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Volume 7 ; Book 32

TOMBSTONE

**Mining District
Cochise County, AZ**

**Santa Fe Mining, Inc.
Title Work
Superior Court Records**

Bankruptcy

VOLUME 1 BOOK 32

SANTA FE MINING, INC
TITLE WORK
SUPERIOR COURT RECORDS

November 1, 1988

RECEIVED

NOV 4 1988

LAND DEPT.

FM: Michael F. Hartman
282 Westchester Sq. S.
Billings, Montana 59105

TO: Santa Fe Pacific Minerals Corp.
6200 Uptown Blvd., NE, Suite 400
Albuquerque, New Mexico 87125
Attention: Denny Cole

RE: Tombstone Prospect, Cochise County, Arizona
Tombstone Exploration Bankruptcy effecting
Tombstone Development Companies Mining Claims

Dear Mr. Cole,

Enclosed please see copies obtained from Bankruptcy Court at Tucson, Arizona. This file should be placed with the Title Report on the 16 claims sent to you. The bankruptcy pertains to Item 26 on Common Chain of Title No. 2 under Unreleased Mining Leases.

NOTE: The Austin Exploration & Mining Corp was Lessee with Tombstone Exploration (See Item D herein).
The Austin Exploration & Mining Corp. does not have a bankruptcy case at the bankruptcy court.
James A. Briscoe is apparently connected with said Austin Exploration & Mining Corp. (see Items D & E herein) and said companies address on page 10 of Lease was c/o Southwest Exploration Associates.
It's my understanding that James A. Briscoe worked for Tombstone Development Company, our Lessee.
I also ran the following Grantor Index at Register of Cochise County, Arizona, under name of The Austin Exploration & Mining Corporation.
General Index Grantor: Vol 3 from 12/21/1978 thru Vol 13 to July, 1985 and Computer from July 1985 to October 24, 1988. Nothing.

I also checked B. P. R. Minerals for bankruptcy at the court at Tucson, Arizona. Nothing filed as of October 21, 1988.

With regards to Tombstone Exploration Bankruptcy - Pay special attention to Proof of Claim filed by Arizona Department of Health Services for Potential Groundwater Contamination - See Item F herein.

If any additional information is needed please advise.

Michael F. Hartman

MFH/mh
enc.

FM: Michael F. Hartman
282 Westchester Sq. S.
Billings, Montana 59105

TO: Santa Fe Mining
6200 uptown Blvd., Suite 400
Albuquerque, NM 87125
Attention: Denny Cole

RE: Tombstone Area, Cochise County, Arizona
Arizona Bankruptcy Court (United States)
Bankruptcy of Tombstone Exploration, Inc.
Bankruptcy Case Docket 85-00045

Dear Mr. Cole,

The following information was obtained from the US (Arizona) Bankruptcy Court located in Tuscon, Arizona at 110 South Church Street. Phone: 602-629-6304.

1A. The following Cases were not checked and need to be reviewed.
Case #85-0082, Tombstone Exploration, Inc., pltf. debtor VS: Tombstone Development Company (Adversary Proceedings).

Case #85-0089, Tombstone Exploration, Inc., pltf. debtors VS: Escapule (File comp. to recover money).

1. CASE 85-00045 (copies attached, portion only)

Note: Because this case was so large, you may wish additional information in file other than what is attached - please review docket (circled in red as #1) to decide same. I've marked in pencil, next to document number, additional copies you may desire from said case.

2. Stipulation and Order concerning termination of mining lease. Pay special attention to paragraph 2 on order. (copies circled in red as #2)

3. Three proof of claims filed by Tombstone Development Company with copy of lease attached. NOTE: no exhibit for description purpose was attached to any of the leases.
COMMENT: I only requested 1 copy of the lease but suggest we order the other two copies and compare them.

4. Order Confirming plan of Reorganization under Chapter 11 filed by Debtor.
Reports of Ballots of Creditors in Class 3.
Ballots for accepting or rejecting plan (2 ballots made only).

5. Proof of Claim filed by Arizona Department of Health Services against Tombstone Exploration, Inc. for potential groundwater contamination. Amended Proof of Claim filed by Cochise County Treasurer and Tax Collector.

6. Civ-85-621-Tuc-WDB transferred from Bankruptcy Court Case # 85-00045. Note: this case was dismissed on the ground of mootness.

7. Letter from Magini Leasing and Contracting and Letter from Tombstone Exploration, Inc.

end


Michael F. Hartman 12/17/1987

INDEX

The following relates to Item 26 on Common Chain of Title No. 2 under Unreleased Mining Leases.

TOMBSTONE EXPLORATION, INC. Bankruptcy - Case No. 85-00045

United States Bankruptcy Court for The District of Arizona
of 110 South Church, Suite # 112
Tucson, Arizona

The following as it effects Tombstone Development Companies mining properties per unrecorded mining lease wherein Tombstone Exploration, Inc. Debtor herein, and The Austin Exploration & Mining Corporation were Lessees.

- A. List of Stockholders.
- B. Disclosure Statement on Debtor's Plan of Reorganization.
(filed Chapter petition on 1/18/1985)
Exhibit A: Summary of Broker Prices
 B: Assets
 C: Debtors Plan (liquidation Plan)
Order Confirming Plan & Report of Ballots
- C. Proof of Claim by Tombstone Development Company.
- D. LEASE AGREEMENT: by: Tombstone Development Company, An Arizona Corporation, Lessor
 to: Tombstone Exploration, Inc., by: Thomas H. Schloss, President,
 c/o Richard F. Hewlett of Tombstone, Arizona
 and
 The Austin Exploration & Mining Corporation, by: James A. Briscoe,
 c/o James Briscoe, Southwest Exploration Associates of
 4500 E. Speedway, Tucson, Arizona 85715
 Lessees
NOTE: No description of mining claims attached to lease - see under Item E.
Stipulation of Default of Mining Lease Obligations.
Termination of Mining Lease
COMMENT: There is no mention of The Austin Exploration & Mining Corporation, Lessee,
interest and or Assignment from said company to Debtor in bankruptcy file.
- E. SCHEDULES B - STATEMENT OF ALL PROPERTY OF DEBTOR.
Appendix A: Patented Mining Claims & Unpatented Mining Claims
 Note: This apparently was the Appendix attached to the mining lease at
 Item D.
 Comment: The Austin Exploration & Mining Corp. is not named as Lessee on
 said Appendix "A".
Exhibit A1 thru A5: List of Mining Locations
Note: on A5 - Belcher Patented Lode Mining Claim, Mineral Survey 858, is listed.
Schedule B-2: Personal Property - Note: "An interest in Skyline Operating Company...
- F. PROOF OF CLAIM BY: Arizona Department of Health Services
 for: POTENTIAL GROUNDWATER CONTAMINATION WITHIN ITS (Tombstone
 Exploration, Inc.) CYANIDE LEACHING OPERATION NEAR
 TOMBSTONE, ARIZONA.
- G. Proof of Claim by Cochise County Treasurer for non-payment of Taxes.
- H. Creditor's Committee & Bankruptcy Case Docket.
- I. Additional Cases referred to in Case File.
- J. Miscellaneous Letters from Debtor and Creditor.

end
by: Michael F. Hartman
October 31, 1988

DATE	BANKRUPTCY CASE RECORD
	<u>CREDITOR'S COMMITTEE</u>
	<ol style="list-style-type: none">1. MAGINI LEASING & CONTRACTING, 4831 N. 42nd Ave., Phx, AZ 850192. ICI AMERICAS, INC., Box 8500, S-2255, Philadelphia, PA 191783. CEC LEASING, INC., Rt. 1, Box 3, Airport Rd., Safford, AZ 855464. COLORADO ARIZONA TRACTOR, PO Drawer K, Safford, AZ 855465. REUTER EQUIP. CO., PO BOX 19010, Phoenix, AZ 850056. HELMICK CORP., 425 S. 48th St., Phoenix, AZ 850347. VAN WATERS & ROGERS/UNIVAR, PO BOX 1431, Phoenix, AZ 850018. DRAVO SONOCAL, Dravo Lime Co., 1 Oliver Plaza, Pittsburgh, PA 159. DUNLAP OIL, PO BOX 4622, Bisbee, AZ 8560310. RUST TRACTOR, PO BOX 4827, El Paso, TX 7881411. L.W.C. AGENCY, INC., 8 Freer St., Box 788, Lynbrook, NY 1156312. PIONEER EQUIP., PO BOX 6573, Phoenix, AZ 8500513. CHIRICAHUA PUMP CO., RR-1, Box 789, Wilcox, AZ 8564314. MGS CONSULTANTS, 1435 S. Euclid, Tucson, AZ 8571915. PLUMBERS SPECIALTY CO., INC., 4208 E. Grant, Tucson, AZ 8571216. MICRO MASTERS, INC., 310 Madison Ave., Suite 424, New York, NY 117. UNITED WESTERN SUPPLY CO., 1409 E. Jackson, Phoenix, AZ 8503418. THE BANKERS LIFE, PO BOX 1522, Des Moines, IA 5030619. A.J. GILBERT CONST. CORP., PO BOX 5288, Bisbee, AZ 8560320. EAST SIDE ELECTRIC, PO BOX 21066, Phoenix, AZ 85034
	<p>Atty for Creditor's Committee: Sally Darcy, Esq. P.O. Box 3017 Tucson, AZ 85702-3017 792-2781</p>

DATE	DOCUMENT NUMBER	BANKRUPTCY CASE REC (cont.)
1/18/85	✓ 1	File debtor's pet page for Chap 11 and list of creditors in form of MML. d-1/18/85
1/18/85	✓ 2	File debtor's corporate resolution. d-1/18/85
1/18/85	3	File debtor's application for appt of atty for DIP. d-1/18/85
1/18/85	4	File affidavit of atty for the debtor. d-1/18/85
1/18/85	5	File affidavit of proposed attorney. d-1/18/85
1/18/85	6	Enter and file order appting Lowell Rothschild as atty for DIP. d-1/18/85
1/18/85	7	Enter and file order designating Thomas Schloss, Pres., to act for DIP. d-1/18/85
1/18/85	✓ 8	Enter and file operating order. d-1/18/85
1/18/85	9	File DIP's motion for permission to issue debtors' certificate. d-1/18/85
1/18/85	10	Enter and file order permitting issuance of debtor's certificate. d-1/18/85
1/18/85	11 HRG	File debtor's list of 20 largest unsecured creditors. d-1/18/85
1/18/85	✓ 12	Enter and file ME: debtor to file stmt of affairs, schedules, list of shareholders and list of executory contracts w/i 15 days. d-1/18/85
1/18/85	13	Enter and file order appointing creditor's committee. d-1/18/85
2/7/85	✓ 14.	File dbtr's Stmt of Affairs, Scheds A & B, Summary, list of executory contracts. d-2/14/85
2/7/85	15.	Entr & file ord for 341 hrg, apptg Est. Adm & auto stay. d-2/14/85
2/7/85	✓ 16.	File dbtr's list of stockholders. d-2/14/85
2/11/85	17.	File cert. of mail re 341 notice (96 c) d-2/14/85
2/23/85	18.	File Patricia Shaler's notice of appear on behalf of Heflin Harrington Inc. d-2/26/85
3/1/85	19.	File DIP's appl. to sell Caterpillar 988, subject to lien of Assoc. Commercial Credit, for \$72,500.00. d-3/5/85
3/8/85	20.	File notice of HRG re dbtr's appl. to sell Caterpillar 988 for \$72,500 & to pay off lien of Assoc. Commercial Credit in amt of \$59,995.87. SET FOR 3/28/85 @ 9:00 a.m. d-3/11/85
3/8/85	21.	File cert. of mailing re above notice. (104 c) d-3/11/85
3/7/85 ***	22.	341 HRG: dbtr swm & exmd. d-3/11/85

BANKRUPTCY CASE RECORD

DATE	
3/7/85	23. File DIP's motion for permission to issue dbtr's certificate. d-3/13/85
3/7/85	24. Enter & file order permitting issuance of debtor's certificate in the amt of \$75,000.00. d-3/13/85
3/12/85	/ 25. File Sally Darcy's notice of appear & request for notice on behalf of C.A.T. Transportation & Leasing, Inc. d-3/14/85
3/21/85	/ 26. File DIP's motion to ext time for dbtr to assume or reject leases. * Enter & file ex-parte order allow dbtr to & until 6/1/85 to assume/reject its leases w/Tombstone Development Co. & Mildred & E. H. Escapule. d-3/22/85
3/25/85	27. File dbtr's appl. for auth. to compromise claim w/Maddux & Sons, Inc. d-3/26/85
3/25/85	28. File dbtr's appl. to sell personal prop, misc. equip, on 4/23/85 @ 9:00 a d-3/26/85
3/25/85	LODGE Order settling claim of Maddux & Sons, Inc. d-3/26/85
3/26/85	29. File Richard Lasater's request for special notice on behalf of Judith S. Mishkin. d-3/27/85
3/28/85	30. HRG: Dbtr's appl. to sell personal prop. Court has been advised the sale has fallen thru, HRG is vacated. d-3/29/85
3/29/85	31. File notice of dbtr's intent to sell misc. equip. on 4/23/85 @ 9:00 a.m. Sale to be at business office of dbtr. d-4/3/85
3/29/85	32. File notice of dbtr's appl. to compromise claim of Maddux & Sons, Inc. Objs to be filed by 4/25/85. d-4/3/85
4/3/85	33. File dbtr's mo. rept for 1/18/85 thru 2/28/85. d-4/5/85
4/3/85	34. File cert of mailing re above notice of dbtr's appl. to compromise claim (104 x 2) d-4/8/85 (& notice of intent to sell misc. prop)
4/16/85	35. File Geoffrey Walker's notice of appear & request for notice on behalf of Assoc. Commercial Corp. d-4/18/85
4/24/85	36. File DIP's appl. to T/O collateral for release of sec. dbt. d-4/30/85
4/24/85	LODGE Order re dbtr's appl. to t/o collateral. d-4/30/85
5/1/85	37. File DIP's notice of appl. to t/o collateral, a 1984 Dodge Ram Charger 515 Int'l Harvester Loader, giving until 5/16/85 to obj. d-5/3/85
5/2/85	38. File cert of mailing re above notice. (119 C) d-5/3/85
5/10/85	39. File dbtr's mo. rept for Apr, 1985, #3. d-5/17/85
5/23/85	40. File C.A.T. Transportation & Leasing's appl. for appr. of emp. of attys d-5/30/85
5/23/85	41. Enter & file order appr. employment of Sally Darcy & firm of Stompoly Even as attys for Creditors' Committee. d-5/30/85

BANKRUPTCY CASE RECORD

DATE	
5/30/85	42. File Creditors' Committee's motion for an extension of time to assume or reject an unexpired lease. d-5/30/85
5/30/85	43. File Creditors' Committee's motion to shorten time for xxxxxxx hrg. d-5/30/85
5/30/85	/ 44. Enter & file order setting hrg on Creditors' Committee's motion to ext time to assume/rej. unexpired lease. SET FOR 5/31/85 @ 3:00 p.m. d-5/30/85
5/31/85	/ 45. File Tombstone Development, Inc, Lessor's, opposition to motion for ext. of time to assume/reject an unexpired lease. d-5/31/85
5/31/85	/ 46. File DIP's motion to assume unexpired lease w/Tombstone Dev. Co. d-6/4/85
5/31/85	/ 47. File Creditors' Committee's affid of delivery re motion to ext time to assume/r unexpired lease. d-6/4/85
5/31/85	/ 48. HRG: Creditors' Committee's motion to ext time to assume/rej unexpired lease. Time to assume or reject unexpired lease is ext for 14 days. d-6/4/85
6/5/85	/ 49. File Tombstone Development, Inc's motion for order declaring executory lease terminated & directing dbtr to vacate premises & opposition to motion to assume lease. d-6/10/85
6/4/85 ***	50. Enter & file order that 1984 Dodge Ram Charger together w/cash pmt of \$250.00 be turned over to Ford Motor Credit Corp & that 515 Int'l Harvester Loader by turned over to CIT Corp. for a release from any and all other liability. d-6/10/85
6/10/85	/ 51. File notice of HRG re dbtr's motion to assume unexpired lease. SET FOR 7/8/85 @ 1:30 p.m. d-6/12/85
6/10/85	/ 52. File Tombstone Development, Inc's notice of appeal re order entered on 5/31/85 granting ext of time to assume/reject lease. d-6/12/85
6/12/85	/ 53. File notice of HRG re Tombstone Development's motion for ordre declaring executory lease terminated & directing dbtr to vacate premises & opposition to motion to assume lease. SET FOR 7/8/85 @ 1:30 p.m. d-6/13/85.
6/13/85	/ 54. File notice of appeal. (Tombstone Development, Inc). d-6/17/85
6/24/85	55. File DIP's appl. to sell personal prop. 2 trucks, on 7/22/85 @ 9:00 a.m. at business office of dbtr in Tombstone. d-6/24/85
6/26/85	56. File notice of dbtr's intent to sell 1979 Ford & 1978 Chev. on 7/22/85 @ 9:00 a.m. at business office of dbtr in Tombstone. Requests for hrg due by 7/21/85. d-7/1/85
6/28/85	57. File cert of mailre above notice. (122 c) d-7/3/85
7/3/85	/ 58. File Mary Mangotich's notice of appear & request for notice on behalf of Tombstone Development, Inc. d-7/3/85
7/5/85	59. File affid. of service re subpoena (Az. Health Svc) d-7/8/85
7/5/85	60. Enter and file order confirming sale of personal prop (trucks, tractor, etc.) d-7/10/85

DATE	BANKRUPTCY CASE RECORD
7/8/85	61. HRG; Debtor's motion to assume unexpired lease; Tombstone Development's motion for order declaring exec lease terminated and directing debtor to vacate the premises and opposition to motion to assume lease: Court: would entertain a solid porposal to cure defaults, but will not give creditor's comm time to get plan approved. Parties are to submit stip and order re regarding removing personal property. After parties formulate issue on tail ings, court will set hearing. d-7/10/85
7/8/85	62. File Tombstone Development's statement of defaults under lease. d-7/10/85
7/10/85	63. File transmittal of appeal to District Court. d-7/10/85
7/10/85	64. File receipt for transmittal of appeal. d-7/17/8
7/11/85	65. File copy of notice of docketing appeal. d-7/22/85
7/16/85	66. File copy of Memo transferring to Judge William D. Browning. d-7/22/8
7/16/85	67. ^{file} File copy of appellee's motiion to dismiss appeal for mootness. d-7/22/85
7/18/85	68. ^{file} Enter and file copy of order dismissing appeal signed by Judge Judge William D. Browning. d7/22/85
7/19/85	69. File returned to Bankruptcy Court. d-7/22/85
7/23/85	70. Enter and file order approving sale of 1979 Ford, 1/2 ton truck to Bob Lee for \$2,500.00 payable \$200.00 per skk. d-7/24/85
7/24/85	71. Enter and file OSC whey proceeding should not be dismissed for making unauthorized pmts; no March 85 rep filed 8/7/85 at 8:45 a.m. d-8/1/85
7/31/85	72. File interim financial rep #4 for May, 1985. d-8/1/85
8/7/85	73. HEARING OSC; OSC is quashed. d-8/13/85
8/12/85	74. File debtor's appli to sell 85 cans of Cyanide, 311 cans of Zinc dust, 240 cans D.E., 10 bags of Borax, 6 bags of Soda Ash. d-8/14/85
8/15/85	75. File not under sec 363(b) of intent to sell 85 cans of Cyanide, etc 9/9/85 at 9:00 a..m. to Escapule. d-8/16/85
8/16/85	76. File cert of mailing re above notice. (123). d-8/21/85
8/16/85	77. ^{file} File debtor's not of change of address. d-8/21/85
8/22/85	78. Enter and file order approving stip & modifying automatic stay, debtor and Associates Commercial Corp. d-8/26/85
8/29/85	79. File stip between debtor & Safeco Credit Co. for relief from stay. d-9/3/85

DATE	BANKRUPTCY CASE RECORD
8/28/85	80. Enter and file order approving stip for rel from stay. d-9/3/85
9/4/85	/ 81. File dbtr's mo. rept for March, 1985. d-9/5/85
9/4/85	/ 82. File dbtr's mo. rept for June, 1985. d-9/5/85
9/4/85	/ 83. File dbtr's mo. rept for July, 1985. d-9/5/85
9/18/85	84. Enter and file order approving & confirming sale of 85 cans of Cyanide, 31 cans zinc dust, 240 cans of D.E., 10 bags of Borax, 6 bags of Soda Ash to Charlie & Louie Escapule for \$16,386.00 payable \$1,000.00 per mth beginning 9/9/85 and ea mth thereafter, balance before 1/1/86. d-9/19/85
9/27/85	85. ^{HAD} File stip between debtor & Tombstone Development Co. terminating lease. d-9/30/85
9/25/85	86. ^{HAD} Enter and file order approving above stip. d-10/1/85
10/22/85	87. File dbtr's mo. rept for Aug, 1985. d-10/24/85
10/22/85	88. File dbtr's mo. rept for Sept, 1985.. d-10/24/85
11/13/85	89. File DIP's appl. for int. compensation of Mesch, Clark & Rothschild as attys for dbtr in the amt of \$9,135.99 for the period to & incl. 10/31/85. d-11/18/85
11/22/85	90. File Alan Polley's request for special notice & request for copies of discl. stmt & plan on behalf of Cochise Co. Atty. d-11/26/85
11/26/85	91. File dbtr's DISCL. STMT. d-11/27/85
11/26/85	92. File dbtr's PLAN. d-11/27/85
12/3/85	93. File notice of HRG re Mesch, Clark's appl. for atty's fees & costs in the amt of \$9,135.99 as attys for dbtr. SET FOR 1/9/86 @ 9:00 a.. d-12/4/85
12/4/85	94. File cert of mailing re above notice. (125 c) d-12/5/85
12/6/85	95. Enter & file notice & order of HRG on Discl. Stmt. SET FOR 1/6/86 @ 1:30 p.m. Jan. 4, 1986 is last day for filing objs to discl. stmt. d-12/10/85
12/8/85	96. File cert of mailing re above notice. (125 CO d-12/11/85
1/3/86	97. File dbtr's mo. rept for Oct, 1985, #9. d-1/6/86
1/2/86 **	98. File Creditors' Committee's obj to discl. stmt. d-1/6/86
1/6/86	99. HRG: Appr. of dbtr's discl. stmt dated 11/26/85. Discl. Stmt will be appr. A date will be set for hrg on confirmation. d-1/8/86
1/10/86	/ 100. Enter & file order appr. discl. stmt & fix time for filing accept/rejs of plan. Last day for filing accept/rejs of plan is 2/7/86; Conf. Hrg. SET FOR 2/11/86 @ 9:00 a.m.; Last day for filing objs to confirmation of plan is 2/7/86. d=1/13/86
1/10/86	101. Enter & file order auth compensation to Mesch, Clark in the amt of \$9,135.95 thru 10/31/85. d-1/13/86

DATE	BANKRUPTCY CASE RECORD
1/9/86	102. HRG: Appl. for attys' fees & costs (Mesch, Clark); No objs, fees are allow as prayed for. d-1/16/86
1/15/86	103. File dbtr's affid of mailing re copies of discl. stmt, plan, ballots, et d-1/21/86
*****	*** *****ALL BALLOTS WILL BE DOCKETED ON SEPARATE SHEET & filed in separate file *****
1/30/86	104. Enter & file order auth pmt of interim comp in the amt of \$9,135.99 to Mesch, Clark. d-1/30/86
2/11/86	105. HRG: Confirmation of Chap. 11 plan. No objs. Plan is confirmed. d d-2/12/86
2/24/86	106. File dbtr's rept of ballots. d-2/26/86
2/26/86	107. Enter & file order confirming plan. d-3/5/86
3/3/86	108. File notice of dbtr's intent to sell portable conveyer w/scale. d-3/5/86
3/6/86	109. File notice of DIP's intent to sell Portable Conveyor & scale to Tom Schloss for \$4,500.00 on 4/10/86 @ 11:30 a.m. in Cred. Mtg. Rm. Requests for hrg due by 4/8/86. d-3/10/86
3/6/86	110. File notice of order confirming plan. d-3/10/86
3/11/86	111. File AMENDED notice of DIP's intent to sell prop. (Amended to reflect correct amt of sale--\$4,500.00) d-3/14/86
3/10/86	112. File cert of mailing re above notice. (126 c) d-3/14/86
3/13/86	113. File dbtr's affid of mailing re order confirming plan. d-3/14/86
3/14/86	114. Enter & file order that dbtr pay Clerk administrative expns in the amt \$143.00 excess noticing fees, w/i 90 days. d-3/18/86
3/13/86	115. File cert of mailing re above notice. (amended notice of DIP's intent sell) (126 c0) d-3/20/86
3/20/86	116. File dbtr's mo. rept for Dec, 1985, #11. d3/21/86
3/20/86	117. File dbtr's mo. rept for Jan, 1985, #12. d-3/21/86
4/10/86	118. Sale by Trustee: Portable conveyer w/Riede systems scale sold to Bob Lee for Schoss for \$11,000.00. d-4/11/86
4/15/86	LODGE Order appr. sale to Tom Schloss. d-4/16/86
4/17/86	119. Enter & file order appr. sale of conveyer & scale to Tom Schloss for \$11,000.00. d-4/18/86
7/15/86	120. File dbtr's post confirmation rept. d-7/25/86
8/28/86	121. File Patricia Shaler's notice of change of address. d-9/4/86
9/5/86	122. File DIP notice of filing post conf. rept. d-9/16/86.

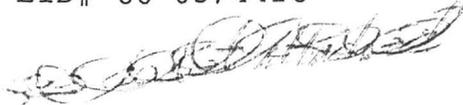
DATE	BANKRUPTCY CASE RECORD
	<u>B A L L O T S</u>
1/24/86	1. File McGraw Edison Svc's ballot ACCEPTING plan. d-1/27/86
1/27/86	2. File Western Technologies, Inc's ballot ACCEPTING plan. d-1/28/86

DATE	BANKRUPTCY CASE RECORD
3/26/87	123. File dbtr's mo. rept for 8/31/86 thru 12/31/86. d-3/27/87
6/11/87	124. File dbtr's post confirmation rept. d-6/17/87
3/2/88	125. Fil dr's rpt of going post rep BK 6/1-12/31/87. EOD 3/10/88
10/17/88	126. Fil dr's POST CONF REPORT EOD 10/29/88

DIST. NO. 0970	OFF. NO. 04	YR. 85	JACKET NUMBER 00045	DATE PETITION FILE MO. 01 | DY 18 | YR. 85			REOPENED R | 0	✓ CHECK IF APPLICABLE Joint Petition Pro Se Petition				
NAME OF DEBTOR TOMBSTONE EXPLORATION, INC.				✓ CHECK PROPER BOXES <input checked="" type="checkbox"/> Voluntary <input type="checkbox"/> Involuntary		OBLIGATIONS OF DEBTOR AS SCHEDULED						
LAST FIRST MIDDLE EID# 86-0374410				<input checked="" type="checkbox"/> Business <input type="checkbox"/> Non-Business		PRIORITY \$						
<i>recheck attached</i>				✓ COMMENCED UNDER <input type="checkbox"/> Chap. 7 <input type="checkbox"/> Chap. 7 - Stockbroker <input type="checkbox"/> Chap. 7 - Commodity Broker <input type="checkbox"/> Chap. 9 <input checked="" type="checkbox"/> Chap. 11 <input type="checkbox"/> Chap. 11 - Railroad <input type="checkbox"/> Chap. 13 <input type="checkbox"/> Sec. 304		SECURED \$						
				<input type="checkbox"/> Chap. 7 - Stockbroker <input type="checkbox"/> Chap. 7 - Commodity Broker		UNSECURED \$						
				<input type="checkbox"/> Chap. 9 <input checked="" type="checkbox"/> Chap. 11 <input type="checkbox"/> Chap. 11 - Railroad		TOTAL ASSETS OF DEBTOR AS SCHEDULED: \$						
				<input type="checkbox"/> Chap. 13 <input type="checkbox"/> Sec. 304		NO. OF CREDITORS SCHEDULED:						
				ADDRESS OF DEBTOR (Number and Street) PO BOX 610				NAME OF JUDGE WILLIAM A SCANLAND		FILING FEES PAID IN FULL AT THE TIME OF FILING X		
				CITY Tombstone		COUNTY Cochise CODE 04003	STATE AZ	ZIP 85638	JUDGE CODE A183	FEES TO BE PAID IN INSTALLMENTS		
ATTORNEY FOR DEBTOR	Lowell Rothschild, 259 N. Meyer, Tucson, AZ 85701 624-8886			TRUSTEE	D-I-P							
ATTORNEY FOR PETITIONING CREDITORS				ATTORNEY FOR TRUSTEE								
EXAMINER				OTHER	341: 3/7/85 @ 10:30 a.m.							
DATE	DOCUMENT NUMBER	BANKRUPTCY CASE RECORD										
		<div style="text-align: right;"> <p>FILED JUL 10 1985 RICHARD H. WEARE, CLERK UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA BY _____ DEPUTY CLERK</p> </div>										

CIV 85-621 TUC RMB

NOG

DIST. NO.	OFF. NO.	YR.	CKET NUMBER	DATE PETITION FILED			REOPENED	CHECK IF APPLICABLE	
0970	04	85	00045	MO. 01	DY 18	YR. 85	0	<input type="checkbox"/>	Joint Petition
NAME OF DEBTOR				CHECK PROPER BOXES					
TOMBSTONE EXPLORATION, INC.				<input checked="" type="checkbox"/> Voluntary		OBLIGATIONS OF DEBTOR AS SCHEDULED			
LAST FIRST MIDDLE				<input type="checkbox"/> Involuntary		PRIORITY			
EID# 86-0374410				<input checked="" type="checkbox"/> Business		\$.00			
				<input type="checkbox"/> Non-Business		\$.00			
				COMMENCED UNDER					
				<input type="checkbox"/> Chap. 7		\$.00			
				<input type="checkbox"/> Chap. 7 - Stockbroker		UNSECURED			
				<input type="checkbox"/> Chap. 7 - Commodity Broker		\$.00			
				<input type="checkbox"/> Chap. 9		TOTAL ASSETS OF DEBTOR AS SCHEDULED:			
				<input checked="" type="checkbox"/> Chap. 11		\$.00			
				<input type="checkbox"/> Chap. 11 - Railroad		NO. OF CREDITORS SCHEDULED:			
				<input type="checkbox"/> Chap. 13		FILING FEES PAID IN FULL AT THE TIME OF FILING			
				<input type="checkbox"/> Sec. 304		FEE TO BE PAID IN INSTALLMENTS			
ADDRESS OF DEBTOR (Number and Street)				NAME OF JUDGE					
NEW ADDRESS NEW YORK OFFICE				WILLIAM A SCANLAND X					
7 Priory Lane									
Pelham Manor, NY 10803									
-PO BOX 610									
CITY	COUNTY	STATE	ZIP	JUDGE CODE					
Tombstone	Cochise	AZ	85638	A183					
ATTORNEY FOR DEBTOR	Lowell Rothschild, 259 N. Meyer, Tucson, AZ 85701 624-8886			TRUSTEE		D-I-P			
ATTORNEY FOR PETITIONING CREDITORS				ATTORNEY FOR TRUSTEE					
EXAMINER				OTHER		341: 3/7/85 @ 10:30 a.m.			
DATE	DOCUMENT NUMBER	BANKRUPTCY CASE RECORD							
7/23/85	85 0082	File complaint for declaratory Judgment, pltf debtor vs. Tombstone Development co.							
	*****	ALL FUTURE PLEADINGS WILL BE DOCKETED & FILED IN ADVERSARY PROCEEDING <u>85 0082</u> ONLY							
8/2/85	85 0089	File comp to recover money, pltf debtors vs. Escapule.							
	*****	ALL FUTURE PLEADINGS WILL BE DOCKETED & FILED IN ADVERSARY PROCEEDING <u>85 0089</u> ONLY							

7

MAGINI LEASING & CONTRACTING

MINING • EXCAVATIONS • ROADS
5701 W. MARYLAND AVENUE GLENDALE, ARIZONA 85301-3922
(602) 242-7315

RECEIVED

MAR 14 1986

New address:
4831 N. 42nd Avenue
Phoenix, Arizona 85019
March 12, 1986

Sally M. Darcy
Stompoly & Even, P.C.
P.O. Box 3017
Tucson, AZ 85702

Stompoly & Even

Re: Tombstone Exploration, Inc. and letter of Feb. 27, 1986
from Patricia Wendel to S. Darcy

Dear Ms. Darcy,

After reading through the above-referenced letter, several questions come to mind. First of all, to quote Ms. Wendel, "...there were huge expenses for set up involved." What exactly does "huge expenses" mean? Dusty Escapule started the whole operation with no more than \$25,000.00. After the initial two months, the mine paid for itself. Increased expansion and all other costs were paid for by the sale of silver and gold from the mine.

Secondly, there appears to be a large discrepancy between what Tom Schloss reported to the Arizona Department of Revenue and Internal Revenue Service and what was actually sold. Do you realize that Schloss reported zero sales of metal to the Arizona Dept. of Revenue? Moreover, we have indications in Tom Schloss' own handwriting that the gross sales from the mine were over \$23 million, and not the \$10 million that Ms. Wendel referred to in her letter. All of this can and will be substantiated in a court of law. Furthermore, the owners of the mine, Tombstone Development Corporation, were not paid their lawful percentage according to the lease agreement.

I think that it is about time that we speak in terms of positives. Mathematics does not leave room for terms like "huge sums" or "a great deal of money and expense", or any other such garbage. We are dealing with hard facts and numbers are and should be made available to substantiate our position. If Schloss lost so much money, it should be no problem at all for him to show us the "real figures". The Arizona Department of Revenue is now going to have a look at this for tax evasion and I feel certain that the Internal Revenue Service will not be far behind.

Please forward a copy of this onto Ms. Wendel. I want her to realize that there are records available, such as the log records of flights to the silver and gold wholesalers, among other items. Tom Schloss is not going to get away with stealing.

Sincerely yours,

Frank Magini
Frank Magini

(4)

FILED

FEB 26 1986

VIRGINIA L FRITZ, CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

MESCH, CLARK & ROTHSCHILD, P.C.
259 North Meyer Avenue
Tucson, Arizona 85701
Phone: (602) 624-8886

By: Lowell E. Rothschild
Patricia Wendel
85-1772.1/kj
Attorneys for Debtor

Arg on 2/11/86
Plan confirmed
Notice of

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)	
	)	NO. 85-00045
TOMBSTONE EXPLORATION, INC.)	
	)	ORDER CONFIRMING PLAN
Debtor.)	

The Plan of Reorganization under Chapter 11 of the Bankruptcy Code filed by TOMBSTONE EXPLORATION, INC. on or about November 8, 1985, having been transmitted to creditors; the Order Approving Disclosure Statement having fixed February 7, 1986 as the last date for filing written objections to confirmation of such Plan of Reorganization; such Order Approving Disclosure Statement having been mailed to all creditors and interested parties along with the approved Disclosure Statement and Plan of Reorganization and Ballot; the hearing on the confirmation of the Plan having been scheduled and having come on regularly for hearing on February 11, 1986;

The Court having considered the evidence and having reviewed the file; and

It having been determined after hearing on notice that:

FEB 24 1986

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZ. 85701-1090

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MESCH, CLARK & ROTHSCCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH ... AVENUE
TUCSON, ARIZ. 85701-1090

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1. The Plan has been accepted in writing by the creditors whose acceptance is required by law;

2. The provisions of Chapter 11 of the Code have been complied with, and the Plan has been proposed in good faith and not by any means forbidden by law;

3. Each holder of a claim will receive under the Plan property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under Chapter 7 of the Code on such date; the Plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims that is impaired under the Plan.

4. All payments made or promised by the debtor or by any other person for services or for costs and expenses in, or in connection with, the Plan and incident to the case, have been fully disclosed to the Court and are reasonable, or if to be fixed after confirmation of the Plan, will be subject to the approval of the Court;

5. The identity, qualifications, and affiliations of the persons who are to be directors or officers of the debtor after confirmation of the Plan have been fully disclosed and the appointment of such persons to such offices, or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security and with public policy;

...

FILED

FEB 24 11 32 AM '86

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MESCH, CLARK & ROTHSCHILD, P.C.
259 North Meyer Avenue
Tucson, Arizona 85701
Phone: (602) 624-8886

By: Lowell E. Rothschild
84-1772.1/kj
Attorney for Debtor

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)	
	)	NO. 85-00045
TOMBSTONE EXPLORATION, INC.)	
	)	REPORT OF BALLOTS
Debtor.)	

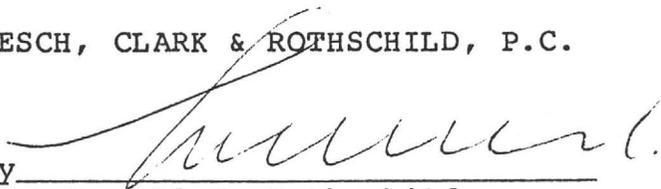
COMES NOW, Lowell E. Rothschild, counsel for the debtor herein and reports to the Court as follows:

1. Of the creditors in Class 3, allowed non-priority unsecured claims, eighteen (18) creditors whose claims total \$391,203.70 accepted the debtor's plan, and one (1) creditor has rejected the plan in the amount of \$14,186.20. Copies of the ballots are attached hereto.

DATED this 21 day of February, 1986.

Respectfully submitted,

MESCH, CLARK & ROTHSCHILD, P.C.

By 

Lowell E. Rothschild
259 North Meyer Avenue
Tucson, Arizona 85701-1090
Attorneys for Debtor

1068

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)
TOMBSTONE EXPLORATION, INC.,) NO. 85-00045
Debtor.)
-----)
BALLOT FOR ACCEPTING OR
REJECTING PLAN

The undersigned, a creditor of the above-named debtor,
in the unpaid principal amount of \$43,281.20 administrative claim
~~\$318,700.00-unsecured claim~~

(Check one box.)

ACCEPTS

REJECTS

the plan for reorganization of the debtor.

DATED this 24 day of January, 1986.

Print or type name: Tombstone Development

Signed: _____

(If appropriate) By: LaVerne Bayler Pres.

As: _____

TO HAVE YOUR VOTE COUNT, YOU MUST COMPLETE AND RETURN THIS BALLOT
ON OR BEFORE FEBRUARY 7, 1986 TO:

Lowell E. Rothschild
259 North Meyer Avenue
Tucson, AZ 85701-1090

The plan referred to in this ballot can be confirmed
by the court and thereby made binding on you if it is accepted
by the holders of two-thirds in the amount and more than one-half
in number of claims in each class and the holders of two-thirds
in amount of equity security interests in each class voting on
the plan. In the event the requisite acceptances are not
obtained, the court may nevertheless confirm the plan if the court
finds that the plan accords fair and equitable treatment to the
class rejecting it.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)
TOMBSTONE EXPLORATION, INC.,) NO. 85-00045
Debtor.) BALLOT FOR ACCEPTING OR
REJECTING PLAN
-----)

The undersigned, a creditor of the above-named debtor,
in the unpaid principal amount of \$ 14,186.20.

(Check one box.)

ACCEPTS REJECTS

the plan for reorganization of the debtor.

DATED this 17TH day of JANUARY, 1986.

Print or type name: VAN WATERS & ROGERS

Signed: _____

(If appropriate) By: J.P. Cronin

As: Credit Agr

TO HAVE YOUR VOTE COUNT, YOU MUST COMPLETE AND RETURN THIS BALLOT
ON OR BEFORE FEBRUARY 7, 1986 TO:

Lowell E. Rothschild
259 North Meyer Avenue
Tucson, AZ 85701-1090

The plan referred to in this ballot can be confirmed
by the court and thereby made binding on you if it is accepted
by the holders of two-thirds in the amount and more than one-half
in number of claims in each class and the holders of two-thirds
in amount of equity security interests in each class voting on
the plan. In the event the requisite acceptances are not
obtained, the court may nevertheless confirm the plan if the court
finds that the plan accords fair and equitable treatment to the
class rejecting it.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)
TOMBSTONE EXPLORATION, INC.,) NO. 85-00045
Debtor.) BALLOT FOR ACCEPTING OR
REJECTING PLAN
-----)

The undersigned, a creditor of the above-named debtor,
in the unpaid principal amount of \$ 191.70.

(Check one box.)

ACCEPTS REJECTS

the plan for reorganization of the debtor.

DATED this 6 day of Feb, 1986.

Print or type name: ALCO STANDARD Corp

Signed: (Formerly BEARING BELT CO)

(If appropriate) By: R. K. Hollett

As: Er Meyer

TO HAVE YOUR VOTE COUNT, YOU MUST COMPLETE AND RETURN THIS BALLOT
ON OR BEFORE FEBRUARY 7, 1986 TO:

my
Lowell E. Rothschild
259 North Meyer Avenue
Tucson, AZ 85701-1090

cc 7 2/6 2/27
cc 5

The plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in the amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re)
TOMBSTONE EXPLORATION, INC.,) NO. 85-00045
Debtor.) BALLOT FOR ACCEPTING OR
REJECTING PLAN

The undersigned, a creditor of the above-named debtor,
in the unpaid principal amount of \$ 2,197.00.

(Check one box.)

ACCEPTS

REJECTS

the plan for reorganization of the debtor.

DATED this 24 day of JANUARY, 1986.

Print or type name: LESTER FARNSWORTH

Signed: Lester Farnsworth

(If appropriate) By: _____

As: _____

TO HAVE YOUR VOTE COUNT, YOU MUST COMPLETE AND RETURN THIS BALLOT
ON OR BEFORE FEBRUARY 7, 1986 TO:

Lowell E. Rothschild
259 North Meyer Avenue
Tucson, AZ 85701-1090

*From United Western Supply
Company of Ariz. Inc.
1411 E. JACKSON
PHOENIX, AZ 85034*

The plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in the amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it.

United States Bankruptcy Court

For the _____ District of Arizona

5

In re *

FILED

MAR 27 1985

Case No. 85-00045

Debtor*

VIRGINIA L. PHILZ CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA
PROOF OF CLAIM

1. *[If claimant is an individual claiming for himself]* The undersigned, who is the claimant herein, resides at ** 2005 North Central, Phoenix, Arizona 85004

[If claimant is a partnership claiming through a member] The undersigned, who resides at ** is a member of _____, a partnership, composed of the undersigned and _____, and of ** _____, and doing business at ** _____ and is authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at ** is the _____ of _____ a corporation organized under the laws of _____ and doing business at ** _____ and is authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at ** _____, is the agent of _____, of ** _____, and is authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$ - Amount unknown at present time

3. The consideration for this debt [or ground of liability] is as follows: Potential groundwater contamination existing at Tombstone Exploration's site located near Tombstone, Arizona.

4. *[If the claim is founded on writing]* The writing on which this claim is founded (or a duplicate thereof) is attached here to [or cannot be attached for the reason set forth in the statement attached hereto]. - N/A

5. *[If appropriate]* This claim is founded on an open account, which became [or will become] due on N/A _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except. - No judgment has been rendered on this claim.

7. The amount of all payments of this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counter-claim except - N/A

9. No security interest is held for this claim except

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

[Continue on reverse side]

United States Bankruptcy Court

For the Tucson Division District of Arizona

In re Tombstone Exploration, Inc.
EID#: 86-0374410

Case No. 85-00045

Debtor

(A M E N D E D)
PROOF OF CLAIM

FILED

1. [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at**

[If claimant is a partnership claiming through a member] The undersigned, who resides at**

is a member of
composed of the undersigned and
of**
doing business at**
and is authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at**

is the _____ of _____
a corporation organized under the laws of _____
and doing business at**
and is authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at** P.O. Drawer 1778, Bisbee, AZ 85603

is the agent of Cochise County, Arizona and is
of** (a duly organized & existing political subdivision of the State of AZ) authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of
\$ 6,509.64 inc. interest to 12/12/85, together with any & all accruing

3. The consideration for this debt [or ground of liability] is as follows: penalties & interest.
1985 Tax, Parcels #996-80-100-25-1 & #996-80-160-25-5

4. [If the claim is founded on a writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto]. Copy of Tax Notices Attached.

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____
as shown by the itemized statement attached hereto.

Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except

7. The amount of all payments of this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counter-claim except

9. No security interest is held for this claim except Title 42 A.R.S.

[If security interest in the property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.]

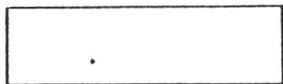
1985 Tax #996-80-100-25-1 \$1,506.45

1985 Tax #996-80-160-25-5 5,003.19

On Land, Buildings and \$6,509.64 including
Equip. Claim Number interest to 12/12/85

(For Office Use Only)

\$ 6,509.64 together with any
Total Amount Claimed and all
accruing penalties and interest



Name of Creditor: Cochise County Treasurer & Tax Collector
(Print or Type Full Name of Creditor)

Dated: 3/12/87

Signed: Karla Sorham Cochise County Treasurer

4030

TOMBSTONE EXPLORATION INC
 THOMAS & HARRIE SCHLOSS
 7 PRIORY LANE
 PELHAM MANOR NY 10803

TAX ROLL NO.	CO	BOOK	MAP	PARCEL
101872	02	996	80	100Y1
FEES	COMB RATE	COMB RATE		
0100	8.4000	1.7100		

TOTAL VALUE OF PRODUCING MINE

PRIMARY	LIMITED VALUE	ASST	ASSESSED VALUE	EXEMPTION	1ST HALF PAID	2ND HALF PAID	
LAND BLDGS ETC	1434	340	488	0			
PERSONAL PROPERTY	42316	340	14387	0			
TOTALS	43750		14875	0	7430	7430	
SECONDARY	FULL CASH VALUE	ASST	ASSESSED VALUE	EXEMPTION	PENALTY	1ST HALF	2ND HALF
LAND	0	340	0	0		19.85	0
BLDGS ETC	1434	340	488	0			
PERSONAL PROPERTY	42316	340	14387	0			
TOTALS	43750		14875	0		763.15	743.30

Tax Code	1984	1985	DIFFERENCE	PRIMARY TAX
00986	7200	5950	-1250	124950
02000	64980	54591	-10389	ADDITIONAL STATE AID
07001	82800	64706	-18094	00
08150	26460	21717	-4743	NET PRIMARY
09000	1980	1637	-343	124950
15000	16	59	43	SECONDARY TAX
				23710
				SPECIAL DISTRICTS
				00
				TOTAL TAX DUE
	183436	148660	-34776	148660

Total
 \$1,506.45

TOMBSTONE EXPLORATION INC
 THOMAS & HARRIE SCHLOSS
 7 PRIORY LANE
 PELHAM MANOR NY 10803

TAX ROLL NO.	CO	BOOK	MAP	PARCEL
101873	02	996	80	160Y5
FEES	COMB RATE	COMB RATE		
0160	9.2900	1.8900		

TOTAL VALUE OF PRODUCING MINE

PRIMARY	LIMITED VALUE	ASST	ASSESSED VALUE	EXEMPTION	1ST HALF PAID	2ND HALF PAID	
LAND BLDGS ETC	4303	340	1463	0			
PERSONAL PROPERTY	126947	340	43162	0			
TOTALS	131250		44625	0	246864	246864	
SECONDARY	FULL CASH VALUE	ASST	ASSESSED VALUE	EXEMPTION	PENALTY	1ST HALF	2ND HALF
LAND	0	340	0	0		65.91	0
BLDGS ETC	4303	340	1463	0			
PERSONAL PROPERTY	126947	340	43162	0			
TOTALS	131250		44625	0		2534.55	246864

Tax Code	1984	1985	DIFFERENCE	PRIMARY TAX
00986	21600	17850	-3750	414566
02000	194941	163774	-31167	ADDITIONAL STATE AID
04156	63180	52657	-10523	00
07001	248400	194118	-54282	NET PRIMARY
08150	79380	65153	-14227	414566
15000	47	176	129	SECONDARY TAX
				791.62
				SPECIAL DISTRICTS
				00
				TOTAL TAX DUE
	607548	493728	-113820	493728

Total
 \$5,003.19

607548 493728 -113820 493728
 FRAME 1 02

1 MESCH, CLARK & ROTHSCHILD, P.C.
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (602) 624-8886

5 By: Lowell E. Rothschild and
6 Patricia Wendel
7 85-1772.1/cso
8 Attorney for Debtor In Possession

9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF ARIZONA

11 In re)
12) NO. 85-00045
13 TOMBSTONE EXPLORATION, INC.)
14) DISCLOSURE STATEMENT ON
15 Debtor.) DEBTOR'S PLAN OF
16) REORGANIZATION

17 The Debtor corporation in the above-captioned Chapter
18 11 proceeding hereby discloses pursuant to Bankruptcy Code
19 § 1125, the following information regarding the Debtor's Plan
20 of Reorganization filed with this Court.

21 1. Debtor, Tombstone Exploration, Inc., filed its
22 Chapter 11 petition on January 18, 1985. Prior to the filing
23 of the petition, the Debtor had been actively engaged in the
24 development of its mining operation for the extraction of
25 precious metals at its plant site in Tombstone, Arizona. There
26 had been a marked drop in the price of silver, and the Debtor's
shareholders were unable to make the continued infusions of
capital needed to operate the mine. The Debtor, in an effort
to deal with all creditors equitably, determined that it would
be in the best interest of the corporation that there be an
orderly liquidation of assets so that all creditors could share

PLAN D
Assets & Liabilities
under Chapter 11 Plan
& Ballots
Set - Notice

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

B

91 A

1 the unliquidated assets which consisted of a modern, functioning,
2 mining operation, which could best be liquidated by the Debtors,
3 as they know how to maximize the sale of said assets.

4 2. Since the filing of the petition, the Debtor has
5 attempted to liquidate the assets and is in the process of doing
6 same; a list of the remaining, unencumbered, vehicles and equip-
7 ment and estimated liquidation value is attached as Exhibit "A",
8 and a current balance sheet is attached as Exhibit "B".

9 3. Eighty percent of the stock of the debtor corpora-
10 tion is owned by Thomas H. Schloss and the remaining twenty
11 percent is owned by six other individuals. The plan contemplates
12 that no amounts will be paid to the shareholders by virtue of
13 their ownership of the stock.

14 4. The Debtor corporation has no ongoing operation.
15 The plan attached hereto and made a part hereof as Exhibit "C"
16 and filed as the Debtor's Plan is intended to be a liquidation
17 plan.

18 5. You are urged to carefully read the contents of
19 this Disclosure Statement before making your decision to accept
20 or reject the Plan. Particular attention should be directed
21 to the provisions of the Plan affecting or impairing your rights
22 as they presently exist. The terms used herein have the same
23 meaning as in the Plan unless the content hereof requires other-
24 wise.

25 NO REPRESENTATIONS, OTHER THAN THOSE SET FORTH HEREIN
26 CONCERNING THE DEBTOR (PARTICULARLY AS TO ITS FUTURE BUSINESS

1 OPERATIONS OR VALUE OF ITS PROPERTY), ARE AUTHORIZED BY THE
2 DEBTOR.

3 Great effort has been made by the Debtor to be accurate
4 in all material respects, but the Debtor is unable to warrant
5 or represent that all the information contained herein is without
6 inaccuracy. The Debtor believes the contents of this Disclosure
7 Statement to be accurate and complete. Neither the Bankruptcy
8 Court nor any other party to these proceedings has passed upon
9 the accuracy of the information contained herein.

10 Projections of results of the sale of Debtor's property
11 are based on the Debtor's best estimates in light of current
12 market conditions, appraisals and other factors which will bear
13 on results but which can only be estimated.

14 It is important that you vote. Under the Bankruptcy
15 Code, a majority in number and two-thirds in amount of the claims
16 of a claimants being solicited THAT ACTUALLY VOTE will bind those
17 who do not vote.

18 DATED this 25 day of November, 1985.

19 TOMSTONE EXPLORATION, INC.

20
21 BY Lowell E. Rothschild and Patricia Wendel
22 Lowell E. Rothschild and
23 Patricia Wendel
24 Attorneys for the
25 Debtor Corporation
26

20
21 By Thomas H. Schloss
22 Thomas H. Schloss,
23 President

PROJECT:DIUSUM

TOMBSTONE EXPLORATION, INC.
SUMMARY OF BROKER PRICES
OCTBER 31, 1985

TRUCKS	\$3,700
HEAVY EQUIPMENT	\$8,000
CONVEYORS & PROCESSING EQUIPMENT	\$73,830
MAINTENANCE EQUIPMENT	\$1,440
MOTORS, PUMPS & PIPES	\$12,315
PRECIPITATION PLANT EQUIP.	\$41,750
SMELTING EQUIPMENT	\$5,005
SAMPLE PREP & PRECIOUS METAL TABLE	\$2,070
GEOLOGICAL, SURVEY & EXPLORATION EQUIP	\$1,985
LABORATORY EQUIPMENT	\$6,468
TRAILERS	\$8,000
BUILDINGS	\$0
OFFICE EQUIPMENT	\$2,385
MISCELLANEOUS	\$4,320

TOTAL	\$171,268
	=====

EXHIBIT A

TOMBSTONE EXPLORATION, INC.
 BALANCE SHEET
 SEPTEMBER 30, 1985
 (UNAUDITED)

**** A S S E T S ****

CURRENT ASSETS:	
CASH IN BANK	10,816.00
FIXED ASSETS:	
FIXED ASSETS - @ APPRAISED VALUE (SEE ATTACHED)	171,268.00

TOTAL ASSETS	182,084.00
	=====

**** LIABILITIES AND STOCKHOLDERS' EQUITY ****

LIABILITIES:	
PRIORITY LOANS	115,000.00
LESSOR CLAIMS	NOT AVAILABLE
TAXES OWING UNITED STATES	2,730.81
TAXES OWING STATES	36,006.13
TAXES OWING OTHER TAXING AUTHORITIES	3,954.92
SECURED CLAIMS	306,507.00
UNSECURED CLAIMS WITHOUT PRIORITY	7,688,309.20

TOTAL LIABILITIES	8,152,508.06

STOCKHOLDERS' EQUITY:	
CAPITAL STOCK	2,283.33
ADDITIONAL PAID IN CAPITAL	134,477.81
RETAINED EARNINGS (DEFICIT)	-8,107,185.20

TOTAL STOCKHOLDERS' EQUITY	-7,970,424.06

TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	182,084.00
	=====

1 MESCH, CLARK & ROTHSCHILD, P.C.
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (602) 624-8886

5 By: Lowell E. Rothschild and
6 Patricia Wendel
7 85-1772.1/cso
8 Attorney for Debtor In Possession

9 IN THE UNITED STATES BANKRUPTCY COURT
10 FOR THE DISTRICT OF ARIZONA

11 In re)
12) NO. 85-00045
13 TOMBSTONE EXPLORATION, INC.)
14) DEBTOR'S PLAN
15 Debtor.)
16 _____)

17 Debtor corporation proposes the following Plan pursuant
18 to Chapter 11 of the Bankruptcy Code.

19 ARTICLE I

20 For the purposes of the Plan, the following terms shall
21 have the respective meanings hereinafter set forth:

22 A. Bankruptcy Code: the Bankruptcy Code, as set forth
23 in Title 11 of the United States Code.

24 B. The Plan: This Plan filed by the Debtor.

25 C. Confirmation of the Plan: The entry by the Court
26 of an Order Confirming the Plan in accordance with § 1129 of
the Bankruptcy Code.

D. Confirmation Date: The date the Order Confirming
the Plan becomes final within the meaning of the Bankruptcy Code.

E. The Court: The United States Bankruptcy Court for
the District of Arizona, Bankruptcy Judge William A. Scanland
acting in the case.

1 F. The Case: The proceeding for reorganization of
2 the Debtor under Chapter 11 of the Bankruptcy Code now pending
3 in the Court and having the case number 85-0045.

4 G. The Debtor: Tombstone Exploration, Inc.

5 H. Prefiling Indebtedness: All claims, as defined
6 by § 101(4) of the Bankruptcy Code against the Debtor existing
7 as of January 18, 1985, without interest from and after such
8 date except as to the over secured claims which shall bear
9 interest.

10 I. The Creditors: All creditors possessing claims
11 against the Debtor for prefiling indebtedness.

12 J. Effective Date of Plan: The effective date will
13 be the first business day following ten (10) days after entry
14 of an Order confirming the plan of reorganization.

15 K. Distribution Date: Distribution date will be
16 defined as the date thirty (30) days after the effective date
17 of the Plan.

18 ARTICLE II

19 Administrative Expense Claims

20 The administrative expenses of the Debtor's Chapter
21 11 case allowed pursuant to § 503(b) of the Code shall be paid
22 as set out in Article IV herein.

23 ARTICLE III

24 Classification of Claims and Interests

25 The creditors and shareholders of the Debtor are divided
26 into the following classes.

W. H. CLARK & ROTHCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEADE AVENUE
TUCSON, ARIZONA 85701-1090

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Class 1: All claims entitled to priority under the
Bankruptcy Code.

Class 2: The allowed secured claims for pre-filing
indebtedness.

Class 3: All allowed non-priority unsecured claims
for pre-filing indebtedness, including those claims arising from
the rejection of the executory contracts or leases.

Class 4: Interest of the holders of the common stock
of the Debtor.

ARTICLE IV

Claims and Interest Not Impaired Under the Plan

Class 1 claims shall be paid 100% of their allowed
claims, semi-annually and pro rata and with interest at the legal
rate, beginning six months after the distribution date, as assets
are liquidated under the plan.

Class 2 claims shall not be impaired by the plan. The
plan shall not alter any legal, equitable, or contractual right
to which each Class 2 claim entitles the holder thereof. Each
holder of a Class 2 claim has taken back its collateral in sat-
isfaction of the holder's secured claim.

ARTICLE V

Claims and Interest Impaired under the Plan

If, at the Confirmation Hearing it appears that there
: : :

MESCH, CLARK & ROTHCHILD, P. C.
ATTORNEYS AT LAW
259 NORTH MICHIGAN AVENUE
TUCSON, ARIZONA 85701-1090

1 is a dissenting class of creditors who are impaired, the Debtor
2 intends pursuant to the Bankruptcy Code as a proponent of the
3 Plan, to ask the Court to confirm the Plan notwithstanding non-
4 acceptance by impaired class to find that the Plan does not dis-
5 criminate unfairly and is fair and equitable with respect to
6 the class of claims that is impaired hereunder.

7 ARTICLE VI

8 Provisions for Satisfying Claims of Creditors

9 The claims of creditors will be satisfied as follows:

10 Class 1 and 2 claims are unimpaired and will be provided
11 for pursuant to Article IV.

12 Class 3 claims: Each holder of an allowed Class 3 claim
13 shall be paid in respect to said claim, semi-annually and
14 pro rata, beginning six (6) months after the distribution date,
15 such funds as Debtor shall have received from liquidation of
16 its equipment as are not required to satisfy the claims of Class
17 1 creditors.

18 Class 4 claims: No amount shall be paid to the share-
19 holders under the Plan as compensation for their equity
20 interests.

21 Additional provisions applicable to all Classes:

22 A. The payments, distribution and other treatments
23 provided in respect to each claim and allowed interests shall
24 be in complete satisfaction, discharge and release of such
25 allowed claims.

26 B. This Plan contemplates a liquidation of the assets

1 of the Debtor company. The assets of the company are represented
2 by the cash balances held in the Debtor's bank accounts and unen-
3 cumbered mining equipment and vehicles, which the Debtor values
4 at not less than \$100,000.00.

5 C. Notwithstanding any other provision of the Plan
6 specifying a date or time for the payments hereunder, payments
7 in respect of a claim which is disputed, unliquidated or contin-
8 gent shall not be made until such claim becomes an allowed claim,
9 whereupon such payment shall be made promptly.

10 ARTICLE VII

11 Execution and Implementation of the Plan

12 The Court's Confirmation Order shall be a judicial determination
13 of the discharge of all indebtedness of the Debtor, including
14 but not limited to all pre-filing indebtedness.

15 ARTICLE VIII

16 Modification of the Plan

17 After confirmation, the Debtor, may, with the approval
18 of the Court, so long as it does not materially or adversely
19 affect the interests of the creditors, remedy any defect or
20 omission or reconcile any inconsistencies in the Plan, or in
21 the order of confirmation, in such manner as may be necessary
22 to carry out the purposes and effect of this Plan.

23 ARTICLE IX

24 Jurisdiction of the Court

25 The Court will retain jurisdiction until this Plan has
26 been fully consummated including, but not limited to, the

1 following purposes:

2 A. The classification of the claim of any creditor
3 and the reexamination of the claims which have been allowed for
4 purposes of determining acceptances at the time of confirmation
5 and the determination of such objections as may be filed to
6 creditor's claims. The failure by the Creditors' Committee to
7 object to, or to examine any claim for the purpose of determining
8 acceptances, shall not be deemed to be a waiver of the Creditors'
9 Committee's right to object to, or reexamine the claim, in whole
10 or in part.

11 B. Rejection of executory contracts that are not
12 discovered prior to confirmation and allowance of claims for
13 damages as to the rejection of any such executory contract within
14 such further time as this Court may direct.

15 C. Determination of all questions and disputes regarding
16 title to the assets of the estate, and determination whether
17 or not subject to pending action as of the date of confirmation
18 between the Debtor and any other party, including but not limited
19 to, any right of the Debtor to recover assets pursuant to the
20 provisions of Title 11 of the United States Code.

21 D. The correction of any defect, the curing of any
22 omission or the reconciliation of any inconsistency in this Plan
23 or the order of confirmation as may be necessary to carry out
24 the purposes and intent of this Plan.

25 E. The modifications of this Plan after confirmation
26 pursuant to the Bankruptcy Rules and Title 11 of the United
States Code.

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

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F. To enforce and interpret the terms and conditions of this Plan.

G. Entry of any order, including injunctions, necessary to enforce the title, rights and powers of the Creditors' Committee, the Debtor, and to impose such limitations, restrictions, terms and conditions of such title, rights and powers as to this Court may deem necessary.

H. To appoint Trustees from time to time and to instruct the Trustee in the performance of his duties from time to time as may be necessary or desirable in the administration of this Plan.

I. Entry of an order concluding and terminating this case.

DATED: November 25th, 1985.

TOMBSTONE EXPLORATION, INC.

By Thomas H. Schloss
Thomas H. Schloss,
President

FILED

SEP 27 1 25 PM '85

VIA REGISTERED MAIL
US BANKRUPTCY COURT
BY _____

LAW OFFICES
BILBY & SHOENHAIR, P. C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
PLEASE DIRECT MAIL TO:
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

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In re) No. 85-00045
TOMBSTONE EXPLORATION,)
INC.,) STIPULATION
Debtor.)
_____)

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Tombstone Exploration, Inc., the debtor and debtor-in-
possession herein ("TEI") and the lessee under that certain
mining lease agreement dated February 7, 1979 ("the mining
lease"), Tombstone Development Company, an Arizona corporation
("TDC") and the lessor under the mining lease, and the Creditors'
Committee duly appointed by the Bankruptcy Court in the above-
entitled proceeding ("Creditors' Committee") hereby stipulate as
follows:

23
24

1. TEI is in default of its obligations under the
mining lease in the following respects:

25
26

A. TEI has failed to pay the monthly minimum
royalty payments due for the months of March, April, May, June

85 p

BILBY & SHAW, P. C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

1 and July of 1985 in the amount of \$7,500.00 per month; as of July
2 8, 1985, the total amount of TDC's administrative claim for
3 minimum monthly royalties (prorated for the month of July) is
4 \$32,000.00;

5 B. TEI has failed to pay the second one-half of the
6 1984 real property taxes on the property pursuant to paragraph 7
7 of the lease, in the amount of \$10,166.29;

8 C. TEI has failed to procure liability insurance as
9 required pursuant to paragraph 15 of the lease; the lessor has
10 been required to obtain such insurance at its own expense and has
11 paid the sum of \$2,655.00 to obtain such insurance. TDC has an
12 administrative claim for an amount prorated from June 5, 1985,
13 the last date on which TEI had coverage, until July 8, 1985, in
14 the amount of \$239.91.

15 D. TDC contends that TEI is in default of certain
16 other obligations under the mining lease, and TEI disputes that
17 contention. Consequently, such alleged defaults are not the
18 subject of this stipulation. The parties reserve all rights
19 which they may have to assert or dispute such claims at the
20 appropriate time.

21 2. TEI is in default under an oral agreement for the
22 month-to-month rental of a building which is situated on the
23 leased premises in that TEI has failed to pay the monthly rental
24 for said building for the months of March, April, May, June and
25 July of 1985 in the amount of \$175.00 per month for a total of
26 \$875.00. TDC has an administrative claim in that amount.

1 3. TDC gave TEI notice of default under the lease more
2 than thirty days prior to this date, and TEI has failed to cure
3 such defaults.

4 4. Although TEI has filed a motion to assume the lease,
5 TEI does not have the present ability to cure the defaults under
6 the lease and cannot provide adequate assurance of future
7 performance of its obligations under the lease.

8 5. Although certain parties represented by the
9 Creditors' Committee were interested in obtaining an assignment
10 of the lease from TEI, those parties are not presently willing to
11 pay the sums required to cure the defaults under the lease and
12 provide adequate assurance of future performance under the lease.

13 6. The parties stipulate and agree that effective as of
14 July 8, 1985, the lease is terminated as between TEI and TDC.
15 TEI shall have until September 8, 1985 to remove from the leased
16 premises all personal property, machinery, tools, appliances,
17 supplies, pumps, pipe, and equipment owned by TEI pursuant to
18 paragraph 10 of the lease, and TDC agrees to furnish TEI
19 reasonable access to the premises during such sixty day period to
20 facilitate the removal and/or sale of such property by TEI. Any
21 property which is not removed by September 8, 1985 shall become
22 the property of TDC.

23 7. The parties agree that no mine tailings, ore or
24 minerals shall be removed from the leased premises pending a
25 determination by the court of the parties' respective right,
26 title and interest in and to such tailings and minerals.

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DATED: September 26, 1985.

BILBY & SHOENHAIR, P.C.

By Mary E. Mangotich
Mary E. Mangotich
P. O. Box 871
Tucson, Arizona 85702
Attorneys for TDI

MESCH, CLARK & ROTHSCHILD

By Patricia Wendel
Patricia Wendel
259 North Meyer Avenue
Tucson, Arizona 85701
Attorneys for Debtor

BILBY & SHOENHAIR, P.C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

UNITED STATES BANKRUPTCY COURT

FOR THE _____ DISTRICT OF ARIZONA

FILED

AUG 19 1 20 PM '85

VICTOR L. FORT
CHIEF CLERK
US BANKRUPTCY COURT
Case No. 85-00045

In re

TOMBSTONE EXPLORATION, INC.

Debtor

Include all names used by Debtor within the last six years

3

PROOF OF CLAIM

1. (a) [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at *

(b) [If claimant is a partnership claiming through a member] The undersigned, who resides at *

is a member of _____, a partnership composed of the undersigned and _____ of * _____, and doing business at * _____ and is authorized to make this proof of claim in behalf of the partnership.

(c) [If claimant is a corporation claiming through an authorized officer] The undersigned, who resides * P. O. Box 1445, Grand Island, Nebraska, 68801 _____, is the President of Tombstone Development Company

a corporation organized under the laws of _____ and doing business at * P. O. Box 1445, Grand Island, Nebraska 68801 and is authorized to make this proof of claim on behalf of the corporation.

(d) [If claim is made by agent] The undersigned, who resides at * _____, is the agent of _____, of * _____, and authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$ Undetermined at this time but believe it to be in excess of \$1,000,000.00 plus interest, costs and attorneys' fees.

*State post-office address.

c *Victor L. Fort*

3. The consideration for this debt [or ground of liability] is as follows: Lease Agreement, which is attached hereto as Exhibit 1.

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except NONE

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except NONE

9. No security interest is held for this claim except NONE

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] _____

This claim has priority pursuant to 11 U.S.C., §365(d)(1) and 11 U.S.C. 507(a)(1).

Dated: 8-13-85

Laverne Baxter
Townstone Development Co.
Print Name

Laverne Baxter
Townstone Development Co.
Signed:

UNITED STATES BANKRUPTCY COURT

FOR THE _____ DISTRICT OF ARIZONA

In re

TOMBSTONE EXPLORATION, INC.,

JAN 28 3 55 PM '85

VIRCH
US BANK
Case No. 85-00045

Debtor

Include all names used by Debtor within the last six years

PROOF OF CLAIM

1. (a) [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at *

(b) [If claimant is a partnership claiming through a member] The undersigned, who resides at * _____ is a member of _____, a partnership composed of the undersigned and _____ of * _____, and doing business at * _____ and is authorized to make this proof of claim in behalf of the partnership.

(c) [If claimant is a corporation claiming through an authorized officer] The undersigned, who resides * P. O. Box 1445, Grand Island, Nebraska, 68801 _____ is the President of Tombstone Development Company a corporation organized under the laws of _____ and doing business at * P. O. Box 1445, Grand Island, Nebraska, 68801 and is authorized to make this proof of claim on behalf of the corporation.

(d) [If claim is made by agent] The undersigned, who resides at * _____ is the agent of _____ of * _____, and is authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$ 318,700.00

*State post-office address.

C

36 AT

3. The consideration for this debt [ground of liability] is as follows: pages due from rejection of executory mining lease, copy of which is attached, computer per attached statement.

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____, as shown by the itemized statement attached hereto.

Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except NONE

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except NONE

9. No security interest is held for this claim except NONE

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] _____

Dated: 1-10-86

TOMBSTONE DEVELOPMENT COMPANY

TOMBSTONE DEVELOPMENT COMPANY

By Laverne Baxter

Signed: BY Laverne Baxter

Print Name

Unsecured Claim

Damages for rejection of executory contract equal to the minimum monthly royalties from July 8, 1985 until the end of the lease term or re-leasing of premises. Pursuant to 11 U.S.C. § 502, the maximum claim for damages resulting from the termination of a lease of real property is the rent reserved by the lease for the greater of one year of 15%, not to exceed three years, of the remaining term of the lease following the date of filing of the petition. In this case, since the lease was open-ended, we assert a claim for the minimum monthly royalty of \$7,500.00, multiplied by 31 months, for a total of \$232,500.00.

In addition to the minimum monthly royalty, Tombstone Development Company claims the right to recover real property taxes for three years, estimated at \$61,200.00, and for certain other costs in connection with the lease, such as the cost of insuring the property, maintaining the property, performing assessment work to preserve the unpatented mining claims, and related matters. Tombstone Development Company estimates such costs at \$25,000.00 for the three year period in question.

UNITED STATES BANKRUPTCY COURT

FOR THE _____ DISTRICT OF ARIZONA

FILED

JAN 26 3 45 PM '86

VIRG
US B
Case No. 85-00045

In re
TOMBSTONE EXPLORATION, INC.,

Debtor
Include all names used by Debtor within the last six years

PROOF OF CLAIM

(Administrative Claim)

1. (a) [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at *

(b) [If claimant is a partnership claiming through a member] The undersigned, who resides at *

is a member of _____, a partnership composed of the undersigned and _____ of * _____, and doing business at * _____ and is authorized to make this proof of claim in behalf of the partnership.

(c) [If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at * P. O. Box 1445, Grand Island, Nebraska, 68801, is the President of Tombstone Development Company a corporation organized under the laws of _____ and doing business at * P. O. Box 1445, Grand Island, Nebraska, 68801 and is authorized to make this proof of claim on behalf of the corporation.

(d) [If claim is made by agent] The undersigned, who resides at * _____, is the agent of _____, of * _____, and is authorized to make this proof of claim on behalf of the claimant.

2. The debtor ~~was at the time of the filing of the petition indebted to this claimant~~ is indebted [or liable] to this claimant, in the sum of \$ 43,281.20.

*State post-office address.

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3. The consideration for this debt [or ground of liability] is as follows: lease of mining claims
pending the proceeding and prior to rejection of the lease

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except NONE

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except NONE

9. No security interest is held for this claim except NONE

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] _____
The entire amount of this claim is entitled to priority
pursuant to 11 USC § 503 and 11 USC § 507(a)(1)

Dated: 1-24-86

TOMBSTONE DEVELOPMENT COMPANY

TOMBSTONE DEVELOPMENT COMPANY

By Laverne Baxter
Print Name

Signed: BY Laverne Baxter

Administrative Claim

1. Minimum monthly royalties which accrued and remained unpaid during the bankruptcy proceedings: \$32,000.00
2. Real Property taxes for second half of 1984, became due and payable during the pendency of the bankruptcy proceedings: \$10,166.29
3. Liability insurance obtained by TDC, prorated until July 8, 1985: \$239.91.
4. Rent accrued during the pendency of the bankruptcy proceedings for the building situated on the leased premises at the rate of \$175.00 per month: \$875.00.

TOTAL ADMINISTRATIVE CLAIM WITH PRIORITY FOR PAYMENT:

\$43,281.20

LAW OFFICES
BILBY & SHOENHAIR, P.C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
PLEASE DIRECT MAIL TO:
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

FILED

SEP 25 1985

VIRGINIA L FRITZ, CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In re) No. 85-00045
)
TOMBSTONE EXPLORATION,) ORDER
INC.,)
)
Debtor.)

Pursuant to the stipulation between Tombstone Exploration, Inc., the debtor and debtor-in-possession herein ("TEI") and the lessee under that certain mining lease agreement dated February 7, 1979 ("the mining lease"), Tombstone Development Company, an Arizona corporation ("TDC") and the lessor under the mining lease, and the Creditors' Committee duly appointed by the Bankruptcy Court in the above-entitled proceeding ("Creditors' Committee"), and good cause appearing,

IT IS HEREBY ORDERED that:

1. Effective as of July 8, 1985, the lease is terminated as between TEI and TDC. TEI shall have until September 8, 1985 to remove from the leased premises all personal

86

SEP 27

10-1

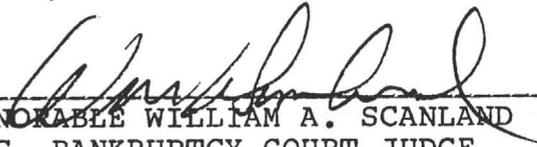
BILBY & S. NHAIR, P.C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
POST OFFICE BOX 971
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

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property, machinery, tools, appliances, supplies, pumps, pipe, and equipment owned by TEI pursuant to paragraph 10 of the lease, and TDC agrees to furnish TEI reasonable access to the premises during such sixty day period to facilitate the removal and/or sale of such property by TEI. Any property which is not removed by September 8, 1985 shall become the property of TDC.

2. No mine tailings, ore or minerals shall be removed from the leased premises pending a determination by the court of the parties' respective right, title and interest in and to such tailings and minerals.

DONE IN OPEN COURT: September 30, 1985.


HONORABLE WILLIAM A. SCANLAND
U.S. BANKRUPTCY COURT JUDGE

UNITED STATES BANKRUPTCY COURT

FOR THE _____ DISTRICT OF ARIZONA

FILED

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VIRGINIA L. ROYCE
CHIEF CLERK
US BANKRUPTCY COURT
BY _____ Case No. 85-00045

In re

TOMBSTONE EXPLORATION, INC.

Debtor

Include all names used by Debtor within the last six years

note: this had copy of lease attached

PROOF OF CLAIM

1. (a) [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at * _____

(b) [If claimant is a partnership claiming through a member] The undersigned, who resides at * _____
is a member of _____, a partnership,
composed of the undersigned and _____,
of * _____, and
doing business at * _____,
and is authorized to make this proof of claim in behalf of the partnership.

(c) [If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at * P. O. Box 1445, Grand Island, Nebraska, 68801, is the
President _____ of Tombstone Development Company _____,
a corporation organized under the laws of _____
and doing business at * P. O. Box 1445, Grand Island, Nebraska 68801,
and is authorized to make this proof of claim on behalf of the corporation.

(d) [If claim is made by agent] The undersigned, who resides at * _____,
is the agent of _____,
of * _____, and is
authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$ Undetermined at this time but believe it to be in excess of \$1,000,000.00 plus interest, costs and attorneys' fee

*State post-office address.

30 box

3. The consideration for this debt [or ground of liability] is as follows: damages due from rejection of executory mining lease, copy of which is attached, computer per attached statement.

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except NONE

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except NONE

9. No security interest is held for this claim except NONE

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] _____

Dated: 1-10-86

TOMBSTONE DEVELOPMENT COMPANY

Laverne Baxter
Print Name

TOMBSTONE DEVELOPMENT COMPANY

Signed: BY Laverne Baxter

UNITED STATES BANKRUPTCY COURT

FOR THE _____ DISTRICT OF ARIZONA

In re

TOMBSTONE EXPLORATION, INC.,

Debtor

Include all names used by Debtor within the last six years

FILED
JAN 20 3 45 PM '86
VIRGIL
US BANK
Case No. 85-00045

NOTE: this has copy of lease attached

PROOF OF CLAIM

(Administrative Claim)

1. (a) [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at * _____

(b) [If claimant is a partnership claiming through a member] The undersigned, who resides at * _____
is a member of _____, a partnership,
composed of the undersigned and _____,
of * _____, and
doing business at * _____,
and is authorized to make this proof of claim in behalf of the partnership.

(c) [If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at * P. O. Box 1445, Grand Island, Nebraska, 68801, is the
President of Tombstone Development Company
corporation organized under the laws of _____
and doing business at * P. O. Box 1445, Grand Island, Nebraska, 68801,
and is authorized to make this proof of claim on behalf of the corporation.

(d) [If claim is made by agent] The undersigned, who resides at * _____,
is the agent of _____,
of * _____, and is
authorized to make this proof of claim on behalf of the claimant.

2. The debtor ~~was at the time of the filing of the petition initiating this case and was~~ is indebted [or liable] to this claimant, in the sum of \$ 43,281.20.

*State post-office address.

35/10

3. The consideration for this debt [or ground of liability] is as follows: lease of mining claims
pending the proceeding and prior to rejection of the lease

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except NONE

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except NONE

9. No security interest is held for this claim except NONE

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] _____
The entire amount of this claim is entitled to priority
pursuant to 11 USC § 503 and 11 USC § 507(a)(1)

Dated: 1-24-86

TOMBSTONE DEVELOPMENT COMPANY

TOMBSTONE DEVELOPMENT COMPANY

By Laverne Baxter
Print Name

Signed: BY Laverne Baxter

Administrative Claim

1. Minimum monthly royalties which accrued and remained unpaid during the bankruptcy proceedings: \$32,000.00
2. Real Property taxes for second half of 1984, became due and payable during the pendency of the bankruptcy proceedings: \$10,166.29
3. Liability insurance obtained by TDC, prorated until July 8, 1985: \$239.91.
4. Rent accrued during the pendency of the bankruptcy proceedings for the building situated on the leased premises at the rate of \$175.00 per month: \$875.00.

TOTAL ADMINISTRATIVE CLAIM WITH PRIORITY FOR PAYMENT:

\$43,281.20

UNITED STATES BANKRUPTCY COURT

FOR THE _____ DISTRICT OF ARIZONA
JAN 28 5 53 PM '85

In re

TOMBSTONE EXPLORATION, INC.,

VIRGINIA LEE
US BANK
Case No. 85-00045

Debtor

Include all names used by Debtor within the last six years

PROOF OF CLAIM

1. (a) [If claimant is an individual claiming for himself] The undersigned, who is the claimant herein, resides at * _____.

(b) [If claimant is a partnership claiming through a member] The undersigned, who resides at * _____
is a member of _____, a partnership,
composed of the undersigned and _____
of * _____, and
doing business at * _____
and is authorized to make this proof of claim in behalf of the partnership.

(c) [If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at * P. O. Box 1445, Grand Island, Nebraska, 68801, is the
President of Tombstone Development Company,
a corporation organized under the laws of _____
and doing business at * P. O. Box 1445, Grand Island, Nebraska, 68801,
and is authorized to make this proof of claim on behalf of the corporation.

(d) [If claim is made by agent] The undersigned, who resides at * _____
_____, is the agent of _____
_____, of * _____, and is
authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$ 318,700.00.

*State post-office address.

3615

3. The consideration for this debt [or ground of liability] is as follows: Lease Agreement, which is attached hereto as Exhibit 1.

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] due on _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

No judgment has been rendered on the claim except NONE

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except NONE

No security interest is held for this claim except NONE

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] _____
is claim has priority pursuant to 11 U.S.C., §365(d)(1) and 11 U.S.C. 507(a)(1).

Dated: 8-13-85
Laverne Baxter
Tomestone Development Co.
Print Name

Laverne Baxter
Tomestone Development Co.
Signed:

Unsecured Claim

Damages for rejection of executory contract equal to the minimum monthly royalties from July 8, 1985 until the end of the lease term or re-leasing of premises. Pursuant to 11 U.S.C. § 502, the maximum claim for damages resulting from the termination of a lease of real property is the rent reserved by the lease for the greater of one year of 15%, not to exceed three years, of the remaining term of the lease following the date of filing of the petition. In this case, since the lease was open-ended, we assert a claim for the minimum monthly royalty of \$7,500.00, multiplied by 31 months, for a total of \$232,500.00.

In addition to the minimum monthly royalty, Tombstone Development Company claims the right to recover real property taxes for three years, estimated at \$61,200.00, and for certain other costs in connection with the lease, such as the cost of insuring the property, maintaining the property, performing assessment work to preserve the unpatented mining claims, and related matters. Tombstone Development Company estimates such costs at \$25,000.00 for the three year period in question.

this is copy of 1/01/79

PRELIMINARY DRAFT *MLF*
W34
1/79

LEASE AGREEMENT

THIS AGREEMENT, dated this 7th day of February, 1979, by and between TOMBSTONE DEVELOPMENT COMPANY, an Arizona Corporation, hereinafter referred to as "Lessor", and Tombstone Exploration, Inc, and The Austin Exploration & Mining Corporation, hereinafter referred to as "Lessee".

RECITALS

Lessors are the owners of certain groups of patented and unpatented lode mining claims, referred to herein as "Leased Claims", all of which are situated in Cochise County, Arizona, Mineral Survey numbers of which, and the book and page of the recording in the office of the Recorder of Cochise County, Arizona, are more particularly described in Appendix "A" attached hereto.

Lessee desires to obtain from Lessor a mining lease covering the Leased Claims, described in Appendix "A", and Lessor desires to grant to Lessee such mining lease, on the terms hereinafter set forth:

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties herein, and other valuable consideration, Lessor hereby leases to Lessee for the term and purposes hereinafter mentioned, all that certain land referred to herein as the "Leased Claims".

1. PURPOSE: This lease is made for the sole purpose of examining, searching and testing for opening and operating mines, of, and extracting, producing, treating, selling and shipping any and all minerals contained therein. Lessor also leases to Lessee, the necessary rights of way, easements and water rights, in connection with the leased claims, so as to facilitate exploration and development thereof. The parties hereto agree that all surface and water rights shall be retained by Lessor, but that the retention of those surface and water rights shall not unreasonably interfere with the exploration or mining and associated activities conducted by Lessee. Also, oil and gas rights are retained by Lessor.

2. TERM: The term of this lease shall be for the initial period of one(1) year from the date hereof, and as long thereafter as valuable mineral is produced from said land in commercial quantities and so long as royalties are paid to Lessors, provided, however, that all of the terms and conditions hereof are fully met and that this lease has not been terminated pursuant to any clause hereof.

3. ROYALTIES: Royalties are to be paid to Lessor on all minerals mined from the leased claims, as a percentage of their market value after being reduced to a marketable concentrate or other ^{saleable} minerals, and payable by a refinery of mutual choice on a basis of ^{5%} ~~50%~~ of the net smelter return. The proceeds of the refinery can be taken in kind by the parties subject to this agreement. Lessee agrees that it shall not unreasonably stockpile ore for any excessive period of time after active and substantial production from the leased claims has commenced, and in no event, shall Lessee stockpile ore for more than six months after production has commenced.

The royalty payable out of production for ores or concentrates sold from the leased claims are payable in varying percentages with the different percentages relating to different average gross value per ton of ore or concentrate produced and sold from the leased claims during each month. The average gross value of ore produced and sold from the leased claims over the period of each month shall be determined by dividing the net smelter returns as defined by 3(A) received for such ore produced by the number of tons mined and shipped during the month. The royalties are payable as follows:

(a) Subject to the provisions of this paragraph, Lessor shall be paid a limited royalty out of production, payable in varying percentages. Each different percentage shall be derived from the average gross value per ton of ore, or concentrate mined and shipped from the leased claims, listed as follows:

For any month in which the average gross value per ton of ore computed is less than \$15.00 per ton, the royalty will be five (5%) percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore computed is from \$15.00 to \$20.00 per ton, the royalty will be 6 percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore figure is \$20.00 per ton or more, but less than \$25.00 per ton, the royalty will be eight (8%) percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore figure is \$25.00 per ton or more, but less than \$40.00 per ton, the royalty will be nine (9%) percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore figure is \$40.00 per ton or more, but less than \$80.00 per ton, the royalty will be ten (10%) percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore figure is \$80.00 per ton or more, but less than \$100.00 per ton, the royalty will be twelve (12%) percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore figure is \$100.00 per ton or more, but less than \$150.00 per ton, the royalty will be fifteen (15%) percent of the net smelter returns from mineral produced from the leased claims;

For any month in which the average gross value per ton of ore figure is more than \$150.00 per ton, the royalty will be twenty (20%) percent of the net smelter returns from mineral produced from the leased claims.

4. OPERATION OF MINE: Lessee agrees to work said land in the manner necessary to good and economic mining, so as to bring about maximum and economic recovery from the property, with due regard to development and preservation of said premises as a workable mine. Lessee agrees to perform continuously and diligently in good faith, in an active and substantial way, development in mining work upon the said leased claims directed toward the discovery and production of minerals or ore therefrom. The equipment and machinery brought onto the leased claims by Lessee is and shall remain the personal property of lessee, with the exception of any building constructed by Lessee, and title thereto shall not vest in Lessor by operation of law. Appendix "B" is an inventory of equipment, buildings, and other property owned by Lessor, which the Lessee will take care of and may use for an operation on the leased claims. The obligation of Lessee set forth in this paragraph shall be suspended only while Lessee's compliance is prevented by the elements, accidents, strike, lockouts, riots, delays in transportation, inability to secure materials in the open market, or interference by governmental action, or by any other causes beyond the reasonable control of Lessee, whether similar or dissimilar to the causes specifically mentioned. Lessee agrees to furnish at its own cost, any and all environmental impact studies required by any governmental authority as a result of its undertaking the exploration, development and mining operation contemplated by this agreement. Lessee agrees to honor any and all contractual obligation undertaken by Lessor relating to the sale of water or surface use of the herein leased claims, so long as those said obligations do not interfere with the exploration, development, mining, or similar activity on the leased claims by Lessee. Lessee hereby recognizes that Lessor intends to develop up to 200 acres of the surface of certain claims situated in the immediate vicinity of the townsite of Tombstone. Those said claims consist of the Content, Cocopah, North Point, Contentment, Empire, Tranquil, Silver Belt, Silver Thread, Contention, New Year, Cincinnati, Head Center, Yellow Jacket and Flora Morrisson claims. Lessor agrees that the said development of the surface on the hereinabove mentioned claims shall not interfere with activities of Lessee contemplated by this lease. Notwithstanding with activities of Lessee, any development of the surface of the above mentioned leased claims, Lessor further agrees that Lessee shall have access on or across the above mentioned claims so as not to interfere with the exploration, development, mining, or associated activities of Lessee contemplated by this lease, on those above named claims. ~~If the Lessee, in its sole~~

However lessee will continue to have all rights for mineral exploration, development and mining 40 feet or more below the surface.

5. REPORTING: Lessee agrees that it will provide Lessor with a report on or before the 15th day of each month, pertaining to the previous month, to the Lessor, in writing, indicating the following:

- (a) The number of tons of waste and ore mined.
- (b) A summary of all assays taken on said ore and waste mined.
- (c) The number of tons processed for which royalty is payable pursuant to this lease through mills, smelting, or reduction plants used to process said ores.

- (d) The value of all minerals sold or otherwise disposed of from ores subject to royalty payments pursuant to this lease.

The above referenced statement and reports are to be accompanied by a draft payable to the Lessor. If no royalty out of production is due for any monthly period hereof, then a report containing all of the pertinent details above required, shall be submitted to Lessor with a statement to the effect that there is no royalty out of production due for the preceding month.

In addition to the above, weekly progress reports will be sent to the Lessor, as well as all data generated relating to the leased claims.

6. ADDITIONAL REPORTS AND ACCESS: Lessee shall keep a full set of accounts and records, and shall allow Lessor, or its agents and employees to examine them from time to time. Lessee will allow lessor to enter upon said premises, and into any workings, mills, or reduction works thereon, or wherever said ore may be worked or reduced, for the purpose of inspection to ascertain whether the terms and conditions of this lease are being promptly carried out and to take samples and to make tests and measurements, and to affix notices. Lessee shall provide to Lessor, its agents and employees, copies of assay reports, drillhole logs, and any and all other data assembled which could be used as an aid in determining the location, quantity, and quality of any and all deposits on said land. All inspections shall be made at reasonable intervals, and shall be at the sole cost of, and risk of Lessor.

7. TAXES: Lessor shall pay all ad valorem and similar property taxes lawfully levied or assessed during the term of this agreement against the property, or any improvements thereto, but upon the receipt of a statement therefor from Lessor, Lessee shall reimburse Lessor for any such taxes paid by Lessor. In addition to the foregoing, Lessee shall pay all other taxes imposed by reason of Lessee's operation and improvements upon the property. Lessee shall pay any such taxes on installment basis upon receiving notice from Lessor that such installment payment of the said taxes is due. Lessee agrees to pay any such taxes before they become delinquent. Lessee shall not be liable for the payment of any tax assessment imposed by any city, county, state, federal or other law or ordinance, on the income of Lessor hereunder, or the interest reserved by Lessor thereunder or upon a transfer or passing by death or gift, of any interest of Lessor or for any similar tax. Lessee further agrees to do all other things necessary and required by federal, state and local laws and regulations to protect and defend and maintain Lessor's title to the leased claims, so that title will be as good as at the time of the execution of this agreement. A Performance Bond referred to in paragraph 12 will also cover tax payments.

8. WARRANTY: Lessor represents and warrants that it is the owner of the leased patented claims and the rights to unpatented claims, free of all claims, liens and encumbrances, and that Lessor has the exclusive possession of the leased claims, except for approximately two acres leased to the United States Department of Agriculture for surface and except to the extent that the United States Government holds title to unpatented claims. Also, Lessor may lease the "Vizina Mine Tour" provided the Lessor assumes all responsibility and liability for the tour enterprise.

9. BANKRUPTCY: In case Lessee shall be adjudged a bankrupt by either voluntary or involuntary proceedings, Lessor may, at its option, terminate this lease by written notice. After termination by notice, Lessor may re-enter the leased claims and take exclusive possession. Upon exercise of the option to terminate, the estate and rights in the herein leased claims of Lessee, and any person claiming through the Lessee, by act of the parties or operation of law, shall immediately terminate.

10. IMPROVEMENTS: Lessee may construct, reconstruct, demolish, remove, maintain, and use such roads, ditches, ponds, buildings, fixtures, machinery, pumps, PVC pipe, mine dumps, pad, heap, and headframes on, through and upon said leased claims, as may be necessary in carrying on mining operations during the term of this lease. At the termination hereof, Lessee may remove all personal property, machinery, tools, appliances, supplies, pumps, pipe, and equipment on said leased claims by Lessee; except shaft timbering and linings, any underground supports, rails, electric, water, or steam or airline pipes, provided no default shall at such time exist with respect to any payments or rentals, or in respect to any covenants, agreements, or conditions to be kept and performed by Lessee; provided that all machinery, tools, appliances and buildings, and all personal property remaining on said premises sixty (60) days after the termination (by notice or otherwise) of this lease, shall be held to have become the property of Lessor and shall not be removed therefrom by Lessee. Lessee agrees to perform all environmental restorations on the claims required by any governmental authority at its sole cost and expense.

Lessee will obtain approval from Lessor on the site and type of building constructed either for a plant and laboratory facility or a building for another lessee to enable use of the present 71 Minerals plant.

11. HOLD HARMLESS: Lessee agrees to release and to indemnify and hold harmless Lessor, and any corporation wholly or in part affiliated with, owned or controlled by Lessor, from and against all claims, causes of action, liabilities, costs and expenses for losses, or damage to, all property whatsoever and injuries to, or death of, all persons whomsoever, arising out of, or in any way connected with, the use and occupation of the leased premises or exercise of the rights hereunder. Lessee agrees to comply with all such regulations promulgated by the responsible governmental agencies in carrying out the activities contemplated by this lease, and to fence all open shafts, pits, etc., which exist upon the claims according to the requirements of the State Mine Inspector.

12. LIENS: Lessee agrees to pay in full, all persons who perform labor or services on, furnish materials, joined or affixed to, or provide equipment for, said leased claims, at Lessee's instance or request. Lessor shall not permit or suffer liens of any kind or nature to be enforced against said leased claims for such labor, services, materials, or equipment. Lessor shall have the right to pay any amount required to release any such lien, or liens, or to defend any action brought thereon, and to pay any judgement entered therein, and lessee shall be liable to Lessor for all costs, damages and reasonable attorney's fees, and any amounts expended in defending any proceedings or payment of any kind of said liens or any judgments obtained therefor. Lessee should also provide a bond in the amount of \$150,000.00 on payment of labor and materials on the property with the cost of the bond to be paid by the lessee.

13. ASSIGNMENT: This lease shall inure to the benefit of and be binding upon the respective heirs, administrators, executors, successors and assigns of the parties hereto. Upon such assignment all references herein to "Lessee" or "Lessor" shall be deemed to refer to such succeeding heirs, administrators, executors, successors and assigns of such alienating party.

14. TERMINATION: After an exploration/development expenditure of \$200,000 and an equivalent of 12 months advanced minimum royalties (\$90,000), ~~SWBH~~ ^{RFH} Lessee shall have the right in its sole and exclusive discretion, to terminate this lease upon giving thirty (30) days written notice of termination to Lessor. Upon giving such notice of termination, Lessee shall be liable only for the payment of the minimum royalty or royalty out of production due for the thirty day period next following the date the notice of termination was given. Lessor can terminate this lease if the advanced minimum royalty is not sent by certified mail on the first day of every month, starting May 1, 1979, or if the Lessee is in default in regard to any other of the provisions of Paragraphs (3), (7) or (17) of this lease. Lessor shall give formal, written and detailed notice of the existence of same to Lessee. If Lessee has not cured the said default within thirty (30) days after receipt of said formal, written and detailed notice of default, Lessor can terminate the herein lease.

15. INSURANCE: Lessee agrees to maintain and keep in force at all times, a policy of liability insurance protecting Lessee and Lessor from personal and property liability that may be incurred on said leased claims in the amount of \$2,000,000.00. Lessee further agrees to maintain and keep in force at all times, workmens compensation insurance and to furnish certificates of insurance and copies of the Insurance policies to the Lessor. Lessor will be named as Additional Insured. ~~SWBH~~ ^{RFH}

16. NOTICES: Any and all notices required hereunder, or permitted to be given by either party to the other, shall be considered to have been delivered at the expiration of seventy-two (72) hours following deposit in the United States Mail, with registered or certified postage prepaid thereon, and addressed:

(a) If to Lessor: To: Tombstone Development Company
c/o William Hight
1824 North Broadwell
Grand Island, Nebrasks (68801)

(b) If to Lessee: To: Richard F. Hewlett
Tombstone, Arizona

James Briscoe
Southwest Exploration Associates
4500 E. Speedway
Suite # 14
Tucson, Arizona (85712)

Either of the parties may change the location to which required notices to it shall be addressed, upon ten (10) days written notice to the other party.

17. ASSESSMENT WORK: Lessee agrees to perform all necessary assessment work required by federal and state laws for the continuing validity of all mining claims subject to this lease. Lessee further agrees to do all other things necessary and required by federal, state, and local laws and regulations to protect, defend and maintain, Lessor's title to the above referenced claims in effect on February 7, 1979, so that title will be as good as at the time of the execution of this agreement. If conflicts exist on the 18 unpatented claims, Lessee will do everything possible to validate the claims.

18. FIRST RIGHT OF REFUSAL: It is agreed to by and between the parties hereto that Lessee shall be given the first right of refusal to buy the interest of Lessor, should Lessor entertain to sell its interest herein, or the leased claims. For the purpose of this paragraph, Lessee has the first right of refusal to buy the leased claims at the same price as set forth in any bona fide offer in writing, acceptable to Lessor, given by any individual or company. Lessor shall, at its own exclusive discretion, determine what collateral, guarantes, or other evidences of Lessee's ability to purchase the said interest of Lessor herein, for the leased claims, are to be provided by Lessee.

19. MISCELLANEOUS: This agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and supersedes all prior agreements of the parties hereto with respect to the subject matter hereof, and may not be waived, amended or modified in any manner except in writing and signed by the party to be charged. Representations, warranties and agreements of the parties hereto, herein contained, regardless of any disclosure made to, or any investigation made by or on behalf of any party not making such representations, warranties and agreements, shall survive the execution and delivery of this agreement. This agreement, and such representations, warranties and agreements, shall be binding upon, inure to the benefit of, and be enforceable, by and against the heirs, successors, or assign of each of the parties hereto.

This Agreement may be recorded or registered with the Clerk, Recorder or similar officer of the county or counties of which these claims are located, or in any appropriate office of the United States Government, or anywhere else Lessee deems appropriate in order to protect its interests hereunder.

This agreement may be executed in any number of counterparts, which together will constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this agreement as of the date and year first above written.

Lessor:
TOMBSTONE DEVELOPMENT COMPANY

By W. B. Higgin

By Robert Wiedfeldt

By James H. Haggerty

By William A. Adams

Lessee:
TOMBSTONE EXPLORATION, INC.

By Thomas H. Schloss
Thomas H. Schloss

THE AUSTIN EXPLORATION & MINING CORP.

By James A. Briscoe
James A. Briscoe

SCHEDULES B — STATEMENT OF ALL PROPERTY OF DEBTOR

Schedules B•1, B•2, B•3 and B•4 must include all property of the debtor as of the date of the filing of the petition by or against him.

SCHEDULE B•1 — REAL PROPERTY

Description and location of all real property in which debtor has an interest. Include equitable and future interests, interest in estates by the entirety, community property, life estates, leaseholds and rights and powers exercisable for his own benefit.

Nature of interest. Specify all deeds and written instruments relating thereto.

Market value of debtor's interest without deduction for secured claims listed in Schedule A•2 or exemptions claimed in Schedule B•4.

See attached list

TOTAL\$ 90,000

This addendum and amendment, referred to as "Appendix A", to lease dated 7th February, 1979 by and between TOMBSTONE DEVELOPMENT COMPANY, referred to as "Lessor", and TOMBSTONE EXPLORATION, INC., referred to as "Lessee", replaces in its entirety the Appendix A as shown in the original lease.

Name	BLM Serial No. or Mineral Survey No.	Patent No.
=====		
PATENTED CLAIMS		
Alta	289	191
Banner	3227	661
Big Comet	3224	669261
Black Hawk	3696	
Blue Monday	265	81
Boss	800	663
Buffalo	3228	
Bunker Hill	810	16753
Cincinatti	254	6612
Cocopah	266	131
C.O.U.	928	481
Contact	679	385
Content	253	72
Contention	120	3812
Contentment	252	17387
Cornell	3228	
Defense	279	117
Eastside	280	84
Eastside No.2	376	230
Emerald	608	321
Emerald South Mine	3712	
Empire	152	40
Escondido	3218	
Extacy	261	109
First So. Ext. of the Toughnut	257	59
Flora Morrison	258	9105
Florodora	3226	
Fortuna	3214	
Gilded Age	181	51
Good Enough	278	77
Grand Central	143	5352
Grand Dipper	540	9997
Hard Up	344	11695
Hawkeye-Little Wonder	3216	
	1230	
Head Center-Yellow Jacket	3213	668200
Herald	268	82
Hidden Treasure	676	394
Houghton	3228	
Hope (Foodle Dog)	295	16276
Illinois	3228	
Last Chance No.2	809	431
Little Comet	3224	669261
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Naumkeag	148	5403
New Year	213	6311
Ninety-nine	3225	
North Extension Sulphuret	256	58
Northpoint	808	442
Oregon	3226	
Owl's Last Hoot	390	229
Owl's Nest	259	111
Old Guard	785	11695
Poor X	223	66
Prompter	477	
Protection	3230	
Rattlesnake	811	16752
Revenue	626	391
San Rafael	3225	
Shorty		1080
Silver Belt	793	660
Silver Plumè	211	134
Silver Thread	790	416
Southern Belle	815	
	3228	
South Extension, Grand Central	144	7279
Sulphuret	156	5131
Survey		
Survey Lode (Surveyor)		
Sydney	475	10049
Telephone		
Toughnut		
Tranquility	155	5023
Tribute		
Verde		
Vizina		
Way Up		
Wedge		
Westside		
=====		
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T D C No. 1	68448	
T D C No. 2	68449	
T D C No. 3	68450	
T D C No. 4	68451	
T D C No. 5	68452	
T D C No. 6	68453	
T D C No. 7	68454	
T D C No. 8	68455	
T D C No. 9	68456	
T D C No. 10	68457	
T D C No. 11	68458	
T D C No. 12	68459	
T D C No. 13	68460	
T D C No. 14	68461	
=====		

Name BLM Serial No. Patent No.
or Mineral Survey No.

=====

UNPATENTED CLAIMS

T D C No. 15	68462
T D C No. 16	68463
T D C No. 17	68464
T D C No. 18	68465
T D C No. 19	125072
T D C No. 20	125073
T D C No. 21	125074
T D C No. 22	125075
T D C No. 23	125076
T D C No. 24	125077
T D C No. 25	125078
T D C No. 26	125079
T D C No. 27	125080
T D C No. 28	125081
T D C No. 29	125082
T D C No. 30	125083
T D C No. 31	125085
T S A No. 51	215480
T S A No. 52	215481
T S A No. 53	215482
T S A No. 54	215483
T S A No. 55	215484
T S A No. 56	215485
T S A No. 57	215486
T S A No. 58	215487
T S A No. 59	215488
T S A No. 60	215489
T S A No. 61	215490
T S A No. 62	215491

=====

Should Lessee begin a mining operation on any claim contiguous to the Antelope and Shoo Fly claims, and if Lessor has no existing mining operation on those two claims, then the Antelope and Shoo Fly will be added to the above list.

Lessor:
 TOMBSTONE DEVELOPMENT COMPANY

by William B. Hight
 William B. Hight, President

LaVerne Baxter
 LaVerne Baxter

7-24-84
 Date

7-24-84
 Date

Lessee:
 TOMBSTONE EXPLORATION, INC.

by Thomas H. Schloss
 Thomas H. Schloss, President

Jerome Eckers
 Jerome Eckers, Secretary

7/16/84
 Date

7/13/87
 Date

EXHIBIT A1

THE FOLLOWING UNPATENTED LODE MINING CLAIMS SITUATED IN THE TOMBSTONE MINING DISTRICT, STATE OF ARIZONA THE LOCATION NOTICES OF WHICH ARE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COCHISE COUNTY, AND THE BLM SERIAL NUMBERS OF WHICH ARE AS FOLLOWS:

<u>NAME OF CLAIM</u>	<u>DATE STAKING</u>	<u>RECORDED BOOK/PAGE</u>	<u>RECORDED DATE</u>	<u>BLM SERIAL NUMBERS</u>
MISY #1 AMENDED	AUGUST 1967	536/327	MARCH 27, 1968	AMC-86285
MISY #2 AMENDED		536/328		AMC-86286
MISY #3 AMENDED		536/329		AMC-86287
MISY #4 AMENDED		536/330		AMC-86288
MISY #5		536/331		AMC-86289
MISY #6		536/332		AMC-86290
MISY #7		536/350		AMC-86291
MISY #8		536/333		AMC-86292
MISY #9		536/334		AMC-86293
MISY #10		536/335		AMC-86294
MISY #11		536/336		AMC-86295
MISY #12		536/337		AMC-86296
MISY #13		536/338		AMC-86297
MISY #14		536/339		AMC-86298
MISY #15		536/340		AMC-86299
MISY #16		536/341		AMC-86300
MISY #17		536/342		AMC-86301
MISY #18		536/343		AMC-86302
MISY #19		536/344		AMC-86303
MISY #20		536/345		AMC-86304
MISY #21		536/346		AMC-86305
MISY #22		536/347		AMC-86306
MISY #24		536/349		AMC-86308

EXHIBIT A2

THE FOLLOWING UNPATENTED LODE MINING CLAIMS SITUATED IN THE TOMBSTONE MINING DISTRICT, STATE OF ARIZONA THE LOCATION NOTICES OF WHICH ARE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COCHISE COUNTY AND THE BLM SERIAL NUMBERS OF WHICH ARE AS FOLLOWS:

NAME OF CLAIM	DATE STAKING	RECORDED BOOK/PAGE	DATE RECORDED	BLM SERIAL NUMBERS
SOLSTICE #1	AUGUST 8, 1967	536/307	MARCH 27, 1968 (AMENDMENT)	AMC-86244
SOLSTICE #2		536/308		AMC-86245
SOLSTICE #3		536/309		AMC-86246
SOLSTICE #4		536/310		AMC-86247
SOLSTICE #5		536/311		AMC-86248
SOLSTICE #6		536/312		AMC-86249
SOLSTICE #7		536/313		AMC-86250
SOLSTICE #8		536/314		AMC-86251

NAME OF CLAIM	RECORDED BOOK/PAGE	BLM SERIAL NUMBERS
SOLSTICE EXT. #1	536/317	AMC-86254
SOLSTICE EXT. #2	536/318	AMC-86255
SOLSTICE EXT. #3	536/319	AMC-86256
SOLSTICE EXT. #4	536/320	AMC-86257
SOLSTICE EXT. #5	536/321	AMC-86258
SOLSTICE EXT. #6	536/322	AMC-86259
SOLSTICE EXT. #7	536/323	AMC-86260
SOLSTICE EXT. #8	536/324	AMC-86261
SOLSTICE EXT. #9	536/325	AMC-86262
SOLSTICE EXT. #10	536/326	AMC-86263

NAME OF CLAIM	RECORDED BOOK/PAGE	BLM SERIAL NUMBERS
SOLSTICE #9	536/315	AMC-86252
SOLSTICE #10	536/316	AMC-86253

EXHIBIT A3

THE FOLLOWING UNPATENTED LOPE MINING CLAIMS SITUATED IN THE TOMBSTONE MINING DISTRICT, STATE OF ARIZONA THE LOCATION NOTICES OF WHICH ARE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COCHISE COUNTY, AND THE BLM SERIAL NUMBERS OF WHICH ARE AS FOLLOWS:

NAME OF CLAIM	DATE STAKING	RECORDED BOOK/PAGE	DATE RECORDED	BLM SERIAL NUMBERS
FOX #1 AMENDED	AUGUST 1967	42/392 536/279	MARCH 27, 1968 (AMENDMENT)	AMC-86264
FOX #2 AMENDED		42/394 536/280		AMC-86265
FOX #3 AMENDED		42/343 536/281		AMC-86266
FOX #4 AMENDED		508/453-454 536/282		AMC-86267
FOX #5 AMENDED		508/455-456 536/283		AMC-86268
FOX #6 AMENDED		508/457-458 536/284		AMC-86269
FOX #7 AMENDED		508/459-460 536/285		AMC-86270
FOX #8 AMENDED		508/461-462 536/286		AMC-86271
FOX #9 AMENDED		508/463-464 536/287		AMC-86272
FOX #10 AMENDED		508/465-466 536/288		AMC-86273
FOX EXT. #9 RECORDED		532/393 536/267		AMC-86263
FOX EXT. #10 RECORDED		532/394 524/308		AMC-86284 AMC-86274
FOX #11 RECORDED AMENDED AMENDMENT RERECORDED		532/401-402 532/403 536/268		
FOX #12 RERECORDED AMENDED AMENDMENT RERECORDED		524/309 532/404/405 532/406 536/269		AMC-86275
FOX #13 RERECORDED AMENDED AMENDMENT RERECORDED		525/310 532/407-408 532/409 536/270		AMC-86276
FOX #14 RERECORDED AMENDED AMENDMENT RERECORDED		524/311 532/410-411 532/412 536/271		AMC-86277

COPY

EXHIBIT A4

THE FOLLOWING UNPATENTED LODE MINING CLAIMS SITUATED IN THE TOMBSTONE MINING DISTRICT, STATE OF ARIZONA THE LOCATION NOTICES OF WHICH ARE RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF COCHISE COUNTY AND THE BLM SERIAL NUMBERS OF WHICH ARE AS FOLLOWS:

NAME OF CLAIM	DATE STAKING	RECORDED BOOK/PAGE	RECORDED DATE	BLM SERIAL NUMBERS
WEST FOX #1	OCT. 17, 1979	1372/81-82	OCT. 18, 1979	AMC-93371
WEST FOX #2		1372/83		AMC-93372
WEST FOX #3		1372/84		AMC-93373
WEST FOX #4		1372/85		AMC-93374
WEST FOX #5		1372/86		AMC-93375
WEST FOX #6		1372/87		AMC-93376
WEST FOX #7		1372/88		AMC-93377
WEST FOX #8		1372/89		AMC-93378
WEST FOX #9		1372/90		AMC-93379
WEST FOX #10		1372/91		AMC-93380
WEST FOX #11		1372/92		AMC-93381
WEST FOX #12		1372/93		AMC-93382
WEST FOX #13		1372/94		AMC-93383
WEST FOX #14		1372/95		AMC-93384
WEST FOX #15		1372/96		AMC-93385
WEST FOX #16		1372/97		AMC-93386
WEST FOX #17		1372/98		AMC-93387
WEST FOX #18		1372/99		AMC-93388

EXHIBIT A5

<u>NAME OF CLAIM</u>	<u>DATE STAKING</u>	<u>RECORDED BOOK/PAGE</u>	<u>RECORDED DATE</u>	<u>BLM SERIAL NUMBER</u>
JEANIE	FEB. 28, 1980	1410/192	MAR. 25, 1980	97107

BELCHER Patented Load Mining Claim - Mineral Survey 858, Load 206,
section 13, Township 20 South, Range 22 E., G & SRB & M, Cochise
County, Arizona - \$10,000.00

SCHEDULE B-2 • PERSONAL PROPERTY • PAGE ONE

Type of property	Description and location	Market value of debtor's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4.
(a) Cash on hand.		\$100.00
(b) Deposits of money with banking institutions, savings and loan associations, brokerage houses, credit unions, public utility companies, landlords and others.		33,479.81 see attached list
(c) Household goods, supplies and furnishings.	none	-0-
(d) Books, pictures and other art objects; stamp, coin and other collections.	none	-0-
(e) Wearing apparel, jewelry, firearms, sports equipment and other personal possessions.	none	-0-
(f) Automobiles, trucks, trailers and other vehicles.	see attached list	29,700.00
(g) Boats, motors and their accessories.	none	-0-

Schedule B-2 - Continued
u. Interest in partnerships

An interest in Skyline Operating Company whereby TEI will be paid 20% of the net profit of Skyline until the total accrued profits of Skyline amount to \$343,750.00; TEI will thereafter be paid 80% of the net profit of Skyline.

Skyline Operating Company will process a stockpile of approximately two million tons of crushed rock to recover precious metal values, and will create, as a marketable by-product, construction aggregate.

Amount Unknown

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

Civil Minutes

BANKRUPTCY JUDGE: WILLIAM A. SCANLAND
REPORTER : Douglas A. Prater

CLERK: Sandra Foley
DATE : July 8, 1985

In re:

1:30 P. M. 85-00045 TOMBSTONE EXPLORATION, INC.

Hearing; Debtors' Motion to Assume (Unexpired Lease)

Hearing; Tombstone Development's Motion for Order Declaring Executory Lease Terminated and Directing Debtor to Vacate the Premises and Opposition to Motion to Assume Lease

FILED

JUL 8 1985

VIRGINIA L. FRITZ, CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

APPEARANCES:

Patricia Wendel, Attorney for Debtor
Mary Mangotich, Attorney for Tombstone Development
Sally Darcy, Attorney for Creditors' Committee

PROCEEDINGS: xxxx Open Court _____ Chambers _____ Other

Ms. Darcy states her clients would post \$30,000.00 bond and file disclosure statement and plan within 15 days.

COURT: Would entertain a solid proposal to cure defaults, but will not give creditors' committee time to get plan approved. Court will recess to give Ms. Darcy opportunity to discuss other proposals with clients.

AFTER RECESS

Ms. Darcy states her clients will not commit to \$30,000.00 and are not going to assume lease. Debtor should be given 60 days to sell its personal property which is located on property and there is a dispute as to ownership of tailings.

Ms. Mangotich states she agrees debtor has 60 days to remove personalty.

COURT: Parties are to submit stipulation and order regarding removing personal property. After parties formulate issue on tailings, Court will set hearing.

COPIES MAILED this 9th

day of July, 1985, to:

PATRICIA WENDEL, 259 North Meyer, Tucson, Arizona 85701

SALLY DARCY, P. O. Box 3017, Tucson, Arizona 85702

MARY MANGOTICH, P. O. Box 871, Tucson, Arizona 85702

6/1
AM

850045

STATEMENT OF DEFAULTS UNDER LEASE

<u>Description</u>	<u>Cost</u>	<u>Lease Provisio</u>
1. Minimum Royalty Payments		¶3
\$7500.00/month X 5 =	\$37,500.00 ^{30,000}	
2. Building Rent		oral agreement
\$175.00/month X 5 =	\$875.00	
3. Second 1/2 of 1984 Real Property Taxes	\$10,166.29	¶7
4. Assessment Work		¶17
\$100/claim X 31 =	\$3,100.00	
\$100/claim X 12 =	\$1,200.00	
5. Liability Insurance	\$2,655.00	¶15
6. Mechanic's Lien Bond	\$1,800.00 (est.)*	¶12
7. Fencing of Open Pits	unknown	¶11
8. Correction of Pollution Problem	unknown	¶4, 11
9. Operation of Mine	unknown; estimate \$500,000.00 required	¶4
10. Reporting		¶5

Statement of Defaults
TYPE ALL

15 days

30,000

FILED

JUL 8 1985

VIRGINIA L FRITZ, CLERK
U.S. BANKRUPTCY COURT,
FOR THE DISTRICT OF ARIZONA

6/2 AM

12B:SRV/CONT.185
Page 2/Service Contracts

TOMBSTONE EXPLORATION, INC.

EASTERN TERMINALS & COMMUNICATIONS, INC.
365 Broadway
Hillsdale, NJ 07642
201/664-1050

One year Service Contract for DATA SOUTH PRINGER located at 17
East 76th Street. Contract for one year commencing 8/01/84.
Total payment for contract: \$ 300.00

COVERING:

PRINTER, DS-180, SN 2325

Payment in full for contract on 6/29/84 CK#2516B in the amount of
\$ 300.00

Contract will automatically renew unless sixty days notice is
given.

TOMBSTONE DEVELOPMENT COMPANY
P. O. Box 1445
Grand Island, NE 68801

See attached

This addendum and amendment, referred to as "Appendix A", to lease dated 7th February, 1979 by and between TOMBSTONE DEVELOPMENT COMPANY, referred to as "Lessor", and TOMBSTONE EXPLORATION, INC., referred to as "Lessee", replaces in its entirety the Appendix A as shown in the original lease.

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Rattlesnake	811	16752
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T D C No. 10	68457	
T D C No. 11	68458	
T D C No. 12	68459	
T D C No. 13	68460	
T D C No. 14	68461	
=====		



TOMBSTONE EXPLORATION, INC.

May 21, 1985

Mr. Frank Magini
President
Magini Leasing
5701 West Maryland Avenue
Glendale, Arizona 85301

Dear Frank:

I look forward to hearing from you after you have reviewed the enclosed material.

Tombstone Exploration, Inc. is currently looking for interested parties to purchase or joint venture its holdings. Attached is a brief summary of the property controlled by TEI. Of major interest are the following:

The open-pit claims, where TEI recovered over 1.1 million ounces of silver and over 22 thousand ounces of gold between the surface and 150 foot level; this implies conservative reserves to the water table of 11 million ounces of silver and 165 thousand ounces of gold;

The wash plant operation, ready to run, with all the components in place for a complete operation. This includes dozer feed, trommel, twin screw, dewatering screen, sand screw, conveyors, ponds, plumbing, twelve precipitation plants and smelting facilities (some of these components are suitable for other types of metal recovery operation);

Numerous historically productive mines, with great potential for mining operations. A number of these have been targeted and preliminary sampling has been conducted. In each target the results have justified further exploration;

"Virgin" property in known mineralized areas, contiguous to the major mining district. The possibility of an offset to the producing district has often been hypothesized, and claims controlled by TEI cover likely targets for exploration.

The properties are fenced, have roads, water supply, and are easily accessible. In place assets consist of: ponds and plumbing, complete wash plant operation, 2 million tons wash plant feed, precipitation plants, testing facilities, smelter and tabling facility, buildings and trailers.

Please contact me if you would like further information.

Sincerely,

Thomas H. Schloss
President

17 East 76th Street
New York, New York 10021
212-628-8466

P.O. Box 610
Tombstone, Arizona 85638
602-457-2231

MINERAL RESOURCES OF TOMBIGBON CORPORATION, INC.

All figures are available from either company records or SEC filings.

Total Sales	Jan. 1, 1981 thru Sept. 30, 1983	\$17,972,915.00
Total Sales	Sept. 30, 1983 thru June 30, 1984	<u>5,391,874.00</u>
	Gross Sales Gold & Silver	23,364,789.00
Operational Costs	Equipment, Fuel, Oil & payments	858,000.00
	Labor & Chemical	7,020,000.00
	Contract Mining	3,800,000.00
	Lease Royalty @ 5% of gross sales	<u>1,168,239.00</u>
	Total Cost	12,846,239.00
	NET INCOME	10,518,550.00

United States Bankruptcy Court

For the _____ District of Arizona

In re *

5

FILED

MAR 27 1985

Case No. 85-00045

Debtor*

VIRGINIA L. PHILZ, CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA
PROOF OF CLAIM

1. *[If claimant is an individual claiming for himself]* The undersigned, who is the claimant herein, resides at ** 2005 North Central, Phoenix, Arizona 85004

[If claimant is a partnership claiming through a member] The undersigned, who resides at ** is a member of _____, a partnership, composed of the undersigned and _____, of ** _____, and doing business at ** _____ and is authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at ** is the _____ of _____ a corporation organized under the laws of _____ and doing business at ** _____ and is authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at ** _____, is the agent of _____, of ** _____, and is authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of \$ - Amount unknown at present time

3. The consideration for this debt [or ground of liability] is as follows: Potential groundwater contamination existing at Tombstone Exploration's site located near Tombstone, Arizona.

4. *[If the claim is founded on writing]* The writing on which this claim is founded (or a duplicate thereof) is attached here to [or cannot be attached for the reason set forth in the statement attached hereto]. - N/A

5. *[If appropriate]* This claim is founded on an open account, which became [or will become] due on N/A _____, as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except. - No judgment has been rendered on this claim.

7. The amount of all payments of this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counter-claim except - N/A

9. No security interest is held for this claim except

[If security interest in property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

[Continue on reverse side]

F

Reverse Side

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 hereof is sufficient to satisfy the claim.
[If priority is claimed, state the amount and basis thereof.]

11. This claim is filed as a(n) (Unsecured)
(Secured) CLAIM.
(Priority)

Amount presently
\$ unknown
Total Amount Claimed

Claim Number
(For Office Use Only)

Name of Creditor: Arizona Department of Health Services
(Print or Type Full Name of Creditor)

Dated: March 22, 1985

Signed: Charles D. Anders
Charles D. Anders, Assistant Director for

Comments (Use for additional information): Environmental Health Services

Tombstone Exploration may be responsible for groundwater contamination within the proximity of its Tombstone, Arizona cyanide leaching operation. In order to determine the presence or extent of contamination, Tombstone Exploration may be required, under Arizona's law, to initiate a hydrologic study to determine the extent of groundwater contamination and to determine necessary cleanup activities. The cost of such activities is presently unknown and cannot be determined without future discussions between the Arizona Department of Health Services and Tombstone Exploration. The Arizona Department of Health Services will be initiating discussions with Tombstone Exploration about its duty to assess actual or potential groundwater contamination and to take necessary cleanup action.

Penalty for Presenting Fraudulent Claim. Fine of not more than \$5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., § 152.

*Include all names used by debtor within last 6 years.

**State post office address.

103-10
(5-83)

United States Bankruptcy Court

For the Tucson Division District of Arizona

In re Tombstone Exploration, Inc.
EID#: 86-0374410

Case No. 85-00045

Debtor*

(A M E N D E D) PROOF OF CLAIM

FILED

MAR 16 1987

1. *[If claimant is an individual claiming for himself]* The undersigned, who is the claimant herein, resides at**

[If claimant is a partnership claiming through a member] The undersigned, who resides at**

is a member of
composed of the undersigned and
of**
doing business at**

and is authorized to make this proof of claim on behalf of the partnership.

[If claimant is a corporation claiming through an authorized officer] The undersigned, who resides at**

is the _____ of _____
a corporation organized under the laws of _____
and doing business at**
and is authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, who resides at** P.O. Drawer 1778, Bisbee, AZ 85603

is the agent of Cochise County, Arizona and is
of** (a duly organized & existing political subdivision of the State of AZ) and is
authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating this case, and still is indebted [or liable] to this claimant, in the sum of
\$ 6,509.64 inc. interest to 12/12/85, together with any & all accruing

penalties & interest.
3. The consideration for this debt [or ground of liability] is as follows:
1985 Tax, Parcels #996-80-100-25-1 & #996-80-160-25-5

4. *[If the claim is founded on a writing]* The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be
attached for the reason set forth in the statement attached hereto]. Copy of Tax Notices Attached.

5. *[If appropriate]* This claim is founded on an open account, which became [or will become] due on _____,
as shown by the itemized statement attached hereto.

Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account
or any part of it.

6. No judgment has been rendered on the claim except

7. The amount of all payments of this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counter-claim except

9. No security interest is held for this claim except Title 42 A.R.S.

[If security interest in the property of the debtor is claimed] The undersigned claims the security interest under the writing referred to in
paragraph 4 hereof [or under a separate writing (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached
hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to
satisfy the claim. *[If priority is claimed, state the amount and basis thereof.]*

1985 Tax #996-80-100-25-1 \$1,506.45

1985 Tax #996-80-160-25-5 5,003.19

On Land, Buildings and Equip. Claim Number \$6,509.64 including
(For Office Use Only) interest to 12/12/85

\$ 6,509.64 together with any
Total Amount Claimed and all
accruing penalties and interest

Name of Creditor: Cochise County Treasurer & Tax Collector
(Print or Type Full Name of Creditor)

Dated: 3/12/87

Signed: Karla Jordan Cochise County Treasurer

Penalty for Presenting Fraudulent Claim. Fine of not more than \$5,000 or imprisonment for not more than 5 years or both—Title 18, U.S.C., §152.

*Include all names used by debtor within last 6 years

**State mailing address

G

408

TOMBSTONE EXPLORATION INC
 THOMAS & HARRIE SCHLOSS
 7 PRIORY LANE
 PELHAM MANOR NY 10803

TAX ROLL NO	CO	BOOK	MAP	PARCEL
101872	02	996	80	100Y1
1984	CASH VALUE		1985	
0100	6.4000		1.7100	

TOTAL VALUE OF PRODUCING MINE

PRIMARY	LIMITED VALUE	ADJUST	ASSESSED VALUE	EXEMPTION	1ST HALF PAID	2ND HALF PAID	
LAND BLDGS ETC	1434	340	488				
PERSONAL PROPERTY	42316	340	14387				
TOTALS	43750		14875		74330	74330	
SECONDARY	FULL CASH VALUE	ADJUST	ASSESSED VALUE	EXEMPTION	PENALTY	1ST HALF	2ND HALF
LAND BLDGS ETC	0	340	0			19.85	0
PERSONAL PROPERTY	1434	340	488				
TOTALS	43750		14875			763.15	743.30

TAX CODE	1984	1985	DIFFERENCE	PRIMARY TAX
00986	7200	5950	-1250	124950
02000	64980	54591	-10389	ADDITIONAL STATE AD
07001	82800	64706	-18094	00
08150	26460	21717	-4743	NET PRIMARY
09000	1980	1637	-343	124950
15000	16	59	43	SECONDARY TAX
				23710
				SPECIAL DISTRICTS
				00
				TOTAL TAX DUE
	183436	148660	-34776	148660

Total
 \$ 1,506.45

TOMBSTONE EXPLORATION INC
 THOMAS & HARRIE SCHLOSS
 7 PRIORY LANE
 PELHAM MANOR NY 10803

TAX ROLL NO	CO	BOOK	MAP	PARCEL
101873	02	996	80	160Y5
1984	CASH VALUE		1985	
0160	9.2900		1.8900	

TOTAL VALUE OF PRODUCING MINE

PRIMARY	LIMITED VALUE	ADJUST	ASSESSED VALUE	EXEMPTION	1ST HALF PAID	2ND HALF PAID	
LAND BLDGS ETC	4303	340	1463				
PERSONAL PROPERTY	126947	340	43162				
TOTALS	131250		44625		246864	246864	
SECONDARY	FULL CASH VALUE	ADJUST	ASSESSED VALUE	EXEMPTION	PENALTY	1ST HALF	2ND HALF
LAND BLDGS ETC	0	340	0			65.41	0
PERSONAL PROPERTY	4303	340	1463				
TOTALS	131250		44625			2534.53	246864

TAX CODE	1984	1985	DIFFERENCE	PRIMARY TAX
00986	21600	17850	-3750	414566
02000	194941	163774	-31167	ADDITIONAL STATE AD
04156	63180	52657	-10523	00
07001	248400	194118	-54282	NET PRIMARY
08150	79380	65153	-14227	414566
15000	47	176	129	SECONDARY TAX
				791.62
				SPECIAL DISTRICTS
				00
				TOTAL TAX DUE

Total
 \$ 5,003.19

607548 493728 -113820 493728
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FILED

FEB 7 1965

CLERK
COURT

1 MESCH, CLARK & ROTHSCHILD, P.C.
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (602) 624-8886

5 By: Lowell E. Rothschild
6 Attorney for Debtor

7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re)
10 TOMBSTONE EXPLORATION, INC.,) NO. 85-00045
11 Debtor.) STOCKHOLDERS

12 The name and address of the Debtor's equity security
13 holders of each class showing the number and kind of interests,
14 registered in the name of each holder and the last known address
15 or place of business of each holder.

16 NAME	17 COMPLETE MAILING ADDRESS INCLUDING ZIP CODE (IF UNKNOWN, SO STATE)	CLASS	NUMBER	TYPE OF INTEREST
---------	---	-------	--------	---------------------

18 Thomas H. Schloss	17 E. 76th Street			
19 New York, NY 10021		Common	1,879,229	shares
20 Harrie E.G. Schloss	17 E. 76th Street			
21 New York, NY 10021		Common	199,797	shares
22 Judith Mishkin	1 Flying Lane			
23 Rolling Hills, CA 90274		Common	211,922	shares
24 Dustin L. Escapule	P. O. Box 1102			
25 Tombstone, AZ 85638		Common	20,060	shares
26				

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

A

MESCH, CLARK & WOTHSCCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

1	Bob G. Lee		
2	P. O. Box 910		
3	Tombstone, AZ 85638	Common	8,226 shares
4	Jerome Eckers		
5	558 Derby Dr. N.		
6	Oceanside, NY 11572	Common	8,000 shares
7	John Dean		
8	Elmsdale Road N.		
9	Scituate, RI 02857	Common	432 shares
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ZOO VS T.E.I.

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LAW OFFICES
BILBY & SHOENHAIR, P. C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
PLEASE DIRECT MAIL TO:
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

LOGGED
VIRGINIA L. FRITZ, CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

FILED

DEC 4 1985

OCT 15 1985

VIRGINIA L. FRITZ, CLERK
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re	)	No. 85-00045
TOMBSTONE EXPLORATION, INC.,	)	Adversary No. 85-0082
Debtor.	)	ORDER

TOMBSTONE EXPLORATION, INC.,)	
Plaintiff,)	
vs.)	
TOMBSTONE DEVELOPMENT COMPANY,)	
an Arizona corporation,)	
Defendant.)	

Pursuant to the stipulation between the above-entitled parties, and good cause appearing,

IT IS HEREBY ORDERED that:

1. The approximately 30,000 tons of washed rock which are the subject of the above-entitled proceeding, are the property of Tombstone Development Company. Tombstone

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+ p
OK

BILBY & SHOENHAIR, P. C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

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Exploration, Inc. is not entitled to, and shall not remove said washed rock, or cause it to be removed, from Tombstone Development Company's real property.

2. The above-entitled adversary proceeding is hereby dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

DONE IN OPEN COURT: December 4, 1985.


HONORABLE WILLIAM A. SCANLAND
U.S. BANKRUPTCY COURT JUDGE

FILED

OCT 15 1 42 PM '85

US BANKRUPTCY COURT
BY _____

Notice Oppr.

LAW OFFICES
BILBY & SHOENHAIR, P. C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
PLEASE DIRECT MAIL TO:
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re)	No. 85-00045
TOMBSTONE EXPLORATION, INC.,)	Adversary No. 85-0082
Debtor.	)	STIPULATION

TOMBSTONE EXPLORATION, INC.,)	
Plaintiff,)	
vs.)	
TOMBSTONE DEVELOPMENT COMPANY,)	
an Arizona corporation,)	
Defendant.)	

The parties to the above-entitled proceeding, Tombstone Development Company, an Arizona corporation (herein "TDC") and Tombstone Exploration, Inc., the debtor and debtor-in-possession herein (herein "TEI") hereby stipulate as follows:

1. The approximately 30,000 tons of washed rock which are the subject of the above-entitled proceeding, are the

82-7

BILBY & SHOENHAIR, P.C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800

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property of TDC. TEI is not entitled to, and shall not remove said washed rock, or cause it to be removed, from TDC's real property.

2. The above-entitled adversary proceeding shall be dismissed with prejudice, with each party to bear its own costs and attorneys' fees.

DATED: October 14, 1985.

BILBY & SHOENHAIR, P.C.

By Mary E. Mangotich
Mary E. Mangotich
P. O. Box 871
Tucson, Arizona 85702
Attorneys for TDC

MESCH, CLARK & ROTHSCHILD

By Patricia Wendel
Patricia Wendel
259 North Meyer Avenue
Tucson, Arizona 85701
Attorneys for TEI

FILED

JUL 23 8 45 AM '85

VIRGINIA L. BRUCE
CHIEF CLERK
US BANKRUPTCY COURT
BY _____
DEPUTY CLERK

1 MESCH, CLARK & ROTHSCHILD, P.C.
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (602) 624-8886

5 By: Patricia Wendel
6 Attorney for Debtor

7 IN THE UNITED STATES BANKRUPTCY COURT
8 FOR THE DISTRICT OF ARIZONA

9 In re)
10 TOMBSTONE EXPLORATION, INC.,)
11 Debtor.)

NO. 85-00045

12 TOMBSTONE EXPLORATION, INC.,)
13 Plaintiff,)

ADVERSARY NO. 85-0082

14 vs.)

COMPLAINT FOR DECLARATORY
JUDGMENT

15 TOMBSTONE DEVELOPMENT CO., an)
16 Arizona corporation,)
17 Defendant.)

18 1. TOMBSTONE EXPLORATION, INC., the debtor in posses-
19 sion herein ("TEI"), is lessee, in that certain mining lease
20 agreement ("the mining lease") dated February 7, 1979, with
21 Tombstone Development Co., an Arizona corporation ("TDC"), as
22 lessor.

23 2. Upon notice and hearing, the lease has been ter-
24 minated, effective July 8, 1985. The court at the hearing on
25 termination specifically reserved determination as to ownership
26 of certain washed rock.

3. Pursuant to paragraph 10 of the mining lease,

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

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a

MESCH, CLARK & ROTHSCCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

1 plaintiff is entitled to remove all personal property, machinery,
2 tools, appliances, supplies, pumps, pipe, and equipment from
3 the leased premises, within sixty (60) days after termination
4 of the mining lease.

5 4. Upon the leased premises is located approximately
6 30,000 tons of primary washed rock, resulting from plaintiff's
7 mining activities, which plaintiff believes it can sell at \$4.00
8 per ton for the benefit of the estate. In addition, there is
9 approximately 1,960,000 tons of extracted, but unwashed rock.

10 5. Plaintiff believes and alleges that said washed
11 rock constitutes personal property which plaintiff is entitled
12 to remove pursuant to paragraph 10 of the lease.

13 6. The unwashed rock is of minimal value to plaintiff,
14 and plaintiff makes no claim thereto.

15 7. Plaintiff will require a brief period of time to
16 remove the washed rock following the court's determination as to
17 ownership.

18 WHEREFORE, plaintiff requests this court to issue an
19 order:

20 1. Determining that the approximately 30,000 tons of
21 washed rock constitutes personal property which plaintiff is
22 entitled to remove from the leased premises:

23 2. Granting plaintiff sixty (60) days from the date
24 of final order of this declaratory judgment action within which
25 to remove said rock;

26 ***

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3. Granting such other and further relief as the court
deems necessary.

DATED this 22nd day of July, 1985.

MESCH, CLARK & ROTHSCHILD, P.C.

By *Patricia Wendel*
Patricia Wendel
259 North Meyer Avenue
Tucson, Arizona 85701-1090
Attorneys for Debtor

Copy of the foregoing
mailed this 22nd day
of July, 1985, to:

Mary Mangotich
Bilby & Shoenhair, P.C.
P.O. Box 871
Tucson, AZ 85702

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

LODGED

FILED

JUL 18 1985

LAW OFFICES
BILBY & SHOENHAIR, P.C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
PLEASE DIRECT MAIL TO
POST OFFICE BOX 871
TUCSON, ARIZONA 85702
TELEPHONE (602) 792-4800
CLERK, U. S. DISTRICT COURT
DISTRICT OF ARIZONA
DEPUTY

RICHARD H. WEARE, CLERK
UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
BY *[Signature]*
DEPUTY CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

WDB

In the Matter of) No. CIV-85-621-TUC-*WDB*
)
TOMBSTONE DEVELOPMENT,) No. 85-00045
INC.,)
) ORDER
Appellant/Defendant,)
)
vs.)
)
TOMBSTONE EXPLORATION,)
INC.,)
)
Appellee/Plaintiff.)

The appellant having moved to dismiss its appeal on the ground of mootness, and good cause appearing,

IT IS HEREBY ORDERED that the appeal in the above-entitled matter is hereby dismissed.

DONE IN OPEN COURT: July 18, 1985.

William D. Browning
JUDGE OF THE U.S. DISTRICT COURT

Mangotich
Savoy
Rothschild
WDB
Burke
CPT

(6)

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DIST. NO.	OFF. NO.	YR.	CKET NUMBER	DATE PETITION FILED			REOPENED	CHECK IF APPLICABLE	
0970	04	85	00045	MO. 01	DY 18	YR. 85	R	0	Joint Petition
NAME OF DEBTOR				CHECK PROPER BOXES			Pro Se Petition		
TOMBSTONE EXPLORATION, INC.				XX	Voluntary			OBLIGATIONS OF DEBTOR AS SCHEDULED	
LAST FIRST MIDDLE					Involuntary				
EID# 86-0374410				XX	Business			PRIORITY	
					Non-Business			\$.00	
				COMMENCED UNDER			SECURED		
					Chap. 7			\$.00	
					Chap. 7 - Stockbroker			UNSECURED	
					Chap. 7 - Commodity Broker			\$.00	
					Chap. 9			TOTAL ASSETS OF DEBTOR AS SCHEDULED:	
				XX	Chap. 11				
					Chap. 11 - Railroad			\$.00	
					Chap. 13			NO. OF CREDITORS SCHEDULED:	
					Sec. 304				
ADDRESS OF DEBTOR (Number and Street)				NAME OF JUDGE			FILING FEES PAID IN FULL AT THE TIME OF FILING		
NEW ADDRESS NEW YORK OFFICE 7 Priory Lane Pelham Manor, NY 10803 -PO BOX 610				WILLIAM A SCANLAND			X		
CITY	COUNTY	STATE	ZIP	JUDGE CODE			FEES TO BE PAID IN INSTALLMENTS		
Tombstone	Cochise	AZ	85638	A183					
ATTORNEY FOR DEBTOR	Lowell Rothschild, 259 N. Meyer, Tucson, AZ 85701 624-8886			TRUSTEE	D-I-P				
ATTORNEY FOR PETITIONING CREDITORS				ATTORNEY FOR TRUSTEE					
EXAMINER				OTHER	341: 3/7/85 @ 10:30 a.m.				
DATE	DOCUMENT NUMBER	BANKRUPTCY CASE RECORD							
7/23/85	85 0082	File complaint for declaratory Judgment, pltf debtor vs. Tombstone Development co.							
	*****	ALL FUTURE PLEADINGS WILL BE DOCKETED & FILED IN ADVERSARY PROCEEDING <u>85 0082</u> ONLY							
8/2/85	85 0089	File comp to recover money, pltf debtors vs. Escapule.							
	*****	ALL FUTURE PLEADINGS WILL BE DOCKETED & FILED IN ADVERSARY PROCEEDING <u>85 0089</u> ONLY							
<p><i>DS</i> <i>Dustin + Cheri Escapule, 1/200</i> <i>\$72,000 loans</i> <i>dismissed 8/13/85 - requested by TEC</i> <i>transcript filed 13 filed by Escapule</i></p>									

DATE	DOCUMENT NUMBER	BANKRUPTCY CASE RECORD (cont.)
1/18/85	1	File debtor's pet page for Chap 11 and list of creditors in form of MML. d-1/18/85
1/18/85	2	File debtor's corporate resolution. d-1/18/85
1/18/85	3	File debtor's application for appt of atty for DIP. d-1/18/85
1/18/85	4	File affidavit of atty for the debtor. d-1/18/85
1/18/85	5	File affidavit of proposed attorney. d-1/18/85
1/18/85	6	Enter and file order appting Lowell Rothschild as atty for DIP. d-1/18/85
1/18/85	7	Enter and file order designating Thomas Schloss, Pres., to act for DIP. d-1/18/85
1/18/85	8	Enter and file operating order. d-1/18/85
1/18/85	9	File DIP's motion for permission to issue debtors' certificate. d-1/18/85
1/18/85	10	Enter and file order permitting issuance of debtor's certificate. d-1/18/85
1/18/85	11	File debtor's list of 20 largest unsecured creditors. d-1/18/85
1/18/85	12	Enter and file ME: debtor to file stmt of affairs, schedules, list of shareholders and list of executory contracts w/i 15 days. d-1/18/85
1/18/85	13	Enter and file order appointing creditor's committee. d-1/18/85
2/7/85	14.	File dbtr's Stmt of Affairs, Scheds A & B, Summary, list of executory contracts. d-2/14/85
2/7/85	15.	Entr & fle ord for 341 hrg, apptg Est. Adm & auto stay. d-2/14/85
2/7/85	16.	File dbtr's list of stockholders. d-2/14/85
2/11/85	17.	File cert. of mail re 341 notice (96 c) d-2/14/85
2/23/85	18.	File Patricia Shaler's notice of appear on behalf of Heflin Harrington, Inc. d-2/26/85
3/1/85	19.	File DIP's appl. to sell Caterpillar 988, subject to lien of Assoc. Commercial Credit, for \$72,500.00. d-3/5/85
3/8/85	20.	File notice of HRG re dbtr's appl. to sell Caterpillar 988 for \$72,500 & to pay off lien of Assoc. Commercial Credit in amt of \$59,995.87. SET FOR 3/28/85 @ 9:00 a.m. d-3/11/85
3/11/85	21.	File cert. of mailing re above notice. (104 c) d-3/11/85
3/7/85 ***	22.	341 HRG: dbtr swm & exmd. d-3/11/85

memorandum



DATE: July 16, 1985

REPLY TO: RICHARD M. BILBY
ATTN OF:

SUBJECT: MINUTE ORDER

TO: Clerk's Office
U. S. District Court

Please enter the following order and notify counsel:

CIV-85-621-TUC-RMB
CASE NO. BANKRUPTCY-85-00045

TITLE: TOMBSTONE DEVELOPMENT, INC. v. TOMBSTONE EXPLORATION, INC.

IT IS ORDERED that this case is transferred to the
Honorable William D. Browning for all further proceedings.

In compliance with Local Rule 10(b), all future pleadings
must carry the following case number and designation:

CIV-85-621-TUC-WDB

FILED

JUL 16 1985

RICHARD H. WEARE, CLERK
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

BY _____
DEPUTY CLERK

copies issued to:

RMB
WDB
Mangotick
Rothschuld



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

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DISTRICT COURT BANKRUPTCY MATTER CONTROL SHEET

TRANSFERRED

(THIS PORTION TO BE COMPLETED BY BANKRUPTCY PERSONNEL)

July 10, 1985
DATE

BANKRUPTCY FILE NUMBER

CASE TITLE: Jonestone Development Inc. v. Jonestone Exploration

TYPE OF ACTION
(CHECK ONE)

ADVERSARY PROCEEDINGS

CONTESTED MATTERS

- 1. Recover Money or Property / /
- 2. Determine Lien / /
- 3. Sell Free of Lien / /
- 4. Object to or Revoke Discharge or Confirmation / /
- 5. Injunction / /
- 6. Relief from Stay / /
- 7. Determine Dischargeability / /

- 8. Disputed Claim /
- 9. Disputed Exemption Report /
- 10. Contested Involuntary /
- 11. Other (describe in Remarks) /
- 12. Non-Bankruptcy (describe in Remarks) /

Remarks: Appeal

DO NOT WRITE BELOW THIS LINE

July 10, 1985
DATE RECEIVED DISTRICT COURT

RMB
DISTRICT COURT
JUDGE'S INITIALS

7-18-85
DATE RECEIVED BACK FROM JUDGE

7-19-85
DATE RETURNED TO BANKRUPTCY

INSTRUCTIONS: The top portion of this form will be completed by Bankruptcy personnel and the form placed on top of the bankruptcy file. The file will then be delivered to the District Court Clerk's office, Intake Section, where the District Court Judge will be assigned and the appropriate entries made in the District Court Bankruptcy Matter Log. The file will then be given to the appropriate Courtroom Deputy for delivery to the Judge (or his staff). When the action has been completed, the file, together with this cover sheet will be returned to the appropriate Courtroom Deputy who will give the entire file and cover sheet to the Intake Section personnel who will complete their log, withdraw the cover sheet, and return the file to the Bankruptcy Court.

BK Form #1 (1/28/83)

RECEIVED BY: Pat Palamini

DATE 7-19-85

69

COPY FOR THE JUDGE

FILED

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RICHARD H. Y. [unclear]
U.S. DIST. CO. [unclear]
DISTRICT OF ARIZONA
BY [unclear] DEPUTY CLERK

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LAW OFFICES
BILBY & SHOENHAIR, P.C.
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UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

In the Matter of)	No. CIV-85-621-TUC	(RMB)
TOMBSTONE DEVELOPMENT,	)	No. 85-00045	
INC.,	)	MOTION TO DISMISS APPEAL FOR	
Appellant/Defendant,	)	MOOTNESS	
vs.)		
TOMBSTONE EXPLORATION,)		
INC.,)		
Appellee/Plaintiff.)		

18 Tombstone Development Company, the appellee in the
19 above-entitled proceedings, hereby moves pursuant to Rule 8011,
20 Rules of Bankruptcy Procedure, to dismiss its appeal in the
21 above-entitled proceeding for the reason that the appeal has
22 become moot. The order appealed from granted the debtor and the
23 creditors' committee a certain time within which to assume or
24 reject an executory lease. Neither the debtor nor the creditors'
25 committee took any action during the extended time period granted
26 by the court's order. Consequently, the appeal has become moot.

67

1 RESPECTFULLY SUBMITTED: July 16, 1985.

2 BILBY & SHOENHAIR, P.C.

3
4 By Mary E. Mangotich
5 Mary E. Mangotich
6 P. O. Box 871
Tucson, Arizona 85702
Attorneys for Tombstone Development
Company

7 Served by mail on
8 July 16, 1985 upon:

9 Lowell E. Rothschild
10 Mesch, Clark & Rothschild
259 North Meyer Avenue
11 Tucson, Arizona 85701
Attorneys for Debtor

12 Sally M. Darcy
13 Stompoly & Even, P.C.
P. O. Box 3017
14 Tucson, Arizona 85702
Attorneys for Creditors' Committee

15 Barry Holland
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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re) No. 85-00045
)
TOMBSTONE EXPLORATION,) NOTICE OF APPEAL
INC.,)
)
Debtor.)
)
)
)
)
)

Tombstone Development, Inc., a creditor in the above-captioned bankruptcy proceedings, hereby appeals to the District Court from the final order of the Bankruptcy Court entered in the above-entitled proceedings on May 31, 1985 granting an extension of time (until June 14, 1985) to assume or reject the lease between the debtor and Tombstone Development, Inc. The parties to the order appealed from and the names and addresses of their respective attorneys are as follows:

Tombstone Development, Inc.
Mary E. Mangotich
Bilby & Shoenhair, P.C.
P. O. Box 871
Tucson, Arizona 85702
(602) 792-4800

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Tombstone Exploration, Inc., Debtor
Lowell E. Rothschild
Mesch, Clark & Rothschild
259 North Meyer Avenue
Tucson, Arizona 85701
(602) 624-8886

Unsecured Creditors Committee
Sally M. Darcy
Stompoly & Even, P.C.
P. O. Box 3017
Tucson, Arizona 85702
(602) 792-2781

DATED: June 10, 1985.

BILBY & SHOENHAIR, P.C.

By Mary E. Mangotich
Mary E. Mangotich
P. O. Box 871
Tucson, Arizona 85702
Attorneys for Tombstone Development,
Inc.

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JUN 5 1985
U.S. DISTRICT COURT
TUCSON, ARIZONA

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re)	No. 85-00045
)	
TOMBSTONE EXPLORATION, INC.,)	MOTION FOR ORDER DECLARING EXECUTORY LEASE TERMINATED AND DIRECTING DEBTOR TO VACATE THE PREMISES AND OPPOSITION TO MOTION TO ASSUME LEASE
Debtor.)	
_____)	

Tombstone Development, Inc. (herein "Lessor") alleges in support of its motion, and in opposition to the debtor's motion to assume the executory lease that:

1. Lessor entered into a written lease agreement with the debtor dated February 7, 1977, a copy of which was previously filed with the court (herein "the Lease").
2. The debtor filed its petition for reorganization under Chapter 11 on or about January 28, 1985, and has acted as a debtor-in-possession since that date.
3. The debtor has paid no rent to Lessor pursuant to the Lease since February 1, 1985.

498

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4. The debtor is in default under the Lease in that:

A. The debtor has failed to pay the minimum monthly royalty payment in the amount of \$7,500.00 per month which became due and payable on the first of March, April, May, and June, 1985;

B. The debtor has failed to pay the sum of \$175.00 per month for rent on a building located on the leased premises in accordance with an oral agreement between the parties, which became due and payable on the first of March, April, May, and June, 1985;

C. The debtor has failed to pay the real property taxes on the property which became due and payable on May 1, 1985 in the amount of \$10,166.29;

D. The debtor has failed to perform the assessment work required to preserve the 31 unpatented mining claims on the property. Such work must be completed by September, 1985. Lessor estimates that it will cost between \$3,000.00 and \$4,000.00 to complete such work, and that it is necessary to commence the work immediately.

5. On or about March 29, 1985, the debtor obtained an order of this court extending the time within which the debtor could assume or reject the lease until June 1, 1985. No other party obtained any order extending the time to assume or reject the lease during the sixty-day period following the filing of the debtor's petition herein.

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1 6. On May 31, 1985, the debtor filed with the court a
2 motion to assume the Lease. The debtor's motion has not been set
3 for hearing, and no order approving the assumption of the Lease
4 has been entered.

5 7. Because the Lease was in default on May 31, 1985,
6 the debtor was not legally entitled or authorized to assume the
7 Lease unless, at the time of the assumption, the debtor (a) cured
8 all defaults under the Lease or demonstrated that it would
9 promptly cure such defaults; and (b) provided adequate assurance
10 of future performance under the Lease. The debtor neither cured
11 the defaults nor provided adequate assurance of prompt cure or of
12 future performance.

13 8. The debtor and certain members of the unsecured
14 creditors committee have contended that the tailings located on
15 the leased premises are property of the debtor, which the debtor
16 is entitled to remove from the leased premises. Lessor contends
17 that such tailings are property of the Lessor which may not be
18 removed from the premises. Lessor would suffer damage if Lessee
19 is permitted to remove the tailings from the property without
20 compensating Lessor for the value thereof.

21 9. On June 2, 1985, when the time within which the
22 debtor was permitted to assume or reject the Lease expired
23 without the debtor having cured the defaults under the Lease,
24 provided adequate assurance of future performance under the
25 Lease, or obtained an order approving the assumption of the
26

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1 Lease, the Lease automatically terminated. Upon termination, the
2 Lessor is entitled to possession of the premises.

3 10. In the alternative, the Lease has terminated because
4 the debtor did not, during the period since the order for relief
5 was entered, timely performed its obligations under the Lease as
6 required by 11 U.S.C. § 365(d)(3), and the time for performance
7 of such obligations was not extended by order of the court.

8 11. In the alternative, even if the debtor could
9 effectively assume the Lease, Lessor would be entitled to
10 terminate the Lease due to the debtor's defaults under paragraph
11 14 thereof. Lessor has given the debtor notice of its defaults
12 under the lease in accordance with paragraph 14 thereof, and the
13 Lease has effectively been terminated by the Lessor.

14 12. The Lessor has made demand upon the Lessee, and
15 hereby demands, that the Lessee vacate the leased premises. The
16 Lessee has failed and refused to do so.

17 13. Lessor will be irreparably damaged if it is not
18 forthwith permitted to take possession of the leased premises in
19 order to complete the assessment work which is required in order
20 to protect Lessor's interest in the 31 unpatented mining claims
21 on the property.

22 WHEREFORE, Lessor respectfully requests that the court
23 enter an order declaring that the Lease is terminated effective
24 as of June 1, 1985, directing the debtor to vacate the leased
25 premises and relinquish possession to the Lessor, directing the
26 debtor to leave unmolested thereon all tailings and other

1 property of the Lessor, and granting the Lessor such other and
2 further relief as is proper in the premises.

3 DATED: June 5, 1985.

4 BILBY & SHOENHAIR, P.C.

5
6 By Mary E. Mengotich
7 Mary E. Mengotich
8 P. O. Box 871
9 Tucson, Arizona 85702
10 Attorneys for Tombstone Development,
11 Inc.

12 Served by mail on
13 June 5, 1985
14 upon:

15 Lowell E. Rothschild
16 Mesch, Clark & Rothschild
17 259 North Meyer Avenue
18 Tucson, Arizona 85701
19 Attorneys for Debtor

20 Sally M. Darcy
21 Stompoly & Even, P.C.
22 P. O. Box 3017
23 Tucson, Arizona 85702
24 Attorneys for Unsecured
25 Creditors Committee

26 Bobby Holland

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MAY 31 1985

U.S. BANKRUPTCY COURT
BY *[Signature]*

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF ARIZONA

In re)	No. 85-00045
)	
TOMBSTONE EXPLORATION, INC.,)	OPPOSITION TO MOTION FOR EXTENSION OF TIME TO ASSUME OR REJECT AN UNEXPIRED LEASE
)	
Debtor.)	
)	
)	

Tombstone Development, Inc. (herein "Lessor"), the Lessor under that certain Mining Lease Agreement dated February 7, 1979, a copy of which is attached as Exhibit A (herein "the Lease") hereby opposes the motion of the Unsecured Creditors Committee (herein "the Committee") to extend the time to assume or reject the Lease, for the following reasons:

1. Only the trustee or debtor-in-possession has the power to assume or reject the unexpired Lease. No trustee has been appointed in this case, and the debtor has not acted to assume or reject the Lease, or to assign the Lease to the unsecured creditors. Accordingly, the movant does not have standing to seek the relief requested.

USA

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1 2. Pursuant to 11 U.S.C. § 365(d)(3), the trustee is
2 allowed only sixty days to assume or reject an unexpired lease of
3 nonresidential real property, unless within that sixty day period
4 the time is extended for cause. The sixty day period has
5 expired, and the court is not empowered to grant any further
6 extension.

7 3. The debtor-in-possession obtained an ex parte order
8 of the court extending the time to assume or reject the Lease
9 until June 1, 1985. However, the debtor-in-possession has not
10 performed the debtor's obligations under the Lease since the
11 order for relief was entered, as required by 11 U.S.C. §
12 365(d)(3). Even if the court were authorized to grant a further
13 extension, under the circumstances it would be inappropriate to
14 do so.

15 4. The Committee seeks to speculate for thirty days on
16 the possible sale of the Lease to an undisclosed buyer, for
17 undisclosed terms, without having tendered the performance
18 required by 11 U.S.C. § 365(d)(3). The post-petition defaults in
19 the Lease are as follows:

20 A. The debtor has failed to pay real property taxes
21 for the last half of 1984 in the sum of \$10,166.29;

22 B. The debtor owes a minimum royalty for the months
23 of March, April, and May, 1985, and will owe the royalty for the
24 month of June, 1985 in the amount of \$7,500.00 per month, for a
25 total of \$30,000.00;

26

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1 C. The debtor owes additional rent on a building
2 furnished by the Lessor in the amount of \$175.00 per month for
3 the months of March, April, and May, 1985, and will owe rent for
4 June on June 1, 1985.

5 D. The debtor has failed for a considerable period
6 of time to conduct mining operations on the property as required
7 under the Lease, and has failed to perform the assessment work
8 required to preserve the Lessor's 31 unpatented mining claims.
9 The Lessor's interest under the Lease is not and cannot be
10 adequately protected by the Committee.

11 5. The Committee has not demonstrated and cannot
12 establish that the debtor can or will cure or provide adequate
13 assurance of prompt cure, that the debtor can or will compensate
14 the Lessor for its actual pecuniary losses resulting from the
15 debtor's defaults, or that the debtor can or will provide
16 adequate assurance of future performance under the Lease. The
17 Lessor's interest is therefore not adequately protected.

18 This opposition is further supported by the authorities
19 cited in the attached memorandum.

20 DATED: May 31, 1985.

21 BILBY & SHOENHAIR, P.C.

22
23 By Mary E. Mangotich
24 Mary E. Mangotich
25 P. O. Box 871
26 Tucson, Arizona 85702
Attorneys for Tombstone Development,
Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT OF FACTS.

The debtor filed its petition for relief under Chapter 11 over four months ago. The debtor is acting as a debtor-in-possession. Since the date of filing, no payments have been made to Tombstone Development, Inc. pursuant to the Lease. The debtor is in default under the Lease in that:

A. The debtor failed to pay real property taxes for the second half of 1984 which became due on May 1, 1985 in the amount of \$10,166.29, as required pursuant to paragraph 7 of the Lease.

B. The debtor has failed to pay the minimum royalty payments of \$7,500.00 per month, as required under paragraph 3(b) of the Lease, for the months of March, April, and May, 1985, and presumably will not be making the payment due on June 1, 1985.

C. The debtor has failed to pay the sum of \$175.00 per month for the use and occupation of a building owned by the Lessor which was moved onto the property at the debtor's request pursuant to an agreement between the parties. Rent is owed for the months of March, April, and May, 1985, and the June, 1985 installment will become due on June 1, 1985.

D. The debtor has ceased mining operations on the property, as required in paragraph 4 of the Lease. Not only is this an explicit breach of the Lease Agreement, failure to perform assessment work on the 31 unpatented mining claims covered under the Mining Lease Agreement may result in forfeiture of those claims. The assessment work must be accomplished prior

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1 to September, 1985. Lessor contends that in order to meet the
2 deadline, this work must be commenced immediately.

3 The Committee refers to unsuccessful attempts by the
4 debtor and/or the Committee to renegotiate the terms of the
5 Lease. Such efforts are irrelevant to any determination of the
6 Committee's right to further extend the time to assume or reject
7 the Lease, and should not be considered by the court. The
8 Committee also states that the Lessor has not sought relief from
9 the court to force a cure of the defaults. No affirmative
10 request for such relief is required, in view of the provisions of
11 11 U.S.C. § 365(d)(3), and this contention is irrelevant to the
12 issue at hand.

13 **II. DISCUSSION OF LAW.**

14 **A. The Committee does not have standing to seek an**
15 **extension of time.**

16 11 U.S.C. § 365, by its terms, refers to "the trustee."
17 Only the trustee is authorized to assume or reject a contract.
18 Such a decision is not, and should not be, the prerogative of the
19 Committee, since it is the trustee/debtor-in-possession, not the
20 Committee, which can exercise the business judgment required to
21 make such a decision, and it is the debtor-in-possession which
22 must perform the Lessee's obligations pending the decision.

23 **B. The request for extension is untimely, and the court**
24 **is without authority to grant the request.**

25 11 U.S.C. § 365(d)(4) provides:

26 Notwithstanding paragraphs (1) and (2), in a
case under any Chapter of this Title, if the

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trustee does not assume or reject an unexpired lease of nonresidential real property under which the debtor is the lessee within sixty days after the date of the order for relief, or within such additional time as the court, for cause, within such sixty day period, fixes, then such lease is deemed rejected, and the trustee shall immediately surrender such nonresidential real property to the lessor.

The unsecured creditors did not, within the sixty day period after the order for relief was entered, obtain an extension of time for the assumption or rejection of the Lease. 11 U.S.C. § 365(d)(4) explicitly provides that the Lease will be automatically deemed rejected unless within that sixty day period the court extends the time for cause. The court has no legal authority to grant a further extension this time, almost 120 days after the order for relief was entered. See generally, In re By-Rite Distributing, Inc., 12 C.B.C.2d 253 (D. Utah, March 12, 1985), at 262-264.

C. The performance required by 11 U.S.C. § 365(d)(3) has not been tendered, and an extension of time should not be granted in the absence of proof of ability to assume the contract.

11 U.S.C. § 365(d)(3) explicitly provides that:

The trustee shall timely perform all the obligations of the debtor, except those specified in Section 365(b)(2), arising from and after the order for relief under any unexpired lease of nonresidential real property, until such lease is assumed or rejected, notwithstanding Section 503(b)(1) of this Title.

The debtor-in-possession has not performed its obligations under the Lease since the order for relief was entered. Furthermore,

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1 the court has already granted one ex parte motion to extend the
2 time to assume or reject the Lease. It is now one day before
3 that extension expires.

4 The Committee has not demonstrated that it has the
5 ability to cure the debtor's defaults or to provide adequate
6 assurance of future performance. The debtor has failed to do so,
7 and presumably will not take any action to do so. There are no
8 other assets in the estate from which such assurance could be
9 made.

10 In the absence of a bankruptcy proceeding, the Lessor
11 would clearly be entitled to terminate the Lease and otherwise
12 protect its interest in the property. The Bankruptcy Code
13 provides only limited authority for the court and the trustee to
14 impair the contract between the parties for the benefit of
15 creditors. The debtor-in-possession has not fulfilled the
16 conditions upon which such authority may be exercised. The court
17 should not continue to impair the property and contract rights of
18 the Lessor merely to enable the unsecured creditors to speculate
19 in the value of the debtor's Lease. Although counsel for the
20 Committee may not have been employed until May 23, 1985, that
21 Committee has had four months since the date of filing of the
22 petition to take whatever action it deemed appropriate in regard
23 to the Lease. It has failed to act until one day before the time
24 expires for assumption or rejection of the Lease by the debtor-
25 in-possession. A further extension is not appropriate and is not
26 authorized by § 365.

BILBY & SHOENHAIR, P.C.
NINTH FLOOR VALLEY NATIONAL BUILDING
CONGRESS AT STONE
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1 11 U.S.C. § 365(b)(1) provides that the trustee may not
2 assume a contract or lease unless, at the time of assumption, the
3 trustee cures or provides adequate assurance that he will
4 promptly secure such default, compensates or provides adequate
5 assurance that he will promptly compensate the other party for
6 any actual pecuniary loss resulting from the default, and
7 provides adequate assurance of future performance under the
8 lease. In the absence of proof that the contract is likely to be
9 assumed by a party having the ability to comply with the
10 requirements of § 365(b)(1), an extension of time to assume or
11 reject the contract amounts to a free option to peddle the Lease,
12 at the Lessor's risk and expense. Such a result was neither
13 authorized nor intended by the drafters of the Code.

14 **D. The Lessor's interest in the Lease is not adequately**
15 **protected.**

16 In fixing the time for assumption or rejection of an
17 executory contract, the court must balance the importance of the
18 contract to the estate, against the Lessor's need for protection.
19 If the Lessor's interest under the Lease is not adequately
20 protected, at a minimum by the requirement of payment of all
21 post-petition charges, it is an abuse of discretion for the court
22 to allow additional time to ponder the question of assumption or
23 rejection of an executory contract. Cf. Matter of Whitcomb &
24 Keller Mortgage Co., Inc., 9 C.B.C.2d 312 (7th Cir. 1983). In
25 this case, no such protection is offered.
26

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III. CONCLUSION.

For the foregoing reasons, the request for extension should be denied.

DATED: May 31, 1985.

BILBY & SHOENHAIR, P.C.

By Mary E. Mangotich
Mary E. Mangotich
P. O. Box 871
Tucson, Arizona 85702
Attorneys for Tombstone Development, Inc.

Hand delivered on May 31, 1985 to:

Sally M. Darcy
Stompoly & Even, P.C.
120 West Broadway
Tucson, Arizona 85701
Attorneys for Creditors Committee

Lowell E. Rothschild
Mesch, Clark & Rothschild
259 North Meyer Avenue
Tucson, Arizona 85701
Attorneys for Debtor

Mary E. Mangotich

FILED

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U.S. BANKRUPTCY COURT
DISTRICT OF ARIZONA
BY _____

Sit

LAW OFFICES
STOMPOLY & EVEN, P.C.
UNITED BANK PLAZA
P. O. Box 3017
TUCSON, ARIZONA 85702-3017
(602) 792-2781

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SALLY M. DARCY
SMD:sle

Attorneys for Creditors Committee

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF ARIZONA

In Re:	)	No. 85-00045
)	
TOMBSTONE EXPLORATION, INC.,	)	MOTION FOR AN EXTENSION OF TIME
	)	TO ASSUME OR REJECT AN UNEXPIRED
Debtor.	)	LEASE
)	

COMES NOW the unsecured Creditors Committee, by and through its attorneys, Stompoly & Even, P.C., by Sally M. Darcy and move this Court pursuant to 11 U.S.C. §365(d)(4) for an Order extending the time in which the Debtor may assume or reject an unexpired lease.

This Motion is based upon the attached Memorandum.

DATED this 30th day of May, 1985.

STOMPOLY & EVEN, P.C.

By *Sally M. Darcy*
Sally M. Darcy

u2f

MEMORANDUM

1
2 1. On May 23, 1985, an Order was entered approving the
3 employment of Sally M. Darcy for the unsecured Creditors Committee.

4 2. The above-named Debtor is involved in the business of
5 mining, and is a Lessee under a certain lease agreement involving
6 groups of patented and unpatented lode mining claims in Cochise
7 County, Arizona.

8 3. The above-described lease is the only valuable asset
9 of this Debtor's estate. The lease has not been assumed or
10 rejected and the Debtor has until June 1, 1985 to make such an
11 election.

12 4. Upon information and belief, the Debtor had been
13 attempting to renegotiate the terms of said lease, but has been
14 unsuccessful in its efforts to do so.

15 5. The creditors of the unsecured Creditors Committee
16 believe the lease has great value, and can be sold or assumed to
17 provide the creditors a dividend on their claims.

18 6. The unsecured creditors have not had an opportunity
19 to investigate the sale or assumption of this lease, and during
20 the last two weeks have been working diligently toward the sale
21 or assumption of said lease.

22 7. The unsecured creditors of the unsecured Creditors
23 Committee believe they can, and possibly have found a buyer, or
24 entity that will take over the lease and provide a return to the
25 unsecured creditors.

1 without knowledge of the default until May 24, 1985. The Lessor
2 has not petitioned the Court for relief from this default.

3 The unsecured creditors have been in limbo in this case,
4 as they could not file a plan for one hundred and twenty (120)
5 days after the date the relief was entered and they could not
6 interfere with the Debtor's negotiations with the Lessor. The
7 unsecured creditors should not be penalized because the Debtor was
8 unable to renegotiate the lease with the Lessor.

9 WHEREFORE, the unsecured creditors request that this
10 Court grant an extension of thirty (30) days for the unsecured
11 creditors to submit a sale or proposal of the lease to this Court.

12 DATED this 30th day of May, 1985.

13 STOMPOLY & EVEN, P.C.

14

15

By Sally M. Darcy
Sally M. Darcy

16

17 Copy of the foregoing
18 mailed this ___ day of
May, 1985, to:

18

19 W. E. Dolph
20 Bilby & Shoenhair
P.O. Box 871
Tucson, Arizona 85702

21 Lowell E. Rothschild
22 Mesch, Clark & Rothschild
23 259 N. Meyer Ave.
Tucson, Arizona 85701

24

25

FILED

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VIRGINIA L. PRITZ
CHIEF CLERK
US BANKRUPTCY COURT
BY _____
DEPUTY CLERK
Set

1 MESCH, CLARK & ROTHSCHILD, P.C.
2 259 North Meyer Avenue
3 Tucson, Arizona 85701
4 Phone: (602) 624-8886

5 By: Patricia Wendel

6 Attorney for Debtor in Possession

7 IN THE UNITED STATES BANKRUPTCY COURT

8 FOR THE DISTRICT OF ARIZONA

9 In re)

10 TOMBSTONE EXPLORATION, INC.,)

11 Debtor.)

12 NO. 8500045

13 MOTION TO EXTEND TIME
14 FOR DEBTOR TO ASSUME OR
15 REJECT LEASES

C-S
3/22/85

MESCH, CLARK & ROTHSCHILD, P.C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

16 The debtor in possession, by and through its attorneys
17 undersigned, moves the court to extend the time period set out in
18 11 U.S.C. § 365(d)(4) within which the debtor must assume or
19 reject a lease and in support thereof, states the following:

20 1. Tombstone Exploration Inc. is the debtor in
21 possession, engaged in the business of extracting precious
22 minerals from certain leased property located in Tombstone,
23 Arizona.

24 2. Tombstone Exploration Inc. is the lessee and
25 Tombstone Development Co. of Grand Island, Nebraska is the lessor
26 as to mineral rights in _____ acres of land located in or near
Tombstone, Arizona. The lease between the parties was executed
in 1979 and requires monthly royalty payments of \$7,500.00,
irrespective of production.

3. Tombstone Exploration International is the lessee
and Mildred and E. H. Escapule are lessors as to mineral rights

26

MESCH, CLARK & ROTHSCHILD, P. C.
ATTORNEYS AT LAW
259 NORTH MEYER AVENUE
TUCSON, ARIZONA 85701-1090

1 in 2,000 acres of land located in or near Tombstone, Arizona.
2 Said lease was executed in 1983.

3 4. Payments under both of the above leases are current.

4 5. The debtor in possession is currently engaged in
5 negotiations with the above named lessors regarding modification
6 of their leases with the debtor. Modifications are essential if
7 the debtor is to successfully reorganize its business.

8 6. Whether or not the debtor in possession assumes or
9 rejects either or both leases, as it is required to do within 60
10 days of filing pursuant to 11 U.S.C. § 365(d)(4) depends upon the
11 outcome of the negotiations. The 60 day period expires March 19,
12 1985.

13 7. The debtor in possession anticipates that the nego-
14 tiation process may be completed on or about June 1, 1985.

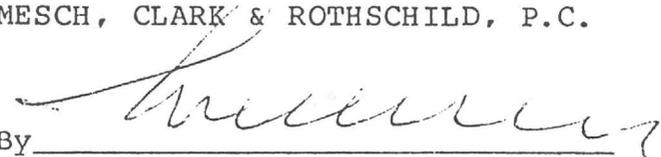
15 WHEREFORE, the debtor in possession respectfully re-
16 quests this court to extend the time period within which it must
17 assume or reject the above two leases from March 19, 1985 to June
18 1, 1985 so as to allow it to attempt to modify the leases with
19 the lessors.

20 DATED this 14th day of March, 1985.

21 MESCH, CLARK & ROTHSCHILD, P.C.

22

23

By 

24

Lowell E. Rothschild
Patricia Wendel
259 North Meyer Avenue
Tucson, Arizona 85701-1090
Attorneys for Debtor In
Possession

25

26

MESCH, CLARK & ROTHSCHILD, P.C.
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TUCSON, ARIZONA 85701-1090

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EX-PARTE ORDER

Upon the application of the debtor in possession to extend the time prescribed by 11 U.S.C. § 365(d)(4) within which the debtor must assume or reject a lease, and good cause appearing for extension of said time period,

IT IS HEREBY ORDERED allowing the debtor to and until June 1, 1985 to either assume or reject its leases with Tombstone Development Co. and Mildred and E. H. Escapule.

DATED this 18th day of March, 1985.



JUDGE OF BANKRUPTCY COURT

JERRY QUINN
TELUS

IN THE SUPERIOR COURT

COCHISE COUNTY, ARIZONA

1986 AUG 20 AM 11:03

ELLEN M. YOUNG
CLERK SUPERIOR COURT
BY M.C.
DEPUTY

RICHARD A. WINKLER

Judge

No. 42428

JERRY RUSSELL, etc.

Plaintiff

Date 8/20/86

vs.

TOMBSTONE EXPLORATIONS, INC., et al.

Defendant

MINUTE ENTRY

It appearing that this case has been on the inactive calendar for a period of two months or more,

IT IS THEREFORE ORDERED that said case be dismissed without prejudice for lack of prosecution, and

IT IS FURTHER ORDERED that any bond filed herein be exonerated and if said bond be in cash that the same be returned by the Clerk to the proper party or his attorney.

IT IS FURTHER ORDERED that any exhibits herein be returned by the Clerk to the respective parties.

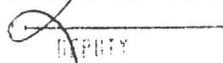
Richard A. Winkler

Judge of the Superior Court

William M. Spence, Esq.
200 E. Mitchell Drive, Ste. 315
Phoenix, AZ 85012

cc: Joe F. Tarver, Esq.
CHANDLER, TULLAR, etc.
33 No. Stone Ave., Ste. 1700
Tucson, AZ 85701

FILED
1985 JUN -6 PM 12:05
12 17

ELLEN H. YOUNG
CLERK SUPERIOR COURT
BY. 
DEPUTY

1 **William M. Spence, Ltd.**

2 Attorney & Counselor at Law
3 200 East Mitchell Drive
4 Suite 315
5 Phoenix, Arizona 85012
6 (602) 234-0034

7 Attorney for Plaintiffs

8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

9 IN AND FOR THE COUNTY OF MARICOPA

10 JERRY RUSSELL, Personal Representative
11 of the Estate of MICHAEL JOHN RUSSELL,
12 for herself and minor child, MICHELLE
13 RUSSELL,

14 Plaintiffs

15 vs

16 TOMBSTONE EXPLORATION, INC., an Arizona
17 corporation, TOMSBTONE COMMUNITY HEALTH
18 SERVICES, JOHN DOE SPANGLER and PATRICIA
19 SPANGLER, Administrator TOMBSTONE COM-
20 MUNITY HEALTH SERVICES, INC., an Arizona
21 corporation, DOES I through 50, PARTNER-
22 SHIPS DOES I through 100, BLACK CORPORA-
23 TION, WHITE CORPORATION, and X, Y, Z COR-
24 PORATION,

25 Defendants

26 Plaintiff alleges and states as follows:

COUNT I

I

That plaintiff JERRY RUSSELL is the widow of the decedent,
the Personal Representative of the Estate of JOHN MICHAEL
RUSSELL and the natural mother of their minor child, MICHELLE
RUSSELL.

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II

That at all times pertinent herein plaintiff was a resident and citizen of the state of Arizona, county of Cochise.

III

That defendant TOMBSTONE EXPLORATION, INC., an Arizona corporation, was at all times pertinent herein doing business in the county of Cochise, state of Arizona under the laws of said state and county and said defendant caused events to occur in the county of Cochise, state of Arizona out of which this action arose.

IV

That defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC., an Arizona corporation, was at all times pertinent herein a corporation performing the services of a clinic and emergency hospital in the county of Cochise, state of Arizona under the laws of said state and county and said defendant caused events to occur in said county and state out of which this action arose.

V

That defendant PATRICIA SPANGLER was at all times pertinent herein a registered nurse and a certified physician's assistant and was the agent and administrator of defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC.

VI

All individuals, defendants herein, were acting in the furtherance of their marital communities.

VII

1
2 That the true names or capacities, whether individual,
3 corporate, associate or otherwise and their respective specific
4 acts of negligence of said defendants DOES I through 50,
5 PARTNERSHIPS DOES 51 through 100, BLACK CORPORATION, WHITE
6 CORPORATION and X, Y, Z CORPORATIONS are unknown to plaintiff
7 at this time. Plaintiff is informed and believes and thereon
8 alleges that each of the defendants designated herein as a DOE
9 is responsible in some manner for the events and happenings
10 herein referred to and negligently caused the death of
11 Plaintiff's husband, MICHAEL JOHN RUSSELL as herein alleged;
12 that plaintiff will ask leave of this court to amend this
13 complaint to insert the true names and capacities of said
14 defendants when same have been ascertained by plaintiff
15 together with appropriate charging allegations and to join such
16 defendants to this action.

VIII

17
18 That on or about February 1, 1982 and for sometime prior
19 thereto, defendant TOMBSTONE EXPLORATION, INC., by and through
20 its authorized agents and employees operated a silver mine
21 known as Contention mine, a leaching and stripping operation
22 near the town of Tombstone, Arizona, county of Cochise and was
23 duly licensed and authorized to operate said mine under the
24 laws of the state of Arizona.

IX

25
26 That on or about February 1, 1982 and for sometime prior
27 thereto, decedent MICHAEL JOHN RUSSELL was employed as a
28 laborer by the defendant TOMBSTONE EXPLORATION, INC. at their

1 Contention mine site and in the performance of his duties
2 worked in and around the mine, leaching operations and storage
3 areas where he was subject to continual exposure to hazardous
4 and dangerously toxic substances including, but not limited to,
5 cyanide.

6 X

7 That on or about February 1, 1982 and for sometime prior
8 thereto defendant TOMBSTONE EXPLORATION, INC. did not and had
9 not conducted this mining operation in a responsible manner,
10 i.e., by failing to conduct this operation with due regard to
11 the health and safety of others, failing to provide the proper
12 training of its employees and failing to purchase such
13 equipment, safety devices and safeguards as were reasonably
14 necessary to protect the life, health and safety of its
15 employees.

16 Defendant TOMBSTONE EXPLORATION, INC. further neglected and
17 failed to inspect, correctly instruct or warn employees of
18 unsafe conditions, practices, defective equipment and materials
19 and further neglected and failed to have on duty a person of
20 sufficient responsibility to see that the operations were
21 carried on in a safe manner for all employees and is negligent
22 for the unsafe and hazardous conduct of its mine operation, all
23 of which is in violation of A.R.S. Sec. 27-304.

24 XI

25 In addition thereto or in the alternative, defendant
26 TOMBSTONE EXPLORATION, INC. neglected and failed to have
27 adequate and proper first aid material available to all
28 employees, and to have qualified supervisors and foremen who

1 were able to properly administer all first aid material. That
2 the failure to provide proper and adequate first aid material
3 and to instruct its employees in the proper use of said first
4 aid equipment and material constitutes negligence and is in
5 violation of A.R.S. Sec 27-306.

6 XII

7 In addition thereto or in the alternative, defendant
8 TOMBSTONE EXPLORATION, INC. failed and neglected to provide the
9 proper and approved type of clothing for the protection of its
10 employees when in the work area. Defendant TOMBSTONE
11 EXPLORATION, INC.'s failure and neglect so to do constitutes
12 negligence and is in violation of A.R.S. Sec. 27-312.

13 XIII

14 In addition thereto or in the alternative, defendant
15 TOMBSTONE EXPLORATION, INC. failed and neglected to do
16 everything reasonably within its power to prevent the breathing
17 or inhaling of hazardous dust and gas and to provide
18 respirators to all employees who might be working in the area
19 of any hazardous or dangerous substances. That defendant
20 TOMBSTONE EXPLORATION, INC. failed and neglected to provide
21 such equipment and to do everything reasonably within its power
22 to protect and prevent its employees from inhaling hazardous
23 dust and gases and its failure so to do constitutes negligence
24 and is in violation of A.R.S. Secs. 27-411 and 27-412.

25 XIV

26 All of the foregoing alleged acts constitute negligence per
27 se and were in violation of the statutes as hereinabove set
28 forth.

1
2 The grossly wilful and wanton negligent acts of the
3 defendants and each of them committed in total disregard for
4 the lives and property of others were the direct and proximate
5 cause of the death of JOHN MICHAEL RUSSELL and because of the
6 nature of the foregoing acts complained of plaintiffs are
7 entitled to punitive damages in the sum of TWO MILLION DOLLARS
8 (\$2,000,000.00).

COUNT II

XVI

9
10
11 Plaintiffs reallege each and every allegation contained in
12 Paragraphs I through XV, inclusive, of Count I and incorporate
13 the same by reference as if fully set forth herein.

XVII

14
15 That defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC.,
16 an Arizona corporation, held itself out to the public as a
17 medical institution with a qualified staff to treat, and
18 administer to persons in all emergency conditions.

XVIII

19
20 That defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC.
21 was aware of the hazards of a mine operation; that one of the
22 principal objectives of TOMBSTONE COMMUNITY HEALTH SERVICES,
23 INC. was to establish and maintain emergency health services
24 for TOMBSTONE EXPLORATION, INC.

25 That defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC.
26 was aware of the hazards of a mining operation. Many injuries
27 and conditions of the employees of TOMBSTONE EXPLORATION, INC.
28 had been treated at TOMBSTONE COMMUNITY HEALTH SERVICES, INC.

1 and the staff was aware and knew of the medical equipment,
2 supplies and medicines vital to the treatment of injuries and
3 conditions common to mining operations which were foreseeable
4 and which had occurred previously.

5 That TOMBSTONE COMMUNITY HEALTH SERVICES, INC. was grossly
6 wilful and wantonly negligent in not having the proper medical
7 equipment and medicines and in not having a staff of qualified,
8 experienced persons to treat and administer to victims of
9 injuries and conditions common to mining operations.

10

XIX

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All of the foregoing acts and omissions of TOMBSTONE
COMMUNITY HEALTH SERVICES, INC. constitute negligence and were
grossly wilful and wantonly negligent and in total disregard
for the lives and property of others and were one of the direct
and proximate causes of the death of plaintiff's husband,
MICHAEL JOHN RUSSELL and because of the foregoing acts
complained of, plaintiffs are entitled to punitive damages
against the defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC.
in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

COUNT III

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Plaintiffs reallege each and every allegation contained in
Paragraphs I through XV, inclusive, of Count I and Paragraphs
XVI through XIX, inclusive, of Count II and incorporate the
same by reference as if fully set forth herein.

1
2 That defendant TOMBSTONE COMMUNITY HEALTH SERVICES, INC.
3 employed one PATRICIA SPANGLER as its administrator. Defendant
4 PATRICIA SPANGLER was a registered nurse and physician's
5 assistant and did know or should have known all of the symptoms
6 of cyanide poisoning. That the wrong diagnosis and treatment
7 by PATRICIA SPANGLER was contributory to the demise of the
8 plaintiff MICHAEL JOHN RUSSELL.

9 That it was the duty of defendant PATRICIA SPANGLER as an
10 administrator of a medical facility and as a registered nurse
11 and physician's assistant to keep herself informed and
12 qualified to diagnose and treat emergency illnesses and
13 injuries.

14 That defendant PATRICIA SPANGLER knew of the hazards of a
15 mine operation and should have prepared and qualified herself
16 for such injuries and illnesses that are common to the
17 operation of a silver mine and more especially since the
18 employees of TOMBSTONE EXPLORATION, INC. had experienced many
19 injuries and emergency illnesses, including cyanide poisoning,
20 which caused the demise of plaintiff MICHAEL JOHN RUSSELL.

21
22 The grossly wilful and wanton negligent acts of the
23 defendant PATRICIA SPANGLER was one of the direct and proximate
24 causes of the death of plaintiff's husband MICHAEL JOHN RUSSELL
25 and because of the foregoing acts complained of, plaintiffs are
26 entitled to punitive damages against the defendant PATRICIA
27 SPANGLER in the sum of ONE MILLION DOLLARS (\$1,000,000.00)
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COUNT IV

XXIII

Plaintiffs reallege each and every allegation contained in Paragraphs I through XV, inclusive, of Count I and Paragraphs XVI through XIX, inclusive, of Count II and Paragraphs XX through XXII, inclusive, of Count III and incorporate the same by reference as if fully set forth herein.

XXIV

That the death of plaintiff MICHAEL JOHN RUSSELL proximately caused by the gross, wilful and wanton negligence of the defendants and each of them, the plaintiff, the widow of decedent plaintiff MICHAEL JOHN RUSSELL, has been deprived of the assistance, care, love, society, comfort and support of her husband and is reasonably entitled to damages for the loss of consortium in the sum of ONE MILLION DOLLARS (\$1,000,000.00).

COUNT V

XXV

Plaintiffs reallege each and every allegation and averment contained in Paragraphs I through XV, inclusive, of Count I and Paragraphs XVI through XIX, inclusive, of Count II and Paragraphs XX through XXII, inclusive, of Count III and Paragraphs XXIII and XXIV of Count IV and incorporate the same by reference as if fully set forth herein.

XXVI

1
2 That the death of plaintiff MICHAEL JOHN RUSSELL directly
3 and proximately caused by the grossly wilful and wanton
4 negligence of the defendants and each of them, the infant
5 daughter of said plaintiff has been deprived of ever seeing or
6 knowing her father and of the care, love, comfort, guidance,
7 counsel and companionship of her father and is entitled to
8 damages for this loss in the sum of ONE MILLION DOLLARS
9 (\$1,000,000.00).

10 XXVII

11 As a further direct and proximate result of the negligence
12 of the defendants, and each of them, as aforesaid, and the
13 untimely death of JOHN MICHAEL RUSSELL, the plaintiff JERRY
14 RUSSELL has been required to pay the funeral and burial
15 expenses for the decedent.

16 WHEREFORE, Plaintiffs pray for judgment against the
17 defendants and each of them as follows:

18 1. For punitive damages against defendant TOMBSTONE
19 EXPLORATION, INC. in the sum of TWO MILLION DOLLARS;

20 2. For punitive damages against defendant TOMBSTONE
21 COMMUNITY HEALTH SERVICES, INC. in the sum of ONE MILLION
22 DOLLARS;

23 3. For punitive damages against defendant PATRICIA
24 SPANGLER and her marital community, in the sum of ONE MILLION
25 DOLLARS;

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4. For plaintiff JERRY RUSSELL against defendants and each of them for the sum of ONE MILLION DOLLARS for general damages and loss of consortium;

5. For plaintiff MICHELLE RUSSELL against defendants and each of them the sum of ONE MILLION DOLLARS for general damages and the loss of her father;

6. For the reimbursement of the funeral and burial expenses for the decedent, JOHN MICHAEL RUSSELL;

7. For such other and further relief as the Court may deem just and proper in the premises; and

8. For costs of suit incurred herein.

WILLIAM M. SPENCE, LTD.

By 
For The Firm

W.D.

JAN 31 1983 FILED
VIVIAN KRINGLE, Clerk
By *[Signature]*
ELLEN *[Signature]* Deputy
CLERK SUPERIOR COURT
BY *[Signature]*

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William M. Spence, Ltd.
Attorney & Counselor at Law
200 East Mitchell Drive
Suite 315
Phoenix, Arizona 85012
(602) 234-0034

Attorney for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE **NEW COMPLAINTS**

JERRY RUSSELL, Personal Representative of the Estate of MICHAEL JOHN RUSSELL for herself and minor child MICHELLE RUSSELL,	)	C 479520
	)	CASE NO. _____
Plaintiffs	)	COMPLAINT
	)	(WRONGFUL DEATH)
vs)	
TOMBSTONE EXPLORATION, INC., an Arizona corporation, TOMBSTONE COMMUNITY HEALTH SERVICE, JOHN DOE SPANGLER and PATRICIA SPANGLER, Administrator TOMBSTONE COM- MUNITY HEALTH SERVICE, DOES I through 50, PARTNERSHIPS DOES 51 through 100, BLACK CORPORATION, WHITE CORPORATION AND X, Y, Z CORPORATION,	)	45-
)	
Defendants)	

Plaintiff alleges and states as follows:

COUNT I

I

That plaintiff JERRY RUSSELL is the widow of the deced-
ent, the Personal Representative of the Estate of JOHN MICHAEL
RUSSELL and the natural mother of their minor child, MICHELLE
RUSSELL.

II

That at all times pertinent herein Plaintiff was a

1 resident and citizen of the state of Arizona, county of Cochise.

2 III

3 That defendant TOMBSTONE EXPLORATION, INC., an
4 Arizona corporation, was at all times pertinent herein doing busi-
5 ness in the county of Cochise, state of Arizona under the laws
6 of said state and county and said defendant caused events to occur
7 in the county of Cochise, state of Arizona out of which this
8 action arose.

9 IV

10 That defendant TOMBSTONE COMMUNITY HEALTH SERVICE, was at
11 all times pertinent herein an orgnization performing the services
12 of a clinic and emergency hospital in the county of Cochise, state
13 of Arizona.

14 V

15 That defendant PATRICIA SPANGLER, was at all times
16 pertinent herein, an agent and administrator of defendant
17 TOMBSTONE COMMUNITY HEALTH SERVICE.

18 VI

19 That the true names or capacities, whether individual,
20 corporation, associate or otherwise and their respective specific
21 acts of negligence of said defendants DOES I through 50, PARTNER-
22 SHIPS DOES 51 through 100, BLACK CORPORATION, WHITE CORPORATION
23 and Z, Y, Z CORPORATION are unknown to plaintiff at this time.
24 Plaintiff is informed and believes and thereon alleges that each
25 of the defendants designated herein as a DOE are responsible in
26 some manner for the events and happenings herein referred to and
27 negligently caused the death of Plaintiff's husband, MICHAEL JOHN
28 RUSSELL as herein alleged; that plaintiff will ask leave of this
court to amend this complaint to insert the true names and

1 capacities of said defendants when same have been ascertained by
2 plaintiff together with appropriate charging allegations and to
3 join such defendants in this action.

4 VII

5 That on or about February 1, 1980 and for sometime
6 prior thereto, defendant TOMBSTONE EXPLORATION, INC., by and
7 through its authorized agents and employees operated a silver
8 mine known as Contention mine, a leaching and stripping operation,
9 near the town of Tombstone, Arizona, county of Cochise and was
10 duly licensed and aurohotized to operate said mine under the laws
11 of the state of Arizona.

12 VIII

13 That on or about February 1, 1980 decedent MICHAEL
14 JOHN RUSSELL was employed as a laborer by the defendant TOMBSTONE
15 EXPLORATION, INC. at their Contention mine site and in the per-
16 formance of his duties as a laborer was instructed by the agents
17 of the defendant TOMBSTONE EXPLORATION, INC. to enter the mine
18 and work in and around the area of the storage shed which housed
19 a hazardous and dangerous substance, commonly known as cyanide.

20 IX

21 That on or about February 1, 19803 and for sometime
22 prior thereto defendant TOMBSTONE EXPLORATION, INC. had not con-
23 ducted this mining operation in a responsible manner, failed to
24 conduct this operation with due regard to the health and safety
25 of other, failed to provide the proper training to its employees,
26 failed to provide proper supervision of its employees and failed
27 to purchase such equipment, safety devices and safeguards as were
28 reasonably necessary to protect the life, health and safety of

1 of its employees. Defendant TOMBSTONE EXPLORATION, INC. further neglected
2 and failed to have on duty a person of sufficient responsibility
3 to see that the operations were carried on in a safe manner for
4 all employees. Defendant TOMBSTONE EXPLORATION, INC. further
5 neglected and failed to inspect, correct instruct or warn employees
6 of unsafe conditions, practices, defective equipment and materials
7 and is negligence for the unsafe and hazardous conduct of its
8 mine operation which is in violation of ARS Sec.27-304.

9 X

10 In addition thereto or in the alternative, Defendant
11 TOMBSTONE EXPLORATION, INC. neglected and failed to have adequate
12 and proper first aid material available to all employees. That
13 the supervisors and foremen shall be qualified and able to proper-
14 ly administer all first aid material. That the failure to provide
15 proper and adequate first aid material and to instruct its em-
16 ployees in the proper use of said first aid equipment and material
17 is negligence of TOMBSTONE EXPLORATION, INC. and is in violation
18 of ARS Sec. 27-306.

19 XI

20 In addition thereto or in the alternative, Defendant
21 TOMBSTONE EXPLORATION, INC. failed and neglected to provide the
22 proper and approved type of clothing for the protection of its
23 employees when in the work area. Defendant TOMBSTONE EXPLORATION,
24 INC.'S failure and neglect so to do constitutes negligence and
25 is in violation of ARS Sec. 312.

26 XII

27 In addition thereto or in the alternative, Defendant
28 TOMBSTONE EXPLORATION, INC. failed and neglected to do everything

1 reasonably within his power to prevent the breathing or inhaling
2 of hazardous dust and gas and that respirators shall be provided
3 to all employees who may be working in the area of any hazardous
4 or dangerous substances. That Defendant TOMBSTONE EXPLORATION, INC
5 failed and neglected to provide such equipment and to do every-
6 thing reasonably within its power to protect and prevent its
7 employees from inhaling hazardous dust and gases and by its
8 failure so to do constitutes negligence and is in violation of
9 ARS Secs. 27-411 and 27-412.

10 COUNT II

11 XIII

12 Plaintiffs reallege, each and every allegation con-
13 tained in Paragraphs I through XII, inclusive, of Plaintiff's
14 Count I and incorporate the same by reference as if fully set
15 forth herein.

16 XIV

17 That Defendant Tombstone Community Health Services
18 held itself out to the public as a medical institution with a
19 qualified staff to treat and administer to all emergency condi-
20 tions.

21 That Defendant Tombstone Community Health was aware
22 of the hazards of a mining operation. Many injuries and condi-
23 tions of the employees of TOMBSTONE EXPLORATION, INC. had been
24 treated at the Tombstone Community Health Services they were aware
25 and had treated cases of cyanide poisoning. That Tombstone Com-
26 munity Health Services was derelict and negligent in its duties
27 of a medical institution in not having a staff of qualified
28

1 persons. Tombstone Community Health Services in failing to
2 provide experienced and qualified personnel to administer and
3 treat injuries common to mine operations and which were foresee-
4 able and which had occurred previously constituted negligence.

5 COUNT III

6 XV

7 Plaintiffs reallege, each and every allegation con-
8 tained in Paragraphs I through XII, inclusive, of Plaintiff's
9 Count I and Paragraph XIV of Count III and incorporate the same
10 by reference as if fully set forth herein.

11 COUNT IV

12 XVI

13 That Defendant TOMNSTONE COMMUNITY HEALTH SERVICES
14 employed one PATRICIA SPANGLER as its administrator. Defendant
15 PATRICIA SPANGLER should have known all of the symptoms of cyanide
16 poisoning. That her wrong diagnosis and treatment was contribu-
17 tory to the illness and demise of the plaintiff MICHAEL JOHN
18 RUSSELL That it was her duty as an administrator of a medical
19 facility to keep herself informed and qualified to diagnose and
20 treat emergency illnesses and injuries. That PATRICIA SPANGLER
21 knew of the hazards of a mine operation and should have prepared
22 and qualified herself for such illness and injuries that are com-
23 mon to the operation of a mine and more especially since the employees
24 of TOMBSTONE EXPLORATION, INC. experienced many injuries and emer-
25 gency illness prior to February 1, 1980 the date the plaintiff
26 became greivously ill from cyanide poisoning which caused his
27 demise.

28 . . . That defendant PATRICIA SPANGLER was at all times acting
in the furtherance of the marital community.

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COUNT V

XVII

Plaintiffs reallege each and every allegation and averment contained in Paragraphs I through VII, inclusive, of Plaintiff's Count I and Paragraph XIV of Count II and Paragraph XVI of Count III and Paragraph XVI of Count IV and incorporate the same by reference as if fully set forth herein.

XVIII

That the death of plaintiff proximately caused by the gross, wilfull and wanton negligence of the Defendants and each of them, the Plaintiff, the widow of decedent Plaintiff, has been deprived of the assistance, care, love, society, comfort and support of her husband and is reasonably entitled to damages for the loss of consortium.

COUNT VI

Plaintiffs reallege each and every allegation and averment contained in Paragraphs I through VII, inclusive, of Plaintiff's Count I and Paragraph XIV of Count II and Paragraph XVI of Count III and Paragraph XVI of Count IV and Paragraph XVIII of Count V and incorporates the same by reference as if fully set forth herein.

XIX

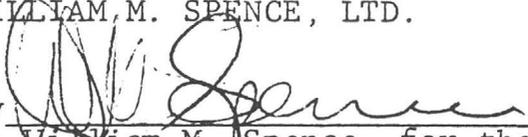
That the death of Plaintiff proximately caused by the gross, wilfull and wanton negligence of the Defendants and each of them, the infant daughter of said Plaintiff has been deprived of ever seeing or knowing her father and of the care, love, comfort, guidance, counsel, companionship of her father and is entitled to damages for this loss.

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WHEREFORE, Plaintiffs pray for judgment against the Defendants and each of them, as follows:

1. For special and compensatory damages in the amount of \$500,000.00;
2. Punitive damages in the sum of \$2,000,000.00
3. General Damages in the sum of \$500,000.00
4. Loss of consortium in the sum of \$500,000.00
5. Michelle Russell the sum of \$1,000,000.00 for the loss of her father, the Plaintiff decedent.
6. For such other and further relief as the Court may deem just and proper in the premises.

WILLIAM M. SPENCE, LTD.

By 
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