A No, I do not remember how many tons, but
11 usually they will run around 70 tons. In 1958
12 then I had a call from Mr. Stewart of C. K.
13 Williams Company regarding some more of the ore.

14 Q Who called you?

15 A Mr. Jim Stewart, C. K. Williams Company,
16 St. Louis.

17 Q What did he call you for?

18 A He called me to inquire about some of the
19 ore. He said they had had a carload of it which
20 I didn't know of up until that time.

21 Q Were you acquainted with this Mr. Stewart
22 prior to this occasion?

23 A No, sir. I have never met him.

24 Q Do you know how he knew where the ore
25 came from?

26 A I don't know unless Mr. Campbell or Mr.

1 Wright had advised him or Bradley & Eckstrom had
2 advised him.

3 Q What was his purpose in phoning you?

4 A He said that the carload of ore that they
5 received in '57 became mixed with some other ore
6 and they would like to try some more of it, talk
7 to me about a car or two cars, and I told him it
8 would be rather expensive to get a car or two
9 cars loaded and asked him what he had in mind as
10 to price. Whatever he told me -- I don't remember
11 the amount now -- I told him I didn't think they
12 would be interested at that price because it
13 wouldn't pay the cost of loading.

14 Q When you say "they," you are speaking of
15 whom?

16 A Mr. Campbell. That was probably late
17 August or early September.

18 Q What did you do as a result of that call?

19 A Well, I was out of the city, and he called
20 back a few days later and talked to Mr. Clements.

21 Q Who is Mr. Clements?

22 A Mr. Clements is secretary-treasurer of
23 Cowden Livestock Company and is the office
24 manager.

25 Q He handles things for you in your absence,
26 is that the idea?

1 A Yes, sir. And as a result of that
2 conversation they worked out a plan whereby Mr.
3 Stewart had found someone in Seligman to load
4 this ore for him, and Mr. Clements contacted Mr.
5 Campbell and Mr. Campbell told him to go ahead
6 and sell the ore, and as I remember it the price
7 was \$4 at the dump, \$4 per ton.

8 Q They were to load it on the cars, is that
9 the idea?

10 A They had secured a man to haul the ore
11 and load it.

12 Q Do you know who that was?

13 A A Mr. Johnson in Seligman.

14 Q What is his first name?

15 A I do not remember.

16 Q And the proceeds of that transaction
17 went to whom?

18 A I think they came back to me, but I would
19 have to look that up to be sure.

20 Q Will you check that, please?

21 A I would have to call the office to find
22 out. That is the only way I can check it.

23 Q As a matter of fact, there was about
24 \$5600 that went to you, isn't that correct?

25 A Oh, it's approximately that amount, but
26 to say correctly I couldn't tell you until I

1 checked with the office.

2 Q Was that money ever sent to Mr. Campbell?

3 A No, sir.

4 Q Though it was not at that time your
5 position that the lease was not in effect, is that
6 right?

7 A Pardon me?

8 Q At that time it was your position that
9 the lease was in effect, is that right?

10 A Yes, sir.

11 Q In other words, it was not in effect at
12 that time?

13 A No.

14 Q So whatever that sum is, be it \$5600 or
15 whatever that is, that properly belongs to Mr.
16 Campbell, is that right?

17 A Well, I still have the money. There is
18 some question about who it belongs to.

19 Q Have you ever sold any other ore from
20 that property?

21 A None that I can remember.

22 Q None at any time?

23 A No.

24 Q Had you before this lease was entered into
25 made any effort to develop the property yourself?

26 A No, sir. Oh, yes, I will change that. I

1 had had a lease with Pickens-Mather of Cleveland,
2 Ohio, and they came in and done some work on the
3 property.

4 Q When was that?

5 A I think it started in 1953.

6 Q How long did that continue?

7 A Probably a year and a half.

8 Q Do you have some correspondence with you
9 from C. K. Williams?

10 A Yes, sir.

11 Q May I see it?

12 A Yes. Are you interested in the bills of
13 lading?

14 Q Not at the moment. Mr. Cowden, I hand
15 you back what appears to be a September 5, 1958
16 letter from C. K. Williams & Company in which
17 they request ore at \$6.50 a ton. Is that the
18 price that was paid on the first shipment?

19 A Well, if it was, the loading costs came
20 out of it.

21 Q I believe that says F.O.B. Seligman,
22 correct?

23 A That is right.

24 (Defendants' Exhibit 2-Cowden was marked
25 for identification by the reporter.)

26 Q I hand you the next little packet that you

1 showed me and a letter on top from C. K. Williams
2 & Company dated March 10, 1959 having attached to
3 it bills of lading and transmittal letters
4 indicating the completion of the transaction
5 apparently of a second shipment of ore, is that
6 right?

7 MR. PERRY: Were there two shipments?

8 THE WITNESS: Yes, there were two. There was
9 a '58 and a '59.

10 (Defendants' Exhibit 3-Cowden was marked
11 for identification by the reporter.)

12 Q BY MR. PARSONS: I hand you three letters
13 dated February 8, 1961, August 11, 1961 and
14 August 18, 1961 being carbon copies of letters
15 sent to you but directed on the face of them to
16 Elwood Wright. Let me add one more letter being
17 November 18, 1960, also being a carbon copy of a
18 letter to Mr. Wright.

19 (Defendants' Exhibit 4-Cowden through
20 Defendants' Exhibit 7-Cowden inclusive
21 were marked for identification by the
22 reporter.)

23 I am handing you letters on the letterhead
24 entitled Victorville Lime Rock Company and
25 underneath that it says "Subsidiary of C. K.
26 Williams & Co.," address is Victorville,

1 California; a letter dated August 21, 1959,
2 September 14, 1959, September 18, 1959, this
3 being a carbon copy letter which you sent back to
4 the writer of the two prior letters, is that
5 correct?

6 A This is replying to some other letter
7 because this says "your letter of the 14th."
8 It says, "I have held up answering your letter of
9 the 14th." Here is the August 21st and here is
10 the September 11th and it's dictated then but
11 mailed the 14th apparently because it has the 14th
12 of September underneath it, and I told him when I
13 would be in Phoenix.

14 Q And a September 29th letter from
15 Victorville Lime & Rock Company and a September
16 31, 1959 letter from Victorville Lime Rock Company.
17 Each of these letters refers to your getting
18 together with a representative of C. K. Williams,
19 is that right?

20 A The first letters refer to a date for a
21 meeting with Mr. Piercy, with Mr. Clements and
22 myself. The letter of September 29th I think is
23 from me to him and said they would like to meet
24 us for discussion of proposals regarding the
25 Seligman iron ore. The letter of the 31st asks
26 about a date which apparently was replied to by

1 phone. There doesn't seem to be any reply here.

2 Q As a result of this correspondence did
3 you have a meeting with --

4 A No, sir. Mr. Piercy is the only one I
5 had a meeting with but not with anyone else.

6 Q You had a meeting with Mr. Piercy?

7 A Yes, sir. That is stated in the letters,
8 but not anyone else.

9 Q E. A. Piercy?

10 A I think that is his initials.

11 (Defendants' Exhibit 8-Cowden through
12 Defendants' Exhibit 12-Cowden were
13 marked for identification by the reporter.)

14 Q Where did that take place?

15 A At the Arizona Club in Phoenix.

16 Q In the September 29th letter it says,
17 "Either the writer or Jim Stewart of C. K.
18 Williams & Co. will be available" to enter into
19 further discussions. You didn't see Mr. Jim
20 Stewart?

21 A No, sir, I have never met him.

22 Q Who was present at that time?

23 MR. PERRY: At what time?

24 MR. PARSONS: At the time that he just stated
25 that he had a meeting with Mr. Piercy.

26 THE WITNESS: Mr. Clements and myself and Mr.

1 Piercy.

2 Q BY MR. PARSONS: When did that take place,
3 can you recall?

4 A One of those letters will tell. September
5 24, 1959.

6 Q Is that the only time you ever met him?

7 A It's the only time I remember of.

8 Q What took place at that meeting?

9 A Oh, he was interested in knowing if he
10 might work out some plan with Mr. Campbell to get
11 a steady supply of this ore, what I thought would
12 be the development of the mine. Generally from
13 one of these letters here Mr. Johnson, who loaded
14 it -- it indicates that Mr. Piercy had been to the
15 mine and looked at the ore for Mr. Stewart, and
16 I understand Mr. Stewart had also been to the mine,
17 but I never met him or I did not know him
18 personally.

19 Q Did you inform Mr. Campbell of this
20 conversation?

21 A I informed Mr. Wright.

22 Q Have you ever had any other contact with
23 anybody from the C. K. Williams Company?

24 A No, sir.

25 Q You have brought here all the correspondence
26 that you have had with anybody representing that

1 company?

2 A Yes, sir.

3 Q Who next did you have contact with in
4 regard to the E. P. Campbell lease following this
5 occasion?

6 MR. PERRY: Do you understand the question,
7 sir?

8 THE WITNESS: No, I do not when you say "who
9 next," because I can't remember. We might have
10 had telephone calls with various people and given
11 Mr. Campbell's address.

12 Q BY MR. PARSONS: Do you have some records
13 from which you could ascertain this?

14 A Oh, I had a call from the Utah Construction
15 Company, had some correspondence with them.

16 Q Who at the Utah Construction Company?

17 A Mr. Wes Bourret and Mr. Riddell who were
18 here and looked at the ranch and also some
19 correspondence with Mr. Bakke, the official who
20 takes care of their land leases and purchases.

21 Q Would you like to hand me those letters
22 you are looking at?

23 A Yes.

24 Q I have here a letter from Utah Construction
25 Company of July 23, 1959 signed by Weston Bourret,
26 one of August 26, 1959 signed by Paul A. Riddell,

1 a carbon of a letter dated October 7, 1959 signed
2 Paul A. Riddell directed to James Miller, Cowden
3 Ranch, and an original letter of November 4, 1960
4 directed to Mr. E. Ray Cowden signed by Norris
5 C. Bakke, Jr., a letter of November 24, 1959 also
6 from the Utah Construction Company to Mr. Ray
7 Cowden signed by Paul A. Riddell, a letter dated
8 June 3, 1960 from the same concern signed by
9 Weston Bourret, a letter dated July 13, 1960 from
10 the same company to Mr. Ray Cowden signed by
11 Norris C. Bakke, a carbon of a letter signed by
12 E. Ray Cowden directed to Mr. N. C. Bakke under
13 date of July 22, 1960, carbon copy of a letter
14 dated August 5, 1960 unsigned but apparently from
15 E. Ray Cowden to Mr. Bakke, a letter from the
16 same concern dated August 9, 1960 signed by Norris
17 C. Bakke, Jr. directed to Mr. E. Ray Cowden.
18 Do you have any other correspondence with the
19 Utah Construction Company?

20 A None that I know of.

21 (Documents referred to above were marked
22 Defendants' Exhibit No. 13-Cowden for
23 identification by the reporter.)

24 Q You have not been approached by anyone
25 from there including Weston Bourret for the
26 purpose of attempting to work something out with

1 regard to production?

2 A Everything is covered in that correspondence.

3 Q There has been no oral conversations
4 subsequent to this correspondence, Exhibit 13?

5 A None that I remember of.

6 Q None that you know of?

7 A No.

8 Q Do you have some further correspondence
9 from persons who were proposing or dealing with
10 Mr. E. P. Campbell with respect to this property?

11 A Let me see if I understand that question.

12 (Pending question read by the reporter.)

13 A I have some correspondence with the
14 Kaiser Steel Corporation.

15 Q May I see that?

16 A Yes.

17 Q You have handed me a letter on the
18 letterhead of Kaiser Steel Corporation, Executive
19 Offices, Oakland, California, signed by T. M.
20 Price, Raw Materials Consultant, to which is
21 attached a report consisting of two pages dated
22 June 9, 1959 purporting to be from K. B. Powell,
23 Superintendent of Raw Materials at Fontana. The
24 subject of the report is "Cowden Livestock
25 Company, Arizona iron deposit." I notice that in
26 the last paragraph at the bottom of the first page

1 it says:

2 "Ray Helmke of San Francisco offered
3 us the ore for open hearth use in August
4 of 1957. I again visited the property.
5 The approximate 1,000 tons of two-inch
6 by ten-inch ore which had only been
7 mined a few months had slacked like coal.
8 It only took a tap with a sample pick to
9 break a ten-inch piece to minus two-inch
10 fines. None of the ore I saw in the
11 stockpile or in the small pit was hard
12 enough to stand shipping."

13 I take it that you were aware, Mr. Cowden,
14 of the extreme friability of the ore?

15 A No. All I know about that is Mr. Powell's
16 report.

17 Q On the second page of the same report in
18 the second paragraph it says, "Unfortunately it
19 is extremely soft and most friable and will not
20 stand up," and it concludes that they are not
21 interested in using the ore for blast furnace
22 production. I would like to have these marked,
23 the June 16th letter, a carbon of a letter from
24 Mr. Price to Mr. Cowden dated May 28, 1959 and a
25 subsequent letter from Kaiser Steel Corporation
26 dated May 21, 1959 directed to Mr. Cowden signed

1 by T. M. Price.

2 (Defendants' Exhibit 14-Cowden was marked
3 for identification by the reporter.)

4 Those documents have been combined to make
5 Exhibit 14 for identification. Have you
6 subsequent to the last letter from Mr. Price,
7 which is dated May 21, 1959, had any further
8 communications either written or oral with
9 anybody from the Kaiser Steel Corporation with
10 respect to the Cowden property?

11 A Yes, sir.

12 Q Do you have those with you?

13 A No, sir.

14 Q Were they oral?

15 A Oral.

16 Q With whom?

17 A Mr. Powell.

18 Q Mr. Powell was one of the arbitrators
19 in the arbitration proceedings?

20 A Yes, sir.

21 Q Kenneth Powell, is it?

22 A Yes, sir.

23 Q Will you explain to me how Mr. Powell
24 happened to be selected by you as your representa-
25 tive on the arbitration board?

26 A He was recommended to me as an arbitrator

1 in trying to find someone who was experienced and
2 qualified as an arbitrator.

3 Q From whom was this recommendation?

4 A If I remember correctly it came through Mr.
5 Bedford to Mr. Snell in this office.

6 Q Are you acquainted with Henry J. Kaiser,
7 Jr.?

8 A I was, yes.

9 Q Did he have anything to do with the
10 recommendation of Mr. Powell?

11 A Not that I know of.

12 Q Other than the selection of Mr. Powell
13 to serve on the arbitration board as your
14 representative have you had any other connection
15 with anybody from the Kaiser Steel Corporation
16 with respect to the property?

17 A Only in other business ventures with
18 Mr. Bedford.

19 Q Nothing in respect to the mining claims
20 here in question?

21 A No, sir.

22 Q Do you have any further documents?

23 A A letter from Mr. Mann of the Diversa
24 Company and a reply.

25 Q You have handed me a letter which says
26 Diversa and indicates an address below that of

1 633 Meadows Building, Dallas 6, Texas, dated
2 February 8, 1962 and a carbon copy of a letter
3 dated February 15, 1962 directed to Mr. Gerald C.
4 Mann, President, Diversa, indicating at the
5 bottom that it was sent by E. Ray Cowden. Also
6 attached to the carbon copy is a card of Victor H.
7 Verity, Attorney at Law, and in a handwritten
8 memorandum it appears to have the name of Gerald
9 C. Mann. Did you subsequently have a meeting with
10 Mr. Gerald C. Mann of Diversa?

11 A With Mr. Mann, Jr. and Mr. Mann, Sr. and
12 Mr. Verity, all three of them, Mr. Clements, Mr.
13 Wright and myself in the Adams Hotel in Phoenix.

14 Q When did that take place?

15 A Shortly after that. I don't know whether
16 it states the date in the letter or not.

17 Q The letter is dated February 15, 1962,
18 so it was shortly after that?

19 A Yes. It may say so in one of the letters,
20 but I am not sure.

21 MR. PARSONS: May those two letters be marked
22 for identification?

23 (Defendants' Exhibit 15-Cowden was marked
24 for identification by the reporter.)

25 Q What took place at that meeting?

26 A Mr. Mann discussed the mining property and

1 made some inquiries about it.

2 Q Did he at that time propose a lease to
3 you?

4 A Yes, he had a form of lease drawn that he
5 proposed to us.

6 Q That was unacceptable, I take it, to you?

7 A I told Mr. Mann that we were not in a
8 position to make a lease because we did not know
9 the status of the estate of Mr. Campbell.

10 Q However, at that time you did know that
11 there was an assignment that was recorded and the
12 lease was then assigned to Mr. Elwood Wright?

13 A Yes.

14 Q Can you explain that position a little
15 further?

16 A I think I can. In December, 1961 Mr.
17 Wright and a Mr. Chamberlain from Fort Worth,
18 Texas, who stated that he was the attorney for the
19 administrator of the E. P. Campbell estate, came
20 to Phoenix and had a talk with Mr. Clements.

21 Q Mr. Clements and yourself?

22 A No, sir. I was not here.

23 Q You were not here at that time?

24 A No, sir. At that conversation or meeting,
25 so Mr. Clements tells me, Mr. Chamberlain proposed
26 that the Campbell estate give up all their

1 interest in the lease, organize a new company,
2 make a new lease and that he personally would take
3 an interest in it and would put some money in it.
4 He asked me to call him when I returned to Phoenix.
5 I did call him on long distance and I asked Mr.
6 Chamberlain if he could give us the assurance that
7 the Campbell estate had no interest in this lease
8 and relinquish any interest that they might have,
9 and he said that they would have. That I did not
10 receive, and I never heard from him again.

11 Q You were informed, I take it, by Mr.
12 Clements that this conversation went on and the
13 meeting went on with Judge Chamberlain?

14 A Yes, sir, and I have discussed it with
15 Elwood since that time.

16 Q You stated that he was representing the
17 estate of E. P. Campbell. Are you sure of that?
18 Isn't it just as equally possible that he was
19 representing himself, that is, Mr. Chamberlain?

20 A I was told by Mr. Clements and later by
21 Mr. Wright that he was the attorney for the
22 administrator of the estate. I never met the
23 gentleman.

24 Q Do you have any further communications
25 from anybody with respect to the property, anybody
26 who was dealing with either Mr. Wright or Mr.

1 Campbell?

2 A No. I have a letter here from Mr. Stewart
3 of C. K. Williams Company to Mr. Symonds, the
4 president of Ferro-Oxide, but that is all
5 correspondence.

6 Q May I see that?

7 A Yes.

8 Q You have handed me what appears to be a
9 carbon copy of a letter from A. J. Symonds,
10 president of Ferro-Oxide Corporation, from C. K.
11 Williams & Company apparently signed by T. J.
12 Stewart, vice-president of production, dated
13 July 25, 1962 indicating that copies were sent to
14 L. K. Ayers, E. Ray Cowden and E. G. Ratcliffe
15 and a pencil mark after the name "Cowden." Did
16 you receive this in the regular course of business?

17 A I assume so. It came in the mail. It's
18 in the file.

19 (Defendants' Exhibit No. 16-Cowden was
20 marked for identification by the reporter.)

21 Q This letter has been marked as Defendants'
22 Exhibit 16 for identification and it states:

23 "Dear Mr. Symonds:

24 "We have made arrangements with Harold
25 Johnson of Seligman, Arizona, to load the
26 iron ore from the Cowden Ranch, which is

1 presently stockpiled at Seligman and owned
2 by Ferro-Oxide Corporation into cars for
3 shipment. We are enclosing our purchase
4 order for approximately 1,000 tons of
5 iron ore to cover this shipment.

6 "We will pay Ferro-Oxide Corporation
7 \$4 per net ton for all ore shipped on
8 the basis of rail weights furnished by
9 the Santa Fe Railroad.

10 "You are to guarantee that Ferro-Oxide
11 Corporation is the owner of the ore and
12 that it is free of liens and encumbrances."

13 Did you make any reply to the request in
14 the last paragraph, Mr. Cowden?

15 MR. PERRY: Just a moment.

16 MR. PARSONS: I withdraw the question.

17 Q As a result of that last paragraph did
18 you write anybody with respect to it?

19 A No, sir. The inquiry was not to me.

20 Q I understand.

21 MR. PERRY: Do you have any personal knowledge,
22 Mr. Cowden, about the truth of any of the things
23 stated in that letter, a carbon copy of which
24 came to you?

25 A No, sir.

26 Q BY MR. PARSONS: Do you have any reason

1 to doubt the truth of anything that is set forth
2 in this letter, a carbon copy of which was sent to
3 you?

4 MR. PERRY: You are instructed not to answer
5 that question.

6 Q BY MR. PARSONS: Do you have any further
7 correspondence with respect to these properties
8 or during the time from the entering into the
9 lease on May 31, 1956 to date?

10 A Not that I know of. This is just some
11 analysis of ore and some bills of lading which you
12 may look at.

13 Q That was the next thing I was coming to.
14 Do you have some reports or analyses?

15 A Yes.

16 Q I will return these to you, Mr. Cowden.
17 You may keep those. Do you have something
18 additional there?

19 A It's a letter from Mr. Wright.

20 Q This is a letter from Mr. Wright to you
21 dated September 18, 1960?

22 A Yes.

23 Q This is what appears to be on carbon type
24 paper but appears to be the original letter sent
25 by Mr. Elwood Wright dated September 18, 1960.

26 (Defendants' Exhibit 17-Cowden was marked
for identification by the reporter.)

1 Q You have had no further communications
2 from Ferro-Oxide, either oral or written, from
3 Mr. Bill Blommel, Al Symonds or George Bernard?

4 A I have never talked to them myself, never
5 did see Mr. Blommel except at the time of the
6 arbitration.

7 Q Has Mr. Clements?

8 A He probably has had some conversation with
9 him, but I can't tell you what it is.

10 Q Mr. Cowden, don't you have a chemical
11 analysis report that was prepared by Columbia-
12 Geneva Company?

13 A Oh, we may have, but I can't be sure,
14 Mr. Parsons. It's quite an extensive file.

15 Q Do you have your files with you here?

16 A I think everything we have is right over
17 there.

18 (Thereupon a short recess was taken.)

19 Q Mr. Cowden, were you contacted by a Mr.
20 Lake?

21 A Yes, sir.

22 Q When was that?

23 A Oh, in the spring of 1962, March or April,
24 somewhere along there.

25 Q Did you subsequently have a meeting with
26 him?

1 A He called me from Los Angeles, I think it
2 was, and said he was coming through here and would
3 like to see me. He did come through Phoenix,
4 came out to the office and visited with me.

5 Q You had a conversation with him, I take
6 it?

7 A Yes, sir.

8 Q Anybody else present at the time?

9 A I think Mr. Clements was or at least part
10 of the time.

11 Q That was in your office on Van Buren Street?

12 A Yes, sir.

13 Q What took place at that time? What was
14 said?

15 A He inquired as to the iron property on the
16 Seligman ranch.

17 Q Did he say that he came to see you as a
18 result of Mr. Elwood Wright's efforts?

19 A He said he had talked to Mr. Wright.

20 Q Did he make a proposal of any sort to you?

21 A No, he did not.

22 Q What was the conversation?

23 A Well, he said he thought he would be
24 interested in the property but he wanted to make a
25 new lease on it, he was not interested under the
26 present lease.

1 Q Did you inform him that Mr. Wright did
2 not have an effective lease at that time?

3 A No, sir.

4 Q You did not do that?

5 A No.

6 Q Do you recall Mr. Wright coming to you
7 with a plan for sale of bulk ore to the Mitsubishi
8 people?

9 A Yes, he was there to see us and discuss
10 that.

11 Q When was that?

12 A I would have to look at the file to see
13 the time of the correspondence. As I remember it
14 would be in 1961.

15 Q Do you have copies of those two letters
16 in your file?

17 A I don't know whether I have copies of these
18 or not. No, I don't think so.

19 MR. PERRY: We saw those for the first time
20 yesterday when they were produced.

21 THE WITNESS: It would have been sometime in
22 '61, probably the summer of '61.

23 Q BY MR. PARSONS: You did see a copy of that
24 letter that is dated May 10, 1962?

25 A I have the original of that letter.

26 Q We are referring now to what is identified

1 in Mr. Wright's deposition as Plaintiffs' Exhibit
2 B, is that correct?

3 A That is correct.

4 Q Do you remember the substance of the
5 proposal that Mr. Wright made to you at that time?

6 MR. PERRY: There is no record of any proposal
7 being made, Mr. Parsons.

8 MR. PARSONS: All right.

9 Q Did Mr. Wright make a proposal to you at
10 that time?

11 A Well, in this letter Mr. Wright states,
12 "Mr. Cowden, I am only trying to do what the
13 arbitrators suggested, that is to work out a new
14 agreement that both parties can live with."

15 Q But he did tell you that there had been
16 contact made with the Mitsubishi Shoji Kaisha, Ltd.,
17 is that right?

18 A He might not have used those words, but
19 he said the Japanese interests.

20 Q He told you, did he not, that he had a
21 deal he thought was about to crystallize, is
22 that right?

23 A He discussed the over-all transaction.

24 Q Did you tell him that you were not
25 interested in the sale of ore to the Japanese for
26 tax reasons?

1 A I told him that would be one of the
2 reasons, and I questioned further if it would be
3 profitable to him.

4 Q Why was that one of the reasons?

5 A Well, that is two of them.

6 Q What was the tax reason?

7 A Because it would be a heavy sale, a sale
8 of a large quantity of ore in any one year which
9 would be royalties to me and would become
10 ordinary income and put me in a high tax bracket.

11 Q You didn't want that big sale of ore from
12 your property?

13 A I was really not interested on that basis.

14 Q That is what you told Mr. Wright?

15 A In effect.

16 Q You have handed me, Mr. Cowden, some
17 reports here and papers which we won't try to put
18 into the deposition and make part of the deposition,
19 but I would like to read in the titles of these
20 things. I have a four-page report here entitled
21 the condensed information of the specific gravity
22 from the ore deposit, Ferro-Oxide Research, Inc.,
23 a report consisting of five pages and a one-page
24 attachment from Southwestern Engineering Company
25 of Los Angeles entitled "Metallurgical report,"
26 and further entitled "Report of magnetic separation

1 test conducted on samples of iron ore" submitted
2 by Sargent, Jonas, Felton, et al., 1714 West
3 McKinley Street, Phoenix, Arizona, is that
4 correct?

5 A Those papers I gave you came from our files.

6 Q Did I correctly state what they are?

7 MR. PERRY: Well, we assume that you wouldn't
8 read it wrong.

9 MR. PARSONS: I assume you are looking over my
10 shoulder, Mr. Perry. If I didn't state it
11 correctly, I wish you would correct me.

12 MR. PERRY: I am sure you did it right, sir.
13 I don't even have to look.

14 MR. PARSONS: And a 13-page report prepared by
15 Westport Laboratories by Charles H. Jonas of
16 Phoenix, Arizona signed by D. H. McCloud, the top
17 of which says "Dorr Oliver, Incorporated." I have
18 two copies of a report entitled "Geological
19 Report, Seligman iron property, Chino Mining
20 District, Yavapai County, Arizona" prepared by
21 Dorrman S. Oliver, Registered Mining Engineer,
22 Wickenburg, Arizona, dated July 27, 1960 on the
23 first sheet. On the second sheet it is dated July
24 26, 1960 and it consists of some six typewritten
25 pages and five pages attached that appear to be
26 hole log tabulations and also to which are attached

8

1 four maps. In addition I have a report dated
2 August, 1961 by Heinreichs Geoxploration Company,
3 Tucson, Arizona consisting of five pages plus an
4 attached large red and yellow type map.

5 Mr. Cowden, all these reports were
6 submitted to you by Mr. Wright or persons who were
7 dealing with Mr. Wright with regard to the Cowden
8 mining property?

9 A I'm not sure of that.

10 Q You don't know who sent them to you?

11 A Not all of them, no, I do not.

12 Q Which one?

13 A Oh, I think this Jonas report was not in.
14 Mr. Wright was dealing with him. He said he was
15 having to buy food for him and keep him up while
16 he was working for him and he wanted to get
17 something out of him. This one here, the Heinreichs
18 report, I do not know where that came from. It
19 might have been the result of the arbitration, but
20 I am not sure.

21 Q Let me ask you this: You did not have
22 this prepared, did you?

23 A No, sir. It says in there who it's
24 prepared for, Mr. Tognoni.

25 Q And Mr. Tognoni is Mr. Wright's and Mr.
26 Swartz's attorney, is that right?

1 A It's my understanding.

2 Q And this does pertain to your property?

3 A I assume so.

4 Q In addition to those reports, sir, there
5 are numerous assay reports that were submitted to
6 you by Mr. Wright over the period of years, is
7 that right?

8 A I can't say that they were mailed by Mr.
9 Wright.

10 Q You received them from some source and
11 they concerned your property, is that right?

12 A From some source. I think that is correct.

13 Q They were not solicited by you from
14 somebody to prepare them for you?

15 A Not that I know of.

16 Q You have also handed me the reports that
17 are shown, one made from the ARC Laboratory of
18 Phoenix, Arizona, dated August 15, 1960 indicating
19 on its face it was prepared for Ferro-Oxide
20 Research and a second one from Arizona Testing
21 Laboratories consisting of two pages dated August
22 12, 1960 indicating on its face it was prepared
23 for Ferro-Oxide Research, Inc. Though you have
24 received other reports, Mr. Cowden, you don't
25 know from whom they came, is that right?

26 A Not at the present time, no.

1 Q Mr. Cowden, you were present at the
2 arbitration proceedings concerning a notice of
3 default which you sent out to Mr. E. P. Campbell,
4 those proceedings beginning on October 25, 1960,
5 is that right?

6 A Yes, sir.

7 Q And at that proceeding you had appointed
8 Mr. Kenneth Powell as your arbitrator?

9 A Yes, sir.

10 Q Do you know who the other arbitrators
11 were?

12 A I can look at the arbitration list and
13 recall their names. Mr. Sundness and Mr. Stanley
14 M. Secrist.

15 Q Mr. Powell was your particular appointee?

16 A Yes, sir.

17 Q Do you know who represented Mr. Campbell?

18 A I don't remember which one of them it was.

19 Q At any rate, you presented evidence at
20 that time of alleged defaults on the part of Mr.
21 Campbell under the May 31, 1956 lease, is that
22 right?

23 A Yes, sir.

24 Q What was the purpose of that arbitration?

25 A To determine whether there was a default.

26 Q What was the result of the arbitration?

1 MR. PERRY: You are instructed not to answer
2 that question. It calls for a conclusion. The
3 best evidence of that would be the testimony of
4 the arbitrators if it were admissible.

5 Q BY MR. PARSONS: I hand you an original
6 and a copy of a report signed by O. A. Sundness,
7 K. B. Powell and S. M. Secrist dated January 15,
8 1961.

9 A The only signature that I know on here is
10 Mr. Powell's.

11 Q You do recognize Mr. Powell's signature?

12 A Yes.

13 Q Have you seen that report before or a copy
14 of it?

15 A I can't tell until I look through the
16 files. I assume that I received a copy of it or
17 an original.

18 Q Would you look through your files?

19 A I doubt if I have it in here.

20 Q You know a decision was rendered, don't
21 you?

22 A Yes, sir.

23 Q And it was approximately January 15th?

24 A That is approximately right, yes.

25 Q You do recognize recognize the signature
26 there of Mr. Powell?

1 A Yes, sir.

2 (Defendants' Exhibit 18-Cowden was marked
3 for identification by the reporter.)

4 Q Mr. Cowden, on the second page of that
5 report towards the bottom opposite No. 3 it
6 purports to be one of the charges that was made
7 and one of the items that was to be determined by
8 the arbitrators:

9 "3. Lessee has failed to proceed
10 forthwith or at all and with diligence
11 during the term of the lease with mining
12 operations calculated to and which in
13 fact do properly, economically and fully
14 mine, remove and sell the iron ore deposit
15 located upon the demised premises.

16 "4. Lessee has failed to mine the
17 demised property for a period in excess
18 of six successive months."

19 Referring to those two charges, it's
20 stated in this decision the following:

21 "These two alleged breaches may be
22 considered together since they both must
23 be considered with regard to what the
24 term 'mining' refers to. To the layman
25 the term 'mining' usually connotes only
26 the drilling, the blasting and the loading

1 of the ore. However, in a contract such
2 as the one under consideration, the term
3 'mining' must of necessity cover all of
4 the steps required to develop the property
5 and get the ore to market. These would
6 include:

7 "1. Preliminary drilling and sampling
8 to determine the chemical and physical
9 characteristics of the ore for the purpose
10 of intelligently presenting it to the
11 market.

12 "2. Secondary drilling and sampling
13 for the purpose of intelligently laying
14 out a plan for economical operation of
15 the ore body. This planning would include
16 estimates of tonnage available, complete
17 analyses of this tonnage for presentation
18 to market and an estimate of cost of
19 production at the railroad or other
20 delivery point.

21 "3. Contacting consumers of iron ore
22 in hopes of establishing a firm and
23 continuing outlet for the product.

24 "4. After an interested consumer is
25 found and his approximate monthly or
26 annual demand is known, contacts and

1 negotiations with truckers or a railroad
2 must be made in an endeavor to obtain a
3 fair haulage rate."

4 Mr. Cowden, do you have any quarrel with
5 anything that is stated in there that I have just
6 read to you?

7 MR. PERRY: You are instructed not to answer
8 that question, Mr. Cowden. I wouldn't want you
9 quarreling with anybody.

10 THE WITNESS: I don't like to quarrel.

11 Q BY MR. PARSONS: Do you agree with those
12 statements I have just read from the arbitration
13 report?

14 MR. PERRY: You are instructed not to answer
15 that question, Mr. Cowden.

16 Q BY MR. PARSONS: What does the term
17 "mining" mean to you, Mr. Cowden?

18 MR. PERRY: Are you a miner, Mr. Cowden?

19 THE WITNESS: No, sir.

20 MR. PERRY: You are instructed not to answer
21 that question.

22 Q BY MR. PARSONS: All right. Let me read
23 a little further. Following where I left off on
24 page 3 it is stated:

25 "From the evidence submitted, it
26 appears that all these steps have been

1 taken. It also appears that the ore in
2 this deposit, while of fairly rich iron
3 content, is not very desirable for blast
4 furnace use and not at all suitable for
5 open hearth use, because of its air-
6 spalling characteristics which produces
7 a large amount of fines, undesirable for
8 pig iron and for steel making. It does
9 have a limited value for special purposes,
10 and from evidence submitted (ore contract
11 dated 8/2/60) it appears that a market
12 has been found and delivery on contracts
13 has begun. While compliance may have
14 been slow, the contact between Lessee and
15 Lessor may not have been as satisfactory
16 as it should have been, it appears that
17 production is now started, and Lessee
18 should not be charged with noncompliance
19 at this time."

20 And now I am reading from the last page,
21 the last paragraph where it is stated:

22 "In summary, it is our feeling that
23 finding a specialty market for such a
24 small tonnage, with physical characteristics
25 unknown and untried, is a difficult task.
26 The blast furnace man operates a utility

1 within which various chemical reactions,
2 still not completely understood, are taking
3 place. If he has available known uniform
4 ores which produce for him a satisfactory
5 product, at reasonable cost, he is loath
6 to experiment with an unknown ore which
7 may seriously upset his furnace practice.
8 Now that a specialty market seems to be
9 opening up, it will be to the best economic
10 interest of both Lessor and Lessee to work
11 closely together and pursue this outlet
12 while attempting to develop others."

13 I am now going to read the paragraph
14 preceding the one I have just read where it is
15 stated as follows:

16 "There are some ambiguities in the
17 contract and it is clear that certain
18 parts of the lease are interpreted one
19 way by the Lessor and another way by the
20 Lessee, therefore, it is our recommendation
21 that the Lessor and the Lessee meet and
22 iron out these areas of misunderstanding
23 so as to avoid friction and arbitration
24 in the future."

25 Mr. Cowden, did you consider that
26 arbitration decision binding upon you?

1 A Yes, sir.

2 Q Do you still as of that date?

3 MR. PERRY: You are instructed not to answer
4 that question.

5 Q BY MR. PARSONS: Do you still consider
6 the arbitration agreement was binding upon you
7 at the time of its rendition on January 15, 1961?

8 A Yes, sir.

9 Q What do you now contend to be the reason
10 that the lease is not in effect if that is your
11 contention?

12 A Failure to mine.

13 Q Failure to mine successfully for a six
14 months' period?

15 MR. PERRY: He didn't say that. He said
16 "failure to mine."

17 Q BY MR. PARSONS: I assume you mean within
18 the terms of the lease where it says -- I will
19 read it to you --

20 MR. PERRY: What Mr. Cowden means is precisely
21 what he says and nothing more or nothing less.

22 Q BY MR. PARSONS: Failure to mine ore from
23 the property, is that right?

24 A Pardon me?

25 Q Failure to mine ore from the property is
26 what you contend is the present breach of the

1 lease, is that correct?

2 A That is the property we are discussing.

3 Q Anything else?

4 A Well, at least that is the important part.

5 Q Do you now understand that the ore that is
6 available on that property is a particularly
7 friable sort of thing that decrepitates -- maybe
8 I shouldn't use that word -- that breaks up very
9 easily on exposure?

10 A I have been told that.

11 Q Do you understand that it's not suitable
12 for blast furnace treatment or hearth furnace
13 treatment by reason of that?

14 A Only by what I have been told.

15 Q But you have been so informed by experts,
16 is that right?

17 A Well, Mr. Powell is one of the persons
18 who has told me that.

19 Q He was your arbitrator?

20 A Yes, sir.

21 Q Do you consider him an expert?

22 A I thought he was competent to meet the
23 requirements of the lease as an arbitrator.

24 Q Since the arbitration agreement, sir, what
25 date did you consider that the lease was no longer
26 in effect?

1 MR. PERRY: Unless you have a specific date in
2 mind, Mr. Cowden, you need not hazard a guess or
3 speculate.

4 THE WITNESS: I won't try to guess.

5 MR. PERRY: Is that something you have left
6 in the hands of your counsel?

7 THE WITNESS: Yes.

8 Q BY MR. PARSONS: Would you object to
9 production on the property now by reason of any
10 tax consideration?

11 MR. PERRY: You need not answer that unless
12 you give someone a lease.

13 Q BY MR. PARSONS: Well, without regard to
14 the comments of counsel will you now answer?

15 MR. PERRY: No, you won't answer. It's pure
16 speculation.

17 Q BY MR. PARSONS: You did at one time in
18 part object to a great big production by reason of
19 the amount of income which would accrue to you and
20 you would have to pay a tax on, is that right?

21 A That was one of the reasons.

22 Q Does that reason still exist?

23 A It might and it might not.

24 Q Is that as much of an answer as you are
25 going to give me?

26 A Yes, sir.

1 Q Who wrote this lease? Who prepared this
2 lease?

3 A Mr. Wilmer of Snell & Wilmer.

4 MR. PARSONS: That is all.

5

6

REDIRECT EXAMINATION

7 BY MR. PERRY:

8 Q I have one or two questions, sir, just so
9 that the record may be clear. Did you ever have
10 any contact with anybody representing Mitsubishi
11 or any other Japanese interests?

12 A No, sir.

13 Q Have you ever by any conduct on your part
14 interfered between Mr. Wright or Mr. Campbell and
15 anybody representing any Japanese interests with
16 whom they may have been dealing?

17 A No, sir.

18 Q Did you do anything affirmative on your
19 part to prevent a deal between Mr. Wright and the
20 Japanese interests, Mitsubishi or anybody else?

21 A No, sir.

22 Q Has the lease between the Campbells and
23 you that we have been talking about ever been
24 modified or amended?

25 A No, sir.

26 Q Am I correct that in your conference or

1 conversation with Mr. Wright about Mitsubishi you
2 merely expressed your personal feeling about the
3 deal which he was proposing to make?

4 A Yes, sir.

5 MR. PERRY: That is all.

6

7 RE-CROSS EXAMINATION

8 BY MR. PARSONS:

9 Q What did you think the arbitrators were
10 referring to when they spoke in their report for
11 a need of cooperation between the parties and the
12 elimination of ambiguities in the lease?

13 MR. PERRY: You need not answer that question.

14 Q BY MR. PARSONS: Do you have any thoughts
15 on the matter at all?

16 MR. PERRY: Whether you have thoughts or not
17 is entirely irrelevant. Do not answer the
18 question.

19 Q BY MR. PARSONS: What specifically do you
20 think they are referring to when they said there
21 are ambiguities? Do you consider the lease
22 ambiguous in any respect? Are you instructing him
23 not to answer?

24 MR. PERRY: I am.

25 MR. PARSONS: That is all.

26 (Signature waived.)

1 STATE OF ARIZONA,)
 2 COUNTY OF MARICOPA.) ss.

3 I hereby certify that I took the foregoing
 4 deposition pursuant to stipulation; that I was
 5 then and there a notary public in and for the
 6 County of Maricopa, State of Arizona, and by
 7 virtue thereof authorized to administer an oath;
 8 that the witness before testifying was duly sworn
 9 by me to testify to the truth, the whole truth and
 10 nothing but the truth; that said deposition was
 11 reduced to typewriting under my direction, and
 12 that the foregoing 52 typewritten pages constitute
 13 a full, true and accurate transcript of the
 14 testimony of said witness.

15 Witness my hand and seal of office this 7th
 16 day of November, 1962.

17
 18
 19 _____
 20 Richard H. Ryan
 21 Notary Public

22 My commission expires
 23 August 25, 1964.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

E. RAY COWDEN and
RUTH REED COWDEN,

Plaintiffs,

vs.

ELWOOD WRIGHT, et al.,

Defendants.

No. 22363

No. 22571

DEPOSITION OF GUY ALLAN SWARTZ

Phoenix, Arizona
November 1, 1962

RYAN, POWERS & RYAN
COURT REPORTERS
412 SECURITY BUILDING
PHOENIX 4, ARIZONA
TELEPHONE ALPINE 8-6064

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

E. RAY COWDEN and
RUTH REED COWDEN,

Plaintiffs,

vs.

ELWOOD WRIGHT, et al.,

Defendants.

No. 22363
No. 22571

DEPOSITION OF GUY ALLAN SWARTZ

BE IT REMEMBERED that pursuant to stipulation the deposition of Guy Allan Swartz, a defendant herein, was taken upon cross examination by the plaintiffs, before Richard H. Ryan, a notary public in and for the County of Maricopa, State of Arizona, on the 1st day of November, 1962, commencing at the hour of 4:30 o'clock p.m., at the offices of Messrs. Snell & Wilmer, 400 Security Building, Phoenix, Arizona.

The plaintiffs were represented by their attorneys, Messrs. Snell & Wilmer, by Mr. Roger W. Perry and Mr. Edward Jacobson.

The defendants were represented by their attorneys, Messrs. Tognoni, Parsons, Birchett & Gooding, by Mr. Arthur B. Parsons, Jr.

The following proceedings were had:

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STIPULATION

IT WAS STIPULATED by and between the parties to the above-entitled cause that the deposition of Guy Allan Swartz may be taken upon cross examination before Richard H. Ryan, a notary public in and for the County of Maricopa, State of Arizona, on the 1st day of November, 1962, commencing at the hour of 4:30 o'clock p.m., at the offices of Messrs. Snell & Wilmer, 400 Security Building, Phoenix, Arizona.

It was further stipulated that all objections except as to form of questions or answers and except as to errors which might be obviated or cured at the time of the taking of the deposition are reserved until the time of trial. All other formalities required by law for the taking and returning of depositions, including the signature of the witness, are waived.

1 GUY ALLAN SWARTZ,
2 being first duly sworn by the notary, testified
3 as follows:
4

5 CROSS EXAMINATION

6 BY MR. PERRY:

7 Q What is your name, please?

8 A Guy Allan Swartz.

9 Q You are one of the defendants in the
10 lawsuit entitled Cowden vs. Wright, et al., No.
11 22571, now pending in Yavapai County, Arizona,
12 and also one of the defendants in Cause No.
13 22363, also bearing caption E. Ray Cowden, et al.,
14 vs. Elwood Wright, et al., isn't that right?

15 A Yes.

16 MR. PARSONS: He isn't yet, but he will be.

17 MR. PERRY: I understood yesterday that he
18 might be joined as a party.

19 MR. PARSONS: We have stipulated that he might
20 be joined as a party.

21 Q BY MR. PERRY: And you have appeared in
22 this case by your attorney, Mr. Arthur Parsons,
23 of the firm of Tognoni, Parsons, Birchett &
24 Gooding during the depositions which have been
25 taken yesterday and today, is that right?

26 A Excepting this morning.

1 Q Well, you were not personally present
2 this morning, but your attorney was?

3 A Yes, that's correct.

4 Q You have been served with a complaint and
5 summons in the action No. 22571, that is, the
6 injunction action?

7 A Yes, that's correct.

8 Q Do you claim any interest in the property
9 we have been referring to as the Cowden mining
10 property?

11 A I do indeed.

12 Q What interest do you claim in that property,
13 sir?

14 A I claim the rights of the lessee as
15 outlined in the lease agreement which I believe is
16 on record between the Yavapai Ranch and Cattle
17 Company and E. P. Campbell.

18 Q By what right do you claim the position
19 of lessee under that lease?

20 A By a direct assignment from Mr. Wright
21 who was the assignee of Mr. Campbell.

22 Q On what date was that assignment made to
23 you by Mr. Wright?

24 A I believe that was on July 5, 1962.

25 Q At the time you accepted the assignment
26 from Mr. Wright were you aware that there had been

1 filed and was pending in Yavapai County, Arizona,
2 an action to quiet title and naming the Campbell
3 estate and Mr. Wright as defendants?

4 A I don't believe at that time I was aware of
5 any impending action.

6 Q When did you first become aware of the
7 fact that there was a lawsuit pending?

8 A It would be shortly thereafter. I don't
9 recollect any specific date as such.

10 Q Was it sometime during the month of July?

11 A I believe that it probably would be, yes.

12 Q Have you been on the property?

13 A Oh, yes.

14 Q Do you intend to go on it again?

15 A Indeed I do.

16 Q Unless you are restrained by a court of
17 competent jurisdiction, Mr. Swartz, will you
18 continue to go upon that property?

19 A I certainly will.

20 Q And that will be pursuant to what you
21 claim to be a valid assignment of a present
22 existing lease?

23 A That would be actually one of the duties
24 and obligations of the lessee whose rights I claim.

25 Q Pursuant to the lease which you claim still
26 exists?

1 A Yes, which does exist at this time.

2 Q In your opinion.

3 A I am sure that it does.

4 Q You have entered into a contract dated
5 July 5, 1962 which I believe was executed
6 coincident with the assignment of the lease to
7 you, is that right?

8 A Would you repeat that again?

9 (Pending question read by the reporter.)

10 A We entered into a contract which I believe
11 had the heading of an agreement.

12 Q This is a copy of Plaintiffs' Exhibit E
13 attached to the deposition of Mr. Wright. Will
14 you tell me if that is the agreement that you
15 entered into at that time?

16 A It does appear to be a copy of that
17 particular agreement.

18 Q At the time that you accepted the assign-
19 ment and entered into this contract and before
20 that time, Mr. Swartz, did Mr. Wright inform you
21 that it was possible that the estate of the late
22 Mr. Campbell might claim some interest in this
23 lease?

24 A That matter was discussed. However, I
25 could see no way in my own mind that there would
26 be any adverse claim in that respect.

1 Q With whom was it discussed?

2 A Between Mr. Wright and myself.

3 Q Tell me that discussion.

4 A Mr. Wright merely gave me the history,
5 and I believe that he was very honest and gave me
6 quite a complete history on the whole proceedings
7 of the property.

8 Q He didn't tell you about the quiet title
9 action, though?

10 A I don't know that Mr. Wright was actually
11 aware of it at that time.

12 Q What did he tell you about the interests
13 of the Campbells or any claimed interests they
14 might have in this lease?

15 A Mr. Wright as I recall thought that he
16 owed a moral obligation to Mrs. Campbell at that
17 time. However, that is a point of his own
18 consideration. By examination and reading of the
19 various transactions in the past I could not see
20 that there would be any complications or obliga-
21 tions legally binding.

22 Q You reached that conclusion after your
23 conference with Mr. Wright?

24 A Yes, I did.

25 Q Did you have any legal counsel in that
26 connection?

1 A At that time I don't believe I did, no.

2 Q When did you first employ counsel in
3 connection with this matter?

4 A I would judge on about -- let's see --
5 maybe we best back up here. Mr. Wright and I were
6 negotiating on this property several months before
7 July. I don't know the exact date. But in that
8 interim before July 5th I did have legal counsel.

9 Q Who was that?

10 A I have talked to several attorneys, Mr.
11 Pat Walker of Post, Texas and Mr. Dean Salsbury
12 of Roswell, New Mexico and also Mr. Tognoni and
13 Mr. Parsons.

14 Q Where was this contract negotiated and
15 drawn?

16 A It was negotiated over a period of time in
17 several different places. It was drawn in Roswell,
18 New Mexico.

19 Q Have you any knowledge of any claim
20 asserted by the Campbell estate under this lease?

21 A None to my knowledge.

22 Q Have you made any effort to ascertain
23 whether any such claim is asserted?

24 A I have.

25 Q With whom have you talked or had
26 conferences in that connection?

1 A Mr. Chardo Pierce for one.

2 Q Who is he?

3 A He is an individual who works in connection
4 but without salary or compensation with the
5 Campbell estate. I know him personally and
6 consider him a personal friend of mine.

7 Q Is he an attorney?

8 A No, sir, he is not.

9 Q Is he the executor or administrator of
10 the estate of Mr. Campbell?

11 A No, sir, he is not.

12 Q Do you know who is?

13 A So far as I know there isn't any.

14 Q Have you made an effort to find out
15 whether or not there was one?

16 A I have.

17 Q Have you contacted Mrs. Campbell?

18 A I haven't spoken to Mrs. Campbell in quite
19 some time.

20 Q Have you expended any money in connection
21 with this lease since you accepted the assignment?

22 A Yes.

23 Q Tell me what you spent and what for.

24 A In addition to innumerable traveling
25 expenses, I believe for assessment work and a small
26 amount of mining which was accomplished in the

9

1 month of August, 1962, there was a sum in excess
2 of \$2,000. I don't know exactly how much, but I
3 am sure it would be that.

4 Q What was that spent for?

5 A That was assessment work and general
6 evaluation up there.

7 Q The assessment work was on the unpatented
8 claims?

9 A Yes. We also did a small amount of mining
10 there, mainly to determine the method, the proper
11 method of mining actually and to learn more of
12 the property, too.

13 Q Have you had any actual experience in
14 mining yourself?

15 A Some, mostly on a consulting basis and by
16 reason of my educational background.

17 Q You are a geologist?

18 A Yes, sir.

19 Q Do you have a degree in geology?

20 A Yes, sir, from Ohio State University.

21 Q I wonder if you would be kind enough to
22 tell me about the assessment work that was done.

23 A I don't recall the exact number, but there
24 were several core tests drilled with a wagon drill
25 air operated, and those were drilled in such
26

1 locations so as to properly evaluate to the
2 greatest extent each unpatented lease on the
3 property.

4 Q Was all this work accomplished in one day?

5 A No, sir, it took a period of I believe
6 four or five days.

7 Q Were you on the property personally doing
8 this work?

9 A Oh, yes.

10 Q Who else was with you on the property?

11 A I had two other individuals with me, Mr.
12 Joe Don Cook and Mr. Kenneth Frick.

13 Q Where are those gentlemen from?

14 A They are from Roswell, New Mexico.

15 Q What is their business?

16 A They are employees of mine. Incidentally,
17 in this regard if I may add here I did make a
18 small report of sample description with the
19 location of each core test, and I did send Mr.
20 Cowden a copy of that accompanied with five-foot
21 samples from each core test.

22 Q When was that sent?

23 A I don't know the approximate date, but it
24 was shortly thereafter.

25 Q I take it that the report you sent to Mr.
26 Cowden would be dated and the date would be

1 approximately the time you mailed it?

2 A It would be approximately that, yes, or
3 at that date.

4 Q In connection with this agreement
5 between yourself and Mr. Wright have you made any
6 firm plans as to beginning production?

7 A Yes, sir.

8 Q Tell me about that.

9 A I have obtained a lease from the Santa Fe
10 Railway alongside the rail spur in Seligman. This
11 lease is large enough for adequate stockpiling.
12 We have to date had a mill constructed and plan
13 to -- well, the mill today is being disassembled
14 and is in the process of being shipped to
15 Seligman to be installed at this particular site.
16 We have moved 200 tons of ore from the mine site
17 to the rail site. In addition we have verified and
18 ascertained a sizable market for the coming year.
19 We have made arrangements for bagging equipment.
20 In short, we are attempting to be set up to move
21 somewhere between 1,000 and 1500 tons per day.
22 We hope to be at that point of production within
23 two or three months.

24 Q You plan to move about 1,000 tons a day,
25 about 25,000 tons a month?

26 A That would be 1,000 tons a day. If there

1 are 31 days, that would probably be 31,000,
2 probably run around the clock.

3 Q Run around the clock?

4 A In the oil fields we normally do.

5 Q Well, that is what you contemplate on this
6 deal?

7 A At this time I anticipate that.

8 Q How long would it take you under those
9 circumstances to strip this property of ore?

10 A That depends on how big the property is.
11 That is one unknown factor at this time.

12 Q What is your best estimate?

13 A I believe that there is somewhere in the
14 neighborhood of one million tons on the property,
15 but that could be very much enlarged.

16 Q Assuming that you were talking about
17 a million tons, you would contemplate starting
18 production and once you reached your peak
19 continuing until a million tons is gone at 1,000
20 tons a day?

21 A I believe one would have to move nearly
22 that amount to remove that much ore in the time
23 remaining on the lease.

24 Q It's your idea then to exhaust the ore
25 body during the remaining period of the lease?

26 A I believe that is one of the obligations

1 of the lessee.

2 Q Well, whether it's an obligation of the
3 lessee or not, that is what you intend to do?

4 A That is my present anticipation, that is
5 correct. However, it does appear at this time
6 that the ore body may be quite a bit larger than
7 is apparent. It's highly possible through
8 different faulting patterns in the area that the
9 ore bodies may be discontinuous but actually to
10 be larger than is evident on the surface.

11 Q You plan to have a large stockpile of ore
12 in Seligman, do you?

13 A Yes, sir.

14 Q That will be held on your own account and
15 not sold?

16 A No, sir, that will be sold eventually.

17 Q Eventually?

18 A As time is provided.

19 Q Do you contemplate paying the royalty when
20 you remove the ore from the mine site or after you
21 sell it later?

22 A I believe the lease calls for the payment
23 of the royalty of the ore as it's removed from
24 the mine site, and I would abide in all cases by
25 the lease.

26 Q Is there anyone else interested now in

1 this Cowden lease other than yourself and Mr.
2 Wright by reason of this contract?

3 A No, sir.

4 Q You have no other associates in this deal,
5 no other associates with an ownership interest in
6 the deal?

7 A Not at this present time, no, sir.

8 Q Have you pledged your interest in this
9 deal as security in connection with the financing
10 of the deal?

11 A I have not.

12 Q Have all the funds advanced so far been
13 your own funds?

14 A In connection here, yes.

15 Q Do you anticipate that you will need
16 financing to set up a fine grind mill and so on?

17 A I do anticipate eventual financing, yes,
18 for payment of royalties and removal of some ore,
19 yes, that is quite true.

20 Q Do you know where that financing is coming
21 from?

22 A Yes, sir, I have a pretty fair idea. In
23 fact, I have turned down several offers of
24 financing. I am not particularly worried about
25 financing at this point.

26 Q Has Mr. Wright agreed to indemnify you

1 from any loss you might experience if it's
2 declared that this lease is no good?

3 A No, sir.

4 Q You have just taken that risk, is that
5 right?

6 A After I am into something like this, why,
7 I don't believe I would have any cause of action
8 with Mr. Wright, no, sir.

9 Q Are you trained in the law?

10 A No, sir.

11 Q You have no other agreement with any
12 persons except the assignment of the lease which
13 we know about and except this contract which we
14 refer to?

15 A I have had discussions with many people.

16 Q I said "agreements."

17 A I have no agreements in effect at this
18 time.

19 Q What is your business at the moment aside
20 from this lease?

21 A I am a consulting engineer and geologist.

22 Q Is that a full time occupation?

23 A It certainly is, about a 24 hour a day one.

24 Q Where is your home?

25 A It's in Roswell, New Mexico.

26 Q Do you intend to move to Seligman if this

1 thing starts?

2 A No, sir. I presently intend at this time
3 to move to Prescott.

4 Q You would operate from Prescott?

5 A I would.

6 Q Do you plan to have a full time foreman
7 in Seligman?

8 A Yes, sir.

9 Q Have you hired such a person?

10 A No, sir. I am negotiating with one
11 individual at this time for that position.

12 Q Who is that?

13 A I would hesitate to say at this time
14 because it might jeopardize his position. I
15 don't know. Well, I don't think it would matter.
16 Mr. A. J. Henry.

17 Q Where does he live?

18 A Phoenix.

19 Q You intend then to abandon your present
20 practice?

21 A No, sir, I do not intend to abandon it.
22 I do believe that 99 per cent of my time would
23 probably be devoted to this effort. I believe it
24 would be worthy of it.

25 Q Tell me, do you have an oral agreement of
26 any kind which is going to provide you the

1 financing you are going to need to put this thing
2 into operation?

3 A I have had discussions with individuals
4 in which case I may join or split interests. I
5 do not have any standing agreements orally or
6 written at this time with any individual. In this
7 light, as an example of that statement, Mr. Davis
8 of Los Angeles, who would be one of our chief
9 purchasers, entertained his interest to join in
10 the structure of an organization of this nature
11 handling this particular type of material.

12 Q Are there any outstanding offers of
13 financing right now which are there and all you
14 have to do is accept it if you want?

15 A I believe so, yes.

16 Q Tell me about them.

17 A I don't believe that they would be far
18 enough along to get into that because it would be
19 hearsay, and I would hesitate to violate the trust
20 of any individual in that nature.

21 Q You mean you have promises of financing
22 from people whose names you do not feel you can
23 divulge because they want to keep it a secret?

24 A No, sir, I don't believe that ethics would
25 allow me to get into details of that nature at this
26 time.

1 Q You realize, sir, that you are under oath?

2 A Yes, sir.

3 Q And that you have an obligation to fully
4 and completely tell the truth and the facts about
5 this matter?

6 MR. PARSONS: Mr. Perry, obviously he doesn't
7 wish to embarrass somebody.

8 MR. PERRY: I am sorry if anybody has to be
9 embarrassed, but we have a right to know these
10 things.

11 MR. PARSONS: I don't think he should be
12 required to answer such a question with respect
13 to people who may have come to him with proposals
14 for fear of causing other persons to be embarrassed
15 by it and the persons who made the proposals.

16 MR. PERRY: If you are instructing him not to
17 answer, the reason is because it might be
18 embarrassing to some third parties?

19 MR. PARSONS: Not purely on the grounds of
20 embarrassment but on the grounds of the statement
21 that he made that it wouldn't be ethical, that it
22 was a trust.

23 THE WITNESS: I will say that I do not have
24 any agreements either verbally or written other
25 than those that are on the record at this time,
26 and any other discussion would be hearsay.

1 Q BY MR. PERRY: Have you ever mined iron
2 before?

3 A No, sir.

4 Q Have you ever mined anything before?

5 A I have evaluated mining properties on
6 several instances. It would depend on your
7 definition of "mining" in this instance.

8 Q How do you define "mining"?

9 A Well, I believe that evaluation is mining.
10 I believe actually anything connected with the
11 mining business is a particular type or phase of
12 mining. It's certainly so in the steel industry.

13 Q I take it for the last few days we have
14 been engaged in mining here?

15 A I believe it's a phase of mining, yes,
16 sir.

17 Q Except for the evaluation of some iron
18 properties have you done any mining, iron mining?

19 A No, sir.

20 Q And I take it that in your opinion anyone
21 that goes to a piece of property to look at it,
22 if he has had some training and recognizes ore
23 when he sees it, is engaged in mining?

24 A No, sir.

25 Q How can you tell by looking whether he is
26 mining or not?

1 A By physical appearance I don't believe you
2 could.

3 Q How would we tell?

4 A By the results that he might obtain.

5 Q That is a good definition. "By results";
6 O.K. What else?

7 A I don't believe there would be any other
8 way of telling.

9 Q In other words, if I hired you as a
10 geologist to go up to my Quarter Circle Mine and
11 look at it and maybe make an assay or something,
12 and when you came down the hill again and I said,
13 "Have you ever mined the Quarter Circle?" why, your
14 answer would be yes, you had mined it because you
15 had been engaged in mining on it, is that right?

16 A Results in this case might be a very
17 intangible and not visual effect. An opinion
18 could be derived which by examination of the
19 property and thereby could be construed as mining
20 I believe.

21 MR. PERRY: I think that is all.

22 (Signature waived.)
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1 STATE OF ARIZONA,)
 2 COUNTY OF MARICOPA.) ss.

3 I hereby certify that I took the foregoing
 4 deposition pursuant to stipulation; that I was
 5 then and there a notary public in and for the
 6 County of Maricopa, State of Arizona, and by
 7 virtue thereof authorized to administer an oath;
 8 that the witness before testifying was duly sworn
 9 by me to testify to the truth, the whole truth,
 10 and nothing but the truth; that said deposition
 11 was reduced to typewriting under my direction, and
 12 that the foregoing 21 typewritten pages constitute
 13 a full, true and accurate transcript of the
 14 testimony of said witness.

15 Witness my hand and seal of office this 7th
 16 day of November, 1962.

17
 18
 19 _____
 20 Richard H. Ryan
 21 Notary Public

22 My commission expires
 23 August 25, 1964.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

E. RAY COWDEN and
RUTH REED COWDEN,

Plaintiffs,

vs.

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DEPOSITION OF ELWOOD WRIGHT

Phoenix, Arizona
October 31, 1962

E. W. Wright
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RYAN, POWERS & RYAN
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1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF YAVAPAI

3
4 E. RAY COWDEN and
5 RUTH REED COWDEN,

6 Plaintiffs,

7 vs.

8 ELWOOD WRIGHT, et al.,

9 Defendants.

) No. 22363

) No. 22571

10 DEPOSITION OF ELWOOD WRIGHT

11 BE IT REMEMBERED that pursuant to stipulation
12 the deposition of Elwood Wright, a defendant
13 herein, was taken upon cross examination by the
14 plaintiffs, before Richard H. Ryan, a notary
15 public in and for the County of Maricopa, State of
16 Arizona, in Room 400 Security Building, Phoenix,
17 Arizona, on the 31st day of October, 1962,
18 commencing at 2:00 o'clock p.m.

19 The plaintiffs were represented by their
20 attorneys, Messrs. Snell & Wilmer, by Mr. Roger W.
21 Perry and Mr. Edward Jacobson.

22 The defendants were represented by their
23 attorneys, Messrs. Tognoni, Parsons, Birchett &
24 Gooding, by Mr. Arthur B. Parsons, Jr.

25 The following proceedings were had:
26

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3 STIPULATION

4 IT WAS STIPULATED by and between the parties
5 to the above-entitled cause that the deposition of
6 Elwood Wright may be taken upon cross examination
7 before Richard H. Ryan, a notary public in and for
8 the County of Maricopa, State of Arizona, on the
9 31st day of October, 1962, commencing at the hour
10 of 2:00 o'clock p.m., at the offices of Messrs.
11 Snell & Wilmer, 400 Security Building, Phoenix,
12 Arizona.

13 It was further stipulated that all objections
14 except as to form of questions or answers and
15 except as to errors which might be obviated or
16 cured at the time of the taking of the deposition
17 are reserved until the time of trial. All other
18 formalities required by law for the taking and
19 returning of depositions, including the signature
20 of the witness, are waived.
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1 MR. PERRY: Art, will we have these depositions
2 for both cases?

3 MR. PARSONS: Yes, I'm perfectly agreeable to
4 that.

5 (Discussion off the record.)

6 MR. PARSONS: We are agreeable to having Mr.
7 and Mrs. Swartz joined in the quiet title action.

8 MR. PERRY: May the record show that we may
9 add their names to the caption as parties
10 defendant?

11 MR. PARSONS: Yes. It's Guy A. Swartz and Donna
12 A. Swartz.

13 MR. PERRY: Are we agreed that the deposition
14 may be used in either case?

15 MR. PARSONS: Either case.

16
17 ELWOOD WRIGHT,
18 being first duly sworn by the notary, testified
19 as follows:

20
21 CROSS EXAMINATION

22 BY MR. PERRY:

23 Q Will you state your name?

24 A Elwood Wright.

25 Q Mr. Wright, you have been sworn and you
26 understand that you are under oath?

1 A I do, yes.

2 Q You have testified in the past on
3 occasion, have you?

4 A Yes, one time.

5 Q Was that in an arbitration proceeding?

6 A Yes, in the arbitration proceeding.

7 Q What is your age, Mr. Wright?

8 A I'm 39.

9 Q Where do you live?

10 A I presently reside at 118 North Avenue H,
11 Post, Texas.

12 Q How long have you lived in Post?

13 A It's my home town. I was born and raised
14 there.

15 Q Are you married?

16 A Yes.

17 Q Do you have children?

18 A Yes, I do.

19 Q How many children do you have?

20 A I have two children and one stepchild.

21 Q What are the ages of your children?

22 A My stepdaughter is eight. I have one son
23 22 months old and one son five months old.

24 Q When were you married?

25 A I was married in 1960.

26 Q What is your wife's name?

1 A Mary Lee Wright.

2 Q You say you were born in Post, Texas?

3 A Yes, sir.

4 Q And did you grow up in that city?

5 A Yes.

6 Q I say "city"; what is the population of
7 Post, Texas?

8 A Presently probably about 5500.

9 Q What educational background do you have?

10 A I have a high school education and three
11 years in geology at Texas Tech.

12 Q Do you have a degree from Texas Tech?

13 A No, sir, I do not have a degree.

14 Q Go ahead.

15 A And two years at the University of Houston
16 in electricity.

17 Q Do you have a degree from any educational
18 institution?

19 A I take it that you mean an institution of
20 higher learning beyond high school?

21 Q Yes.

22 A No, sir, I do not have a degree.

23 Q You went to high school in Post?

24 A Yes, sir.

25 Q When did you first start earning a living
26 on your own, at what age?

1 A Completely on my own?

2 Q Yes, sir.

3 A Well, I supported myself mostly through
4 college.

5 Q What was your employment at that time?

6 A Working part time in grocery stores and
7 odds and ends.

8 Q When did you first have full time employ-
9 ment when you were not also going to school?

10 A That would be in 1949.

11 Q Who did you work for then?

12 A I worked for Humble Oil & Refining Company.

13 Q What did you do for Humble?

14 A I was in geophysical research and geophysical.

15 Q And what was your job?

16 A It was a combination of several jobs. I
17 was a shooter, which is associated with the
18 blasting of the dynamite, and then I was on the
19 recording truck taking recordings of the
20 geophysical work.

21 Q Was this laboring work?

22 A It's not classified as labor, no.

23 Q Do you have to have special education,
24 background and training?

25 A You should, yes, sir. It's not necessary.
26 I mean you can learn it in the field.

1 Q Is that what you did, learned it in the
2 field?

3 A Yes, I mean other than my geological
4 training.

5 Q What was the next job you had?

6 A With Lowe Electric Company, Houston,
7 Texas.

8 Q What did you do for Lowe Electric Company?

9 A I worked as an apprentice electrician and
10 then became an electrician.

11 Q During what years were you with Lowe?

12 A This was '51 through '54, sometime in '54.

13 Q What was your next job?

14 A I owned a half interest in a grocery
15 store.

16 Q Where was that, in Post?

17 A Post, Texas.

18 Q How long did you have the grocery store?

19 A I sold out after 14 months.

20 Q Then what did you do?

21 A Then I went to work for E. P. Campbell
22 of Western Drilling Company, Lubbock, Texas.

23 Q What was Mr. Campbell's company?

24 A Western Drilling Company.

25 Q Had you known Mr. Campbell before that time?

26 A No, not until the interview.

1 Q This was in Lubbock?

2 A Lubbock, Texas, yes.

3 Q What was your first assignment when you
4 started working for Mr. Campbell?

5 A In geological exploration and exploration
6 drilling for uranium and other minerals.

7 Q Were you on a salary?

8 A I was on an expense account.

9 Q Did you receive any salary?

10 A No, sir, never did I receive a salary
11 while working for Mr. Campbell.

12 Q How were you paid?

13 A I was not paid. I had some of my own
14 money. I worked on a contingency basis plus my
15 expenses.

16 Q Would you explain how you received
17 earnings?

18 A I did not receive any earnings. All my
19 expenses were paid, and then anything that I found
20 I owned an interest in.

21 Q What was the year you started with Mr.
22 Campbell?

23 A May of 1954.

24 Q During that first year did you report any
25 income for federal income tax purposes?

26 A Yes, sir, because I had a previous income

1 in my grocery business.

2 Q Did you have any income as a result of
3 your deal with Mr. Campbell?

4 A My association with Mr. Campbell, no, sir.

5 Q During the following year of '55 to '56
6 did you have any reportable income?

7 A No, sir.

8 Q How about 1956 to '57?

9 A No, sir.

10 Q '57 to '58?

11 A No, sir.

12 Q '58 to '59?

13 MR. PARSONS: I would like to object to these
14 questions with respect to Mr. Wright's income as
15 being wholly immaterial and irrelevant so far as
16 the issues of this case are concerned.

17 Q BY MR. PERRY: O.K. Now you can go ahead,
18 sir. '58 to '59?

19 A No, sir. Let's just say that I did not
20 have any income while I was employed with Mr.
21 Campbell.

22 Q Did you file federal income tax returns
23 during those years?

24 A No, sir.

25 MR. PARSONS: May that be noted as a continuing
26 objection?

1 MR. PERRY: Yes, of course.

2 Q When did you sever your connection with
3 Mr. E. P. Campbell?

4 A Upon his death, which was May 9, 1961.

5 Q Have you had any income since that time?

6 A No, sir.

7 Q Does your wife work?

8 A No, sir.

9 Q Are you independently wealthy?

10 A No, sir.

11 Q What is your business at this time?

12 A I'm not employed.

13 Q When were you last employed?

14 MR. PARSONS: My objection continues to this
15 whole line of questioning with respect to
16 employment.

17 THE WITNESS: I have not been employed other
18 than what I spoke of with Mr. Campbell other than
19 I have done odd jobs on a contingency basis and
20 expenses paid for several companies.

21 Q BY MR. PERRY: Name those companies, please.

22 A Diversa, Incorporated of Dallas, Texas.

23 Q When did you do work for Diversa?

24 A I have never gone to work for Diversa. I
25 have done work for them under a consultant basis.

26 Q When was that?

1 A The first time was probably five years ago.

2 Q You were not paid anything for that work?

3 A No, sir. It was through Mr. Campbell as
4 a favor to Diversa.

5 Q Since that time have you done any other
6 work for them?

7 A Yes, sir. I would like to make it clear,
8 Art, that I have not received any money up until
9 this year. Is that understood?

10 Q You just tell me the facts, sir.

11 A Yes, I just came off of the job for
12 Diversa.

13 Q That was during 1962?

14 A Yes, sir, 1962.

15 Q Other than the work five years ago was this
16 job you just finished the only one you have had?

17 A No, sir. The only one I have had for what?

18 Q For Diversa.

19 A Oh, no. I have done work for Diversa
20 periodically for the last five years.

21 Q But you have never been paid for that?

22 A I have never been paid up until this year
23 by Diversa.

24 Q In 1962?

25 A 1962.

26 Q And in this year you first received some

1 compensation for your services?

2 A Yes, sir.

3 Q For what period of time did you work for
4 Diversa this year?

5 A From about July 6th until October 19th.

6 Q Was that a full time job during that
7 period?

8 A You mean was I employed by them full time?

9 Q Yes.

10 A Yes, sir.

11 Q Where was this employment geographically?

12 A In Colorado.

13 Q Whereabouts in Colorado?

14 A Ouray, Colorado.

15 Q Is that a mining property?

16 A Yes.

17 Q What kind of ore?

18 A Gold, silver, copper, lead, zinc.

19 Q Other than your work for Diversa and Mr.
20 Campbell, Mr. Wright, what other companies have
21 you worked for either on a purely expense account
22 basis or for salary?

23 A For salary this year I did an electrical
24 job.

25 Q For whom?

26 A For Wally Simpson, Post, Texas, a super

1 market.

2 Q Anything else?

3 A No.

4 Q When was the last time that you were at
5 the Cowden mining property?

6 A March, 1962, March and the first of
7 April.

8 Q You have not been at the Cowden mining
9 property since April, 1962?

10 A Not as working. I have been by there,
11 yes, sir.

12 Q Have you been on the land?

13 A Yes, sir.

14 Q When were you last on the land?

15 A In the latter part of April.

16 Q 1962?

17 A Yes, sir.

18 Q You have not been on the land since that
19 time?

20 A No, sir.

21 Q What did you do the last time you were on
22 the property?

23 A Just checked the property and took some
24 samples from the ore dump.

25 Q About how much in weight?

26 A Oh, 50 or 100 pounds.

1 Q Who was with you?

2 A No one.

3 Q Was that a trip of just a few moments,
4 then?

5 A Yes.

6 Q When next preceding that time were you
7 at the property?

8 A The last of March and two or three days in
9 April.

10 Q You were there two or three days early in
11 April?

12 A In early April, yes, and several days in
13 the latter part of March.

14 Q In the early part of April, 1962 what did
15 you do on the property?

16 A I was finishing up my work that I had
17 started previously in March.

18 Q What work was that?

19 A It was loading out and shipping out to
20 C. K. Williams Company 12 carloads of iron ore.

21 Q 12 railroad carloads?

22 A Yes.

23 Q That was from the Cowden property in March
24 and April of 1962?

25 A Well, the shipping was finished I believe
26 in the latter part of March, but I had some other

1 work to accomplish a couple of days in April.

2 Q Was this shipment in March of 1962
3 pursuant to a contract or purchase order you had
4 from C. K. Williams Company?

5 A Yes, sir, signed by Mr. Jim Stewart who
6 is the vice-president of C. K. Williams Company.

7 Q At what price was this ore sold?

8 A This ore was sold at \$7 loaded on the car
9 F.O.B. Seligman for minus four inch material.

10 Q When were these 12 carloads of ore mined?

11 A Some of it was presently mined at the time
12 I was shipping.

13 Q You actually did some blasting, you mean?

14 A Yes, definitely.

15 Q Blasting was done in March?

16 A Yes, sir.

17 Q Were you alone on the property in March
18 and April?

19 A No, sir.

20 Q Was someone with you?

21 A W. J. Winters.

22 Q Where is Mr. Winters?

23 A I believe he is presently living at Aguila,
24 Arizona.

25 Q Anyone else?

26 A Yes, sir, Mrs. Irene Allen.

1 Q Was she working there, too?

2 A She owned the truck and had a truck driver
3 there hauling the ore.

4 Q What was the truck driver's name?

5 A I can't think of it. It's Casey something,
6 but I just can't think of his last name because I
7 didn't have any dealings with him other than tell
8 him what to do.

9 Q You rented the truck from Mrs. Allen?

10 A From Mrs. Allen.

11 Q Where does Mrs. Allen live?

12 A I can't answer that. She used to live at
13 Aguila, Arizona, but I have no idea now.

14 Q You understand that she no longer lives
15 in Aguila?

16 A I don't know. I can't answer that. I
17 haven't seen her in several months.

18 Q Is Mr. Winters a miner?

19 A Yes, of 30 years experience.

20 Q How many days did you and Mr. Winters work
21 during March?

22 A Well, Mr. Winters had a helper. He had
23 two helpers. I don't remember their names at the
24 present. They may come to me. I believe one was
25 Ozzie Block.

26 Q Were these both local people?

1 A Well, they are miners. You know miners
2 live one place for a while and then they move on.

3 Q In any event Mr. Winters with two helpers
4 and you did the blasting and the removing of the
5 ore from the Cowden property in March of 1962?

6 A Yes, sir.

7 Q How many days were Winters and his two
8 helpers on the premises?

9 A Art, can I go back to my notes for a
10 moment?

11 MR. PARSONS: If you have something to
12 refresh your memory, you may refer to it.

13 MR. PERRY: I have no objection.

14 THE WITNESS: Art, I would like to correct
15 myself. May I correct myself?

16 Q BY MR. PERRY: Sure, if you made a mistake.

17 A I made an honest mistake. Mr. Winters and
18 Mr. Block were on the property in September of
19 1961. Mr. D. C. Evans and a miner that he hired
20 did the blasting in March of 1962.

21 Q Where is Mr. D. C. Evans?

22 A At that time he was living at Yarnell,
23 Arizona.

24 Q Do you know where he is now?

25 A I have been informed that he moved back to
26 Cortez, Colorado. I believe he owns a farm there.

1 Q Did you keep a copy of your letter to Mr.
2 Cowden dated April 3, 1962?

3 A Yes. I don't have it with me, but I am
4 sure I have got it in my file.

5 Q I will ask you if you recognize it if I
6 show you a photostat of it.

7 A Yes.

8 Q You can check the third page. Is that
9 your signature?

10 A Yes, sir.

11 Q You do recognize this as your letter to
12 Mr. Cowden bearing the April 3rd date?

13 A Yes, sir.

14 Q The first paragraph of that letter reads
15 as follows: "This letter will have to suffice as
16 I was informed that you were in Mexico this past
17 week. I had planned to spend some time with you
18 if possible while I was in Arizona, I did not
19 intend on stockpiling the ore from the Iron
20 Chancellor Claim until we had discussed the over-
21 all situation. However, I felt that I had better
22 do this as you were not available. I stockpiled
23 approximately 400 tons of mine run ore on your
24 property alongside the other stockpiles. This was
25 the ore I mined last September. I had two miners,
26 a truck and loader on the property on Sunday, March

1 25, 1962. We worked all that day and removed
2 from the Iron Chancellor roadside face to the
3 stockpile 25 full truckloads."

4 Is that what you wrote to Mr. Cowden?

5 A Yes, sir.

6 Q Is it true then that the only day that
7 you were on the property and doing any work on
8 the property in March was on March 25th?

9 A Yes, at that particular time. But
10 remember now I shipped 12 carloads of ore to C. K.
11 Williams. *in March 1961*

12 Q Did you ever advise Mr. Cowden of the
13 shipment to C. K. Williams prior to April in March
14 of 1962?

15 A I can't answer that for sure. I know that
16 I sent Mr. Cowden his royalty check.

17 Q Excuse me, sir. Did you send him the
18 royalty check for the shipment which you say was
19 made in March of 1962?

20 A Art, I am a year behind on this doggoned
21 thing. I am sorry. I am not trying to deliberately
22 misconstrue things. C. K. Williams canceled my
23 order in March of 1962. I had a thousand-ton
24 order, and they canceled it in 1962.

25 Q So it was not shipped?

26 A No, sir. I would like to say that that is

1 an honest mistake. They canceled my order, and
2 I was a little confused.

3 Q So it's a fact as you said in your letter
4 to Mr. Cowden of April 3, 1962 that you spent
5 Sunday, March 25, 1962 on the property and that
6 is all you did in March of 1962?

7 A Yes, sir. I stockpiled 400 to 450 tons of
8 ore in the stockpile.

9 Q There were no shipments during that month?

10 A No, sir.

11 Q There were no shipments in April of 1962?

12 A No, sir, there has been no shipments in
13 1962.

14 Q Not one ton?

15 A Not under my shipping, no, sir.

16 Q So that we are clear about this, Mr.

17 Wright, you were on the premises one day in March
18 of 1962, on Sunday?

19 A No, sir, I was on the property. That is
20 the only work I did in March, yes, sir. I was on
21 the property.

22 Q How many days were you on the property?

23 A I stayed at Seligman two or three days.
24 I was on the property.

25 Q Each day?

26 A Only one time to get samples.

1 Q That would have been in March or April?

2 A March.

3 Q Have you been back to the property since
4 that time?

5 A No, sir, other than only go by there. I
6 have not been on the property to do work. I have
7 been by there. Every time I come to Arizona I go
8 by the property.

9 Q How about February of 1962? Were you on
10 the property at any time during the month of
11 February, 1962?

12 A Not to the best of my knowledge I don't
13 think I was, no.

14 Q Was anybody acting for you or on your
15 behalf on the property in February, 1962?

16 A I'd like to say not to my knowledge at
17 this time. It's possible that Diversa, Incorporated,
18 had some men on the property in February because
19 this was the time I was working out a deal with
20 Diversa, and to the best of my knowledge I don't
21 know about it if they did have men. It's
22 possible they had engineers on the property, I
23 don't know.

24 Q If Diversa was on the property, is it
25 your testimony that they were there as your agents?

26 A I don't quite understand that, Art. I was

1 negotiating with Diversa. I'd say yes, that they
2 were my agents. I mean if you are negotiating
3 with someone, they want to check on the facts.

4 Q Who in the Diversa organization was your
5 contact? With whom did you deal?

6 A Mostly with Gerald C. Mann, Jr. but also
7 with Gerald C. Mann, Sr.

8 Q In January of 1962 did you visit the
9 property for any reason?

10 A Yes, sir, I did, but I can't remember
11 whether I got the ore -- I took some ore to Frank
12 Davis in Los Angeles, and I got about 200 pounds
13 of ore for test work, but I can't remember whether
14 I got it from the Ferro-Oxide railroad siding or
15 from the stockpile on Mr. Cowden's property.

16 Q In any event, what you did was to take
17 some samples of ore to California?

18 A Yes, sir.

19 Q You didn't perform any mining?

20 A No, sir.

21 Q This lease was originally made with E. P.
22 Campbell?

23 A Yes, sir, that is true.

24 Q Then as I understand it the lease was
25 assigned to you, is that correct?

26 A That is true, yes, sir.