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Volume 8 ; Book 7

TOMBSTONE

Mining District

Cochise County

ARIZONA

Briscoe, Speer, and Schloss
Depositions + Lawsuit Papers

INDICIES of LEGAL TRANSACTIONS

for

TOMBSTONE EXPLORATION, INC.

Thomas E. Schloss & Dwight E. Lee

vs.

SOUTHWESTERN EXPLORATION ASSOCIATES, INC.

Southwestern Exploration Associates, Inc.
Hydromet, Inc.

Austin Mining & Exploration, Inc.
James A. Briscoe
Richard F. Hewlett

Summons: June 10, 1980. Summons from T.E.I. declaring fraud, negligent misrepresentation, breach of contract, breach of management agreement, conspiracy to violate securities laws

Interrogatories: August 26, 1980. Interrogatories from T.E.I. asking the following questions of James A. Briscoe, et al.: liability insurance & ownership of corporation. Followed by James A. Briscoe answers.

JAB Deposition: August 28, 1980. Index of exhibits and examinations are on Page 3.

JAB Answer & Counterclaim: July 16, 1980.

Schloss Deposition: September 10, 1976.

Request to Produce: October 10, 1980. T.E.I. requesting JAB to produce incorporation records, minutes of shareholders meetings, stock ledgers, organizational meetings, correspondence, agreements, contracts and accounting records, relating to Tombstone Heap Leach Project.

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In the Superior Court of the State of Arizona

In and for the County of Pima

TOMBSTONE EXPLORATION, INC.,
a Delaware corporation; et al,

Plaintiff...s,

vs.

SOUTHWEST EXPLORATION ASSOCIATES,
INC., an Arizona Corporation, et al

Defendant...s

No. 188423

SUMMONS

THE STATE OF ARIZONA to the above named defendant
JAMES A. BRISCOE, Geologist
4500 East Speedway
Tucson, Arizona

YOU ARE HEREBY SUMMONED and required to appear and defend in the above entitled action in the above entitled court, within TWENTY DAYS, exclusive of the day of service, after service of this summons upon you if served within the State of Arizona, or within THIRTY DAYS, exclusive of the day of service, if served without the State of Arizona, and you are hereby notified that in case you fail so to do, judgment by default will be rendered against you for the relief demanded in the complaint.

The name and address of plaintiff's attorney is LAW OFFICES OF KENNETH L. ALLEN, P.C.
By: KENNETH L. ALLEN
705 Transamerica Building
Tucson, Arizona 85701

GIVEN under my hand and the seal of the Superior Court of the State of Arizona in and for the County of Pima, this 10 day of June, 1980.

NOTARY PUBLIC AND SEC. 12011 A.P.S.
NOTARIAL COMMISSION NO. 12011 A.P.S.
NOTARIAL COMMISSION NO. 12011 A.P.S.

JAMES N. CORBETT,
Clerk
By: Christina E. Delgado
Deputy Clerk

STATE OF ARIZONA)

: ss.

CERTIFICATE or AFFIDAVIT of SERVICE

County of Pima)

, being first duly sworn, deposes and says as follows:

I do hereby certify:

That I received the foregoing Summons to which was attached a true copy of the COMPLAINT on the ___ day of _____, 19___, at the hour of ___ m., and that I personally served the same upon the defendants hereinafter named and at the places, times and dates, and in the manner hereinafter set forth, to-wit:

Name Date Time Place Manner

By _____

Subscribed and sworn to before me this ___ day of _____
19___.

Notary Public

My commission expires: _____

Fees \$ _____

Travel _____ miles \$ _____

Total \$ _____

COPY

LAW OFFICES OF KENNETH L. ALLEN, P.C.
SUITE 708 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
TELEPHONE (602) 624-1757

Attorney for Plaintiffs.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

TOMBSTONE EXPLORATION, INC.,)
a Delaware Corporation;)
THOMAS H. SCHLOSS, indivi-)
dually and DWIGHT E. LEE,)
individually,)

NO. 188423

COMPLAINT

(Tort non-motor vehicle,
Fraud, Negligent Misrepresenta-
tion and Breach of Contract)

Plaintiffs,

vs.

SOUTHWEST EXPLORATION)
ASSOCIATES, INC., an Arizona)
Corporation; S.E.A.)
HYDROMET, INC., an Arizona)
Corporation; AUSTIN)
EXPLORATION AND MINING CO.,)
an Arizona Corporation;)
JAMES A. BRISCOE, as)
President of Southwest)
Exploration Associates, Inc.,)
S.E.A. Hydromet, Inc., and)
Austin Exploration and Mining)
Mining Co.; JAMES A. BRISCOE)
and "JANE DOE" BRISCOE, hus-)
band and wife, if he be)
married; RICHARD F. HEWLETT,)
Vice President and General)
Manager of S.E.A. Hydromet,)
Inc., and as officer-)
employee-agent of Southwest)
Exploration Associates, Inc.)
and Austin Exploration and)
Mining Co; RICHARD F.)
HEWLETT and "JANE DOE")
HEWLETT, husband and wife,)
if he be married; JOHN DOES)
1 through 5; ABC COMPANIES)
1 through 5; and XYZ CORPO-)
RATIONS 1 through 5,)

Defendants.

COME NOW the Plaintiffs and for their complaint state and
allege as follows:

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I

JURISDICTION

1. That at all times herein mentioned Plaintiffs THOMAS H. SCHLOSS and DWIGHT E. LEE were and are residents of the State of New York; that Plaintiff TOMBSTONE EXPLORATION, INC. (hereafter TEI) was and is a Delaware corporation qualified to and doing business in the State of Arizona with its principle place of business being Tombstone, Arizona.

2. That at all times herein mentioned Defendants JAMES A. BRISCOE and "JANE-DOE"-BRISCOE (hereinafter referred to as BRISCOE) were and are residents of Tucson, Pima County, Arizona; that Defendants RICHARD F. HEWLETT's and "JANE DOE" HEWLETT's (hereinafter referred to as HEWLETT) residence is unknown to Plaintiffs; that at all times herein Defendants BRISCOE and HEWLETT were acting upon behalf of and for the benefit of the community of their respective marital communities.

3. That the contract involved herein was entered into and executed in Pima County, Arizona; that the real property involved and set forth in Exhibit "A" attached hereto and made a part hereof, is located in Tombstone, Arizona, and consists of patented and unpatented mining claims recorded in the office of the County Recorder of Cochise County, Arizona, and more specifically and particularly described in Exhibit "A" attached hereto.

4. At all times mentioned herein Defendants SOUTHWEST EXPLORATION ASSOCIATES, INC. (SEA), S.E.A. HYDROMET, INC. (HYDROMET), and AUSTIN EXPLORATION AND MINING CO. (AUSTIN), were and are corporations organized and existing under the laws of the State of Arizona and have their principle place of business in the County of Pima, State of Arizona.

II

THE DEFENDANTS

5. Each of the Defendants has joined together with the

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wives

1 other Defendants to form, promote and sell, for each of Defen-
2 dants' gain and benefit, interests or shares in the mining claims
3 set forth in Exhibit "A", said interest to take the form of a
4 joint venture or other operating arrangement wherein Defendants
5 would obtain monies from others and operate mining operations on
6 the property.

Not correct

7 6. At all times herein mentioned each of the Defendants
8 was the agent and employee of each of the remaining Defendants
9 and was, in doing the things herein complained of, acting in the
10 scope of this agency, employment and entity.

11 7. Each Defendant (a) agreed and conspired with the other
12 Defendants to do the things complained of in this Complaint, or
13 (b) aided and abetted said Defendants in doing said things; that
14 Defendants S.E.A. HYDROMET and AUSTIN are, and at all times
15 mentioned herein were, mere shells, instrumentalities and
16 conduits through which Defendants BRISCOE carried on their
17 business in the corporate names, exactly as carried on prior to
18 incorporation, exercising complete control and dominance of such
19 business, to such an extent that any individuality or
20 separateness of Defendants S.E.A. HYDROMET and AUSTIN and
21 Defendants BRISCOE do not and at all times herein mentioned did
22 not exist.

23 III

24 FIRST CLAIM FOR RELIEF

25 (Fraud)

26 8. Plaintiffs incorporate by reference herein the allega-
27 tions contained in Paragraphs 1 through 7, above.

28 9. That from July of 1978 through and including March 7,
29 1979, Defendants BRISCOE, HEWLETT and SEA promoted and offered
30 to sell to Plaintiffs an interest in the Tombstone project, a
31 heap leach operation, to be carried out on the property described
32 in Exhibit "A" hereto. In order to induce Plaintiffs to purchase

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1 such interest said Defendants made the following representations
2 to Plaintiffs:

3 A. That the dumps to be leached in the operation
4 contained, as of February 20, 1979, a gross value of over
5 12,000,000 U.S. dollars.

6 B. That numerous facilities existed on the property
7 that would enable production to commence shortly after the
8 project was initiated.

9 C. That Defendants had performed all necessary
10 ^{No} geological and ^{No} metallurgical studies and testing so that the
11 operation would, after an initial investment of \$25,000.00,
12 produce gold and silver values sufficient to sustain its own
13 operation and return sizeable profit for the investment.

14 D. That Defendants ^{Hewlett} had developed a new metallurgical
15 process which was proven effective for the recovery of gold and
16 silver called "Induced Percolation Substances" and by use of this
17 process on the Tombstone project would allow 75% recovery of the
18 gold and silver values.

19 E. That the use of the Defendants' metallurgical
20 process would allow recoveries of gold and silver much greater
21 than the use of cyanide leaching which was the accepted method
22 for leaching gold and silver.

23 F. That a complete investment of \$150,000.00 to
24 \$200,000.00 in the increments set forth in Exhibit "B" would
25 enable the operation to result in a turn-key complete work opera-
26 tion to get the property to a point of producing enough gold and
27 silver to support the ongoing production.

28 G. That the cash flow from the processing of the ore
29 would pay back a \$200,000.00 capital investment in from four to
30 six months.

31 10. The representations made by said Defendants were, in
32 truth and fact, false. The true facts were:

2. P. 5.
Hewlett
Hewlett

COPY

1 A. That the dumps to be leached in the operation had
2 previously been leached two or three times substantially reducing
3 the monetary value of the dumps.

4 B. That basically no useable facilities existed on
5 the property and that Plaintiffs have had, over the last year, to
6 purchase all needed facilities to enable production of gold and
7 silver values to commence. *what? whom, for what*

8 C. That none of the required geological and metallur-
9 gical studies and testing had been performed by Defendants to
10 enable production of gold and silver values in any quantity let
11 alone in a quantity sufficient for the project to sustain its own
12 operation after the initial investment of \$25,000.00. In fact,
13 Plaintiffs have expended hundreds of thousands of dollars to test
14 and study the property metallurgically and geologically.

15 D. That Defendants new metallurgical process was not
16 only ineffective, but was known to the Defendants to be ineffec-
17 tive for the recovery of gold and silver and it, in fact, would
18 not recover gold and silver values on the Tombstone project any-
19 where close to 75% of said values. *what? check the reports figure*

20 E. That the metallurgical process of Defendants was
21 much less effective in the recovery of gold and silver values by
22 leaching than the accepted method of cyanide leaching.

23 F. That Plaintiffs' investment of in excess of
24 \$500,000.00 to protect themselves has not put the project into a
25 turn-key complete work operation.

26 G. That to date the cash flow from the project has
27 not returned any of the capital investment of Plaintiffs, let
28 alone completely pay back the capital investment in four to six
29 months from the date of the contract.

30 11. When Defendants made said representations to Plaintiffs
31 they knew, or should have known, them to be false and fraudulent;
32 said statements were made by them with the intent to defraud and

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1 deceive Plaintiffs and to induce Plaintiffs to purchase an
2 interest in Tombstone heap leaching project from Defendants as
3 hereinafter alleged.

4 12. At the time said representations were made, Plaintiffs
5 were ignorant of their falsity but believed each of thm to be
6 true. In reliance thereon, Plaintiffs did purchase a 25%
7 interest in the Tombstone heap leaching project pursuant to that
8 agreement dated March 7, 1979 attached hereto as Exhibit "B" and
9 made a part hereof. That additional interests could be acquired
10 by further investment, as set forth in Paragraph 6 of Exhibit
11 "B". That had Plaintiffs known the true facts and not have
12 relied upon Defendants' expertise and representations, they would
13 not have purchased said interest from Defendants or, alterna-
14 tively, would have restructured the financial contributions and
15 interests according to the true facts.

16 13. That following the initial interest purchase, Defen-
17 dants HYDROMET and AUSTIN were formed by the other Defendants and
18 said Defendants, including HEWLETT, AUSTIN, and HYDROMET made the
19 following representations to Plaintiffs:

20 A. The metallurgy at the project, along with the
21 "Induced Percolation Substances", was "no risk" and good percola-
22 tion and values of gold and silver were being recovered.

23 B. That the metallurgical recoveries going on at the
24 project were "no risk" and that the results could have not been
25 better.

26 C. That for the month following April 11, 1979, the
27 cash flow for the project would be \$175,000.00.

28 14. That the representations made by said Defendants were,
29 in truth and fact, false, the true facts being:

30 A. That the new metallurgical process "Induced Perco-
31 lation Substances" was not only a high risk and unproven process,
32 but Defendants had actual knowledge that the process did not work

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*Wrong thing
we said that*

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1 on a property and project such as the Tombstone heap leach
2 project and that Defendants were not getting good percolation or
3 recovery of gold and silver values.

4 B. That the recoveries of gold and silver values on
5 the project were, in fact, non-existent under the process used by
6 Defendants and of considerable risk.

7 C. That for the month following April 11, 1979, there
8 was no cash flow from the project, let alone \$175,000.00.

9 15. When Defendants made said representations to Plaintiffs
10 they knew, or should have known, them to be false and fraudulent;
11 said statements were made by the Defendants in concert as a
12 continuing course of fraudulent conduct with the intent to
13 further deceive and defraud Plaintiffs and to induce Plaintiffs
14 to invest additional funds in the project.

15 16. At the time said representations were made Plaintiffs
16 were ignorant of their falsity and believed each of them to be
17 true. In reliance thereon, Plaintiffs on April 23, 1979,
18 purchased an additional interest in the Tombstone heap leach
19 project for \$25,000.00. Had Plaintiffs known the true facts they
20 would not have purchased said interest or made an additional
21 investment from Defendants or, in the alternative, would have
22 restructured the respective interests and investment capital.

23 17. That during the months of May and June, Plaintiffs
24 became concerned about their investment and the fact that none of
25 the representations by Defendants were proving to be accurate and
26 therefore embarked upon an attempt to salvage their investment
27 and this project and have continued said effort to the date of
28 this Complaint.

29 18. By reason of the facts alleged, Plaintiffs have been
30 damaged in the sum of in excess of \$1,000,000.00.

31 19. Defendants did the things alleged herein with the
32 intent to defraud Plaintiffs. Said acts were done maliciously

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1 and oppressively. Plaintiffs therefore are entitled to and seek
2 punitive damages in the amount of \$1,000,000.00.

3 20. Pursuant to A.R.S. 12-341.01, Plaintiffs are entitled
4 to attorneys' fees.

5 SECOND CLAIM FOR RELIEF

6 (Negligent misrepresentation)

7 21. Plaintiffs incorporate by reference thereto the
8 allegations contained in Paragraphs 1 through 17 of this
9 Complaint.

10 22. When Defendants and each of them made the representa-
11 tions to Plaintiffs contained in Paragraphs 9 through 17,
12 Defendants had no reasonable grounds to believe said
13 representations to be true; said representations were made to
14 Plaintiffs with the intent to deceive Plaintiffs and to induce
15 Plaintiffs to purchase said interests from Defendants.

16 23. Plaintiffs incorporate by reference thereto the
17 allegations contained in Paragraphs 18 through 20 of this
18 Complaint.

19 THIRD CLAIM FOR RELIEF

20 (Breach of Contract)

21 24. Plaintiffs incorporate by reference thereto the allega-
22 tions contained in Paragraphs 1 through 17 of this Complaint.

23 25. That Defendant BRISCOE, by and on behalf of himself and
24 Defendant SEA and/or Defendant AUSTIN entered into the contract
25 and/or letter agreement dated March 7, 1979 attached hereto as
26 Exhibit "B" and by reference incorporated herein. That, pursuant
27 to said agreement, the parties thereto were to enter into a more
28 comprehensive operation agreement for the Tombstone heap leach
29 project. That, for various reasons, such agreement was never
30 consummated and the parties continued to operate under the March
31 7, 1979, agreement and its amendment dated May 22, 1979, which is
32

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1 attached hereto and made a part hereof by reference as Exhibit
2 "C".

3 26. Pursuant to Paragraph 6 of said agreement, Plaintiffs
4 were to acquire additional interests based upon their
5 monetary contributions, and further that either Plaintiffs' or
6 Defendants' interests could be diluted based upon the additional
7 funding contributed to the project.

8 27. That Plaintiffs have invested in excess of \$500,000.00
9 to date in an attempt to salvage the project and to protect their
10 investment, thereby diluting and reducing Defendants BRISCOE,
11 S.E.A. HYDROMET and/or AUSTIN of any interest whatsoever under
12 the contract agreement dated March 7, 1979.

13 28. Plaintiffs have demanded recognition of Defendants
14 BRISCOE's, SEA's and AUSTIN's dilution and reduction of interest
15 to zero, but said Defendants have refused and continue to refuse
16 to relinquish their interest or claims to interest pursuant to
17 the contract of March 7, 1979, and are therefore in default under
18 the contract.

19 29. As a direct result of the above breach by Defendants
20 BRISCOE, SEA and/or AUSTIN, Plaintiffs have been damaged in that
21 they are proceeding to operate the Tombstone heap leach project
22 subject to unwarranted claims of interest by Defendants BRISCOE,
23 SEA and/or AUSTIN and are thereby entitled to a judicial deter-
24 mination and order that the Defendants, due to their breach of
25 contract, have no interest whatsoever in the Tombstone heap
26 leaching project or, in the alternative, such an interest as is
27 equitable, based upon the contributions of the respective
28 parties.

29 FOURTH CLAIM FOR RELIEF

30 (Breach of Management Agreement)

31 30. Plaintiffs incorporate by reference thereto the allega-
32 tions contained in Paragraphs 1 through 17 of this Complaint.

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1 31. That as a result of the contract dated March 7, 1979,
2 it was agreed pursuant to Paragraph 5 of that document, that
3 Defendant SEA would be employed to manage the Tombstone heap
4 leaching project. That SEA created Defendant HYDROMET to manage
5 said project. That Defendant BRISCOE, individually and on behalf
6 of SEA did, in fact, control HYDROMET and its general manager and
7 vice president Defendant HEWLETT, to the extent that there was no
8 separateness of the various entities. That the Defendants S.E.A.
9 HYDROMET, BRISCOE and HEWLETT agreed to manage the Tombstone heap
10 leaching project in a businesslike and minerlike manner. In
11 compliance with the applicable provisions of the March 7, 1979
12 agreement and in compliance with acceptable standards within the
13 industry for such a project, the Defendants S.E.A., HYDROMET,
14 BRISCOE and HEWLETT breached said agreement and were so grossly
15 negligent in their management of the project that within four
16 months the project was three to four months behind schedule and
17 400% over budget, all to the damage and loss of Plaintiffs.

18 32. Further the Defendants committed acts during the course
19 of their management of Tombstone heap leaching project which
20 damaged the existing heap leaching dumps and other aspects of the
21 property in that gold and silver values were made more difficult
22 to be recovered in the future because of the negligent and
23 improper application of metallurgical processes and practices
24 employed by the Defendants, all to the damage and loss of
25 Plaintiffs.

26 33. The above complained of acts, while Defendants were in
27 the management position of the Tombstone heap leaching project,
28 were done knowingly and maliciously and entitle Plaintiffs to
29 punitive damages.

30 34. As a result of the above acts and breach of the
31 management agreement and negligent management by the Defendants,
32 Plaintiffs have been damaged in an amount in excess of

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1 \$1,000,000.00 actual damages and are entitled to punitive damages
2 of at least \$1,000,000.00.

3 FIFTH CLAIM FOR RELIEF

4 (Conspiracy to Violate Securities Laws)

5 35. Plaintiffs incorporate by reference the allegations
6 contained in Paragraphs 1 through 17 herein.

7 36. During the months between July of 1978 and March 7,
8 1979, Defendants and each of them conspired together and
9 maliciously and wilfully entered into a scheme to defraud and
10 deceive Plaintiffs and deprive them of their money and formed a
11 deliberate design and process to sell to Plaintiffs an interest
12 in the Tombstone heap leaching project for which no approval for
13 sale thereof had been obtained from the Arizona and New York
14 departments of corporations, Securities Exchange Commission, or
15 any other agency or department, as required by the laws of the
16 States of Arizona and New York, and the United States.

17 37. Defendants did the acts and things herein alleged and
18 all of such acts and things were participated in and done by all
19 of said Defendants or by one or more of them as steps in said
20 conspiracy and for the unlawful purposes of defrauding and
21 deceiving Plaintiffs as herein alleged.

22 38. Said wrongful acts of said Defendants in carrying out
23 said conspiracy accomplished Defendants' purposes and resulted in
24 the total loss to Plaintiffs of in excess of \$1,000,000.00,
25 all of which is to Plaintiffs' damage.

26 39. Said acts of the Defendants were oppressive, malicious
27 and contrary to law and Plaintiffs pray for punitive damages in
28 the sum of \$1,000,000.00.

29 WHEREFORE, Plaintiffs pray for judgment as follows:

30 1. Compensatory damages, Plaintiffs' actual damages, but
31 in no case less than \$1,000,000.00 under all claims for relief.

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2. For a judicial determination establishing that Defendants have no interest whatsoever in the Tombstone heap leaching project pursuant to Plaintiffs' Third claim for relief or, in the alternative, a determination of the respective shares of the Plaintiffs and Defendants in said project, based upon their contributions and the equities.

3. As to all claims for relief, punitive damages of no less than \$1,000,000.00.

4. As to all claims for relief, attorneys' fees pursuant to A.R.S. 12-341.01, costs of the suit incurred herein.

5. Such other and further relief as the Court and Jury deem just and proper.

LAW OFFICES OF KENNETH L. ALLEN, P.C.

By Kenneth L. Allen
KENNETH L. ALLEN
705 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorneys for Plaintiffs

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

KENNETH L. ALLEN, being first duly sworn on oath, deposes and says:

That he is an attorney duly authorized to practice law in the State of Arizona; that as such attorney he has prepared the foregoing Complaint in this matter; that the contents of the Complaint are true and correct and as to those matters which are based upon his information and belief, he believes them to be true.

Kenneth L. Allen
KENNETH L. ALLEN

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1 LAW OFFICES OF KENNETH L. ALLEN, P.C.
2 SUITE 705 TRANSAMERICA BUILDING
3 177 NORTH CHURCH AVENUE
4 TUCSON, ARIZONA 85701
5 TELEPHONE (602) 624-1767

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A copy of the Am of this
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JAB & CEA.
JAB
JSE is by
Will be 3p Wed PM 20
P.A. ch. stuff.

6 Attorney for Plaintiffs
7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF PIMA

9 TOMBSTONE EXPLORATION, INC.,)
10 a Delaware Corporation;)
11 THOMAS E. SCHLOSS, individually)
12 and DWIGHT E. LEE, individually,)
13 Plaintiffs,)
14 vs.)
15 SOUTHWEST EXPLORATION ASSO-)
16 CIATES, INC., an Arizona)
17 Corporation, et al,)
18 Defendants.)

NO. 188423

NOTICE OF SERVICE OF
NON-UNIFORM INTERROGATORIES TO
DEFENDANT JAMES A. BRISCOE

18 Plaintiffs hereby give notice that they have on this day
19 served an original and one (1) copy of Non-Uniform
20 Interrogatories, consisting of three interrogatories and subparts
21 thereto, requesting that such interrogatories be answered within
22 thirty (30) days from receipt thereof, pursuant to Rule 33,
23 Arizona Rules of Civil Procedure, by Defendant JAMES A. BRISCOE.

24 DATED this 26 day of August, 1980.

26 LAW OFFICES OF KENNETH L. ALLEN, P.C.

27
28 By Ilene G. Sipe
29 ILENE G. SIPE
30 705 Transamerica Building
31 177 North Church Avenue
32 Tucson, Arizona 85701
Attorneys for Plaintiff

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COPY of the foregoing
mailed this 26th day
of July, 1980, to:

JAY S. KITTLE, ESQ.
509 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorney for Defendant JAMES A. BRISCOE

Eleanor S. Ryan
Mrs. Eleanore S. Ryan
Secretary to ILENE G. SIPE

COPY

1 LAW OFFICES OF KENNETH L. ALLEN, P.C.
2 SUITE 705 TRANSAMERICA BUILDING
3 177 NORTH CHURCH AVENUE
4 TUCSON, ARIZONA 85701
5 TELEPHONE (602) 624-1757

6 Attorney for Plaintiffs

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
8 IN AND FOR THE COUNTY OF PIMA

9 TOMBSTONE EXPLORATION, INC.,)
10 a Delaware Corporation;)
11 THOMAS E. SCHLOSS, individually)
12 and DWIGHT E. LEE, individually,)

13 Plaintiffs,)

14 vs.)

15 SOUTHWEST EXPLORATION ASSO-)
16 CIATES, INC., an Arizona)
17 Corporation, et al,)

18 Defendants.)

NO. 188423

NON-UNIFORM INTERROGATORIES
TO DEFENDANT JAMES A.
BRISCOE

19 TO: The above-named Defendant, JAMES A. BRISCOE and his attorney
20 of record JAY S. KITTLE:

21 Under authority of Rule 33, Arizona Rules of Civil Procedure,
22 you are hereby requested to answer in writing and under oath,
23 within thirty (30) days from receipt hereof, the following Inter-
24 rogatories:

25 INSTRUCTIONS FOR USE

26
27 A. All information is to be divulged which is in the
28 possession of the individual or corporate party, his attorneys,
29 investigators, agents, employees or other representatives of the
30 named party and his attorney.

31 B. A "medical practitioner" as used in these Interro-
32 gatories is meant to include any medical doctor, osteopathic phy-
sician, podiatrist, doctor of chiropractic, naturopathic physician
or other person who performs any form of healing art.

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C. Where an individual Interrogatory calls for an answer which involves more than one, each part of the answer should be clearly set out so that it is understandable.

D. Where the terms "you", "plaintiff" or "defendant" are used, they are meant to include every individual party and separate answers should be given for each person named as a party, if requested.

E. Where the terms "accident" or "the accident" are used, they are meant to mean the incident which is the basis of this lawsuit, unless otherwise specified.

F. A space has been provided on the interrogatories for your answer. Your answer should immediately follow the interrogatory. If your answer requires more space than is provided, you shall type on a separate sheet the interrogatory and thereafter give your answer, as required by Rule XVII of the Uniform Rules of Practice.

G. These interrogatories are intended as continuing interrogatories, requiring you to answer by supplemental answer, setting forth any information within the scope of the interrogatories as may be acquired by you, your agents, attorneys, or representatives following original answers.

1. Within the 13 month period prior to the occurrence of the incident described in the Complaint, was the Defendant a named insured or an insured under any type of liability insurance issued by any entity carrying on an insurance business?

2. Was the business or corporation owned by the Defendant at the time of the incident, described (either specifically or by class) in any policy of insurance?

COPY

1 3. If your answer to either of the two preceding questions
2 was affirmative, state the following as to each such policy of
3 insurance:
4 A. The name of the insurer:
5
6
7 B. The name of the named insured:
8
9
10 C. The types of risk insured against:
11
12
13 D. The business, persons, corporations or premises in the
14 policy:
15
16
17 E. The inception date of the policy:
18
19
20 F. The expiration date of the policy:
21
22
23 G. Was the policy ever cancelled? _____.
24 If so, when and for what reason?
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27 H. The name and address of the agent who sold the policy:
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I. The limits of liability:

(1) What are the limits of liability stated in the policy as to each person, business or corporation insured?

(2) What are the limits of liability applicable to the named Defendant?

J. What was the insuring agreement?

DATED this 26 day of August, 1980.

LAW OFFICES OF KENNETH L. ALLEN, P.C.

By Ilene G. Sipe
ILENE G. SIPE
705 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorneys for Plaintiffs

Original and one copy mailed this 27th day of August, 1980, to:

JAY S. KITTLE, ESQ.
509 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorneys for Defendant JAMES A. BRISCOE

Eleanore S. Ryan
Mrs. Eleanore S. Ryan
Secretary to ILENE G. SIPE

COPY

1 LAW OFFICES OF KENNETH L. ALLEN, P.C.
2 SUITE 705 TRANSAMERICA BUILDING
3 177 NORTH CHURCH AVENUE
4 TUCSON, ARIZONA 85701
5 TELEPHONE (602) 624-1757

6 Attorney for Plaintiffs

7 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

8 IN AND FOR THE COUNTY OF PIMA

9 TOMBESTONE EXPLORATION, INC.,)
10 a Delaware Corporation;)
11 THOMAS E. SCHLOSS, individually)
12 and DWIGHT E. LEE, individually,)
13 Plaintiffs,)

NO. 188423

14 vs.)

NON-UNIFORM INTERROGATORIES
TO DEFENDANT JAMES A.
BRISCOE

15 SOUTHWEST EXPLORATION ASSO-)
16 CIATES, INC., an Arizona)
17 Corporation, et al,)

Defendants.)

18 TO: The above-named Defendant, JAMES A. BRISCOE and his attorney
19 of record JAY S. KITTLE;

20 Under authority of Rule 33, Arizona Rules of Civil Procedure,
21 you are hereby requested to answer in writing and under oath,
22 within thirty (30) days from receipt hereof, the following Inter-
23 rogatories:

24 INSTRUCTIONS FOR USE

25 A. All information is to be divulged which is in the
26 possession of the individual or corporate party, his attorneys,
27 investigators, agents, employees or other representatives of the
28 named party and his attorney.

29 B. A "medical practitioner" as used in these Interro-
30 gatories is meant to include any medical doctor, osteopathic phy-
31 sician, podiatrist, doctor of chiropractic, naturopathic physician
32 or other person who performs any form of healing art.

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C. Where an individual Interrogatory calls for an answer which involves more than one, each part of the answer should be clearly set out so that it is understandable.

D. Where the terms "you", "plaintiff" or "defendant" are used, they are meant to include every individual party and separate answers should be given for each person named as a party, if requested.

E. Where the terms "accident" or "the accident" are used, they are meant to mean the incident which is the basis of this lawsuit, unless otherwise specified.

F. A space has been provided on the interrogatories for your answer. Your answer should immediately follow the interrogatory. If your answer requires more space than is provided, you shall type on a separate sheet the interrogatory and thereafter give your answer, as required by Rule XVII of the Uniform Rules of Practice.

G. These interrogatories are intended as continuing interrogatories, requiring you to answer by supplemental answer, setting forth any information within the scope of the interrogatories as may be acquired by you, your agents, attorneys, or representatives following original answers.

1. Within the 13 month period prior to the occurrence of the incident described in the Complaint, was the Defendant a named insured or an insured under any type of liability insurance issued by any entity carrying on an insurance business?

Yes.

2. Was the business or corporation owned by the Defendant at the time of the incident, described (either specifically or by class) in any policy of insurance?

Yes.

1 3. If your answer to either of the two preceding questions
2 was affirmative, state the following as to each such policy of
3 insurance:

4 A. The name of the insurer:

5 Aetna Casualty and Surety
6

7 B. The name of the named insured:

8 Southwestern Exploration Associates, Inc. and S.E.A. Photography,
9 Inc. and James A. Briscoe.

10 C. The types of risk insured against:

11 Geophysical Exploration, Aerial Photography
12

13 D. The business, persons, corporations or premises in the
14 policy:

15 See B.
16

17 E. The inception date of the policy:

18 12/18/78
19

20 F. The expiration date of the policy:

21 8/8/79
22

23 G. Was the policy ever cancelled? _____

24 If so, when and for what reason?

25 8/8/79 - rewritten into a package policy
26

27 H. The name and address of the agent who sold the policy:

28 Allan Dochtermann
29 Tucson Realty and Trust Co.
30 6390 E. Broadway, Tucson, AZ 85710
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I. The limits of liability:

(1) What are the limits of liability stated in the policy as to each person, business or corporation insured?

500,000 per occ/500,000 aggregate - Bodily Injury
100,000 per occ/100,000 aggregate - Property Damage

(2) What are the limits of liability applicable to the named Defendant?

Same as I.

J. What was the insuring agreement?

Standard Manufacturer's and Contractors Liability Policy

DATED this 26 day of August, 1980.

LAW OFFICES OF KENNETH L. ALLEN, P.C.

By Ilene G. Sipe
ILENE G. SIPE
705 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701
Attorneys for Plaintiffs

Original and one copy mailed this 27th day of August, 1980, to:

JAY S. KITTLE, ESQ.
509 Transamerica Building
177 North Church Avenue
Tucson, Arizona, 85701
Attorneys for Defendant JAMES A. BRISCOE

Eleanor S. Ryan
Mrs. Eleanore S. Ryan
Secretary to ILENE G. SIPE

ANSWER
Counterclockwise

FILE ^{P-} Tombstone

COREY & KITTLE, P.C.

ATTORNEYS AT LAW

BARRY M. COREY
JAY S. KITTLE
PATRICK J. FARRELL
THOMAS A. STOOPS

SUITE 509 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 882-4994

July 22, 1980

Southwestern Exploration Associates, Inc.
4500 East Speedway, Suite 14
Tucson, Arizona 85712

ATTENTION: James A. Briscoe

RE: Southwestern Exploration Associates, Inc. advs. Tombstone
Exploration, Inc.

Dear Jim:

Enclosed herewith for your files is a copy of the Answer
we filed on behalf of S.E.A. and its related corporations in
the matter referred to above.

Jay will be out of the office on vacation until August 1,
but please feel free to give me a call if I can answer questions
for you concerning the Answer. Also, it would probably be
helpful for us to meet some time before Jay returns to discuss
the steps which should be taken by the Corporation in view of
its present financial difficulties.

Sincerely yours,

COREY & KITTLE, P.C.


Patrick J. Farrell

PJF:jr

Enclosure

REVIEWED

AUG 11 1980

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COREY & KITTLE, P.C.
ATTORNEYS AT LAW
SUITE 809 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 682-4994

Attorneys for Defendants

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

TOMBSTONE EXPLORATION, INC.,)
a Delaware Corporation;)
THOMAS H. SCHLOSS, indivi-)
dually and DWIGHT E. LEE,)
individually,)

Plaintiffs,)

vs.)

SOUTHWEST EXPLORATION)
ASSOCIATES, INC., an)
Arizona Corporation; et al;)

Defendants.)

NO. 188423

ANSWER AND COUNTERCLAIM

COME NOW Defendants SOUTHWEST EXPLORATION ASSOCIATES, INC
HYDROMET, INC., AUSTIN EXPLORATION AND MINING COMPANY, JAMES A.
BRISCOE, individually and as President of Southwest Exploration
Associates, Inc, Hydromet, Inc., and Austin Exploration and Mining
Company, by and through their attorneys undersigned and answer the
Plaintiffs complaint.

JURISDICTION

A. Defendants admit that JAMES A. BRISCOE was and is a
resident of Tucson, Pima County, Arizona.

B. Defendants admit the allegations contained in Para-
graphs 3 and 4 of Plaintiffs' Complaint.

THE DEFENDANTS

C. Defendants deny the allegations contained in Para-
graphs 5, 6 and 7 of Plaintiffs' Complaint.

COPY

ROUTE 508 TRAILWAY BLDG.
177 NORTH CHURCH AVENUE
TUCSON ARIZONA 85701
16021 882-4981

1 FIRST CLAIM FOR RELIEF

2 D. Defendants incorporate by reference herein the
3 answers stated above to Paragraphs 1 - 7 of Plaintiffs' Complaint.

4 E. Defendants admit that Defendants BRISCOE and SOUTH-
5 WEST EXPLORATIONS, INC. promoted and offered to sell to Plaintiffs
6 an interest in the Tombstone Project, a heap leach operation.

7 F. Defendants admit that certain buildings, plumbing,
8 and roads existed on the property that would facilitate production
9 after the project was initiated.

10 G. Defendants deny the balance of the allegations
11 contained in Subparagraphs A - G in Paragraph 9 of Plaintiffs'
12 Complaint.

13 H. Defendants deny the allegations contained in Para-
14 graphs 10 and 11 of Plaintiffs' Complaint.

15 I. Defendants admit the Plaintiffs did purchase a 25%
16 interest in the Tombstone heap leaching project pursuant to the
17 Agreement dated March 7, 1979, attached to Plaintiffs' Complaint
18 as Exhibit B. Defendants further admit that additional interests
19 could be acquired by Plaintiffs through further investment as set
20 forth in Paragraph 6 of said Exhibit B. Defendants deny the balance
21 of the allegations contained in Paragraph 12 of Plaintiffs' Com-
22 plaint.

23 J. Defendants deny the allegations contained in Para-
24 graphs 13 through 20 of Plaintiffs' Complaint.

25 SECOND CLAIM FOR RELIEF

26 K. Defendants incorporate by reference herein their
27 answers stated above to Paragraphs 1 - 20 of Plaintiffs' Complaint.

28 L. Defendants deny the allegations contained in Para-
29 graph 22 of Plaintiffs' Complaint.

30 THIRD CLAIM FOR RELIEF

31 M. Defendants incorporate by reference herein their
32 answers stated above to Paragraphs 1 - 17 of Plaintiffs' Complaint.

COPY

SUITE 508 TRAHAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 882-4984

1 N. Defendants deny that Defendant BRISCOE personally
2 entered into the contract and/or letter agreement dated March 7,
3 1979, attached as Exhibit B to Plaintiffs' Complaint. Defendants
4 admit the balance of the allegations contained in Paragraph 25
5 of Plaintiffs' Complaint.

6 O. Defendants admit that Plaintiffs were to acquire
7 additional interests in the Tombstone project as stated in Para-
8 graph 6 of the March 7, 1979, agreement; Defendants deny that
9 either Plaintiffs' or Defendants' interest could be diluted based
10 on additional funding contributed to the project, except in the
11 case where the parties might seek additional funding from outside
12 sources.

13 P. Defendants deny the allegations contained in Para-
14 graphs 27, 28 and 29 of Plaintiffs' Complaint.

15 FOURTH CLAIM FOR RELIEF

16 Q. Defendants incorporate by reference herein their
17 answers to the allegations contained in Paragraphs 1 - 17 of
18 Plaintiffs' Complaint.

19 R. Defendants admit that Defendant SOUTHWEST EXPLORATION
20 ASSOCIATES, INC. would be employed to manage the Tombstone heap
21 Leaching project. Defendants deny the balance of the allegations
22 contained in Paragraph 31 of Plaintiffs' Complaint.

23 S. Defendants deny the allegations contained in Para-
24 graph 32, 33 and 34 of Plaintiffs' Complaint.

25 FIFTH CLAIM FOR RELIEF

26 T. Defendants incorporate by reference herein their
27 answers to the allegations contained in Paragraphs 1 - 17 of
28 Plaintiffs' Complaint.

29 U. Defendants deny the allegations contained in Para-
30 graphs 36, 37, 38 and 39 of Plaintiffs' Complaint.

31 AFFIRMATIVE DEFENSES

32 V. Plaintiffs are knowledgeable mineral investors, were

COPY

SUITE 808 TRAN-AMERICA BUILDING
177 NORTH GUNCH AVENUE
TUCSON, ARIZONA 85701
(602) 887-4984

1 familiar with the Tombstone Heap Leach properties prior to invest-
2 ing in them, and assumed the risks inherent in such projects.

3 W. Plaintiffs have managed the Tombstone Leaching
4 operation since May of 1979, and thus are estopped to claims that
5 operating difficulties since then are due to Defendants mismanage-
6 ment.

7 X. Plaintiffs have failed to pay Defendants considera-
8 tion due them for services rendered, and cannot now contend that
9 Defendants breached its management agreement with Plaintiffs.

10 Y. Since assuming full control of the Leaching Project,
11 Plaintiffs have voluntarily continued to invest sums of money in
12 the project without inducement from the Defendants.

13 Z. Since April or May of 1979, Plaintiffs have retained
14 their own professional metalurgist to advise them, and cannot now
15 be heard to say they relied exclusively on alleged statements of
16 Defendants concerning the metalurgical characteristics of the sub-
17 ject property.

18 AA. The mineral properties referred to in Plaintiffs'
19 Complaint continue to be valuable properties, and have not been
20 productive because of Plaintiffs mismanagement.

21 WHEREFORE, Defendants request that Plaintiffs' Complaint
22 be dismissed with prejudice and that Plaintiffs take nothing by
23 their Complaint, that Defendants be awarded their costs incurred
24 herein and reasonable attorneys' fees expended by them in this
25 action pursuant to A.R.S. §12-341.01, and that the Court order
26 such other and further relief as the Court deems just and proper
27 in the premises.

28 COUNTERCLAIMS

29 COME NOW the Defendants, and for their claims against
30 Plaintiffs, state and allege as follows:

31 BB. Defendants rendered valuable professional services
32 to Plaintiffs in connection with the Tombstone Heap Leach Project;

COPY

SUITE 606 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 882-4894

1 and were not paid as agreed. Amounts owing to Defendants from
2 Plaintiffs total approximately \$45,097.73.

3 CC. Plaintiffs have controlled the Tombstone Heap Leach
4 Project since May of 1979, and have badly mismanaged it thereby
5 jeopardizing Defendants' interest in the project. By reason of
6 such mismanagement, mineral concentrates which could have been sold
7 at historic high prices were kept off the market, and surrounding
8 mineral claims which could have been secured and should have been
9 secured for the benefit of both Plaintiffs and Defendants were
10 instead acquired by others.

11 DD. Plaintiffs secretly retained valuable mineral con-
12 centrates from the Tombstone Heap Leach Project with the intent to
13 defraud Defendants, and Defendants have suffered great damage by
14 reason of such fraud.

15 EE. The acts of Plaintiffs complained of above were done
16 knowingly and maliciously and entitle Defendants to punitive
17 damages.

18 WHEREFORE, Defendants pray for judgment against Plaintiffs
19 as follows:

- 20 1. Compensatory damages, Defendants actual damages, but
21 in no case less than \$1,000,000 under all claims for relief.
- 22 2. Damages in contract for the sum of \$45,097.73, to-
23 gether with applicable interest, for amounts owing to Defendants
24 by Plaintiffs for professional services rendered.
- 25 3. As to all claims for relief, punitive damages of no
26 less than \$1,000,000.
- 27 4. As to all claims for relief, attorneys' fees pursuant
28 to A.R.S. §12-341.01, together with costs of the suit incurred
29 herein.
- 30 5. Such other and further relief as the Court deems just
31 and proper.
- 32

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DATED this 16th day of July, 1980.

COREY & KITTLE, P.C.

By: Jay S. Kittle
Attorneys for Southwest Exploration
Associates, Inc., Hydromet, Inc.,
Austin Exploration and Mining
Company and James A. Briscoe
509 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701

Copy for the foregoing mailed
to Kenneth L. Allen, Attorney
for Plaintiffs
705 Transamerica Building
177 North Church Avenue
Tucson, Arizona 85701, this
16th day of July, 1980

ATTORNEYS AT LAW
ROUTE 509 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 882-4984

COPY

Request to
produce

RECEIVED OCT 14 1980

COREY & KITTLE, P.C.

ATTORNEYS AT LAW

BARRY M. COREY
JAY S. KITTLE
PATRICK J. FARRELL
THOMAS A. STOOPS

October 13, 1980

SUITE 509 TRANSAMERICA BUILDING
177 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
(602) 882-4994

Southwestern Exploration Associates, Inc.
4500 E. Speedway, Suite 14
Tucson, Arizona 85712

ATTENTION: James A. Briscoe

RE: Tombstone Exploration, Inc. vs. Southwestern Exploration
Associates, Inc.

Dear Jim:

Enclosed herewith is a request to produce a wide variety
of corporate documents relating to S.E.A., SEA Hydromet and
The Austin Exploration and Mining Corporation.

You will note that the deadline for producing these
documents is Thursday, October 23, 1980. If you can arrange
for someone in your office to assemble these documents, I
will be happy to have them picked up by someone from our
office.

Thank you for your assistance with the foregoing.
Please give me a call if you have any questions.

Sincerely yours,

COREY & KITTLE, P.C.



Jay S. Kittle

JSK:jr

Enclosure

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LAW OFFICES OF KENNETH L. ALLEN, P.C.
239 NORTH CHURCH AVENUE
TUCSON, ARIZONA 85701
TELEPHONE (602) 624-1757

Attorney for Plaintiffs.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

TOMBSTONE EXPLORATION, INC.,)
a Delaware corporation, et al,)
Plaintiffs,)

NO. 188423

vs.

REQUEST TO PRODUCE

SOUTHWEST EXPLORATION ASSOCIATES,)
INC., an Arizona corporation,)
Defendants.)

TO: Defendants and their counsel MR. JAY KITTLE,
Attorney at Law, 509 Transamerica Building,
Tucson, Arizona 85701.

Pursuant to Rule 34, Arizona Rules of Civil Procedure,
you are hereby requested to produce the following items, in your
possession or under your control, for inspection and copying at
the offices of LAW OFFICES OF KENNETH L. ALLEN, P.C., 239 North
Church Avenue, Tucson, Arizona, 85701, on or before Thursday,
October 23, 1980:

All corporate documents of the three defendant corporations
including, but not limited to, incorporation records, minutes of
shareholders' and directors' meetings, stock ledgers, organiza-
tional meetings and any other written documentation of the corpo-
rations dealing with the plaintiffs, the Tombstone Heap Leach
Project, Tombstone Development Corp., Tombstone Exploration, Inc.;
this documentation to include, but not necessarily be limited to,
all correspondence, agreements, contracts and accounting records.

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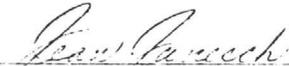
DATED, October 10, 1980.

LAW OFFICES OF KENNETH L. ALLEN, P.C.

By KENNETH L. ALLEN
KENNETH L. ALLEN
239 North Church Avenue
Tucson, AZ 85701
Attorneys for Plaintiffs

COPY of the foregoing Request
to Produce mailed this 10th day
of October, 1980, to:

MR. JAY KITTLE
509 Transamerica Building
Tucson, Arizona 85701
Attorney for Defendants


Mrs. Jean Janesch, CIA

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

TOMBSTONE EXPLORATION, INC.,)
A Delaware Corporation;)
THOMAS E. SCHLOSS, individually)
and DWIGHT E. LEE, individually,)
Plaintiffs,)
-vs-)
SOUTHWEST EXPLORATION ASSO-)
CIATES, INC., an Arizona)
Corporation, et al.,)
Defendants.)

No. 188423

DEPOSITION OF: JAMES A. BRISCOE
August 28, 1980

APPEARANCES:
MR. KENNETH L. ALLEN, Attorney at Law,
Suite 705, Transamerica Building,
177 North Church Avenue,
Tucson, Arizona, 85701,
for the Plaintiffs;

1 APPEARANCES (Cont'd):

2 MR. JAY S. KITTLE, Attorney at Law,
3 Corey & Kittle, P.C.,
4 Suite 509, Transamerica Building,
5 177 North Church Avenue,
6 Tucson, Arizona, 85701,
7 for the Defendants.

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I N D E X

WITNESS

PAGE

JAMES A. BRISCOE

Examination by MR. ALLEN

4

Examination by MR. KITTLE

91

E X H I B I T S

Plaintiffs' Exhibit 1. Report on Tombstone Project

43

Plaintiffs' Exhibit 2. Report on Tombstone Project, 2/20/79

43

Plaintiffs' Exhibit 3. Ledger sheets, P-418

44

Plaintiffs' Exhibit 4. THL trust account records

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Plaintiffs' Exhibit 5. THL trust account records

54

Plaintiffs' Exhibit 6. Letter agreement, 3/7/79

66

Plaintiffs' Exhibit 7. Letter agreement extension, 5/22/79

77

Plaintiffs' Exhibit 8. Analysis of Risk and Project Report

77

Plaintiffs' Exhibit 9. Letter for Mr. Hewlett, 6/22/80

83

1 BE IT REMEMBERED that pursuant to Notice of
2 Taking Deposition in the above-styled and numbered cause,
3 the deposition of JAMES A. BRISCOE was taken upon oral
4 examination at the law offices of Kenneth L. Allen, P.C.,
5 Suite 705, Transamerica Building, 177 North Church
6 Avenue, in the City of Tucson, County of Pima, State of
7 Arizona, before me, Ronald L. Lunsford, a Notary Public
8 in and for the County of Pima, State of Arizona, on the
9 28th day of August, 1980, beginning at the hour of 10:00
10 A.M. on said day.

11
12 JAMES A. BRISCOE,
13 having been first duly sworn to tell the truth, the whole
14 truth and nothing but the truth, was examined and testi-
15 fied as follows:

16
17 EXAMINATION

18 BY MR. ALLEN:

19 Q Jim, would you state your name for the record,
20 please.

21 A James A. Briscoe.

22 Q And do you mind if I call you Jim?

23 A No, please do.

24 Q What is your business address here in Tucson?

25 A 4500 East Speedway, Suite 14.

1 Q What is your business, occupation or profession?

2 A Consulting geologist.

3 Q And how long have you worked for or followed in
4 that profession?

5 A Geology?

6 Q Yes.

7 A Since graduation from college, approximately
8 1965.

9 Q Why don't you tell us in as much detail as you
10 want, Sir, and give me your educational background and
11 your experience background, for the record, and what you
12 have done in various educational training.

13 A Well, I have a Bachelor's and Master's in
14 science. A degree from the University of Arizona. I have
15 four years working for American Smelting and Refining
16 Company in various exploration positions. I have spent
17 approximately two years working for a small exploration
18 company in California called Geo Data Systems. I spent
19 approximately two years working for a small company
20 called Sierra Mineral Management, and Seventy-One Minerals,
21 Limited.

22 In 1973 I started my own firm, first as a sole
23 proprietor and then incorporated at Southwest Exploration
24 Associates.

25 Q What year did you start that?

1 A 1973. Well, that's the year I went into busi-
2 ness as a consultant, and it was later incorporated.

3 Q Did you obtain a Bachelor's degree in '65?

4 A No. A Bachelor's degree in '64; a Master of
5 Science degree in '67. I completed all of my course work
6 by the Spring of 1965, and then worked intermittently on
7 completing my thesis while I was working full-time for
8 ASARCO, and I was awarded my thesis in 1967.

9 Q And all of those were from the University of
10 Arizona; is that correct?

11 A That is correct.

12 Q Was that under the Department of Geology or
13 School of Mines, or what?

14 A It is under, I believe, the Department of Earth
15 Sciences. Geology Department.

16 Q Well, you are aware that we are talking in
17 regard to a heap leaching project in Cochise County right
18 in the -- almost in the town of Tombstone, and you are
19 familiar with the property or operation known as the
20 Tombstone Exploration, Inc.

21 A Yes.

22 Q For a little history and background, Jim, what
23 kind of experience have you had, and let's try to take it
24 from the Bachelor's degree forward, okay, and I want to
25 go back that far. From your Bachelor's degree forward,

1 what type of experience have you had in your profession
2 with heap leaching?

3 A Well --

4 Q I realize that is a broad question, but as best
5 you can, try to cut it down, if necessary.

6 A Heap leaching for precious metals is quite a
7 new technique. Heap leaching for other things such as
8 copper mineralization in copper mines is quite old and
9 has been used for at least several decades.

10 During my tenure at the Silverbell unit of the
11 American Smelting and Refining Company, I was familiar
12 with the heap leaching of corporate copper material, and
13 was friendly on a professional basis with the metallur-
14 gists at that operation.

15 Q Who was?

16 A I was.

17 Q I realize that, but who was the metallurgist?

18 A The metallurgists were Clement Chase, and, well,
19 another fellow's name who now is deceased escapes me.
20 I will think of it in a moment.

21 Q That's all right.

22 A Silverbell is somewhat important in that they
23 were doing research on liquid ion exchange and ammonia
24 leaching systems, although I absolute had no experience
25 on that.

1 In '67 I made field trips to the Carlin Mine
2 in Wyoming. They were experimenting with some heap
3 leaching, but it was very experimental.

4 Q Was that again for copper?

5 A No. That was for gold.

6 Q Okay. Go ahead.

7 A But that was a very brief one-day trip. Aside
8 from that and reading on precious metal heap leaching,
9 I don't know that I have had any other experience.

10 Q In 1973 when you started your own consulting
11 practice -- in '73, right?

12 A Right.

13 Q Did you at that time have any type of support
14 staff, professional support staff, that had experience
15 in heap leaching in general besides what you have already
16 told me about yourself?

17 A No. Although at that point the only heap
18 leaching in operation was copper leaching.

19 Q In regard to the copper leaching at Silverbell
20 and the familiarity obvious from your education, and I
21 guess you would read a lot about that and it would be
22 part of your studies, would it not, reading and under-
23 standing the principles of copper heap leaching? Am I
24 overstating or understating that?

25 A Well, the general chemistry of copper leaching

1 is very much what occurs in nature. So I would say the
2 answer to that is yes.

3 Q I am really just trying to find out the type
4 of leaching, copper leaching, that was going on at Silver-
5 bell that you had some experience with. Would that have
6 been with the use of sulfuric acid on dumps as opposed
7 to what occurs in underground mines or something like
8 that?

9 A Yes, although there was no sulfuric acid added
10 but generally and simply by oxidation of pyrite.

11 Q When either personally or professionally did
12 you first become acquainted with Richard Hewlett?

13 A Probably in 1964 or '65, very roughly. He was
14 a professor at the University of Arizona and I took a
15 short evening course in computer programming from him.

16 Q Did you ever take any courses from him in the
17 field of Geology or Metallurgy?

18 A No.

19 Q Did you at some point in your life become
20 professionally associated with Hewlett?

21 A Yes, in 1970 I went to work for Dick Hewlett,
22 or shall we say '71, as Sierra Mineral Management's chief
23 geologist and vice-president.

24 Q Mr. Hewlett was the owner of that or what?

25 A That's not quite correct. He was one of the

1 owners. He was president.

2 Q That was Sierra, right?

3 A Right.

4 Q And you were chief geologist?

5 A Vice-president and chief geologist.

6 Q And did that professional relationship continue
7 from that point of '70 forward, or was it broken by
8 another matter? What I really want to do is trace your
9 professional relationship with him, if you would.

10 A Well, there was a variety of problems with
11 Sierra Mineral Managements and its success or, well, its
12 suboperation which included Seventy-One Minerals. I was
13 instrumental in bringing a pretty substantial mine into
14 fruition and joint venture with placer development. I
15 was promised participation in this which did not come to
16 the fore, and because of the various financial and other
17 problems of the company, I decided to submit my resigna-
18 tion and go into consulting work on my own in '73.

19 Q Okay. You were professionally related from
20 '70 to '73 in the Sierra -- what is the name of it again?

21 A Sierra Mineral Management.

22 Q Mineral Management.

23 A Actually it was probably the summer of '73.

24 I would have to check my records to be precise.

25 Q So you and I understand each other, Jim, I

1 think Jay understands me, but I am not trying to hold you
2 to dates. Give us your best recollection. We are not
3 worried too much about that.

4 A Actually let me add a little bit on that. At
5 that point in time Schloss and Dwight Lee were investors
6 in Sierra Mineral Management and Seventy-One Minerals
7 and possibly other things because I was not aware of who
8 the investors were in total. Bewlent recommended an
9 exploration program for precious metals, and specifically
10 processing of old dumps and to treat those by leaching.
11 Because of some of the problems with Sierra and their
12 operations and probably in part because of my performance,
13 they invited me to go to work for them in a group which
14 was called Shorex.

15 I worked for them for several months at which
16 point they decided that they did not want to put money
17 into risky mineral exploration and we then terminated the
18 contract that I had negotiated with them. At that point
19 I actually went into consulting on my own.

20 Q So sometime during the period you were with
21 Sierra, you met Tom Schloss and Dwight Lee?

22 A Right.

23 Q You were aware they were investors in some of
24 Sierra's ventures?

25 A Yes.

1 Q This Seventy-One Minerals operation or organiza-
2 tion, Jim, did they not have some involvement with the
3 Tombstone area that is now known or being run by Tombstone
4 Exploration, Incorporated?

5 A Yes, indeed they did.

6 Q They were on that particular property for some
7 period of time in the '70s, were they not?

8 A Yes, sir. I personally, while an employee of
9 Sierra or Seventy-One Minerals, and it became a little
10 vague as to who I was really employed by, had nothing to
11 do with the Tombstone project; however, I went into con-
12 sulting and did do some consulting work on the project
13 geologically.

14 Q That is really my next question.

15 As an employee of Sierra or Seventy-One Minerals,
16 did you have any responsibilities for that project that
17 you now call the Tombstone Exploration Project?

18 A Not as an employee.

19 Q But after your termination with Sierra, did you
20 have some consulting work before Tombstone Exploration
21 got involved?

22 A Yes.

23 Q All right. Now, let me go back one step.

24 The operation or mine that you brought into
25 fruition and that you told me about earlier, where was

1 that if it is not confidential? Is that an Arizona opera-
2 tion?

3 A No, it is in northern Nevada and it is now
4 known as the McDermitt Mine and is probably one of the
5 larger mercury producing mines in the Americas. Possibly
6 the largest with the exception of the one in Spain which
7 is probably the world's largest.

8 Q To your knowledge did Tom Schloss and Dwight
9 Lee have anything to do with that operation that you were
10 involved in?

11 A Yes. They were investors.

12 Q How about Hewlett, did he have any involvement
13 in that?

14 A As part owner of Sierra or Seventy-One Minerals,
15 he had a substantial interest.

16 Q Was it called something else during the time
17 you were bringing it into fruition?

18 A No. The mine, you mean, the Cordero Mine.

19 Q Okay. When, then, approximate dates, did you
20 first meet Schloss and/or Lee.

21 A Well, I don't think I can be precise on that.
22 I would say it was probably 1971.

23 Q That's close enough.

24 Prior to your consulting for them on possible
25 precious metal leaching recovery from the dump during

1 those months -- a short period of time and not a month,
2 but between the period of time when you resigned from
3 Sierra and went to work for yourself, before that time,
4 did you have occasion to consult or make recommendations
5 to Schloss and/or Lee as an employee of Sierra? If that's
6 not quite clear I will try to clear it up for you.

7 A Could you repeat it again?

8 Q Okay. What I am trying to find out, Jim, did
9 you as an employee of Sierra make any type of presenta-
10 tion of properties or projects for the purpose of inform-
11 ing them to possibly get them to invest in such a project
12 during your time with Sierra?

13 A Yes.

14 Q Did you do that on behalf of Sierra or yourself
15 or for someone else?

16 A No. It was on behalf of Sierra.

17 Q Would it be from your professional experience
18 to witness the geological aspects of this project or
19 property that you made recommendations or made presenta-
20 tions to Schloss or Lee?

21 A Yes, I would say so.

22 Q Was that involving that particular mine, that
23 Cordero, which is now called the McDermitt?

24 A Yes.

25 Q Any others, again while you were an employee of

1 Sierra?

2 A Not that I recall.

3 Q Jim, would you characterize based on your knowl-
4 edge and experience what type of person or professional
5 or whatever that Tom Schloss was in your mind during that
6 period of time you were acquainted with him as an employee
7 of Sierra? If you could put a label on him and maybe you
8 can't, but what was he in your mind?

9 A Rephrase that or repeat that one more time for
10 me.

11 Q Okay. You have told me earlier in your testi-
12 mony that he was an investor, okay. I guess that would
13 be one label you could put on somebody. What I am really
14 looking at, what did you consider him during the period
15 of time while you were an employee of Sierra? What did
16 you characterize or think Tom Schloss was as either a
17 person or professional or businessman?

18 A Well, about the only thing or way I can charac-
19 terize that is what he told me, and what he told me was
20 he had a banking background and that he was involved in
21 stocks, commodities, and ventured capital, and so he was
22 a sophisticated investor, broker, raiser of venture
23 capital funds.

24 Q Again limiting yourself to the initial period
25 of your relationship with him, did you believe him to

1 have expertise in mining ventures or mining, and let's use
2 the broad term mining of any kind?

3 A No, not beyond his familiarity with the various
4 projects he had invested in for Hewlett which substantially
5 predated my tenure with the company.

6 Q To your knowledge had at that point in time --
7 go ahead.

8 A I will add that either at that point or sometime
9 in that time interval, I know he was involved in making
10 loans or financial arrangements for heavy mining equip-
11 ment.

12 Q To your knowledge at that time, again in the
13 period while you were with Sierra, had Mr. Schloss had
14 any experience with heap leaching whether it be by invest-
15 ment or otherwise?

16 A No.

17 Q So just to keep this clear in my mind, Jim,
18 during the time you did consulting for Tom Schloss and
19 Dwight Lee, what months are we talking about?

20 A First, let me clarify the relationship. It was
21 an employee relationship rather than a consulting rela-
22 tionship.

23 Q Okay.

24 A Four to six months.

25 Q All right. Thank you for clarifying that.

1 There was a period, then, of four to six months, at least
2 in your own mind, you considered yourself -- you were not
3 holding yourself out as a consultant, but that happened
4 after your termination and after the employment with
5 Schloss and Lee; is that correct?

6 A Correct.

7 Q During that period of time, what were you doing
8 for them from a mining standpoint or geological stand-
9 point?

10 A I was primarily gathering information for what
11 I thought would be a meaningful way to invest in the
12 mineral business.

13 Q Did you make any type of written presentation
14 to them prior to your employment by them as to what you
15 could do or what purpose you could serve as an employee
16 for them?

17 A Not to my recollection.

18 Q Did you have oral discussions about, say, the
19 parameters or philosophy of basically what you said,
20 looking for meaningful methods of investing in the mining
21 business?

22 A Well, quite frankly I can't remember specifi-
23 cally. It is possible.

24 Q Did you in fact look at and examine in your
25 professional capacity properties with the philosophy in

1 mind that you have already told us about on behalf of them?

2 A Why don't you clarify which philosophy you are
3 talking about.

4 Q Okay. The philosophy of assisting them in find-
5 ing meaningful ways to invest, and I am not going to say
6 industry, but meaning basically what you told me and maybe
7 I misunderstood.

8 A No, I did not look at any properties for them.
9 I simply spent a great deal of time setting down my
10 recommendation and what potential profits might accrue,
11 and making budgets for a meaningful program.

12 Q Did the three of you in late 1972 form a company
13 for basically the purpose you told me about that you
14 worked for them for?

15 A Yes. That was Shorex.

16 Q Shorex.

17 I have a report that was given to me that pur-
18 ports to be something you prepared.

19 A I don't think it is.

20 Q These were too big to make copies, but maybe I
21 can find the background. Let me take a look. These are
22 brown leather-type booklets entitled on the first page
23 and second page, Professional - Mineral Exploration
24 Program, Western North America, November, 1979. I am
25 looking carefully to see if I see a signature.

1 A November, 1979, I don't think that is correct.

2 Q If I said '79, I am sorry. '72. Would you
3 look at that?

4 A Yes. I believe that to be my report.

5 Q Now, after that four to six months, we already
6 know you went into consulting on your own behalf and
7 have done that up through and including the present day,
8 correct?

9 A Correct.

10 Q Okay. When between the time -- sometime in '75,
11 and I am assuming that you ended your employment with
12 Schloss and Lee, when did you next professionally come
13 into contact with them, Jim?

14 A It was probably July of '78, I believe.

15 Q All right. Now, if I can keep my cast of
16 characters here straight.

17 When after your termination from Sierra was the
18 next time professionally you became in contact with Mr.
19 Hewlett?

20 A I believe that it was in the spring of '73.

21 Q What were the circumstances?

22 A He requested I make a trip to Mexico to examine
23 a silver mine for him.

24 Q Did you do so?

25 A Yes, I did.

1 Q Did you have any further involvement with that
2 silver mine?

3 A No.

4 Q At the point in time of your resignation from
5 Sierra, I am not maybe asking it the best way I can,
6 were there any bad feelings from a professional stand-
7 point between yourself and Mr. Hewlett when -- I don't
8 mean bad feelings and I hate to use that term, but, in
9 other words, were there any difficulties between the two
10 of you professionally as a result of your resignation or
11 prior thereto that brought the resignation about?

12 A No, I don't think so.

13 Q Were you familiar, Jim, with what activities or
14 procedures Mr. Hewlett had followed in Seventy-One
15 Minerals operation down at Tombstone?

16 A No. No, I wasn't.

17 Q Do you have any knowledge of what type of pro-
18 cessing he was or may have used or been involved with on
19 that property with Seventy-One Minerals?

20 A Only from a very passive and second-hand way.

21 Q Whatever way, did you become aware at any time
22 prior to the first part of '79 as to what type of pro-
23 cesses, and more specifically, in the way of leaching
24 that Mr. Hewlett may have employed at the Seventy-One
25 Minerals operation in Tombstone?

1 A Yes. I did become aware of those.

2 Q Did you, again prior to January, and let's say
3 January 1st of 1979, were you aware of a process called
4 induced percolation system?

5 A Well, he contacted me in November or early
6 December, and possibly it was mid-December of 1978, and
7 described the processes he was working on.

8 Q And was that one of them?

9 A Yes. Well, let's clarify that.

10 Q That being the IPS system or process?

11 A Yes.

12 Q All right. So let me try to keep this in
13 chronological order.

14 After the spring of '73 and after Hewlett asked
15 you to see the silver mine and you went and saw that in
16 a professional capacity, did you have a professional
17 contact with Hewlett during that period of time up until
18 the contact he had with you in November-December of '78?

19 A Well, I also worked on the Tombstone Project
20 for him on a consulting basis doing mapping in the state
21 of Maine area, and prepared a report for Sierra.

22 Q Let me stop you right there. By the state of
23 Maine, that is a designation of an area in Cochise County
24 in the Tombstone area; is that correct?

25 A Yes.

1 Q Go ahead. I am sorry I interrupted you and I
2 apologize.

3 A That's all right. I submitted to him a final
4 geological report on that.

5 Q When would that have been approximately?

6 A October of '73.

7 Q Any other professional contact with him other
8 than that?

9 A From that point on I don't believe that I even
10 saw Dick Hewlett again until he contacted me.

11 Q Now, what was your professional opinion of
12 Hewlett, say, in 1974?

13 A Why don't you be more specific? You mean my
14 opinion as to his professional capabilities?

15 Q That's right. That's exactly what I mean.

16 In --

17 A '74?

18 Q That would be after your last contact with him
19 until '78.

20 A Well, Dick had various degrees. One was in
21 Mining Engineering and essentially he had completed his
22 Ph.D. in Engineering or Geological Engineering, but
23 without his, I guess, language requirement that he lacked,
24 but I felt he was an outstanding geologist as well as
25 engineer. He was particularly bright and capable in the

1 field of ore reserve estimation.

2 I did not feel he was good nor confident in
3 the field of ore as a geologist. On the other hand, I
4 felt -- I don't think he ever purported to be. So I
5 guess that would be a quick summary.

6 Q Did you have any opinions professionally about
7 his professional ability again in '74?

8 A 1974, let's see.

9 Q His professional ability as a metallurgist.

10 A Well, the curriculum at the University of
11 Arizona where Dick did part of his studies and at the
12 Colorado School of Mines where I believe he obtained a
13 degree which included Metallurgy, I don't think I ever
14 investigated his background, but he was not -- not to my
15 knowledge a metallurgist.

16 Q Okay, Jim. If my information is correct, on
17 March 7th, 1979, you and/or your Southwest Exploration
18 Associates, Inc., entered into a letter agreement with
19 Tom Schloss and Dwight Lee in regard to properties in the
20 Tombstone, Arizona, area; is that correct?

21 A Yes.

22 Q A broad statement.

23 A Yes.

24 Q Now, you have already told me that in November
25 or December of '78, Mr. Hewlett contacted you directly,

1 I mean, made contact with you, correct?

2 A Yes.

3 Q Prior to that contact, again if I recall your
4 testimony correctly, you had made professional contacts
5 with Schloss and Lee in the summer of '78, right?

6 A Yes, that's correct.

7 Q And that contact was in regard, in a general
8 nature, why did you contact them or what was the purpose?

9 A Well, through some exploration that we were
10 doing, we located what we felt to be a significant altera-
11 tion zone that probably indicated a substantial porphyry
12 molybdenum deposit. We had an opportunity to gain a land
13 position over there which I felt could have been very
14 valuable. So I talked with him to see whether they were
15 interested in investing.

16 Q That would have been approximately five years,
17 unless I missed something here, that you had not profes-
18 sionally had contact with Schloss and Lee?

19 A That's correct.

20 Q That's, of course, the five years, first five
21 years of your consulting on your own behalf through your
22 own company or through your sole proprietorship.

23 During that five-year period of time, Jim,
24 what would you, again if you can label it -- label your
25 activities, I mean, consulting geologist, and I under-

1 stand what they do, but did you also try to obtain pro-
2 perties or interest in properties, and I really don't
3 like the word, but possibly promote joint ventures with
4 them and with other people during that five-year period
5 of time?

6 A No. Most of my activities were specifically
7 for clients without a retained interest.

8 Q You were paid as normal billed rates and ex-
9 penses; is that a fair statement?

10 A That's correct.

11 Q Did you at any time during that five years from
12 the starting of your consulting until contacting Schloss
13 and Lee, did you obtain any proprietary interests in any
14 properties?

15 A Well, I forget the exact date, but I believe I
16 did have a proprietary interest in one property in 1974.

17 Q So two things I want to get straight for the
18 record. When we say "precious" and we have been saying
19 that back and forth, what do you mean by that when you
20 say precious metal?

21 A I think primarily gold and silver.

22 Q And when we talk about a proprietary interest,
23 what is your meaning of that when I say proprietary
24 interest, so I know what you mean?

25 A I own mining claims or other rights to mineral

1 deposits.

2 Q Not necessarily in entirety, but it could be a
3 percentage interest; is that fair?

4 A Yes.

5 Q Did the property or potential property interest
6 that you contacted Schloss and Lee about, did that develop
7 into fruition and/or anything of that nature where a deal
8 or investment was made?

9 A No, it did not.

10 Q Did you have any occasion at that time in the
11 summer of '78 to discuss this Tombstone property or pro-
12 ject?

13 A No, I did not.

14 Q When after your mapping in '73 in that area for
15 Hewlett did you then again come into any kind of contact
16 with that property that was now being operated by Tomb-
17 stone Exploration, Inc.?

18 A Well, I don't think I even set foot in Tombstone
19 until probably December of 19 -- no, I am sorry. January
20 of 1979.

21 Q And what were the circumstances surrounding you
22 setting foot in the Tombstone area at that time, January
23 of '79?

24 A I think it was a field trip with Dick Hewlett
25 to look over the situation down there.

1 Q Let me go back, then, to Hewlett's contact with
2 you in November-December of '78.

3 What were the circumstances surrounding why he
4 contacted you?

5 A Well, actually his ex-wife first talked with me
6 and said that -- or reviewed some of the things that Dick
7 had been involved with over the last several years since
8 I had seen him in '73, and suggested that he had a lot of
9 problems but she felt confident in his professional
10 abilities and thought that he had some good ideas and
11 that it would be worthwhile that we might be able to get
12 together, and these were professional ideas. She was
13 curious as to whether I would talk with him or meet with
14 him.

15 Q I don't want to get into a lot of personalities
16 and I am not trying to, but let's go back, I suppose,
17 to where you think you should have gotten an interest in
18 the property that you were involved with back in the
19 early '70s, I believe is the time, right?

20 A Right.

21 Q Did you at any time feel that you didn't get
22 that because of something Hewlett did either to you per-
23 sonally or to the project?

24 A That Hewlett did personally?

25 Q That he did to the project or to you that cut

1 you out, and I guess I really don't know how to put it.

2 A No. That is a great oversimplification of
3 quite a number of complex interacting factors and I don't
4 think there is any specific thing that he did.

5 Q The reason I asked is just what you told me
6 about his wife seemed like, and I am kind of philosophiz-
7 ing here, but it seemed that you in your business became
8 fairly successful and she was trying to open the door of
9 contact back between you and Mr. Hewlett. Would that be
10 a fair characterization?

11 A Yes.

12 Q Assuming you said fine, then he contacted you?

13 A That's essentially correct.

14 Q Was she at this initial contact still married
15 to him?

16 A No, she was not.

17 Q Okay. His ex-wife contacted you and then he
18 contacted you, and after that initial contact by him,
19 was there anything brought up by him about this area that
20 we have now been calling the Tombstone Project?

21 A Oh, yes. He was specifically interested in
22 Tombstone and several other mining districts.

23 Q Before we get into his ideas -- well, maybe
24 those projects or areas were part of his ideas, were they?

25 A Yes.

1 Q Did he represent to you at that time that he
2 had any interest, proprietary interest, in the Tombstone
3 area?

4 A Well, could you go through that question one
5 more time?

6 Q Did he indicate to you at that time when he
7 contacted you that he had any kind of proprietary interest,
8 which I mean by your definition, ownership or claims of
9 personal interest on any of that property down there at
10 that time?

11 A No.

12 Q Did he indicate or advise you that he could
13 obtain such an interest?

14 A Yes.

15 Q Tell me what he told you about the Tombstone
16 area from that standpoint.

17 A He was on good terms, he felt, with the owners
18 of the Tombstone basin, and specifically the Tombstone
19 Development Corporation, and that he was the only person
20 that had ever been able to negotiate a package deal with
21 them. He felt he could do so again.

22 Q And when he told you about the Tombstone basin
23 and Tombstone Development, did you because of your
24 experience and knowledge of the industry and the area,
25 know what he meant?

1 A Yes.

2 Q At least in general?

3 A Yes.

4 Q Okay. What was his idea that he expressed to
5 you in regard to that area?

6 A His ideas regarding what?

7 Q Well, maybe you have already told me. He felt
8 he could negotiate a favorable position with the owners
9 of that area?

10 A Yes.

11 Q Was the idea he had that it might be something
12 that you could and he could be involved in and obtain some
13 interest?

14 A Yes.

15 Q Were there other ideas and other areas also?

16 A Yes, there were.

17 Q Did that area interest you at that time, Jim?

18 A The Tombstone area?

19 Q Yes.

20 A Because of my general work and because of my
21 specific work in 1973, I would characterize the Tombstone
22 District a major mining district having potential for
23 millions of dollars of metals.

24 Q Would that include, in your opinion and based
25 on your knowledge and experience, precious metals?

1 A Yes.

2 Q Did you and Dick Hewlett at that time arrive at
3 any kind of agreement between the two of you as to that
4 idea, or pursuing that idea?

5 A No. He said that he would write a proposal to
6 me regarding his ideas on Tombstone as well as other areas
7 in which I paid him a consulting fee.

8 Q What did he prepare for you?

9 A A summary report on Tombstone as well as some
10 of the other districts that he had ideas regarding.

11 Q Do you recall what type of form that was in?

12 A It was in a ring binder, looseleaf.

13 Q Was he operating under the name of Hewlett
14 Management at the time, to your knowledge?

15 A Quite frankly I don't recall specifically. I
16 have some letterhead that either says "Hewlett Manage-
17 ment," or "Hewlett Consulting."

18 Q And was he at that time living in Sparks,
19 Nevada?

20 A He was.

21 Q Did you subsequently -- well, can you tell me
22 when that was done for you that you paid him the con-
23 sulting fee?

24 A I know that I was -- I had a conversation with
25 him in Sparks near Christmastime when I was in southern

1 Nevada, so I would say that it must have been after the
2 first of the year in 1979, I believe.

3 Q Then did you subsequent to his report on the
4 Tombstone area to you that you paid for, did you make any
5 type of presentation of that project to Schloss and Lee?

6 A Not initially.

7 Q Who did, if anybody?

8 A Well, later we had approached another fellow
9 on this, and he indicated an interest; however, we felt
10 that the amount of retained interest was insufficient.

11 Q I have got ahead of myself a little bit, Jim.

12 As a result of this report by Hewlett to you,
13 did you proceed to obtain or try to obtain an interest
14 in that area from the owners?

15 A Yes. I think we entered into negotiations for
16 that.

17 Q And who were you negotiating with?

18 A The Tombstone Development Company.

19 Q Approximately when was that?

20 A I would suspect that was probably in February
21 of '79.

22 Q And did you do that together with Mr. Hewlett;
23 in other words, were you and he negotiating with the
24 owners or just you?

25 A He was negotiating as -- well, in our behalf,

1 shall we say, because at that point I believe that we had
2 agreed to form some type of operating entity.

3 Q Let's discuss, if we can, what you and Hewlett
4 agreed to do, and if there is anything in writing I would
5 like to know about it in regard to obtaining a proprietary
6 interest in the Tombstone Project; in other words, had
7 you made an agreement with each other whether it be oral
8 or written?

9 A Yes. I believe I indicated an interest in the
10 metallurgical ideas that he was generating at that point,
11 and I believe our agreement was to pursue those metallur-
12 gical ideas as they might pertain to specific districts
13 that he had written reports on.

14 Q Did you and Mr. Hewlett agree to obtain an
15 interest, whatever it might be, in the Tombstone area
16 at any time?

17 A Repeat that for me.

18 Q Sure. At some point in time I believe, if my
19 information is correct, you or a company that you are a
20 part of obtained a lease from Tombstone Development
21 Company.

22 A Yes, that's correct.

23 Q On the area of property that we are talking
24 about, and at some point prior to that, did you and Mr.
25 Hewlett enter into an agreement as to -- that the two of

1 you in some form of entity would obtain an interest in
2 the Tombstone Development Company properties?

3 A Yes.

4 Q What was that arrangement or agreement?

5 A Well, the arrangement as I recall was under the
6 auspices of the entity we set up which I believe was SEA
7 Hydromet, Incorporated. It was simply that we would --
8 that the ownership was 49% for Hewlett and 51% for SBA,
9 and we would pursue whatever ideas, including the Tomb-
10 stone as well as other areas, that he had come up with.

11 Q Are you familiar with a company called Austin?

12 A Yes.

13 Q What is the full name of that company?

14 A Austin Mining and Exploration Company.

15 Q Do you know when that was set up, Jim?

16 A I can't tell you the specific date. It was in
17 the spring of '79. Probably March.

18 Q Is the Austin -- I will shorten it to Austin
19 for the purposes of the deposition -- but was the stock
20 ownership in that originally forty-nine Hewlett and
21 fifty-one percent SBA or Briscoe?

22 A Quite frankly I would have to go back to the
23 records to make sure.

24 Q I may be wrong about this, and you can tell
25 that I take depositions kind of casually, but what I have

1 been able to glean out of a lot of records is SEA Hydro-
2 met was established to run the operation and to be the
3 management portion of running the operation down at
4 Tombstone. I may be wrong about that, but I think the
5 Austin Company was the company that I think participated
6 in a lease with the Tombstone Development Company, and
7 again I am not trying to stick you with this --

8 A Well, I don't think that's correct. SEA Hydro-
9 met was created to form a consulting entity that would
10 exploit Hewlett's metallurgical ideas regarding leaching
11 and liquid metallurgical techniques, hence the name Hydro-
12 met, and the purpose was to form consulting services for
13 a variety of clients in different areas.

14 Q Did you in whatever entity or capacity ulti-
15 mately obtain a lease from Tombstone Development Company?

16 A Yes.

17 Q Do you have a copy of that lease with you by
18 any chance?

19 A No, not with me.

20 Q Who was the lessee?

21 A The lessee I believe was Austin Mining and
22 Exploration and Tom Schloss.

23 Q Do you know when that lease was entered into
24 approximately?

25 A It was probably mid-March of '79, but I don't

1 know exactly.

2 Q Subsequent to the letter agreement between SEA
3 and Briscoe and Schloss and Lee, which is dated March 7th,
4 -79 --

5 A I don't remember which preceded which.

6 Q Prior to March 7, 1979, was Mr. Hewlett employed
7 by SEA and Southwest Exploration, Inc., in any capacity?

8 A No.

9 Q Was he consulting for SEA?

10 A Yes, he was.

11 Q And did he in fact make a proposal to be used
12 by SEA in regard to the Tombstone Project?

13 A Well, prior to even contacting Schloss and Lee,
14 we had conceptually set up Hydromet -- regardless when
15 the incorporation was -- to exploit his ideas which
16 included other areas as well as Tombstone.

17 Q Okay. Let's see if we can get it straight and
18 it is confusing enough.

19 Jim, let's try Tombstone, and I am going to
20 limit my questions in relation to the Tombstone Project.

21 What ideas from metallurgy, and I guess I am
22 trying to think what you called it, but what ideas of
23 Hewlett's were you intending to exploit in regard to the
24 Tombstone Project; in other words, what type of recovery
25 ideas of his did you intend to direct towards Tombstone?

1 A My enthusiasm for Tombstone was that of a geo-
2 logic target regardless of metallurgy, and I felt -- I
3 knew there were substantial dumps in Tombstone that might
4 be amenable to enhance recovery by using the ideas that
5 Dick Hewlett had suggested which included the induced
6 percolation system.

7 Q Then I take it he presented to you in a profes-
8 sional capacity during this period of time his ideas and
9 recommendations of the type of leaching and processes
10 that could be used in the Tombstone Project?

11 A Yes.

12 Q And in what way did he present them; in other
13 words, what I am trying to find out, Jim, what did he
14 tell you and what did you know from his presentation that
15 made you want to exploit his ideas on that particular
16 project, realizing you were interested from a geologic
17 standpoint, but I guess realizing logically you have got
18 to get something recovered to make it valuable.

19 A As you know there are a great number of facets
20 that go into any operation, and one particular facet of
21 Tombstone which set it apart from any other -- many other
22 western mining districts is that the significant old
23 producing mines had all been consolidated into one pro-
24 perty position. That in itself is a very valuable attri-
25 bute, and for the other districts that we had discussed

1 operating in, in which I thought there was considerable
2 merit, the property position was very fractionated and
3 it would probably require, oh, I would have to use rough
4 figures, but I would say \$100,000 worth of negotiation,
5 travel, expenses, time and front end payments to consoli-
6 date the property.

7 In the case of Tombstone all the claims of
8 importance were held by one company, that being Tombstone
9 Development Corporation. So regardless of the other
10 parameters, that provided a very good opportunity for
11 quick action.

12 Q And the purpose in any mining venture is to get
13 a consolidated land position in the areas of geological
14 importance and interest; is that correct?

15 A Yes.

16 Q That being the objective then of negotiating
17 with Tombstone Development Corporation in your particular
18 case, correct?

19 A Yes.

20 Q But prior to entering into any negotiations,
21 Jim, isn't it true that you sought some assistance from
22 Hewlett as to the ability to extract the precious
23 minerals -- metals in that particular area and that is
24 something you were discussing with him in regard to his
25 ideas and processes, or did that matter to you?

1 A Go through that one more time.

2 Q I understand and appreciate the necessity and
3 why the interest geologically and the land position that
4 you want to get into the area of Tombstone Development
5 Company, but what I am curious about is some of the
6 things you had said earlier that Hewlett had presented
7 to you, ideas of his extracting precious metals from that
8 area and other areas. What I want to know is did that
9 play a part in your arriving at the decision to attempt
10 to obtain a position with Tombstone Development; in other
11 words, Hewlett's ideas and presentation to you of his
12 recovery methods or ideas?

13 A Well, I think that was one of the factors, yes.

14 Q What did he present to you based on your over-
15 all experience and background that was different than
16 either what had been tried in this area or known in the
17 industry for extracting precious metals?

18 A I would say primarily the induced percolation
19 system.

20 Q Have you obtained any knowledge about the
21 effectiveness or ineffectiveness for leaching for precious
22 metals such as gold and silver with sulfuric acid or
23 hydrosulfuric acid?

24 A No.

25 Q Was that not part of his ideas as opposed to

1 the cost used for cyanization or cyanide leaching, and
2 I guess what I'm asking is was it part of his idea and
3 the cost?

4 A I think he had mentioned that.

5 Q Did you have any knowledge of whatever source,
6 whether that type of process that he had and was present-
7 ing to you worked or not?

8 A No, I did not.

9 Q Did you ever present to Schloss and Lee concern-
10 ing the situation of the Tombstone Project Mr. Hewlett's
11 ideas? Did you ever do any investigation or checking
12 with any industry to confirm or not confirm Mr. Hewlett's
13 process or ideas?

14 A No. I think that what we did was incorporate
15 Hydromet with the idea to study those methods and bring
16 them to pattern if indeed they were useful things.

17 MR. ALLEN: Let's take a break.

18 (Short recess taken.)

19 BY MR. ALLEN:

20 Q Jim, at some time after the first of the year,
21 1st of January, 1979, did you through your company or
22 individually make a presentation of this project, the
23 Tombstone Project, to Tom Schloss and Dwight Lee?

24 A Yes.

25 Q Do you happen to have with you the presentation

1 that you originally made?

2 A No, I don't.

3 Q Were you the only person involved in making
4 that written presentation, or did you use your staff and
5 consultants, or Hewlett's, to type it? I realize from
6 the standpoint of presentation it is his ideas, sum-
7 maries, et cetera, but did you do it or Hewlett do it,
8 or did you do it together or all alone?

9 A I think mainly it was done by Hewlett with
10 probably some review, I would say, by myself.

11 Q At the time that the presentation was made,
12 Hewlett was still a consultant for SEA?

13 A No. I believe he was an employee of SEA Hydro-
14 met.

15 Q Which is a subsidiary of SEA, Inc., correct?

16 A Correct.

17 Q Did you go over with Mr. Hewlett and review the
18 figures, the monetary figures which the presentation made
19 and indicated; in other words, the amounts of them and
20 as to what would be needed to make this operation go?

21 A I believe that I did.

22 Q As to the amounts of ore and as to the precious
23 metal contents, those that were contained in the presen-
24 tation, what was the source of that information, Jim?

25 A I think the presentation was Dick Hewlett's and

1 ostensibly the source was previous work in the districts
2 where he was head of Seventy-One Minerals.

3 Q Did you in your professional capacity do any-
4 thing at that time to investigate to determine whether
5 those representations were accurate?

6 A Well, what I did do is prior to the presenta-
7 tion to Schloss and Lee I designed a program which would
8 test by standard exploration and mining evaluation tech-
9 niques whether those figures would be accurate.

10 Q In other words, what was presented could only
11 be confirmed later on?

12 A Yes, that's correct. They could only be con-
13 firmed by extensive test work.

14 Q I would like to have this marked as Exhibit 1
15 and I will replace it with a copy because I don't have a
16 copy of it right now.

17 (Plaintiffs' Exhibit No. 1 marked for identi-
18 fication by Notary.)

19 MR. KITTLE: Can I take a look and see what we
20 are talking about?

21 MR. ALLEN: Sure. Why don't you mark this as
22 No. 2, Ron?

23 (Plaintiffs' Exhibit No. 2 marked for identi-
24 fication by Notary.)

25

1 BY MR. ALLEN:

2 Q First of all, do you recognize Plaintiffs'
3 Exhibit No. 1?

4 A Yes.

5 Q What is it?

6 A I think it is a report authored by Dick Hewlett.

7 Q Did that report accompany or was it part of the
8 presentation made to Schloss and Lee?

9 A Quite frankly I don't know.

10 Q As soon as counsel gets through with Exhibit 2,
11 I want to look at it and I will ask you some questions.

12 Do you recognize Exhibit 2, Jim?

13 A Yes, I do.

14 Q And is that what it purports to be on the title
15 page, a report prepared by Hewlett for SEA?

16 A Yes, I think that it is.

17 Q Can you tell me whether or not that report was
18 presented at the time of the initial presentation to
19 Schloss and Lee?

20 A No, I can't.

21 Q For the purposes of these questions, I would
22 like you to assume hypothetically that it was presented
23 to Schloss and Lee.

24 What was the purpose -- your purpose in making
25 the presentation on the Tombstone Project to Tom Schloss

1 and Dwight Lee?

2 A Well, to gain them as funders for work on the
3 property which I felt would yield a profitable operation.

4 Q Would it be fair that you were looking for
5 investors in the project?

6 A Yes.

7 Q And the point in time you presented the project
8 to Lee and Schloss as potential investors, had you or
9 one of your entities acquired a proprietary interest for
10 Tombstone Development Company?

11 A I don't know.

12 Q From the records I have, the first money paid
13 to Tombstone Development Company was in the way of a
14 lease deposit and that was in February of 1979, and it
15 was derived from the account called P-418.

16 Let's have this marked as Plaintiffs' Exhibit
17 No. 3, and I will ask you if you recognize these documents
18 which purport to be ledger sheets -- xerox copies of
19 ledger sheets. I don't know whether they were used or
20 not, but I am going to ask you.

21 (Plaintiffs' Exhibit No. 3 marked for identifi-
22 cation by Notary.)

23 BY MR. ALLEN:

24 Q Go ahead.

25 A What was it you were asking me?

1 Q Do you recognize Exhibit 3?

2 A Yes, I do.

3 Q Are these copies of ledger sheets from your
4 records?

5 A Yes, I believe them to be.

6 Q Do those documents reflect, at least to the
7 extent they are complete, the monies either expended or
8 billed on that project prior to the investment by Schloss
9 and Lee?

10 A Yes, I believe they do.

11 Q And those would be either money or services that
12 your company expended; is that a fair statement, Jim?

13 A Well, I would have to examine them in detail,
14 but I think that's correct.

15 Q I appreciate that. I realize you haven't had
16 a chance to go over them in detail.

17 From your perusal of these, do they seem to
18 indicate the funds or services that were expended by you
19 and your company prior to any investment by Mr. Schloss
20 or Mr. Lee?

21 A Yes, that's correct.

22 Q I am going to have to depend on recall as best
23 I can. The records, Exhibit 3, indicate a downpayment
24 of \$6,000 in February of '79 and also a payment, if I
25 can find it, in April. It looks like April 29th and it is

1 of \$7,500 royalty fee to Tombstone Development Company.

2 Now, other records I have of your organization
3 and the Schloss group set up an account that shows another
4 \$7,500 was paid on April 30th, a day after your records
5 show the \$7,500.

6 Based on your recollection, Jim, did your
7 company make a payment in addition to the down payment
8 on the monthly royalty before the investment group and
9 your company started a joint operation?

10 A I don't think so, but I would again have to
11 check the records very carefully.

12 Q There also could be a possibility, I suppose,
13 that money was paid by the Tombstone Project account,
14 the joint account between yourself and your entity and
15 the Schloss entity could possibly be paying royalty pay-
16 ments, and I am trying to find out when your royalty
17 payments started. I guess that is the best way, to ask
18 you that question, if you know.

19 A I think you are asking me why there are two
20 royalty payments indicated on the records so close
21 together; is that correct?

22 A Yes. If in fact you paid a down payment in
23 February of \$6,000 through your own entity, when did the
24 first \$7,500 become due under the lease, if you know?

25 A I couldn't determine that without going back

1 through all the records myself. The \$6,000, however, was
2 a negotiating ploy used by Hewlett to lock the Tombstone
3 Development Company into this agreement so that other
4 people who we believed also to be interested in the lease
5 would not be able to pull it out from under us.

6 Q Is it -- I know anything is possible, but is
7 it possible that your company itself did not make a
8 royalty payment before the Schloss, Briscoe entity was
9 formed based on your best recollection?

10 A I think that's possible.

11 Q Depending on that particular -- that \$7,500,
12 if I read this right, through January, February and March,
13 the first quarter of 1979, your company in either cash
14 or services rendered or incurred \$22,441.75 according to
15 Exhibit 3 towards the project?

16 A Yes.

17 Q Then there were sums which aren't totaled that
18 seem to be through April 29th and then, by these records,
19 Exhibit 3, if I can do this here --

20 MR. KITTLE: Do you want a calculator?

21 MR. ALLEN: Yes. Let me just for the record --
22 they are carried down here in columns and I will ask you,
23 Jim, before I start -- thank you.

24 MR. KITTLE: Okay.
25

1 BY MR. ALLEN:

2 Q They are carried down the columns here which
3 look like a weekly period and totaled.

4 A Yes. Each monthly period.

5 Q Well, on these first two sheets of Exhibit 3,
6 which run through the month of April, four periods, five
7 periods and April 1st, April 8th, April 22nd and April
8 29th, and there are various categories consisting of two
9 pages, and it looks like to me if you take the bottom
10 figures of each one of these and add them together you
11 would get the total additional money expended in April
12 by your company for services; is that right?

13 A I think that's right.

14 Q And again, not holding anybody to this and I
15 am trying to get an idea, but I will tell you that -- let
16 me give the figures here to Jay and see if he can add
17 them up for me.

18 \$856.25. \$1,494.43.

19 MR. KITTLE: And how many cents?

20 MR. ALLEN: Forty-three cents. \$7,407.91.

21 \$2,725.48. \$906.25. Scratch all of that and let's start
22 over.

23 The second page does have them totaled, Jim,
24 right?

25 THE WITNESS: Right.

1 BY MR. ALLEN:

2 Q And the total for the week of April 8th, 9th --

3 MR. KITTLE: Right here for April 8th, \$906.25.

4 BY MR. ALLEN:

5 Q Yes. April 8th, \$906.25. The week of April
6 15th, \$1,499.33. The week of April 22nd, \$15,416.72,
7 and for the week of April 29th is \$10,725.48. What is
8 the total?

9 MR. KITTLE: I have got a total of \$28,547.75.

10 BY MR. ALLEN:

11 Q So depending on that \$7,500 which was paid and
12 not just accrued, there is some approximate \$50,000 before
13 the account and the project was opened under the entity
14 of the Briscoe entity and Schloss entity --

15 MR. KITTLE: Are we sure it is fifty thousand
16 or twenty-eight?

17 BY MR. ALLEN:

18 Q Well, we had twenty-two for the first quarter
19 and twenty-eight for the month of April.

20 A For the month of April, yes, all right.

21 Q Would I then be correct, Jim, from that point
22 forward, if your figures are correct, the money funding
23 that operation came from Schloss and Lee investors, or
24 the Schloss/Lee investor group?

25 A Yes.

1 Q There was continued management, though, by one
2 of your groups for a period of time on the Tombstone
3 Project?

4 A That fact is a bit muddy, let me put it that
5 way.

6 Q It was the intent, was it not, that SEA or some
7 designated subsidiary or company of SEA would in fact
8 manage the project?

9 A Yes, it was.

10 Q Did Jim Hewlett --

11 A Dick.

12 Q I am sorry, Dick Hewlett, excuse me, subsequent
13 to the signing of the agreement in March of 1979 with
14 Schloss and Lee move onto the Tombstone Project as
15 manager?

16 A He moved onto the project. The intent from our
17 point of view was that he manage it on a consulting basis
18 which was not done.

19 Q In other words, he would be paid by the project
20 as a consultant?

21 A Yes.

22 Q Again, what was, if anything, SEA's role from
23 the date of this agreement forward with the project, your
24 company role?

25 A Ostensibly the role was turnkey management on

1 the project.

2 Q Which you would have been in charge of?

3 A Yes.

4 Q Did the company do that?

5 A No.

6 Q Tell me your own version of what happened after
7 this contract or this letter agreement was signed in
8 regard to the project and your company role in the manage-
9 ment or development down there.

10 A Well, as you have verified here, we had sub-
11 stantial investment in the project prior to bringing any
12 investors on. My agreement with the partnership, which
13 was Austin Mining, Schlorr and Lee, was that we manage it
14 on a consulting basis for the partnership. I agreed to
15 do that at consulting rates, but at a rate lower than
16 what my best clients were getting, and when the time came
17 to pay those bills, Schloss and Lee refused to do so.
18 They paid Hewlett at that time on a salary basis of \$2,000
19 per month.

20 Q Was Hewlett, as your understanding went, Jim,
21 to be paid by you or by your companies or by the project
22 itself?

23 A To be paid by the project.

24 Q Am I misreading you or do you feel there was
25 something wrong with the project itself paying Hewlett

1 \$2,000?

2 A Well, that was not a consulting rate. The
3 \$2,000 went directly to him which paid absolutely no over-
4 head on the company.

5 Q Your company?

6 A Yes, Hydromet, which, of course, put it in a
7 continual loss position for that project.

8 Q Now, some of SEA's fees were paid in the initial
9 stage of this project, were they not?

10 A I think expenses. I think some small portion
11 of fees were paid in September. Again, I would have to
12 go through this and be very careful to see what was paid
13 and what wasn't.

14 Q Well, my records show SEA Hydromet, THL, Tomb-
15 stone Heap Leaching trust account, was opened on the 8th
16 or 9th of March, 1979, shortly after this letter agree-
17 ment was signed in April. On April 25th, 1979, some
18 \$7,567.90 was paid to SEA. Does that refresh your recol-
19 lection that there were payments paid to SEA on their
20 bills?

21 A On their -- expenses were paid, but I think
22 that was very little, if any, of what went to fees. Of
23 course, those expenses were simply passed through which
24 indeed were incurred expenses simply from an administra-
25 tive --

1 Q Well, I am not nit-picking. I don't care
2 whether you pay your secretaries \$12.50 an hour or some
3 other overhead.

4 A That is overhead -- included overhead.

5 Q Again, just for my records, Jim, I show an
6 advance payment to J.A.B. which I assume is \$3,000 on
7 April 25th, 1979. The majority of the fees would be
8 your time, correct, on this project?

9 A My time plus accounting and expenses. There
10 were several geologists involved later on. Precisely
11 when that involvement started, I would have to go back to
12 the records themselves.

13 Q To your knowledge payrollwise, who was working
14 on the project down there, not the SEA people, but SEA
15 Hydromet people, were they paid by SEA Hydromet to your
16 knowledge?

17 A Yes, they were.

18 Q And SEA Hydromet would be paid by the project?

19 A Yes, that's correct.

20 Q Did you --

21 MR. KITTLE: Ken, could we mark for identifica-
22 tion a copy of the materials that you were referring to?

23 MR. ALLEN: Yes. Let's mark these as Exhibits
24 4 and 5 and we will make copies of them. They are a
25 recap of the Tombstone -- well, SEA Hydromet, THE trust

1 account 957-06641.

2 (Plaintiffs' Exhibits 4 and 5 were marked for
3 identification by the Notary.)

4 MR. ALLEN: Can I have an agreement that we can
5 have copies made of these?

6 MR. KITTLE: Yes.

7 THE WITNESS: Is there a reason we can't get a
8 copy of the material?

9 MR. KITTLE: We will be getting a copy of the
10 deposition which includes copies of the exhibits.

11 BY MR. ALLEN:

12 Q Did you, Jim, or your company or any of your
13 entities put any more money, cash money, into this pro-
14 ject after the records that are shown here on Exhibit 3 --

15 A You are separating cash money versus fees,
16 time and expenses?

17 Q I am.

18 A I would have to say I don't think that is a
19 realistic separation.

20 Q I am going to be fair about this. I just want
21 to know first about cash first of all. Did you put any
22 in?

23 A To my recollection I don't believe we did.

24 Q To your knowledge did Mr. Hewlett put any cash
25 money in it?

1 A Mr. Hewlett was in personal bankruptcy situa-
2 tion and I feel quite certain that he did not put any
3 money in.

4 Q You did, however, continue -- and I will give
5 you a copy of this from your records -- continue to incur
6 expenses on behalf of SEA, Incorporated, through and
7 during -- through March 31st of this year, 1980, on the
8 project, did you not?

9 A I would say so.

10 Q My records, and I ask you to the best of your
11 recollection, indicate that through March 31st, 1980,
12 your company had billed Tombstone Exploration \$60,655.33,
13 and had been paid, okay, I have got two figures. You had
14 been paid somewhere between \$15,569.80 and \$21,241.52.

15 I think those figures, just for the record,
16 came about -- well, the figures from your company show a
17 payment of \$15,567.90, and there is some written figures
18 here that may have been included when your guys were
19 talking about this before, but you have presented a
20 balance here of \$5,097.73. Does that sound about right?

21 A I think that's correct.

22 Q I take it from a compilation which shows your
23 logo in fact on it, and I don't know how I got a copy of
24 that.

25 A You may have been given that by Mr. Schloss.

1 Q And he in turn gave it to me.

2 A Okay. This looks familiar.

3 Q I think that figure rings a bell from the answer
4 you have here.

5 A Yes.

6 Q Although the cash, at least in your opinion,
7 that amount of money outstanding there was earned by your
8 company through the efforts on the project.

9 A Well, let me preface that by saying, yes, that
10 is what we billed. My understanding at the outset is
11 that we were to be paid consulting fees which were not
12 reimbursed at all for any of Hewlett's time.

13 Q I see what you are saying. What your opinion
14 is, Jim, that based on this \$2,000 salary that he was
15 receiving your company should have received proportion-
16 ately for overhead and the fact he came through your
17 company.

18 A Well, typical consulting rates are 120 to 150%
19 of direct salary. So that probably is what we would have
20 expended. Actually \$2,000 a month was a pretty low fee
21 for a man of his background.

22 Q Do you recall a point in time when you relieved
23 Mr. Hewlett of his responsibilities?

24 A The date?

25 Q Yes.

1 A I can't tell you exactly. I believe it was the
2 end of July.

3 Q So we would be at best talking about March,
4 April, May, five months at some figure between two and
5 three thousand dollars that you feel SEA, Inc., should
6 have received for its consulting, and I am trying to get
7 some figures, Jim.

8 A Oh, well, if we are going to get down to this,
9 we bill everyone by the hour that they put in. It was
10 expected that Hewlett would not spend all of his time at
11 Tombstone because it was our purpose that he spend time
12 in other things, and in fact he was not able to do so
13 because of the situation at Tombstone, and it was at
14 Schloss' and Lee's insistance that he spend full-time on
15 that project.

16 MR. ALLEN: Guys, why don't we break for lunch
17 at this time and we can come back this afternoon.

18 (Whereupon, the afternoon recess was taken and
19 the deposition resumed at 1:30 P.M. at the same time,
20 date and place as aforementioned.)

21 BY MR. ALLEN:

22 Q Jim, let me ask you before I forget to, do you
23 know where Mr. Hewlett is?

24 A No, I don't.

25 Q Do you have any idea where he was the last time

1 you knew where he was?

2 A I heard that he was in a little town or near a
3 little town called Nipton, California, which is right on
4 the Arizona-Nevada border.

5 Q Is that somewhere near Searchlight?

6 A Yes. Searchlight, Nevada, would be south of
7 Las Vegas, but I have not seen him.

8 Q He isn't there. Let's go off the record.

9 (Discussion off the record.)

10 BY MR. ALLEN:

11 Q Back on the record.

12 Jim, the presentation or representation, as I
13 will call it, presentation or representation as you call
14 them in the Exhibits 1 and 2, if I understand you cor-
15 rectly from the source of them is Mr. Hewlett basically?

16 A Yes.

17 Q And you have reviewed, if I understand your
18 testimony correctly, these two documents, Exhibits 1 and
19 2, to some extent before they were sent out, I assume.

20 A On Exhibit 1, let me review the date on that.
21 There is no date. I believe that this was pretty much
22 sent directly from Mr. Hewlett to Tom Schloss. That is
23 some of the confusion in that they were communicating
24 directly without going through me.

25 Q Okay. Going back then to Exhibit 1. Let's

1 take time out. There is someone at the door.

2 (Short recess taken.)

3 BY MR. ALLEN:

4 Q I want to explore this a little bit, but then
5 am I to presume this was presented to Tom and Dwight?
6 Since you told me you don't know whether it was or not,
7 you don't know whether this was submitted to them or not?

8 A Part of the problem, Kenny, is that very shortly
9 after this deal was signed, and I can't tell you the pre-
10 cise date without going back and doing a great deal of
11 work and effort to review my notes, but Tom told me, "I
12 am taking over control of this project. I am putting in
13 all the money," and therefore, "I will be directing
14 Hewlett in whatever he does."

15 Since I was getting paid I acquiesced to this,
16 and thereafter, although even before that point Tom was
17 talking directly with Dick and directing him in what to
18 do, and after that point he was talking directly with
19 Dick Hewlett without much intervention from me.

20 So without a very, very careful reconstruction
21 of dates and telephone notes and so forth, I am at a
22 very definitive loss to be precise about when what was
23 presented and how.

24 Q All right. Let's do it this way in hypothetical
25 form, if I can.

1 Assuming that this material, Exhibits 1 and 2,
2 was presented to Tom Schloss and Dwight Lee on or about
3 February 20th, 1979, a short two or three weeks before
4 the contract of March 7th, 1979, was entered into, let
5 me ask you from the standpoint of your involvement, okay,
6 what may or may not have happened.

7 A Let me interject. Why do you choose February
8 20th since that isn't the date?

9 Q So you know the reason I am asking you is to
10 assume that other document which is Exhibit 2 is dated
11 February 20th and signed by Mr. Hewlett on that date,
12 and the question is by my information, whether it be
13 right or wrong, is that we received, my client, on or
14 about the 20th or 21st of February, 1979, this as part of
15 the presentation on the Tombstone Project.

16 A I can't be precise, but I think that that docu-
17 ment, Number 1, is much later than that, but again I
18 cannot be precise about that.

19 Q All right. If you will, though, assume that
20 these were received, this part of the presentation, and
21 let's not bind anybody to anything, one part of Exhibit 1,
22 and the third paragraph there that says the cash flow
23 from the processing of ore would pay back \$200,000 capital
24 investment in from four to six months, assigning 50% of
25 the net operating profit to retiring the capital invest-
ment.

1 Did you prior to March 7, 1979, have any
2 information or any knowledge that confirmed such a state-
3 ment that was feasible or possible on this project?

4 A No.

5 Q Would you in your capacity as seeking investors
6 for this project, would you have allowed an employee of
7 yours to make such a presentation or statement, if you
8 know, on this project?

9 A I think it depends on what context it was in
10 because part of the business of economic geology and
11 mining evaluation is to make rough approximations as to
12 what might be returned from any property, and the earlier
13 you can do this the better off you are because it allows
14 you to call out properties that have no potential of
15 return whatsoever. However, the accuracy of those pro-
16 jections should be couched in their prospective.

17 Q So without some form of either cautionary or
18 provisory type explanations, would you have allowed such
19 statements to be made?

20 A No.

21 Q In Exhibit 2, the larger report dated February
22 20th, 1979, by Mr. Hewlett, the following statement is
23 made under the caption "Costs."

24 "The \$177,600 represents the following turn-key
25 complete work to get the property to the point of produc-

1 ing enough gold and silver to support the on-going pro-
2 duction," and it's broken down into various categories.

3 What in your capacity and in your professional
4 opinion at that time does turn-key complete work to get
5 the property to the point of producing enough gold and
6 silver to support an on-going production mean?

7 A Well, that would mean to me that if we gave
8 that amount of money to Dick Hewlett that he would con-
9 tract separately for all the services and come up with
10 the studies indicated.

11 Q And this would be enough production to support
12 an on-going operation?

13 A I would say so.

14 Q Did you at the time prior to March 7, 1971,
15 Jim, have any information that would support such a
16 statement as that?

17 A Well, that exhibit I believe was Hewlett's
18 report to me and not my report to anyone else, and indeed
19 we -- I believe that I requested he prepare this so that
20 I had some idea of what his estimates were.

21 I have been involved in many mining projects
22 and they are characterized by a high degree of unknown
23 factors. Even the largest mining companies go substan-
24 tially over budget on various projects and I could cite
25 numerous examples which I think are not germane.

1 Q All right.

2 A So I also try to couch my estimates and state
3 just that these are estimates and best effort basis, but
4 unforeseen circumstances may require additional expendi-
5 tures.

6 Q Let me get to that. What presentation did you
7 make to Tom Schloss and Dwight Lee in regard to this
8 property about what types of money would be required and
9 what type of returns they could expect from that? Do you
10 know, or let me stop and scratch that first question and
11 start over.

12 Can you tell me, without referring to whatever
13 presentation you made, what representations and recommen-
14 dations you made to these potential investors?

15 A I would say that I probably could not accurately
16 do that. I think what the essence of my presentation was
17 that we have an opportunity in the Tombstone District
18 that regardless of metallurgy or the production dumps,
19 it should be a profitable venture through the expiration
20 of the district and there may be some opportunity for
21 using those techniques that Dick Hewlett has presented
22 for obtaining a cash flow.

23 Q Can you tell me with any kind of certainty of
24 whether or not you made a written presentation to Tom
25 Schloss and Dwight Lee?

1 A That had my signature on it and -- ?

2 Q Well, I don't want to get too technical about
3 it, Jim.

4 A No, quite frankly I don't recall whether I have.

5 Q Do you keep your records of your business and
6 profession so that you can go to your records and produce
7 to your lawyer what in fact you did present in writing,
8 if anything, along with any attachments to those two
9 gentlemen in seeking investment capital?

10 A I think I should be able to do that.

11 Q To your knowledge you have told me you don't
12 know whether this Exhibit 1 and Exhibit 2 were presented
13 to Schloss and Lee prior to March 7th, '79, when the
14 letter agreement was entered into. Can you tell me --

15 A Well, no. The thing that I am not certain
16 about is attachment 1. Now, I mean number 1, Exhibit
17 No. 1. Exhibit 2, let me see. Exhibit No. 2 was pre-
18 pared for another individual and we presented this that
19 I mentioned earlier, and I assume that it was presented
20 to him.

21 Q All right. Do you recall on your own independ-
22 ent recollection whether or not, when that Exhibit 2 was
23 presented to Schloss and Lee, you put any disclaimers or
24 cautionary statements to them as we have just earlier
25 talked about -- about these figures of dollars and

1 production, et cetera?

2 A I don't specifically recall that I did put any
3 disclaimers on them.

4 Q What figures, again to your best recollection,
5 did you present to these two potential investors as to
6 what you needed in the way of money to make it work in
7 your opinion, or did you arrive at any figures at all?

8 A I'm not sure that I personally did. I think
9 what I said -- what was done was figures were calculated
10 by Hewlett, and at one point in part of the presentation
11 the \$20,000 initial budget, which was bare bones as it
12 could have been and possibly go, was suggested as a test
13 of the heap to see whether profitable leaching could be
14 reactivated using equipment and facilities on the site.

15 Q All right. At the time this agreement was
16 signed on March 7th, 1979, Jim, it called for initial
17 investment by the investors of \$25,000.

18 At that point in time based on your figures in
19 Exhibit 3, that's about what your company had into the
20 project at that time, \$24,000?

21 A Yes.

22 Q Based on the agreement which we probably haven't
23 had marked, have we?

24 MR. KITTLE: No, not yet.

25 MR. ALLEN: Mark this as Exhibit C.

1 (Plaintiffs' Exhibit 6 marked for identifica-
2 tion by the Notary.)

3 BY MR. ALLEN:

4 Q Now, that investment, the initial investment,
5 gave an equity interest to the investors of 25%. I am
6 assuming that meant your entity, whatever it was, re-
7 tained a 75% interest?

8 A Yes.

9 Q Could you tell me the processes, either in
10 negotiations or in your own mind, that resulted in the
11 various investment amounts and percentage interest
12 acquired by those investments; in other words, did you
13 have a plan in mind that these represented in any rela-
14 tion to your investment or expected investment? That
15 probably doesn't make any sense; at least it didn't to
16 me when I finished up the question. Let me try it again.

17 Q How was the figure \$25,000 arrived at? Was it
18 based on what you had already put in the property or what
19 you felt you needed to do?

20 A I believe it was based on what we felt we
21 needed to do.

22 Q Okay. The cumulative investment at least shown
23 by Exhibit 6 to be by investors, they acquired 60%
24 interest for investment of \$200,000.

25 A Right.

1 Q Does the figure bear anything as to any expect-
2 tation you had or feeling you had about what the property
3 would to? What is it based on?

4 A I am not sure I can recollect what it was on.

5 Q What I am trying to figure out is this: You
6 entered into an agreement in March and money is paid into
7 the account of \$25,000. Shortly after the March 7th
8 agreement, but in April according to Exhibit 3, SEA
9 expended money or services on the property. Did that
10 occur, first of all?

11 A No. I would have to go back and examine those
12 records to see when the -- check with Tom Schloss and
13 find out precisely what was done with it.

14 Q I guess what I am trying to find out, does the
15 \$200,000 total accumulative investment as set forth in
16 paragraph six have any relation to the money that your
17 group of investors or your company invested?

18 A No, I don't think that it does.

19 Q Did you feel, Jim, at the time this letter
20 agreement, March 7, 1979, Exhibit 6, was entered into
21 that if the investors put in \$200,000 and your entity
22 put in the \$25,000 that it had at the time you entered
23 into this agreement and brought the deal together, that
24 40% was a fair percentage to you and your group?

25 A Why don't you repeat that one for me one more

1 time.

2 Q Let's assume just everything is going along
3 fine, and I am not talking about production or having
4 investments put in, \$200,000 pursuant to the agreement.

5 A Yes.

6 Q And according to the agreement they get 60%
7 interest.

8 A Yes.

9 Q Did you feel 40% interest that your group would
10 retain was fair and adequate remuneration for what you
11 already put in the property as of March 7th when you
12 entered into the agreement, approximately \$20,000, and
13 your putting the deal together so to speak?

14 A Well, I think that there is a couple of items
15 there, and I am still not sure I precisely understand
16 the question, but indeed the purpose in bringing Tom
17 Schloss and Dwight Lee into the picture was not only to
18 exploit the Tombstone Development Corporation, the TDC,
19 which is known as part of the district, but in relation
20 to what the total potential is, relatively small.

21 The purpose was to have them fund additional
22 money to explore in the remainder of the district which
23 was -- which had not been done which probably overshadows
24 the TDC lease in total potential. I am not sure if that
25 impinges on the question you asked.

1 Q Basically I realize Exhibit 6 talks about pro-
2 perties which are more, I guess, yes, more than the TDC
3 lease.

4 A Yes.

5 Q Is it your testimony, then, Jim, that this
6 proposed and projected investment under paragraph six of
7 Exhibit 6, which goes up to \$200,000 for 60% interest
8 for investors, this was not to be used entirely on the
9 development of known TDC property but to be spread around
10 with the other properties?

11 A Well, it was the intention and the feeling
12 that the TDC properties would be brought into production
13 and additional funding would then be brought to bear on
14 other properties or that some of the cash would be used
15 in acquiring land in the other two areas.

16 As a matter of fact, because of the critical-
17 ness of time, some of the cash would have to have been
18 used to acquire land positions in those.

19 Q Isn't it true, and if it is not please correct
20 me, that the objective of this investment and of this
21 project was to get into production and operation and
22 that it would pay its own way basically for the figure
23 of what you already have put in and the \$200,000; in
24 other words, a turn-key operation was that the outside
25 parameter of the objective of the known area?

1 A I think that if we carefully examine it that
2 the objective was to determine whether the TDC ground
3 could be gotten into production and to acquire land in
4 the other two areas.

5 Q But had you not been advised by your consultant,
6 the SEA consultant, that in fact the property could be
7 put into production for less than \$200,000 -- and you
8 relied on that, didn't you?

9 A Well, it's true, and you are referring to
10 Hewlett?

11 Q Yes, that's right, I am.

12 A That's true, that is what he proposed, but
13 there are also provisions in that operating agreement in
14 which the operation would be reviewed at each \$25,000
15 increment to see whether it was worth proceeding.

16 So I am not sure that conceptually I would have
17 said that this is absolutely possible to get that into
18 production for \$200,000.

19 Q Let me ask you a simple question: Did you not
20 then rely on the statements and projections and represen-
21 tations made by Mr. Hewlett?

22 A Well, I think the fact that there is an exhibit,
23 what did you call it, 2, which indicates something in
24 the range of \$150,000 worth of test work indicates that
25 certainly there was testing required.

1 Q Again, if you can, and I may not understand it
2 myself, but it is a simple question. Did you or did you
3 not rely on Mr. Hewlett's representations and reports
4 made to you, your company, in regard to this project and
5 its potential and its basic cost? I don't mean anybody
6 other than you in your capacity?

7 A Well, with the understanding that additional
8 test work had to be done and that was the essential pur-
9 pose of the initial \$25,000, to see whether cash flow
10 could be initiated for that amount and if that were not
11 the case it would have been necessary to revert back to
12 the test work at minimum suggested by Mr. Hewlett to see
13 whether there was available the material in the heap that
14 would make it a buyable project.

15 Now, some place in our discussions with Tom
16 Schloss, I felt that I presented to him, as a matter of
17 fact, there is a document somewhere that was partially
18 prepared to raise capital to do drilling work in the
19 Tombstone Basin, and I believe the drilling amounted to
20 about \$500,000 to delineate ore bodies and preceded by
21 \$100,000 in geological work.

22 Q Let me try again, and I am not trying to be
23 hard-nosed with you, but can you answer my question as
24 to whether or not you relied on the figures of cost
25 projections and the reports, the one dated February 20,

1 1979, of Mr. Hewlett's, did you or didn't you rely on it
2 in effecting your decision to go in on this deal and your
3 position to present it to Scloss and Lee?

4 A I think this Exhibit 2 is what you are referring
5 to?

6 Q Yes.

7 A I thought the working figures were reasonable.

8 Q So you did to that extent rely on it?

9 A Yes.

10 Q And is it not a fact that in that Exhibit 2
11 under the cost -- the heading "Cost," the test work to
12 check out this property comes to a total of \$100,000
13 according to Mr. Hewlett?

14 A That the cost comes to -- well, that's not quite
15 correct in that we have got \$152,000 which relates to
16 heap leaching evaluation and testing. Now, the \$10,000
17 was Dick's evaluation of the cost, I believe, of the
18 initial assaying.

19 Q My point being only in that report you told me
20 you relied and thought the figures were reasonable, that
21 is, under the heading of "Cost," and it is also under
22 the statement including \$152,000 and that this figure of
23 \$177,600 represents the following turn-key complete work
24 to get the property to the point of producing enough
25 gold and silver to support the on-going production.

1 Are you telling me that it was your belief,
2 that is, not going to the property, but taking the
3 \$177,000 or \$200,000 to test it?

4 A Well, this again -- these were Dick's estimates.
5 I did not even look at that document in something over a
6 year.

7 Q I can appreciate that, Jim, but my only ques-
8 tion is was it your belief and opinion at that time that
9 that amount of money was to be used only to test and not
10 to get production going where it supported itself on that
11 project?

12 A Well, I believe that what was presented to Tom
13 was two scenarios that he could either spend some place
14 in the range of \$200,000 for various testing or he could
15 spend \$20,000 for an initial re-irrigation of the heap to
16 see whether we could get cash flow.

17 Q Okay. I didn't ask for that and I will move to
18 strike the whole answer. I am not asking what you pre-
19 sented to Tom, but I am asking what your opinion was of
20 what that meant, was it testing or was it to do with
21 what Hewlett says to make a turn-key operation producing
22 enough gold and silver?

23 A What was my opinion?

24 Q At that time, yes, sir, when this report was
25 done for you.

1 A I would have to go back and see whether I had
2 any notes as to what I thought of the report.

3 Q Okay.

4 A That was Hewlett's opinion.

5 Q Did you at any time after receiving that report,
6 to your recollection, tell Tom Schloss or Dwight Lee that
7 you didn't really know what he meant, whether he meant
8 testing or whether it says what it means: Going into
9 production to support itself?

10 Did you ever tell them that prior to them making
11 their investment with you?

12 A Could you go through that question one more
13 time?

14 Q If I understand the answer again, and I don't
15 mean to be snippy, but if I understand your answer, you
16 say you would have to go back and see what your notes
17 were, and you really don't have an opinion as to what he
18 meant by that or discussing, in other words, those
19 figures?

20 A I think that is Dick Hewlett's opinion of what
21 he thought could be done.

22 Q I understood you to say, and I thought you told
23 me, that you did rely on this to the extent that you
24 thought they were reasonable and could be done.

25 A Well, maybe I used improper language. I would

1 like to go back and answer the statement I made that there
2 are a variety of facts and figures early on in any mining
3 evaluation that can be generated by a variety of engineers.
4 I can't tell you what my opinion of this report is. I
5 believe if I had endorsed that with my signature and had
6 my stamp on it that would be as indicating that it was
7 indeed my representation. It was simply a report to me.

8 Q If the presentation, written presentation that
9 you can't recall what it was to Schloss and Lee from you
10 -- from your company with your stamp and signature on it
11 enclosed that report, Exhibit 2, from Mr. Hewlett, and
12 had no cautionary language from you and no disclaimers
13 from you, would that be an indication based on your prac-
14 tice that you had endorsed that and used it in your
15 presentation for potential investors to rely on?

16 A I would say probably it would.

17 Q Now, I am trying to get back to my question.
18 At any time, to your knowledge, did you advise either in
19 writing or orally, Mr. Schloss or Mr. Lee or both of them
20 that you had not confirmed or were not sure or any other
21 type of disclaimer of the figures that Mr. Hewlett put
22 in his report to you?

23 A Oh, I think that I must have, because --

24 Q Let me finish my statement. That wasn't my
25 complete question. It wasn't completed yet.

1 Before March 7th, 1979, when they made their
2 investment.

3 A Yes, because without detail drilling and assay-
4 ing information, you simply can't verify any tonnage and
5 grades.

6 Q At that point in time subsequent to March 7th,
7 1979, did you become aware of the fact that Mr. Hewlett
8 was not in fact performing as to his representations to
9 you and to the investors?

10 A At any time prior to March 7th?

11 Q Subsequent, after March 7th.

12 A I would say that fairly shortly after the
13 beginning of the project his output was not too satis-
14 factory.

15 Q In fact, Jim, there was a point in time that
16 the investors, when it came time for the next \$25,000,
17 had some questions about what was going on?

18 A Yes.

19 Q Is that right?

20 A I would say that's probably correct.

21 Q And were you aware that Mr. Hewlett as vice-
22 president of SEA Hydromet prepared a report and recommen-
23 dations that his purpose -- I don't know and I am asking
24 if you know what his purpose was -- that he presented to
25 Mr. Lee and Mr. Schloss, and do you recall a report being

1 done almost, well, a little bit more than a month after
2 this agreement in April of 1979 when he made a report on
3 what had happened with the project and that initial
4 \$25,000?

5 A I think that I do.

6 Q He was an employee of SEA Hydromet at the time,
7 was he not, in April of 1979; Mr. Hewlett?

8 A Yes, although with the proviso that he was
9 essentially being paid by the project at employee rates.

10 MR. ALLEN: Let me have this exhibit marked
11 which I guess will be Exhibit No. 7, the document dated
12 May 22nd, 1979.

13 (Plaintiffs' Exhibit No. 7 marked for identifi-
14 cation by the Notary.)

15 BY MR. ALLEN:

16 Q Let me show you what has been marked as Exhibit
17 7 which is again this document dated May 22nd, 1979, and
18 it is signed by James Briscoe, Thomas Schloss and Mr. Lee
19 extending the letter agreement of March 7th, 1979.

20 A Yes.

21 MR. ALLEN: Let me have this marked as Exhibit
22 8 and then let's go off the record a moment.

23 (Plaintiffs' Exhibit No. 8 marked for identifi-
24 cation by the Notary.)

25 (Discussion off the record.)

1 BY MR. ALLEN:

2 Q Back on the record.

3 First of all, Jim, do you recognize Exhibit 7?

4 A Yes, I do.

5 Q And is that your signature at the bottom of it?

6 A Yes, it is.

7 Q Now, if we can -- when you're through, Jim, let
8 me know.

9 A Okay.

10 Q Let's go back to the month of April, 1979. Did
11 you participate with Mr. Hewlett in preparing a report
12 to the investors prior to them making their second
13 investment?

14 A I would simply have to go back through my
15 records to determine that.

16 Q If Mr. Hewlett was making a report based on
17 your practice in your business and in your corporation
18 that you are 51% owner of, would you normally review what
19 he sent out in regard to sending to investors?

20 A I would say that that's a good practice but in
21 this particular case I am not sure that I did.

22 Q On April 11th, Mr. Hewlett sent a report
23 directly to Tom Schloss and Dwight Lee?

24 A At what date?

25 Q April 11th, 1979.

1 A Yes.

2 Q And from the records I have shortly after or
3 within a couple of weeks at least an additional invest-
4 ment of \$25,000 was wired into the account of Tombstone
5 Heap Leach. In that report, and I will show it to you
6 in just a second, Mr. Hewlett says that the remaining
7 risk factors on this project -- it is entitled "Tomb-
8 stone Project and Analysis of Risk and Progress Report" --
9 the remaining risk factors are finalization of lease
10 (signatures), Governmental restrictions, or reserves,
11 metallurgy and metal recovery. Five items. Recents
12 results have proven the following: (1) Needs of finali-
13 zation -- only remaining risk. (2) No risk; sent letters
14 and contacted all agencies. (3) No risk; ample ore
15 reserves - constant confirmation. (4) Solvents: No risk;
16 proven effective. "113": No risk; good percolation and
17 values. (5) No risk.

18 Did you review and agree with that analyzation
19 that was sent to the investors, and from the record,
20 resulted in additional investment? I show you Exhibit 8.

21 A Well, I can't tell you. This was sent simul-
22 taneously to -- I can't tell you whether this was sent
23 simultaneously to Dick or Tom or whether I first looked
24 at it and then it was sent.

25 Q Well, let's see if we can, Jim, let's assume --

1 or let's not assume anything. Would you, based on your
2 knowledge and background, training and experience and
3 familiarity with that project down there, would you have
4 sent such a report to those investors at that time?

5 A Well, I think it is unlikely I would have
6 specifically endorsed no risk under ore reserves or sol-
7 vents and IPS.

8 Q Isn't it a fact at that point in time there was
9 quite a great deal of difficulty with recoveries of any
10 value?

11 A I think that's correct.

12 Q Now, also therein, Jim, included in there is a
13 chart of cash flow. Did you see that? I think it pro-
14 jected it for the next month.

15 A You are talking about under the heading,
16 "Tombstone, immediate expenses."

17 Q I think let's go another page or two.

18 A Okay. This is a list of deposits and checks.

19 Q Let's see if I can find it for you.

20 Projected cash flow, the middle page of the
21 report under the cover letter.

22 A Yes.

23 Q Do you recall seeing anything such as that
24 which reportedly states there will be significant cash
25 flow in his opinion?

1 A Uh-huh.

2 Q Based on your knowledge and experience, would
3 you have arrived at that type of projection to be sent
4 to potential and additional investors?

5 A Well, I would not.

6 Q Jim, is SEA Hydromet, Inc., still in existence?

7 A No, it is not. Well, let me couch that remark
8 that there is a corporation called SEA Hydromet, but
9 there are neither employees nor activity.

10 Q When did that cease to exist basically as a
11 functioning corporation?

12 A When I terminated Dick Hewlett.

13 Q As either in its own right or as a subsidiary
14 of SEA, Inc., did that corporation carry any insurance
15 policies in regard to errors, admissions or negligence
16 on behalf of employees?

17 A No, it did not.

18 Q In '79 did your company, SEA, Inc., carry such
19 insurance?

20 A No, it did not.

21 Q Would it be correct in assuming it carried
22 insurance on its cars and vehicles?

23 A Yes.

24 Q But at no time did it have any provisional or
25 what we call in our profession malpractice type of insur-
ance?

1 A No, simply because at one time I had checked
2 into that, but there wasn't any insurance carrier that
3 had any experience in that other than medical policies
4 and legal.

5 Q Do you carry, and I am not interested today,
6 but back in '79, did you carry a general liability policy
7 with the company; in other words, a policy maybe that
8 covers things other than automobiles?

9 A Yes, I would say so.

10 Q Two things I want to ask you on the record.

11 Could you provide your attorney a copy that was
12 in effect in '79 of any policies of liability insurance
13 you had exclusive of cars. I don't want any of your
14 automobile stuff, so that he and I could take a look at
15 it, number one?

16 A Yes.

17 Q Number two, would you go to your records and
18 find with your best record keeping and recollection of
19 what you presented in its entirety to Schloss and Lee
20 prior to the signing of the March 7th, 1979, agreement,
21 Exhibit 6. Jim, I know there are other ways of doing
22 that, but on the record we can do it this way if it is
23 okay with you.

24 A I think so.

25 Q All right. Let's have Exhibit No. 9 marked,

1 please.

2 (Plaintiffs' Exhibit 9 marked for identifica-
3 tion by the Notary.)

4 BY MR. ALLEN:

5 Q Somewhere, Jim, prior to June 22nd, 1979, did
6 you not have meetings and conferences with Tom Schloss
7 and a gentleman by the name of John Dean?

8 A What was the date?

9 Q Before June 22nd, 1979.

10 A I believe so. As a matter of fact, there was
11 either a conversation or conversations between Tom and I
12 regarding John Dean and letters, visits from John Dean
13 as early as May. Early May, I believe.

14 Q Anyhow, as a result of a visit to the Tombstone
15 area between you and Schloss and John Dean, you wrote a
16 letter on June 22nd, 1979, to Mr. Hewlett and that letter
17 I have marked as Exhibit 9, and it contains five pages.

18 I would ask you to look at that and see if you
19 recognize that document and if that's your signature on
20 the last page.

21 A Yes, that's my signature.

22 Q And does this accurately reflect your feelings
23 as to his, being Hewlett's, performance at that point in
24 time?

25 A Yes.

1 Q To your knowledge did the process and proce-
2 dures from the extraction of the precious metals given to
3 you by Mr. Hewlett and implemented down at Tombstone
4 ever work satisfactorily while he was on the project?

5 A No.

6 Q Did he ever advise you prior to -- first of all,
7 prior to March 7, 1979, that he had had experience with
8 that project or that procedure that he had presented and
9 been told by other qualified people that it didn't work?

10 A No.

11 Q Did he at any time before you terminated him
12 but after the agreement tell you that?

13 A No.

14 Q Did you or the organization, Southwest, SEA
15 Hydromet, ever issue stock to the two of you?

16 A No.

17 Q Did Mr. Hewlett at any time ever own any stock?

18 A Let me make sure. Let me retract that. I am
19 not sure we did or we didn't.

20 Q The records would show?

21 A The records would show.

22 Q Did Mr. Hewlett at any time, Jim, own any stock
23 in SEA, Inc.?

24 A No.

25 Q Or any other corporation?

1 A No.

2 Q Is it a fact that he did not ever have stock
3 in Austin Mining?

4 A Yes, I believe that's correct.

5 Q And again I realize there are other ways of
6 doing this, but it would be something like I would have
7 to ask you to check with somebody about the stock owner-
8 ship, but let me ask you this. Is there anybody that
9 ever owned any stock in SEA, Inc., other than you?

10 A No.

11 Q In regard to the Austin Mining and Mineral,
12 whatever, and SEA Hydromet, I would like to see if there
13 is any stock issued to anybody.

14 MR. KITTLE: Certainly. If we can do it it
15 will be helpful to me and I will enumerate those things,
16 several of which have been attached during the deposition.

17 BY MR. ALLEN:

18 Q Did you as a party in the agreement between
19 yourself and Schloss and Lee -- well, let me back off
20 that.

21 Did you in your capacity with SEA and your
22 relationship with SEA Hydromet, employ and/or commission
23 Mr. Hewlett to provide and accomplish the representations
24 and objective that he set forth in Exhibit 2, to wit,
25 make the Tombstone project a turn-key operation to

1 sufficiently produce precious metals to support an on-
2 going production? Is that what he was hired for?

3 A No.

4 Q Why then do you state in Exhibit 9 that our
5 original objectives of Tombstone were to expend in the
6 range of \$25,000 to make in situ tests of your metallurgi-
7 cal techniques, which you warranted would verify the
8 techniques and put us into possible production with a
9 substantial cash flow?

10 Let me ask you this: Is that what he was hired
11 to do, what I just read from Exhibit 9?

12 A To SEA Hydromet?

13 Q No, Mr. Hewlett.

14 A I'm sorry. No. You are asking me was Dick
15 hired as the vice-president and general manager of SEA
16 Hydromet.

17 Q Right.

18 A He was hired to pursue his ideas in metallurgy
19 as they specifically applied to metallurgical leaching.
20 The Tombstone Project was one of the things that he
21 worked and things he spent probably 99% of his time on.
22 What is purported in that letter was the objective of
23 the \$25,000 which was the in situ tests of those methods.
24 No more than \$25,000 should have been expended in that
25 endeavor, and the fact that he continued to report posi-

1 tive results which resulted in Schloss and Lee putting
2 in additional money was not the initial intent.

3 The initial intent was to spend \$25,000 to see
4 whether that would go into production and if it would
5 not, then they still had participation in a very visible
6 and in a very important mining district, but you have to
7 go back sequentially to normal mining exploration plan-
8 ning, definition and ore reserves, et cetera, et cetera.

9 Q Was it not a fact, Jim, that Mr. Hewlett and
10 you were going to own a portion of the lease on TDC
11 together through another entity?

12 A I think that's probably correct.

13 Q And is it also not a fact that you and Hewlett
14 put this project together and presented it to Mr. Schloss
15 and Mr. Lee requesting investment; in other words, your
16 geologic interest, his ability to negotiate and experi-
17 ence with his ideas were joined together and together
18 you presented this to Schloss and Lee asking for the
19 financial support?

20 A Yes, that's correct.

21 Q And at least as of June 22nd, 1979, you
22 realized that his side of it at least wasn't going to
23 come to fruition?

24 A Yes, that's correct.

25 Q And is it not in this situation, and you

1 correct me if I am wrong, but it was not only to test his
2 methods on in situ testing but to state, as you put it,
3 possible production with substantial cash flow? Was
4 that not part of the purpose and part of the representa-
5 tion to the investors?

6 A Of the initial --

7 Q Tombstone Project.

8 A Yes, I would say so.

9 Q And at that time, two and a half or three
10 months after it started, the investors had put in as you
11 say four times budget, \$100,000, and Mr. Hewlett had
12 changed the metallurgical approach several times with
13 inadequate documentation and he had not scientifically
14 verified or documented even the negative results of his
15 work, to your knowledge, and unless I am bad at reading,
16 you were professionally upset with him and his perform-
17 ance.

18 A Yes.

19 Q Did you feel professionally on June 22nd, 1979,
20 that you were responsible in any way for Mr. Hewlett's
21 performance or lack thereof?

22 A Had I not felt so I probably would not have
23 continued putting in my own money and time, and after I
24 terminated Dick Hewlett it was to the tune of some
25 \$40,000 of unreimbursed efforts, and I should state here

1 that we were very generous in recording our time; in
2 other words, we spent many, many 12 to 14-hours days on
3 which I don't think were adequately charged. So those
4 are conservative figures. In fact, I submitted early on
5 the idea that Dick Hewlett should be terminated which
6 was at one point in one telephone conversation with Tom
7 Schloss who said no, we will not terminate him because
8 there isn't anybody else to take over right now. I said
9 I don't agree with that, et cetera.

10 Q Okay.

11 A Let me also point out that at no time was I
12 receiving professional fees for Hewlett's services and,
13 therefore, it put me in a great bind in which I could not
14 adequately supervise his activities because of the severe
15 cash drain I had already undergone.

16 Q But in fairness, Jim, this wasn't a situation
17 where someone such as ASARCO or Duval or any other major
18 companies or even major exploration companies had hired
19 your company to do something, but this is where you and
20 Mr. Hewlett had proprietary or potential proprietary
21 interest in this project; is that correct?

22 A Yes.

23 Q That does in the industry affect many times
24 what fees are charged; isn't that correct? You make
25 contributions sometimes over and above?

1 A Yes, but I had already, as I pointed out earlier,
2 put in approximately \$55,000 prior to obtaining any in-
3 volvement of their own and stated very, very carefully
4 that I could not become involved in the project without
5 adequate professional compensation and would have stepped
6 out had that been so.

7 Q And in fact did?

8 A Finally.

9 Q In November or something like that of '79?

10 A Yes.

11 Q Would I be correct that you had been putting
12 together this situation, Jim, this operation or this
13 project, you had a couple of goals in mind: One, to
14 hopefully be able to participate in a profitable opera-
15 tion if it worked out and, two, take it to a point where
16 it could be sold at a profit to, say, a major company?

17 A Correct.

18 Q So that was probably the objective of you and
19 the investors when you discussed this matter, was it not?

20 A Well, yes, I think so.

21 Q To your knowledge after you terminated Mr.
22 Hewlett, do you know whether he presented or attempted
23 to present this process of his to any other potential
24 users of it?

25 A It is my understanding that he did, and indeed

1 got one of the people who was working with him during
2 this period to invest their savings in it and it turned
3 out unsuccessful.

4 Q Was that a family in Tombstone involved?

5 A Yes.

6 MR. ALLEN: I think that is all the questions
7 I have got. I can't think of anything further. Basic-
8 ally we have the reciprocal agreement, Jay, and if I am
9 correct, perhaps you need to talk to Jim and I may need
10 to talk to my client -- this can be off the record, Ron.

11 (Discussion off the record.)

12 MR. KITTLE: I do have a few questions just
13 for clarification.

14

15

EXAMINATION

16 BY MR. KITTLE:

17 Q Just to clarify some things here, Jim, first of
18 all, when you talked to Tom Schloss in terms of his
19 involvement in the Tombstone Project, did you believe
20 him to be an experienced investor in mineral properties?

21 A Yes, I certainly did. That, among the reasons
22 that I talked to him, is he had been involved as early
23 as 1968, I believe, in mineral investment through Hewlett
24 and possibly others.

25 Q When you talked with Dick Hewlett about this

1 so-called IPS process that he is working on, did you at
2 that time believe him to be an experienced professional
3 in the field of metallurgy?

4 A No, I really did not.

5 Q To the best of your recollection, when was it
6 that Schloss and Lee took over the management of the
7 Tombstone Project?

8 A It was prior to my departure for Japan which
9 was, if I can refer to this attachment, this one, the
10 date of Exhibit No. 7, and when was I in Los Angeles?
11 It was I believe the day before I boarded the plane for
12 Japan, and that was -- May 22nd, so it was prior to that
13 morning.

14 Q Now, when he took over the management of the
15 project, did that include supervision of Dick Hewlett and
16 his work down there in Tombstone?

17 A Yes, because they were conversing by telephone
18 and there were many conversations I was not privy to.

19 Q To the best of your recollection, when was it
20 that you first urged the termination of Dick Hewlett?

21 A I suspect it was directly on my return from
22 Japan. I would have to check. It was approximately
23 three weeks after that date. It would have been the
24 22nd, so it must have been mid-June.

25 MR. KITTLE: I have no further questions.

C E R T I F I C A T E

1
2 STATE OF ARIZONA)
3 COUNTY OF PIMA) ss.
4

5 I, Ronald L. Lunsford, a Notary Public duly
6 commissioned under the laws of the State of Arizona, in
7 and for the County of Pima, do hereby certify that I took
8 down in shorthand the questions propounded to and the
9 answers given by the witness at the time and place here-
10 inabove set forth; that said witness, before testifying,
11 was by me duly sworn to speak the truth, the whole truth
12 and nothing but the truth in the cause aforesaid; and
13 that the foregoing is a full, true and correct transcript
14 of the testimony given by said witness.

15 I further certify that I am not an attorney
16 or counsel for either of the parties or a relative or
17 employee of any attorney, counsel or party connected
18 with the action, or financially or otherwise interested
19 in the action.

20 WITNESS MY HAND AND SEAL at Tucson, Arizona,
21 this _____ day of October, 1980.
22

23
24 _____
Notary Public

25 My Commission Expires:
June 11, 1984

QUESTIONS TO ESTABLISH VALUE PRODUCED FROM OPERATIONS OF
TOMBSTONE EXPLORATION, INC. (Tom Schloss)

- I MINING COSTS
- II MILLING OPERATION
- III REFINING
- IV ROYALTY PAYMENTS TO THE TOMBSTONE DEVELOPMENT COMPANY
- V TAXES
- VI NEW YORK OFFICE OVERHEAD AND TRAVEL
- VII CONSULTANTS
- VIII RAISING OF OUTSIDE CAPITAL
- IX OWNERSHIP
- X OFFERS FROM OUTSIDE ENTITIES
- XI EXPLORATION
- XII MISCELLANEOUS ITEMS

I MINING COSTS

- A. Please list all the types of earth moving or mining equipment used at the T.E.I. operation.
- B. Is this equipment owned or leased by T.E.I.? (JAB - I think either leased or contracted.)
 - 1. If leased:
 - a. Is it on lease/purchase or simple lease with purchase option?
 - b. What are the monthly lease payments?
 - c. What is the purchase price and what date?
 - d. Please give the yearly (or monthly) operating, maintenance, and fuel costs of the operation.
 - 2. If purchased:
 - a. What was the purchase price of the whole fleet?
 - b. Is any part financed?
 - c. What rate of interest is paid?
 - d. What is the annual (or monthly) operating costs, including interest, depreciation, maintenance and fuel?
- C. If the mining is contracted (JAB thinks it is),
 - 1. What is the cost per ton to move a ton of ore from the mine to the crusher?
 - 2. From the crusher to the leach pad?
 - 3. From the leach pad to waste?
- D. Summarize the mining sequence (JAB COMMENTS on what he believes it to be)
 - 1. Rip with bull dozer or blast and rip.
 - 2. Load with scrapers.
 - 3. Dump at surge pile in front of crusher.
 - 4. Load with front end loader into crusher - mix with cyanide solution and cement. Ore is pelletized and conveyed from the crusher to pelletized surge pile
 - 5. Load with front end loader onto dump trucks.
 - 6. Haul by truck to the leach pad and unload.
 - 7. Leach with cyanide for 48 hours.
 - 8. Pick up with front end loader, put in trucks and haul to waste dump.

(Observation - JAB & Others - rock is handled way too many times. Careful analysis & re-design could reduce handling and, thus, expense).
- E. Who designed the mine plan?
- F. What consultants reviewed the mine plan?
- G. What were their recommendations?

H. Have their recommendations been carried out?

1. If not, why not?

I. What is the overall cost to move a ton of ore through the mine - leach, waste process?

J. What is the waste to ore stripping ratio?

K. What are the current ore reserves?

(JAB COMMENT: Numerous mining companies have examined the T.E.I. Operation. None feel they have developed any ore reserves, other than rough geologically indicated)

1. We would like to have you state these in terms defined by the U. S. Bureau of Mines & U. S. Geological Survey.

- a. Measured (JAB sent this to Schloss
- b. Indicated 9/8/79)
- c. Inferred

2. Please describe the sampling method used.

- a. Backhoe
 - 1. Sample size
 - 2. Description of how taken.
- b. Diamond drill
 - 1. Depth
 - 2. Core recovery
 - 3. Splitting method
 - 4. Was core logged
 - a. By geologist
 - b. Non-professional
- c. Rotary drill - normal circulation.
 - 1. Air
 - 2. Mud
 - 3. Sample interval
 - 4. Sampling method
 - 5. Core (cutting) board constructed
 - 6. Was core logged
 - a. By geologist
 - b. Non-professional
- d. Rotary drill - reverse circulation
 - 1. Air
 - 2. Mud
 - 3. Sample interval
 - 4. Sampling method
 - 5. Core (cutting) board constructed
 - 6. Was core logged
 - a. By geologist
 - b. Non-professional
- e. Air track drill

3. What was the drill spacing and depth. Also, on spacing and depth of backhoe cuts and spacing and depth of any other sampling method.

4. Who designed the exploration program to define ore reserves?
 - a. What is his educational background?
 - b. Is he a registered professional in Arizona? Any other state?
5. What consultants reviewed the program to define ore reserves?
6. What were their recommendations?
7. Were their recommendations carried out?
 - a. If not, why not?

5

II MILLING OPERATION

- A. Please describe in detail, the mill circuit at the T.E.I. operation.

(JAB understanding of mill circuit)

1. Crushing to 2" minus.
 2. Addition of portland cement and moistening with cyanide solution.
 3. Crushed ore, portland cement, cyanide mixture is conveyed up a short conveyor. The angle of the conveyor is adjusted so that the ore rolls backward somewhat more slowly than the forward motion up the conveyor, thus making balls or pellets and, thus, agglomerating the ore, which is discharged from the conveyor into a surge pile.
 4. The agglomerated ore is allowed to cure for some hours, either in the surge pile, or on the leach pad. The heat of the cement reaction assists the cyanide in dissolving contained gold and silver, and holding it in solution.
 5. The leach pile is sprayed with cyanide solution washing and further leaching the agglomerated and pelletized ore.
 6. The cyanide leach solution with dissolved gold and silver (pregnant solution) is collected as it runs out of the heap and piped to the precipitation plant.
 7. At the precipitation plant, zinc dust is added. The zinc replaces the gold and silver in the solution and metallic gold and silver particles are filtered out.
 8. The filtrate containing some zinc, diatomaceous earth (which acts as part of the filtering medium), are placed along with fluxes in a furnace and melted. The gold/silver melt separates from slag, and is poured off into ingots. This is called dore bullion.
 9. The dore bullion is shipped to the refineries - in this case, Englehard Minerals in Anaheim, California. There it is refined electrolytically into 99.999% pure gold and silver, melted and poured into gold and silver ingots, and stamped with the refiners stamp.
 10. The mine is paid in dollars or "in kind" (bullion) by the refinery, after deducting their fees.
- B. What does agglomeration mean?
- C. Where did you first hear about agglomeration?
- D. How is the agglomeration/pelletization done at the T.E.I. operation?

- 6
- E. Where did T.E.I. learn of this procedure?
(Hewlett introduced the idea of cementation/
agglomeration. This is in reality, the "I.P.S.", or
induced percolation system or substances. JAB
introduced John Dean to the personnel at Mountain
States Engineers, Inc. & during the tour of their
facilities, we were shown their pelletizing conveyor.
It is this same system that is in use today.)
 - F. How much does agglomeration increase mineral recovery?
 - G. How much does the agglomeration process cost per ton?
 - H. Is it true that the Tombstone operation is the first
mine in the nation to use this process?
(This is true according to a news article in the
Engineering and Mining Journal magazine, November,
1982 - remember - 1st recommendation by Hewlett)
 - I. Where are the Merrill Crowe zinc precipitation units in
the T.E.I. operation manufactured?
(These are from the State of Maine Mining Company,
Tombstone, discovered by Dusty Escapule's (T.E.I. mine
manager) uncles. They were first recommended by JAB.)
 - J. What is the current capacity for processing pregnant
solution?
 - K. What is the average assay per ton of pregnant solution?
 - L. What are your near term plans for the precipitation
plant capacity?
(JAB learned from the State of Maine Mine Co. that
T.E.I. is purchasing additional precipitation units to
bring installed capacity to six 300 ton per day (71,968
gal./day) plants for combined capacity of 1,800 tons
per day (431,810 gal.) of solution. If we know the
average grade per gallon of solution, then the silver
and gold per day can easily be calculated.)
 - M. Are these plants on lease or have they been purchased?
 - N. What is the average metal content of the ore mined?

July records submitted to T.D.C. show 0.023 oz/ton gold
and 1.8 Oz/ton silver.

1. Gold
2. Silver
3. Lead
4. Zinc
5. Copper

- O. What is the cut off grade in dollars.
- P. Is lead, zinc or copper ever recovered?
- Q. Realizing that high grade ore running up to and above 80 oz. silver per ton was mined under ground in the Contention area, and that some similar grade material was encountered in the early phases of the current operation, what procedures are carried out when such high grade material is encountered in the present mining operation?
- R. Has high grade ore ever been collected, and:
1. Specially treated for enhanced recovery?
 2. Shipped directly to the smelter?
 3. If not, why not?
- S. Have screen analyses of the T.E.I. ore ever been run to determine which size fraction contains what percentage of the gold and what percentage of the silver values?
- T. Would it be practical to screen and treat the fine material in an aggitation leach plant?
(Paul Turney, metallurgical consultant to Tombstone Development Company, has run screen analyses and feels it would be feasible to screed out fines and run them through an aggitation leach plant.)
- U. Who has designed the metallurgical circuit?
- V. What consultants have reviewed the metallurgical plant?
(I think that he will mention Dr. John Dean. Dr. Dean is a chemist, and not competent to design metallurgical plants. Elargement of this point may be in order.)
- W. What were their recommendations?
- X. Have their recommendations been carried out?
1. If not, why not?

III. REFINING

- A. Describe the refining procedure of the metals produced from the T.E.I. mining operation.
- B. Where is the T.E.I. produced metal refined?
- C. What is charged as a percentage of the gross metal value for this service?
 - 1. Is this competitive with other refineries?
 - 2. Which ones have you received competitive bids from?
- D. How long have you been using the current refinery?
- E. Who did you use previously?
(Why did he change refineries)
- F. Describe your relationship to this refiner? (This was the guy Schloss set up to do his refining).
- G. What was the gross value of in ounces of silver and ounces of gold in concentrate shipped to this refinery?
- H. Tell me the meaning of umpire assays.
- I. How were umpire assays run on the concentrate shipped?
 - 1. To the New York refiner?
 - 2. To Englehard?
- J. How was payment received from the New York refiner?
 - 1. In cash?
 - 2. In kind, i. e., gold and silver bullion?
 - 3. If in kind, where was this metal sold to get dollars for the operation?
(Potential here for a sweetheart deal since much of the metal may have been sold through a shop owned by Mrs. Schloss (Harry), as gold and silver jewelry. - Could enlarge on this).
- K. How do the smelting and refining charges of the New York operation compare with that of Englehard?
- L. Have you had any consultants review this aspect of the T.E.I. operation?
- M. What were their recommendations?
- O. Where there recommendations followed?
 - 1. If not, why not?

IV ROYALTY PAYMENTS TO THE TOMBSTONE DEVELOPMENT COMPANY

- A. How much has been paid to date to the Tombstone Development Company?
 - 1. On what royalty basis?
- B. How much in dollars per ton produced has been deducted before calculating their royalty?
- C. What do you project their royalty to be during the next 12 months assuming:
 - 1. \$400/ounce gold
 - 2. \$10/ounce silver

V TAXES

A. Please state the net income of the mine before taxes for:

- 1. 1979
- 2. 1980
- 3. 1981
- 4. 1982
- 5. 1983 - projected

B. How much income was declared for T.E.I. for the years:

- 1. 1979
- 2. 1980
- 3. 1981
- 4. 1982
- 5. 1983 - projected

VI NEW YORK OFFICE OVERHEAD AND TRAVEL

- A. What business do you spend the majority of your energy, effort, and time on?
- B. Do you keep a daily log of hours expended such as a day timer log?
1. If not, how do you account for your time?
- C. What percentage of your time do you spend on the business of T.E.I.?
- D. Please list the officers of T.E.I. and their annual salaries.
1. Chairman of the Board
 2. President
 3. Executive Vice President
 4. Vice President of Mining
 5. Secretary
 6. Treasurer
 7. Board of Directors
 8. Others not listed above
- E. How many trips per year do you make from New York to Tombstone?
- F. What is the duration of each trip?
- G. Where do you stay while in Tombstone?
- H. Give your annual budget for travel, food and lodging for your commuting from New York to Tombstone
1. 1979
 2. 1980
 3. 1981
 4. 1982
 5. 1983 - projected
- I. Please give the total New York office overhead budget allocated to and paid by T.E.I., paid for year 1979 through 1982, and projected for 1983.
1. Office space
 2. Supplies and equipment
 3. Telephone
 4. Postage
 5. Secretarial
 6. Executive and Board of Directors salaries or other remuneration.
 7. Food, travel & lodging
 8. Entertainment

- 9. Insurance of all types
- 10. Retirement funds
- 11. Consulting fees
- 12. Legal fees
- 13. Underwriting fees
- 14. Accounting fees
- 15. Computer expenses
- 16. All other expenses not itemized above

VII CONSULTANTS

A. Do you or have you in the past made use of consultants?

B. Please list the names, affiliations and addresses of consultants you have used in any way related to the T.E.I. project from 1979 through the present time. These might fall under, but not necessarily limited to, the following categories.

- 1. Legal
- 2. Accounting
- 3. Underwriting
- 4. Business management
- 5. Mining engineering
- 6. Civil engineering
- 7. Metallurgical engineering
- 8. Geology
- 9. Mineralogy
- 10. Hydrology
- 11. Aeronautical

VIII RAISING OF OUTSIDE CAPITAL

- A. Are you in the process of raising money for the T.E.I. operation? (yes)
- B. How much money is being raised? (Said to be \$6 million)
- C. What is the vehicle for raising this money?
 - 1. Limited partnership
 - 2. Joint venture
 - 3. Partnership
 - 4. Loan
 - 5. Debentures
 - 6. Stock sale
 - 7. Selling forward the production of the mine
- D. Who is the underwriter?
- E. Is this offering registered with the Security and Exchange Commission?
- F. What states will the offering be made in?
(6 to 7 states supposed to be approved as of this date, per comment from Bill Hight)
- G. Has full disclosure been made that T.E.I. does not own all of the lease from Tombstone Development Company?
- H. Has a cash reserve been set aside in an escrow account to make payments to Austin Exploration & Mining Co.?
 - 1. If not, why not?
 - 2. If so, how much?

IX OWNERSHIP

X OFFERS FROM OUTSIDE ENTITIES

A. Has T.E.I. ever been approached by any other companies, mining companies or other types, or perhaps, individuals, or partnerships, to:

- 1. Buy
- 2. Sublease
- 3. Joint venture
- 4. Invest in
- 5. Enter into a mining partnership with, or contract mine, mill, or produce jointly in any way?

Please list any such offers chronologically

- B. What has T.E.I.'s response to these offers been?
- C. Currently, an offer has been made to purchase the T.E.I./Austin Exploration & Mining Co. lease by HIMCO, a subsidiary of Tenneco. How have you responded to that offer?
- D. Phelps Dodge is currently interested in a sublease on the Tombstone underground workings from the T.E.I./AEM lease.
 - 1. Have you informed AEM of their interest?
 - a. If not, why not?
 - 3. How have you responded to them?
 - 4. Are you assisting them in their studies?

XI EXPLORATION

- A. Please describe the current efforts you are making to develop ore reserves within the T.E.I./A.E.M. lease from Tombstone Development Company
 - 1. For open pit ore
 - 2. For underground reserves
- B. What are your projected plans for:
 - 1. 1983
 - 2. 1984 and beyond?
- C. What efforts are you making to bring in outside expertise to help develop the open pit or underground reserves?
- D. What effect do you think the presence or absence of ore reserves have on the value of the T.E.I./A.E.M. lease?

XII MISCELLANEOUS ITEMS

- A. Do you anticipate the purchase or lease of an aircraft for the T.E.I. mine? (yes)
- B. Will it be purchased or leased?
- C. Please tell us the type of aircraft anticipated
- D. What will be its hourly operating cost, on an annualized basis, including:
 - 1. Purchase/lease
 - 2. Hanger
 - 3. Pilot(s)
 - 4. Maintenance
 - 5. Insurance
 - 6. Fuel
 - 7. Depreciation
 - 8. Construction of landing strip at mine site.
- E. What will be its annual cost to the mining operation?
- F. Will it be used for other purposes than those directly related to T.E.I. mine.
- G. What precautions will be taken that should key T.E.I. personnel will be killed simultaneously, should a serious crash occur, that such an event would not jeopardize the mining operation and the T.E.I./A.E.M. lease?
- H. Are you now, or have you ever been, under the care of a psychiatrist? (yes - could enlarge on this).

TOM SCHLOSS
Deposition #1

1 day of September, 1980, commencing at the hour of 9:30 a.m.
2 on said day, on behalf of the Defendants in a certain cause
3 now pending in the Superior Court of Pima County, Arizona.

4
5 STIPULATIONS

6 It was stipulated and agreed by and between counsel
7 that this deposition could be taken at this time and place;
8 that notice of filing the deposition would be waived; that
9 objections would be in accordance with the Rules of Civil
10 Procedure of the Superior Court of the State of Arizona; that
11 signature of the witness to the deposition would not be waived.

12
13 MR. KITTLE: I think it would also be good to reflect
14 at the outset of this deposition that Mr. Allen and I have
15 agreed that these depositions will be continued, namely the
16 deposition of James Briscoe and the deposition of Mr. Schloss;
17 and that each of us has reserved the right to continue the
18 deposition of opposing parties at a later time.

19 MR. ALLEN: Based upon further discovery and information
20 we may develop that we may want to continue to take additional
21 testimony without prejudice to either party along the lines
22 of harrassment, you know, over multiple depositions, this
23 type of thing. That's our agreement.

24
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21 testimony without prejudice to either party along the lines
22 of harrassment, you know, over multiple depositions, this
23 type of thing. That's our agreement.
24
25

1 THOMAS H. SCHLOSS,
2 a witness called by the Defendant as an adverse party on
3 cross examination, having been first duly sworn to state the
4 truth, the whole truth, and nothing but the truth, testified
5 on his oath as follows:

6

7

EXAMINATION

8 BY MR. KITTLE:

9 Q Let's start out here, Tom, by asking you please to state
10 your full name and your address?

11 A My home address?

12 Q Yes.

13 A Thomas H. Schloss, T-h-e-p-r-i-o-r-y, Pelham Manor,
14 New York, P-e-l-h-a-m, New York.

15 Q Tom, where are you employed?

16 A How do we go off the record?

17 MR. ALLEN: You don't. Just answer the best you can.

18 A I work at an office at 689 Fifth Avenue.

19 Q (By Mr. Kittle) What kind of work do you do?

20 A Right now?

21 Q Yes.

22 A I'm in the investment business.

23 Q What kind of investments do you concern yourself with?

24 A Right now?

25 Q Yes.

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A Just right now, I'm working in the mining business.

Q Tom, tell me a little bit about your educational background, if you will.

A Graduated from high school, college, and have my masters in business administration.

Q What college did you go to?

A Indiana University.

Q And what kind of degree did you get there?

A B. S.

Q What was your major?

A Accounting, and management.

Q You graduated in what year from Indiana University?

A Sixty-four. Around that.

Q You say you have a master's in business administration.

A (Nodded head.)

Q Which school is that from?

A American University.

Q Give me a little background, if you will, on your employment experience, let's say for the last ten years.

A Got out of school, I worked for Walston and Company, for two months. I worked for Bank of New York for about six months. I worked for A. G. Benker for a month. I worked for Continental Illinois for a month, and I moved back to my family business, which was in Indianapolis, which was the Economy Finance Corporation.

1 Q How long did you work in the family business?

2 A I don't remember exactly, but less than a year.

3 Q Could you bring us current, then? What happened after
4 working with the family business?

5 A Moved back to New York. Sold the business. Started an
6 investment business of picking money managers in the stock
7 market.

8 Q What year would that have been approximately?

9 A Sixty-nine, '70.

10 Q What does that mean, picking money managers in the
11 stock market?

12 A Finding money managers that can manage money.

13 Q Does that mean finding people to whom you can entrust
14 money for investment purposes?

15 A Yes.

16 Q Does it mean additional things?

17 A Yes.

18 Q Can you tell me some of the additional things it means?

19 A Well, the people I pick put their money in with the
20 investments they make.

21 Q I'm confused here. If you're locating money managers,
22 it sounds like you're locating people to give money to. Are
23 you also locating people to receive money from?

24 A No. I delegate the fund to be run by another manager.
25 He's putting his funds with mine.

1 Q I see. So --

2 A So if he loses, he's losing his own money.

3 Q I see. Is it fair to say then it's sort of a coopera-
4 tive investment activity where you're cooperating with a
5 money manager to invest some of his funds, as well as some of
6 your funds?

7 A No.

8 Q Okay. What would be a correct way to state that?

9 A It's a limited partnership.

10 Q All right. For the purpose of investing some of your
11 funds and some of money manager's funds?

12 A Correct.

13 Q And normally in that kind of arrangement, who's the
14 general partner, who's the limited?

15 A He's the general partner. We're limited partners.

16 Q Let's say during this ten-year period that you speak
17 of, what are examples of investment activities that you've
18 engaged in through these approaches?

19 A Stock market activities.

20 Q Does that mean common stocks only, or bonds only, or --

21 A It's common stocks, mainly.

22 Q Did you ever get involved in any commodity activities?

23 A What do you mean by commodities?

24 Q I'm thinking of as the term is generally used in the
25 stock market, as distinguished --

1 A Do you mean soybeans, corn, what do you mean by commodi-
2 ties? That's too general a term.

3 Q I mean it in the very broadest sense.

4 A Because bonds are considered commodities, so you'd have
5 to answer that yes, but I don't think that's answering the
6 question.

7 Q No. Well, I'm not referring to bonds; I'm referring to
8 tangible substances like soybeans, pork bellies, the kind of
9 thing that I normally hear referred to as commodities.

10 A No.

11 Q Any involvement in mineral substances as commodities?

12 A Only in recent years.

13 Q Okay. What years would those be?

14 A About '78, '79, but again as a limited partner.

15 Q Uh-huh.

16 A That was a cash and carry business, had nothing to
17 do with the money business.

18 Q You're a security dealer, is that correct?

19 A No, that's not correct.

20 Q Have you had at any time in the past, any kind of license
21 to sell securities?

22 A Yes.

23 Q What type of license did you have, and when did you
24 get it?

25 A 1974, became a member of the New York Stock Exchange,

1 the American Stock Exchange, and the Chicago Board Options
2 Exchange.

3 Q Do you still retain those memberships?

4 A No, I do not.

5 Q When did those memberships terminate?

6 A Beginning of this year.

7 Q Tell me a little bit about your involvement in some
8 of these mining and exploration investments, when did they
9 first begin.

10 A Which, what are you referring to?

11 Q Well, I think that you've indicated to me that at times
12 in the past, you've put together investment funds to invest
13 in mining and mineral projects with a view toward getting a
14 return on your investment?

15 A I don't know when I ever told you that. That's not
16 true. I've made an investment once before in a mining pro-
17 ject, period.

18 Q What was that?

19 A That was a Cordera Mine, it's a mercury mine.

20 Q In what year was that?

21 A About '69, somewhere, about '69, '70, somewhere in there.

22 Q Can you explain to me what kind of an investment arrange-
23 ment that was?

24 A It was a tax shelter where the money was placed as a
25 limited partnership, in a limited partnership of which we

1 were limited partners.

2 Q Who was the general partner?

3 A Dick Hewlett, Bruce Stevenson, and Jim Bishop.

4 Q Were there any other limited partners?

5 A Yes. Quite a few.

6 Q Did you know some of them?

7 A Yes.

8 Q Can you tell me who they were, please?

9 A I don't recall their names.

10 Q Don't recall any of them?

11 A It's been over ten years.

12 No.

13 Q In what state was that limited partnership operated?

14 A What state was it operated, or -- it was a New York
15 partnership.

16 Q In what state were the mineral properties located?

17 A Nevada.

18 Q How long did your involvement in that investment project
19 continue?

20 A After I made the investment, I was not really involved.

21 Q Well, let's put it this way to use some objective
22 standard: I believe that normally the limited partnership
23 files partnership returns and the limited partner receiving
24 a schedule K-1?

25 A We're still receiving K-1's.

1 Q To that extent, at least, you're still involved with
2 the limited partnership?

3 A What do you mean by involved?

4 Q I mean you're a partner?

5 A We're still partners, yes.

6 Q During the deposition of Jim Briscoe, we heard reference
7 to some kind of mining or exploration activity referred to
8 as the Mineral 76. What do you know about that project?

9 A Not a thing. Never heard of it.

10 Q Evidently it was something that Dick Hewlett was involved
11 with, and it had something to do with some properties in the
12 Tombstone area.

13 A Mineral 76 I've never heard of.

14 Q Heard of anything like it?

15 A Mineral 71.

16 Q Okay. Tell me what you know about Mineral 71.

17 MR. ALLEN: Just for the record, for clarification on
18 form. Is your question today what he knows about it? I'm
19 objecting to it, all encompassing unless we have some time
20 limit. If it's just what he knows today, I don't have any
21 objection.

22 Q (By Mr. Kittle) Sure, tell me what you know about it
23 today?

24 A It was a partnership formed by Stevenson, Bishop and
25 McCready to process heap, h-e-a-p, ore. One of the projects

1 was the composit heap that we're working on in Tombstone.

2 Q That was a limited partnership, was it?

3 A To my knowledge.

4 Q What was your involvement with Mineral 71?

5 A None.

6 Q How did you come to know anything about it?

7 A I'd heard about it at -- previous to that time I con-
8 sidered doing Heap Leaching, and I'd heard about the 71
9 Minerals Project.

10 Q Now, I'm assuming that 71 perhaps relates to the year
11 1971. Is that a --

12 A I presume it does.

13 Q Prior to 1971, you'd given some consideration to becom-
14 ing involved in a Heap Leaching Project?

15 A Yes.

16 Q What were the aspects about a Heap Leaching Project,
17 that interested you?

18 A Economical way of processing ore.

19 Q What kinds of ores in particular were you interested
20 in at that time?

21 A Silver and Gold, or anything that could be processed
22 by the Heap Leaching Method.

23 Q As far as you know, did Mineral 71 engage in some heap
24 leaching activities?

25 A Yes.

1 Q And some of those were in the Tombstone area?

2 A Yes.

3 Q Do you know any of the limited partners of that part-
4 nership?

5 A I don't think so, no.

6 Q What kind of results did Mineral 71 get in their leach-
7 ing efforts?

8 A I don't have access to that information. They did a
9 number of different projects, and the word is that they lost
10 a lot of money. The general partners were on the hook for
11 three million dollars.

12 Q Was Dick Hewlett involved in any way with that project?

13 A I think he was.

14 Q When was the first time that you ever visited Tombstone,
15 Arizona?

16 A When Mr., when Jim Briscoe suggested that I come out.

17 Q When was that?

18 A I think it was around April of '70. Is that right?

19 Yeah.

20 Q Prior to that time, you never had occasion to visit
21 Tombstone?

22 A I don't think so.

23 Q Had you --

24 A In fact, no, I don't, I was never there.

25 Q When was the first time that you ever visited Arizona?

1 A When I was evaluating the Cordera Mine.

2 Q What year would that have been?

3 A Sixty-nine.

4 Q Now, I think you indicated that the Cordera Mine was
5 located in some state other than Arizona?

6 A Right.

7 Q How did your evaluation efforts bring you to Arizona?

8 A If I remember correctly, I think Hewlett had offices
9 here.

10 Q Would that be in Tucson?

11 A Yeah.

12 Q What do you do when you go about evaluating a project
13 like the Cordera Project?

14 MR. ALLEN: You're asking him personally, is that right?

15 MR. KITTLE: Yes.

16 MR. ALLEN: What he did?

17 A You read the material, you evaluate it, and you try and
18 get expert help.

19 Q (By Mr. Kittle) What kind of material were you review-
20 ing in that particular case?

21 A A lot of written material. Went to the Bureau of Mines,
22 asked their advice. I went to people who were knowledgeable
23 in the industry, asked their advice. And as I found out
24 later, all the advice they gave me was incorrect, and not
25 valid.

1 Q Can you give me examples of the --

2 A Bureau of Mines was wrong, the advice I got from the
3 industry was wrong.

4 Q Can you give me examples of the kinds of written material
5 that you examined?

6 A Descriptions of the property, description of the method-
7 ology to be used.

8 Q And in that particular case, what kind of methodology
9 were to be used?

10 A Some electrolytic process developed by the Bureau of
11 Mines.

12 Q I think you indicated that you were an investor in
13 that project. How much money did you invest in the Cordera
14 Project?

15 A Around \$50,000.

16 Q What kind of economic returns, if any, did you get from
17 that particular investment?

18 A Bascially very small, and then there's some money com-
19 ing in now.

20 Q By small, can you give me a rough idea of what you're
21 talking about, five, \$10,000?

22 A I don't remember.

23 Q Would it have been any larger than \$10,000?

24 A I don't remember. They were closed down for a long
25 time, because of the price of mercury had dropped, and,

1 therefore, they didn't sell any.

2 Q What kind of benefits do you get from it currently?

3 A Mercury prices are up, and they're selling, and we're
4 getting some money out of it after ten years. I've not been
5 back there in six, seven years. Long time.

6 Q Were there some tax benefits that you received from that
7 investment participation?

8 A Yes.

9 Q Could you give me an example of the kinds of tax bene-
10 fits that were involved?

11 A Some write-off was gained. I don't remember how.

12 Q Is that by way of depletion allowance, or depreciation?

13 A No.

14 Q Or interest write-offs?

15 A No.

16 Q None of those?

17 A No, I don't know what the depletion allowance is on
18 mercury. I was mainly interested in exploratory costs, I
19 guess. I don't remember. It's not an area that I would get
20 involved in in that type of project. That's up to the accoun-
21 tants to determine what the write-offs are.

22 Q Would you characterize your investment in the Cordera
23 Project as a satisfactory investment?

24 A I'm a passive investor, and after ten years, I would
25 say it did not work out very well.

1 Q Give me a little background, if you will, on how you
2 came to be involved with the Tombstone Heap Leach Project,
3 which is now in operation?

4 A Jim Briscoe called Dwight Lee, and said that he had a
5 project which was a Heap Leaching Project in Tombstone,
6 Arizona, where Dick Hewlett had developed a new technology
7 for processing that ore.

8 Q So that I can follow your reply here, can you tell me
9 who's Dwight Lee?

10 A My former partner.

11 Q And how long were you and Dwight Lee partners?

12 A About nine years.

13 Q To the best of your recollection, when did that part-
14 nership association begin?

15 A Sixty-nine, '70.

16 Q And approximately when did it end?

17 A This year.

18 Q What would be a general description of your partner-
19 ship activities with Dwight Lee?

20 A Activities I was involved in.

21 Q And what kind of activities were those?

22 A What I previously described.

23 Q These are investing your funds together with money
24 managers?

25 A That's correct.

1 Q Did Dwight Lee have some of his own money --

2 A Yes.

3 Q -- invested in those projects?

4 A Yes, he did.

5 Q Did Dwight Lee have some of his money invested in the
6 Thombstone Heap Leach Project?

7 A Yes, he did.

8 Q Does he still have an interest in the Tombstone Heap
9 Leach Projects?

10 A Yes, he does.

11 Q Approximately when would that have been, to the best
12 of your knowledge, that Briscoe contacted Dwight Lee and
13 told him of this Heap Leach Project?

14 A Around March or April.

15 Q Of which year?

16 A Seventy-eight. (sic)

17 Q And you learned of this shortly thereafter by talking
18 to Dwight Lee, is that correct?

19 A That's correct.

20 Q Had you ever had any dealings with Jim Briscoe prior
21 to that time?

22 A Yes.

23 Q What kinds of dealings had you had with him?

24 A When he was working for the Cordera, involved in the
25 Cordera Project, he came, he started to work for Dick Hewlett,

1 Bruce Stevenson sometime, sometime during that time.

2 Q That would have been late '60's, early '70's?

3 A Yes.

4 Q Did you have any contact or dealings with Jim Briscoe
5 during the middle '70's, or after the Cordera Project?

6 A Yes.

7 Q Can you give me a rough description of what kind of
8 contact you did have with him?

9 A We talked to him about doing processing heap, doing
10 Heap Leaching processing at that time. We started to set up
11 a business to do that, found we could not get funding for
12 it, and we discontinued it. Jim went on his own, and organ-
13 ized Southwest, or Southwestern Exploration Company, which is
14 what he's currently doing.

15 Q And --

16 A During that time, up until recent time, had, as far as
17 I can remember no contact.

18 Q That contact with Briscoe, then, concerning the possi-
19 bility of Heap Leach Projects would have been in what year,
20 approximately?

21 A I'd say '70. Somewhere around, you know, I'm not sure
22 exactly, but around '70.

23 Q To the best of your knowledge, did Dwight Lee have any
24 contacts with Jim Briscoe professionally, or otherwise, sub-
25 sequent to that time, and prior to Jim's calling on the

1 Tombstone Heap Leach Project?

2 A He and Jim had considered another venture prior to
3 that, to this one.

4 Q Do you know what kind of a venture that might have been?

5 A A, some claims in, I think, the Silverbell area, I think,
6 had gone askew, and he was going to get a lawyer, I think
7 it was you, Mr. Kittle, to try and take over those claims.

8 Q And --

9 A Is my memory of it.

10 Q That would have been approximately what year, to the
11 best of your recollection?

12 A You were the lawyer. I'd ask you what year was it?

13 I presume at the end of the year of '77, or the begin-
14 ning of '78, somewhere around there.

15 Q Now, when you first learned of the Tombstone Heap Leach
16 Project, evidently by talking with Dwight Lee, what did you
17 understand was involved out there?

18 A An investment of \$25,000, which would start the project,
19 and there was a big question of whether there were any more
20 funds would be needed, because the project would be so suc-
21 cessful, they wouldn't need any more funds.

22 Q What did you understand the project was?

23 A A Heap Leaching of the, what we now call the composite
24 heap.

25 Q Now, the composite heap, is that a description of how

1 a heap can be formed, or is that a description of a location,
2 or --

3 A Description of a location.

4 Q Part of a designated mineral property, is that correct?

5 A That's correct.

6 Q What, after Dwight told you about this project, and the
7 possibility of becoming involved as investors, what happened
8 next that led to your eventual involvement in the project?

9 A I came out to Tucson, went through Jim Briscoe's office,
10 and spent part of a day going through his office, and then we
11 went down to Tombstone, and saw the composite heap down there.

12 Q What month, approximately, would that visit have been?

13 A Around April. It would have been March, because we
14 signed that letter in about April, so it would have to have
15 been in the previous month before that.

16 Q You've made reference to a letter. I presume that you're
17 referring to a letter agreement between you and Briscoe con-
18 cerning what you were going to do at the Tombstone Heap Leach
19 Project, is that right?

20 A I'm referring to the letter that you have right there.

21 Q The reason I asked is because this letter seems to be
22 dated March of '79, and I'd understood you to say earlier
23 that Dwight Lee was contacted in March of '78.

24 A I have the years mixed up.

25 Q So what we're talking about is something in --

1 A In '79.

2 Q -- the year of '79 ?

3 A Right. Whenever I was referring to '78, it should be
4 '79. It was a mistake.

5 Q So you made an inspection of the Heap Leach Projects
6 and that would have been, to the best of your recollection,
7 sometime in March of 1979?

8 A Correct.

9 Q Based on that inspection, did those properties seem to
10 be pretty close to the kind of properties you'd been seeking
11 for Heap Leach Projects?

12 A You'd have to clarify the question, because I wasn't
13 seeking projects. I wasn't seeking heap leaching.

14 Q Well, I'd understood you to say that even as far back
15 as 1976, you'd contacted Briscoe about trying to set up some
16 Heap Leach Project.

17 Did you have particular properties in mind at that
18 time?

19 A No, we had not.

20 Q Were you looking for properties that could be amenable
21 to the Heap Leach Process?

22 MR. ALLEN: Excuse me. Again I'm going to have to,
23 unless you get some time. You keep jumping from one to another.
24 Are you talking about is he looking at '70, or is he looking --

25 Q (By Mr. Kittle) Yeah, in '70, when you spoke with Jim

1 Briscoe.

2 A Yeah, we were. I don't remember which ones. Between
3 that time and '79, I was not looking at any properties, was
4 not doing anything in the mining industry.

5 Q Is it a fair statement that in 1979, when you heard
6 about this possibility from Dwight Lee, that you were inter-
7 ested in a possible involvement in the Heap Leach Project?

8 A The deal was described in a very attractive way, that
9 all you had to put in is \$25,000, and you'd make all this
10 amount of money, therefore, I was interested in the project.

11 Q Tom, referring to this letter of March 7 of '79, a
12 copy which I think has already been appended to Briscoe's
13 deposition --

14 MR. ALLEN: Yes.

15 MR. KITTLE: Which I think you have in your files, I'm
16 referring to Page 2 of Appendix 1, which contains the follow-
17 ing language, which I'm going to read verbatim.

18 A Could I see it? What page?

19 Q (By Mr. Kittle) I'm looking at Page 2 of Appendix 1.
20 That paragraph beginning Roman Numeral III, General Outline
21 of Operations. Where it states that, "It's anticipated that
22 the initial \$25,000 price --"

23 MR. ALLEN: Page 2 of Appendix 2?

24 MR. KITTLE: Appendix 1.

25 MR. ALLEN: No, you're under General Outline of Operations,

1 so that --

2 MR. KITTLE: Yes.

3 MR. ALLEN: -- Appendix 2, okay?

4 Q (By Mr. Kittle) Yes, Appendix 2.

5 "It's anticipated that the initial \$25,000 provided by
6 investors will be used to initiate and commence spray leach-
7 ing operations, and the resulting cash flow and any remaining
8 part of the \$25,000 would be used to lease a crusher to pro-
9 cess certain parts of the heap to verify the process, and to
10 determine what the cost will be based on the type of ore to
11 be processed. After these results have been obtained, and
12 analyzed, a decision will be made by the project management
13 committee or group to continue or terminate the program."

14 My question is this: from the language quoted, it
15 would appear that perhaps the \$25,000 was intended to commence
16 the spray leaching operation to determine whether it was
17 feasible to invest additional money, and you've indicated
18 to me that your understanding was that \$25,000 is about all
19 that was, be needed, and it would carry itself.

20 A No. That's not true. You asked me how it was presented
21 to me on the phone, and I answered that all we would need
22 was around \$25,000 to get it started. That's how, that was
23 the correct answer.

24 Q Okay. Where did you get the impression that \$25,000
25 would carry the project, and that no additional funds would

1 be required?

2 A From Jim Briscoe.

3 Q And in what form was that --

4 A Verbal.

5 Q -- impression conveyed to you?

6 A Verbal.

7 Q Was that a --

8 MR. ALLEN: Let him finish his questions.

9 Q (By Mr. Kittle) Was that a personal meeting with Jim
10 Briscoe?

11 A No.

12 Q Was it a telephone conversation?

13 A Yes.

14 Q It would seem, from the wording contained in this
15 Appendix 2, that subsequent to the telephone conversation with
16 Jim Briscoe, that you referred to that, there was some modi-
17 fication of that understanding.

18 How did that modification take place?

19 MR. ALLEN: Excuse me. I'm going to object to the
20 form of the question, since it's based on Mr. Kittle's inter-
21 pretation of what that contract says, and the form is completely
22 improper. And foundation as to whether or not there was
23 any modification has not been established. If you can answer
24 it, fine, but I want my objection on the record.

25 Q (By Mr. Kittle) Okay. My question simply is this: A

1 reading of this quoted language would seem to suggest that the
2 \$25,000 was intended to determine whether the investment of
3 additional monies would be warranted. That interpretation is
4 at variance with the impression that you had from talking with
5 Jim Briscoe, as you've indicated.

6 My question is simply this: That if indeed the two
7 are in variance, and if this letter was prepared by you, as I
8 think it was, how did it change, or the modification of that
9 expectation come about?

10 MR. ALLEN: Same objection that I've registered before,
11 If you can answer, go ahead.

12 A Jim had described the investment in terms that it was
13 being so safe that he was going to mortgage his home and
14 put up all the funds, and that he may not need any investors.
15 upon re-evaluation, and talking with his partner, Dick Hewlett,
16 in this project, I think Dick impressed upon him that you
17 should have more money available to you.

18 Q (By Mr. Kittle) Okay. Now, here's the point that I'm
19 trying to clarify, and perhaps a better way to try to clarify
20 it is to ask you how you interpret the language that I quoted
21 from that Paragraph 2.

22 MR. ALLEN: The what? Then?

23 Q (By Mr. Kittle) Well, let's say how do you interpret
24 it today as you read that language before you?

25 A I interpret it that for \$25,000 you can initiate and

1 commence a spray leaching operation, which will result in a
2 cash flow with part of that money left over, which will be
3 used to lease a crusher, which will then determine the cost
4 for processing the ore.

5 Q Is it a fair interpretation to say that the next sentence
6 suggests that those putting funds into the project may then
7 evaluate the results and determine whether to continue or
8 terminate the program?

9 A That's a fair interpretation.

10 Q Tell me a little bit more, to the best of your recol-
11 lection, how this letter of March 7, 1979, came to be written,
12 and sent to Jim Briscoe for signature?

13 A This was a letter of intent in which Jim Briscoe and I
14 were involved in the writing of that, of which a contract
15 was to follow.

16 Q Now, you say Jim Briscoe was involved. Would you
17 please describe his involvement with the writing of this
18 letter?

19 A He supplied his ideas on how he wanted certain para-
20 graphs to be written.

21 Q Is it fair to say that when the words were put on paper,
22 you put them on paper in your office, and sent them to him
23 for his review, and approval?

24 A It went back and forth. He put some of his words on
25 paper. This exhibit was an exhibit that he wrote, not that

1 I wrote.

2 Q Are you saying --

3 MR. ALLEN: You mean Appendix 2, is that what you're
4 referring to?

5 A Yes.

6 Q (By Mr. Kittle) All right. Could you identify, please,
7 what portions of the March 7, 1979 document are things that,
8 to the best of your recollection, Jim Briscoe wrote, and what
9 are portions that you wrote?

10 A It's been a year and a half, and we both wrote it, we
11 both signed it. We both approved of its language. It was
12 written by a lawyer, Leo Smith.

13 Q I see. That was a lawyer you had retained to assist
14 you with this project, is that correct?

15 A We -- I'd retained him to write the contract for both
16 of us. He had this contract reviewed by his lawyer. I think
17 his lawyer was Mr. Kittle, if I remember. Were you the lawyer
18 at that time?

19 Q This letter, then, was something that the formulation
20 of this language was guided in part by a lawyer named Leo
21 Smith here in Tucson, who you'd asked to assist you?

22 A That's right. And Mr. Brisco had a lawyer who reviewed
23 it for him.

24 Q The document bears the date March 7 of '79. As far as
25 you know, is this pretty close to the time when it was actually

1 signed by you and Jim Briscoe?

2 A As far as I remember.

3 Q I notice, referring to the opening paragraph of that
4 letter, and I believe you have a copy before you, that the
5 letter contemplates that the parties will enter into a formal
6 agreement incorporating the provisions for operation of the
7 exploration and development program, incorporating the terms
8 of this letter agreement, and such other provisions as are
9 customarily desirable in such agreement.

10 Was any such formal agreement ever entered into between
11 you and Briscoe?

12 A Clarification. There was no signed agreement other than
13 this letter.

14 Q And why was that?

15 A Having to do with what was going on with the project,
16 and that no final document other than this letter was ever
17 written, signed.

18 Q Okay. I understand that no formal agreement was signed
19 but I still don't understand why. Can you go into that a
20 little bit more?

21 A As the project was progressing, I was becoming more
22 and more unhappy with how the various parties were conducting
23 themselves in the Tombstone Project, and, therefore, a final
24 document was not signed.

25 Q Was it your feeling at that time that a formal agreement

1 was not necessary?

2 A Which time?

3 Q Let's say immediately following the execution of this
4 March 7 agreement, which contemplated the subsequent forma-
5 tion of a formal agreement?

6 A No. On March 8, or soon thereafter, I was anticipating
7 drafting a working agreement.

8 Q At some time subsequent to that March 8, did you deter-
9 mine that a formal agreement was not necessary?

10 A It evolved. No specific decision was made until later,
11 but it evolved that I was very unhappy with the results
12 that were coming out of either Dick Hewlett or Jim Briscoe,
13 culminating in August and September of that year.

14 Q Was --

15 A The year being 1979.

16 Q I understand that you were unhappy with Dick Hewlett
17 and with Jim Briscoe, and unhappy with results.

18 Did you conclude, because of that dissatisfaction, that
19 a formal agreement would not be necessary?

20 A I did not know how to get the parties to agree to any-
21 thing, and did not want, at a later time, all the funds that
22 I put in there to go down the drain, so I continued funding
23 it based upon the March 7 agreement.

24 Q Now, if you had gone forward with the original plans
25 to prepare a formal agreement, how would that have caused

1 some of your funds to go down the drain?

2 A Jim Briscoe and Southwestern Exploration Company were
3 running up very high bills, and they were not warranted, and
4 in order to get an agreement signed, probably something at
5 that time would have to have been done about it.

6 Q What do you mean by something would have to be done about
7 that?

8 A I don't know how we would get it resolved.

9 Q By using the term doing something about them, do you
10 mean paying them?

11 A That would be one way, or making an arrangement to pay.

12 Q Are you saying, then, that you did not make an effort
13 to enter into a formal agreement, because you determined that
14 you wouldn't be able to get Jim Briscoe to agree to it unless
15 the expenses of SEA were paid, and that you did not want to
16 pay them at that time?

17 MR. ALLEN: I'm going to object to the form of that
18 question as being multiple, and will instruct you not to
19 answer it until it's cleared up.

20 Q (By Mr. Kittle) Did you determine that you didn't want
21 to go forward with a formal agreement because you believed
22 that Jim Briscoe would not sign?

23 A I was unhappy with Briscoe's and Hewlett's performance,
24 and did not want to go further with them.

25 Q Are you saying that you wanted to change the arrangements

1 originally contemplated in your March 7 letter?

2 A No, I would have to live with what was in the March 7
3 letter.

4 Q One of the things that was in the March 7 letter indi-
5 cated that the parties would enter into a formal agreement.

6 Why, evidently, did you not want to live with that por-
7 tion of the March 7 agreement?

8 A I was very unhappy with their performance.

9 Q Was it your conclusion that that would justify you from
10 not entering into a formal agreement?

11 A I didn't enter into a formal agreement.

12 Q I understand that.

13 A Whether it justified it or not, I didn't.

14 Q Obviously, what I'm trying to get a little better
15 handle on is why you didn't, especially in retrospect, since
16 it seems like it would have gone a long way toward clarifying
17 many of the questions which now exist.

18 A Is that a question?

19 MR. ALLEN: I don't know. He's still asking you why
20 you didn't enter into it, and I just object. It's been asked
21 and answered. If you want to answer, go ahead.

22 A I think I answered why.

23 Q (By Mr. Kittle) You've given me responses and described
24 that you're unhappy with Briscoe.

25 Can you tell me why you did not want to enter into a

1 formal agreement?

2 A What time? When?

3 Q Let's say at any time subsequent to March 7, 1979?

4 A Well, I was unhappy with his performance. He was
5 supposed to supervise the project. He was supposed to give
6 his expertise as well as Southwest Explorations expertise in
7 running that project, and that was not forthcoming. I was
8 to be a passive investor, and he was to manage this project.

9 Q Might that have been a reason for entering into a for-
10 mal agreement which modified some of the terms of the March
11 7 letter understanding?

12 A Might have.

13 Q Didn't you have a draft formal agreement prepared at
14 one time by Leo Smith?

15 A Yes.

16 Q What, why was that draft agreement not executed?

17 A For the reasons I have been giving. We attempted to
18 get, Leo and I started to work on an agreement. It was never
19 finished.

20 Q How were, where was the money to come from to pay Leo
21 Smith for that work?

22 A Which work?

23 Q The work expended in connection with preparing the
24 draft of a formal agreement?

25 A To the best of my knowledge, it was to come, I think,

1 from the company funds, to the best of my knowledge.

2 Q Was any portion of that expense to be contributed by
3 Jim Briscoe?

4 A It may have been legal bills were to be split.

5 Q How much was paid Leo Smith for that work?

6 A I don't remember.

7 Q What might be an approximation of the amount?

8 MR. ALLEN: Well, I'm going to instruct you, Tom, unless
9 it came out of the project fund, if you know whether it came
10 out of the project funds, you don't have to answer that as
11 to, or what you paid him, if it did not come from the project
12 funds, to your knowledge. You don't have to answer it. If
13 it came from project funds, being the project that you and
14 Briscoe were involved in, then answer it, if you know, but
15 if it didn't come from those funds, you don't have to answer
16 it, and I'll instruct you not to.

17 Q (By Mr. Kittle) Do you know where the payment came from?

18 A It came from funds that were invested in the project
19 paid to Leo Smith.

20 Q What was the approximate amount of the payment?

21 A I don't remember.

22 Q Approximately when would he have been paid?

23 A He was paid in part during the Year 1979.

24 Q Has he been paid in full for that work?

25 A Yes.

1 Q When was the balance paid to him, if only part was paid
2 in 1979?

3 A To the best of my knowledge, it may have all been paid
4 in '79.

5 Q Where's the draft agreement now that was prepared by
6 Leo Smith?

7 A Either my lawyer has it, or Leo has it, I guess.

8 Q Going back to the March 7, 1979 document, can you tell
9 me in your own words, what you believe you were expected to
10 do, according to that letter understanding?

11 A That we were to invest \$25,000 or greater amounts as
12 described on Page 3. There was a lot of discussion of whether
13 that they would not need the entire \$200,000 called for on
14 Paragraph 6, because the cash flow would start coming in so
15 fast that they wouldn't need any more money, that if they
16 needed -- they felt they would only need anywhere from 25 to
17 \$50,000, that they would not need anything else, and that all
18 I would have to do is put the money in, and worry about what
19 I was going to do with all the cash that was coming out.

20 Q What about the formation of an operating entity?

21 I see reference in the agreement that it was contemplated
22 that the parties would form an operating entity.

23 What did you understand your involvement would be in
24 that operating entity?

25 A As an investor.

1 Q As an investor, what would you do in the operating
2 entity?

3 A Invest funds.

4 Q You did not envision that your participation in the
5 operating entity would be anything more than the investment
6 of funds?

7 A That's correct. I would be investing funds in this
8 project, and that they did not envision that they would need
9 \$200,000, and that Jim Briscoe and his organization, and Dick
10 Hewlett, who was a part of that organization, would be, would
11 be able to handle the project.

12 Q Tom, going back to Page 2 of Appendix 2 of this March
13 7, '79 agreement, I see reference in that Paragraph 3 to a
14 project management committee.

15 What was your understanding of what that committee
16 would be?

17 A That was a committee to be formed, made up of myself,
18 Jim Briscoe, I think Dwight Lee, and maybe Dick Hewlett.

19 Q So at least in part, it was contemplated, at the time
20 the March 7, '79 letter was signed, that you would have some
21 management participation via the project management committee?

22 A When I'm investing funds in a project of this nature,
23 and having to make an evaluation every time you put in money,
24 I would have some say of when I would have to put in that
25 money, and the project would not go in a direction which I

1 did not approve.

2 Q Tell me, if you will, please, in your own words, what
3 was your understanding that Jim Briscoe and any companies
4 he might be involved with, were supposed to do pursuant to this
5 March 7, '79 letter?

6 A He formed Austin Company, which was 49 percent owned
7 by Dick Hewlett, and 51 percent owned by Jim Briscoe, that
8 Dick Hewlett was the vice president of Hydromet, that Dick
9 Hewlett would be down in Tombstone running the project, and
10 Southwestern Exploration Company, hereafter referred to as SEA,
11 would manage the project.

12 Q Now, is that an understanding that you get from this
13 March 7 agreement?

14 A I got it from verbal conversations from Jim, and Dick,
15 and everybody else. Whether it's in the legal agreement.

16 Q How was SEA to be compensated?

17 A Out of the earnings of the company.

18 Q Where's the method of compensation set out for SEA?

19 A I suppose Appendix 1.

20 Q In your answer, you indicated that it was your under-
21 standing that SEA was to be compensated from the earnings of
22 the company, which would seem to imply that if there were no
23 earnings, SEA was not to be paid. This is an unusual arrange-
24 ment to be made, and I'm wondering if there's some special
25 provision that indicates that SEA was to be paid only if

1 there were earnings?

2 A The project was described to me that we would not be
3 able to invest \$200,000, and that the earnings would be com-
4 ing in so fast that it wouldn't be a problem.

5 Q Was SEA, in fact, paid for the work they did on the
6 project to manage it?

7 A In part.

8 Q About how much was paid to them, to the best of your
9 recollection?

10 A They've taken some funds out. I'm not sure of the
11 exact amount.

12 Q To the best of your recollection, what was the total
13 amount that SEA claimed that should be paid to it?

14 A To the best of my knowledge, around \$50,000.

15 Q And if only part was paid to them, why was not the
16 remainder also paid?

17 A It's the subject of this litigation.

18 Q That's one of the reasons why I would like to better
19 understand your perspective for why those funds were not paid.

20 A The work that they performed was performed in an inade-
21 quate manner, did not result in the project making any money,
22 did not result in anything of value. In fact, was a way for
23 Southwest, SEA, to siphon off funds from the project.

24 Q Is it fair to say that because SEA did not produce the
25 results you thought should be achieved, you determined that

1 they should not be paid?

2 MR. ALLEN: I think you're asking for a legal conclusion,
3 Jay, that's a part of this lawsuit, and I'm going -- if you
4 want to ask his personal feelings, I don't have any objection
5 to that. But that's what we're here for is to determine
6 whether or not those funds were earned, and you're asking for
7 him to do what the judge and jury are going to have to do in
8 this case. But if you have personal --

9 MR. KITTLE: I don't think I'm asking for any kind of
10 legal conclusion. I'm trying to better establish the criteria
11 that you used, Tom, in determining whether or not SEA should
12 be paid, and we've established that they were paid only in
13 part, and I'm trying to get a better understanding of why
14 it was determined that they should not be paid in full.

15 A I think I gave some of the reasons in my previous answer

16 Q (By Mr. Kittle) All right. And in attempting to sum-
17 marize what I understand those reasons to be, I've asked, and
18 would ask again, if you think it's a fair statement.

19 Is it a fair summary of your response to say that because
20 SEA did not achieve the results you thought should be achieved
21 that a determination was made that SEA should not be paid in
22 full?

23 A I'd have to answer that your conclusion is wrong. There
24 were a lot of other factors that I felt that they committed
25 fraud, they induced me to get into this project, they gave

1 me information while I was funding the project that was
2 erroneous, misleading, fraudulent, and so forth. That's why
3 they, that bill has not been paid.

4 Q Well, let's go into that a little more so that I can
5 better understand what were the factors which you weighed
6 in making that decision.

7 You've alluded to misinformation. Can you give me some
8 examples of what you believe to be misinformation provided
9 you by Jim Briscoe?

10 A The process that they had anticipated using to process
11 the ore would not work.

12 Q What was that process?

13 A It's a general term called induce percolation. Its
14 chemistry I can't tell you. I'm not a chemist, and I can't
15 describe the chemistry.

16 Q How do you distinguish between a business determination
17 that a proposed activity will be successful, and it isn't,
18 from a situation where somebody fraudulently induces somebody
19 to do something which they know won't work?

20 MR. ALLEN: If you understand it, go ahead and answer
21 it.

22 A Clarify the question.

23 Q (By Mr. Kittle) Fine.

24 You've indicated that Jim Briscoe provided you with
25 misinformation which was fraudulent. It seems like one

1 possible interpretation of what you've described is a belief
2 by all parties concerned that a process would work, based on
3 certain judgmental factors, and contrasting that with a state-
4 ment to you by Briscoe, for example, that something would
5 work, when he knew, in fact, it wouldn't.

6 How do you know what you've said Briscoe was telling you
7 was something he didn't think would work anyway?

8 A Present knowledge, or then? What time frame?

9 MR. ALLEN: Present knowledge.

10 A Present knowledge?

11 Q (By Mr. Kittle) Yes.

12 A He knew at the beginning that this would not work, or
13 he should have done the due diligence to know that it would
14 not work, or he should have called people that he knew, and
15 he would have determined that it would not have worked, such
16 as if he'd called the head of the Leaching Department at the
17 University of Arizona -- what's his name -- David Robb, who
18 was his former teacher, if he'd called the Bureau of Mines,
19 Mr. Lindstrom; if he'd gone down there with a shovel that
20 he carries in the back of his truck, and a bucket, and picked
21 up rock off of the heap, taken it to any independent lab,
22 they would have shown that it would not work.

23 Q Now, earlier, you indicated to me that you came out here
24 to Arizona and went to Tombstone to make your own evaluation.

25 I presume that those areas of inquiry were equally

1 available to you. Is that a fair statement?

2 A That's incorrect.

3 Q In what respect is that correct?

4 A I did not know David Robb at that point. I did not
5 have the association with any of the people that I mentioned
6 where I can call up and say, "Will this work, or will this not
7 work." I had to rely on Jim Briscoe, and Southwest, SEA to
8 make that determination, because they were knowledgeable in
9 the industry, had the contacts, and had the ability to call
10 these people and ask.

11 Q Now, you indicated earlier that when you were consider-
12 ing an investment in the Cordera Project, that you made inde-
13 pendent inquiries, contacting some of the same kinds of people
14 you suggest Jim Briscoe could have contacted. How was the
15 proposed involvement in the Tombstone Project any different
16 from your proposed involvement in the Cordera Project?

17 MR. ALLEN: Excuse me. I'm going to object to the form
18 of the question as it misstates his testimony where he stated
19 that he reviewed documents, and hired consultants to deter-
20 mine these things. Go ahead if you can answer.

21 A Okay, ask the question again.

22 MR. ALLEN: Do you want to read it back to him?

23 (Pending question read by the Reporter.)

24 A The methodology that I used nine, ten years previous
25 to that time didn't work, and one of the reasons I felt it

1 did not work, is because I didn't have a personal knowledge
2 or personal relationship with these people, and they were
3 not as willing as somebody in the field to give complete infor-
4 mation as they would be to somebody who's a professional in
5 the field. And Jim Briscoe held himself out to representing
6 very large companies, he had over 40 or 50 people in his
7 company, and that he should be able to call these people and
8 get the information. I asked him to call other people and
9 check it around, and check the metallurgy as well as some of
10 the other things. To my knowledge, he either did it and
11 didn't tell me what were the results of that, or whatever.

12 Q Is it correct that this induced percolation system is
13 not a system that's widely used in the mining industry?

14 A That's correct.

15 Q Isn't it correct that back in March of '79, that use
16 of this system was controversial?

17 A Well, to the extent that it didn't work, it was certainly
18 controversial. If it worked, it wouldn't be controversial.

19 Q Isn't it correct that back in 1979, there were varying
20 opinions among informed professionals about whether this sys-
21 tem was worth using or not?

22 A Not to my knowledge, in the beginning of '79.

23 Q If this was a system that was sure to bring favorable
24 results, why wasn't it in widespread use?

25 A I don't know.

1 Q Going back to --

2 A Can we get something to drink?

3 Q Sure can. Would you like to take a break?

4 MR. KITTLE: Why don't we take a five-minute breather?

5 (Recess.)

6 Q (By Mr. Kittle) Let's go back on the record.

7 Tom, as I understand it, you and your associates are
8 part of this Tombstone Heap Leach as a corporation called
9 Tombstone Exploration, Inc., is that correct?

10 A Tombstone Exporation is a corporation.

11 Q I notice that Tombstone Exploration is the Plaintiff in
12 this case. Can you tell me what's the involvement of Tombstone
13 Exploration, Inc., in this matter?

14 A They're a corporation which is receiving funds as invest-
15 ing in the property that's owned by, and leased to us by TDC,
16 Tombstone Development Company, hereafter referred to as TDC.

17 Q Are you also involved in this project personally?

18 A No.

19 Q Who are the shareholders of Tombstone Exploration, Inc.?

20 A Myself, Dwight Lee, John Dean, D-e-a-n, and Judith
21 Mishkin, M-i-s-h-k-i-n.

22 Q What's the approximate percentage ownership that you
23 have in TEI?

24 A Seventy-nine percent.

25 Q What's the approximate percentage ownership that Dwight

1 Lee has?

2 A Ten.

3 Q And the approximate percentage ownership that John
4 Dean has?

5 A Three.

6 Q And the remaining shareholder, her approximate percen-
7 tage ownership?

8 A Eight.

9 Q And those are all the shareholders, is that correct?

10 A That's correct.

11 Q Who are the officers in this corporation?

12 A I'm an officer. I'm president, chairman of the board,
13 and my wife is vice president.

14 Q Are there any other officers of the corporation?

15 A No.

16 Q Who are the directors of the corporation?

17 A My wife and myself.

18 Q In what year was the company incorporated?

19 A Seventy-nine.

20 Q In what state was it incorporated?

21 A Delaware.

22 Q And I assume that it's qualified to do business in the
23 State of Arizona?

24 A Yes.

25 Q Is it qualified to do business in any state other than

1 Delaware and Arizona?

2 A Not to my knowledge.

3 Q What are the activities of the corporation?

4 A Running the activities of the leased properties of TDC.

5 Q And that's essentially the Tombstone Heap Leach Project?

6 A That's correct.

7 Q Is TEI involved in any other activities besides the
8 Tombstone Heap Leach Project?

9 A No.

10 Q What's the approximate capitalization of TEI?

11 A Clarification.

12 Q Okay, let's focus on funds invested by shareholders.

13 A Clarification. There's been approximately over a
14 million, two invested and/or guaranteed by shareholders.

15 Q Let's focus simply on the amount invested as distin-
16 guished from any guarantees.

17 A That's just an accounting methodology.

18 Q Let me look at it from the point of view of the cor-
19 poration's books.

20 How much cash has been received by the corporation
21 from shareholders for the purchase of stock?

22 A Approximately \$100,000.

23 Q How much cash has been received by the corporation from
24 shareholders as debt?

25 A A million, one, plus the \$100,000, totalling approximately

1 a million, two.

2 Q Has debt capital been received by the corporation from
3 any sources other than shareholders of the corporation?

4 A Yes.

5 Q What are those other sources?

6 A For equipment purchases.

7 Q That would be credit extended by the vendor of a piece
8 of equipment?

9 A Correct.

10 Q In rough terms, what would be the approximate amount of
11 credit expended by vendors to assist the corporation in pur-
12 chasing equipment?

13 A To the best of my knowledge, around \$600,000.

14 Q Can you give me a general description of the kind of
15 equipment that's involved?

16 A Currently? Time period.

17 Q Well, evidently there's only one year time period.
18 Why don't we take it, say from March of '79, up through the
19 present.

20 A I think you have to be more specific.

21 Q Well, let's start, then, presently.

22 A Presently we have a small front end loader, a large
23 front end loader, a 50-ton truck, a dozer, a scraper, one
24 500-ton plant on lease, and one 100-ton plant on lease.

25 Q What kind of crusher do you use?

1 A We have a 1942 something crusher. I can't think of the
2 name of it.

3 Q Is that piece of equipment something that was purchased
4 outright, or is vendor credit involved in that?

5 A Purchased outright.

6 Q Is any of the major equipment used in operation of the
7 Tombstone Project leased equipment?

8 A Definition of leased?

9 Q Let's define it as not owned outright by the corporation,
10 not being purchased by the corporation, and not intended to
11 be purchased by the corporation.

12 A Yes. The one 100-ton plant.

13 Q And who's the lessor of that plant?

14 A Bailey Escapule.

15 Q Just for clarification, so that I'm sure I know what
16 you're talking about, would you describe for me, please, what
17 you mean when you talk about a 100-ton plant?

18 A It's a Merryil, M-e-r-r-y-i-l, I think, Crow, C-r-o-w,
19 Cynazation Processing Plant, C-y-n-a-z-a-t-i-o-n, I believe.

20 Q Can you take me slowly through the process of what a
21 Cynazation Plant does?

22 A It's divided into three parts. The first part is a
23 clarification filter, which clarifies the solution. Then the
24 air is taken out through a dehydration, I'm sorry, de-airization
25 chamber. Zinc is then added, and then it passes through

1 another set of filters where diamateous earth and zinc, and
2 the precious metals are all filtered out, and the resulting
3 fluid, which at that time is called barren, is sprayed back
4 up on the heap.

5 Q And tell me, if you will, how the solution is prepared
6 which enters the Cynazation Plant?

7 A You mix cyanide in it.

8 Q I'm thinking about the stuff that you're processing.
9 Where does it come from?

10 MR. ALLEN: Pregnant solution.

11 A The ore?

12 Q (By Mr. Kittle) Yes, the mineral-bearing substance that
13 you hope to recover minerals from?

14 A Your spraying solution up onto the rocks which have ore,
15 or have precious metals in them, goes down through the rocks,
16 out of the rocks, onto a liner, liner into the plant, where
17 it goes through the process, and as barren solution goes back
18 up the closed circuit.

19 Q What's the liner?

20 A Can be either made up of plastic or sand.

21 Q Is it just a method of conducting that fluid to the
22 Cynazation Plant?

23 A Yes, it's a method, yes.

24 Q You've indicated that you have a crusher as part of the
25 plant equipment. How's the crusher used?

1 A For crushing rock.

2 Q Is that something that you do before fluid is sprayed
3 onto a pile of stuff?

4 A Not necessarily. When Dick Hewlett was doing it, he did
5 not crush any of it. When Jim Briscoe wanted it crushed, and
6 talks about crushing in this proposal, the cost of crushing
7 was tremendous. Crushing does, we feel, upon analysis, add
8 to the values if you can get the cost down. We owned a
9 crusher. Our costs of running that crusher were excessive.
10 We no longer crush our own rock.

11 Q How do you use the crusher which you own?

12 A We don't.

13 Q It's owned, but it's not presently being used?

14 A That's correct.

15 Q Tell me how crushed material is used in the mineral
16 recovery process which you now operate?

17 A Crush the ore.

18 Q Do you take material from a heap, crush it, and return
19 it to the heap, or what are the mechanics of crushing material?

20 A One, we're not crushing ore from the heap, because there
21 may not be enough values in the heap in comparison to the
22 cost of processing it, one.

23 Two, you take the ore, you crush it, and you put it on
24 a pad, and the pad is made up of sand with a, sometimes a
25 liner is put down, a plastic liner and more sand on top of it,

1 and the crushed ore is placed on top of that.

2 Q If you don't use your crusher for the crushing process,
3 where do you get ore crushed?

4 A Contract crusher.

5 Q Presently, who's the contract crusher that you use?

6 A Maddox and Son.

7 Q Where are they located?

8 A Bisbee, I think.

9 Q When did you first begin using their services?

10 A Yesterday.

11 Q If you don't crush material from the heap, I presume
12 you crush other material. Where does the other material come
13 from?

14 A The Contention Mine Site. Capital C.

15 Q For what period of time did you make use of the company's
16 crusher?

17 A About 60 days.

18 Q When was the company's crusher first acquired?

19 A Maybe 70 days ago, 80 days, you know, just before we
20 started using it.

21 Q What are reasons that the crusher was not acquired at
22 an earlier time?

23 A They're expensive. Tests have to be made by the testing
24 division to determine where the values are, and whether there
25 will be enough of a return after the cost of crushing, because

1 crushing means you've got to move the ore twice. Those tests
2 are called screen analysis, and before you buy a crusher,
3 you should do adequate screen analysis.

4 Q Did you use any contract crushing services prior to
5 employing this outfit out of Bisbee?

6 A No.

7 Q I notice from the letter agreement of March 7, again
8 looking at Page 2 of Appendix 2, that it seems to have been
9 contemplated that a portion of the initial \$25,000 would be
10 used to lease a crusher to process certain parts of the heap.

11 Looking back in time to 1979, what are reasons why a
12 crusher was not leased as originally contemplated in that
13 letter agreement?

14 A This --

15 MR. ALLEN: Just a minute. For the record, I've got
16 to object to the foundation, that you haven't established
17 that that was his contemplation; that's your interpretation
18 of the contract.

19 A This was Briscoe's, not Dick Hewlett's, this is
20 Briscoe's contemplation, one.

21 Briscoe got a quote from a contract crusher for a mini-
22 mum of six months crushing at \$5.61 per ton. There'd not
23 been enough analysis to determine whether we could afford
24 \$5.60, and the quantities that this man had to crush, we would
25 not have been able to process, and we did not have a process.

1 The induced percolation was the process they were using, would
2 not have worked, and it would have been a big disaster.

3 In contrast, we signed a contract for Maddox and Son
4 for a minimum of 10,000 tons at \$2.80. The man that Mr.
5 Briscoe talked to, I think it was a Mr. Gilbert, is a friend
6 of his. Mr. Maddox is a business acquaintance.

7 Q Okay. What you've described seems to relate to contract
8 crushing. I'm trying to get a better handle on how it was
9 decided that a crusher would not be leased, as described in
10 Paragraph 3 of Appendix 2 of the March 7, '79 agreement?

11 A As of the writing of this document, on that date that
12 was between Mr. Briscoe and Mr. Hewlett. And this was written
13 by Mr. Briscoe. And Dick Hewlett, who was running the opera-
14 tion down there, did not decide to pursue the crushing.

15 Q Well, you know, this is part of a letter agreement that's
16 signed both by you and by Jim Briscoe.

17 Are you saying that there were portions of that letter
18 agreement that you agreed with, and portions that you did not
19 agree with?

20 A When I signed this agreement, I did not know how much
21 -- when I signed this agreement on March 7, 1979, I did not
22 know how much a crusher would cost, I did not know what
23 analysis needed to be done to determine whether you could
24 afford a crusher. I did not know that a crusher of sufficient
25 size costs over a \$150,000. If I had, I probably would have,

1 I would have said that that was an unrealistic goal, but at
2 that time, I didn't know.

3 Q How much did it cost to lease a crusher?

4 A I don't know. I don't lease crushers.

5 Q Are you saying, then, that the decision not to lease
6 a crusher, when both you and Jim Briscoe were involved in the
7 project, was made by someone other than yourself?

8 A No, I'm saying with my knowledge today, it was very
9 unrealistic, and very poor methodology, without further studies
10 to say we're going to, within the first \$25,000 lease a crusher,
11 would have been a very poor business move with my present
12 knowledge today.

13 Q How can you make that determination, if you don't know
14 what it costs to lease a crusher?

15 A Because I don't know anybody who ever leases crushers.
16 I said it cost me \$2.80 per ton to have them crush. Briscoe
17 got a cost of over \$5.60 for six months' contract. That's
18 not leasing a crusher.

19 Q I appreciate that, and I'm just trying to get a better
20 idea of how a decision was made by someone at some time to
21 explore other alternatives than leasing a crusher as set out
22 in this agreement that the two of you signed?

23 MR. ALLEN: Excuse me. You can ask him anything you
24 want to. I'm thinking maybe you're a little confused if
25 you're trying to explore something --

1 Excuse me for interrupting you, but so maybe we can
2 save some time. You can't lease one. You got to contract
3 the people that run them, and stuff. In other words, you just
4 can't go out and lease that type of equipment, am I right?

5 A That's right.

6 MR. ALLEN: Either contract it, or you buy it, and run
7 it yourself. And maybe that, if that helps, if you're explor-
8 ing something else, go ahead.

9 MR. KITTLE: No, that's helpful, if that's the case.

10 Q (By Mr. Kittle) You said you didn't know anyone who
11 leased a crusher.

12 Do you now know for a fact that crushers simply are
13 not leased?

14 A You can form a lease to buy. It's the same thing as a
15 conditional sales contract. I think we're playing with words.

16 Q Well, I'm not playing with words. I'm trying to under-
17 stand better why what took place does not track more closely
18 the ideas reflected in this letter agreement.

19 To the best of your knowledge, were any inquiries made,
20 either by you or by Briscoe, at any time during 1979, to
21 explore a lease-purchase of a crusher?

22 A Yes. Jim Briscoe explored that, the cost for a, to
23 purchase under a lease-purchase arrangement, would result in
24 the cost of about a quarter of a million dollars. The cost,
25 as I pointed out earlier, to have a contract crusher come in,

1 the cost that Jim got from a friend of his, okay, was over
2 \$5.60 per ton. Those are the only two ways, I guess, that
3 you would enter into a crushing.

4 Q Did Jim Briscoe recommend that a crusher acquired in
5 some form be utilized at the Tombstone Heap Leach Project?

6 A What time? When?

7 Q At any time during his active involvement with the
8 project?

9 A Obviously on March 7, he did.

10 Q And you're saying that he recommended it because it's
11 your recollection that he --

12 A Formulated. He recommended on the first \$25,000 that
13 that be done, and I say that it was not good mining technique.

14 Q Can the induced percolation system be used on materials
15 which have not first been processed by a crusher?

16 A The induced percolation, as you were saying it, has not
17 been able to work in the lab, let alone out in the field.

18 Q Tell me in what respect the process you're now utilizing
19 in Tombstone differs from the induced percolation system?

20 A I'm not a metallurgist, and I'm not a chemist, I cannot
21 tell you the difference. All I can say is we're not using the
22 induced percolation. We're using Cynazation, which has been
23 around for 30, 40, 50 years. It was a , it was a similar
24 process that Minerals '71 used. They had a different form
25 of filtration. They used a filter press, and we're using

1 swimming pool filters. Other than that, it's quite similar.

2 That's why Hewlett and Briscoe did not recommend that
3 system at the beginning.

4 Q Are you using a pelletizer in the system today?

5 A We are.

6 Q Can you tell me how that works?

7 A Upon crushing the ore, we put it onto -- upon crushing
8 the ore, we add lime, so that as it's being crushed, the lime
9 is mixed in. We put water to keep the dust down, and to get
10 some moisture into the crushed rock in the crusher. We then
11 take it off of the crusher by conveyor belt and put it in what
12 we call a pelletizer.

13 The pelletizer is a conveyor belt that's running up hill
14 so that the ore and the water, which at that point has
15 cyanide in it, rolls on top of each other.

16 Q Then what happens to the pellets after they reach the
17 top of the conveying belt, and what happens to the fluid that
18 presumably have flowed to the bottom?

19 A It's only wetted to approximately five, ten percent, and
20 the rocks don't get up to the top, they roll back down and
21 they roll off to another conveyor belt, which goes out to
22 the pad.

23 Q And then at the pad, they're leached, is that correct?

24 A That's correct.

25 Q What benefits result from putting the material into the

1 pellets as you've described?

2 A This was a technique that was developed by ourselves,
3 and only in recent months.

4 I'm sorry, what was your question?

5 Q I'm trying to figure out what benefits you get from
6 using these little pellets?

7 A It coats the cyanide and the lime completely around
8 the rock so that you're exposure is greater, so that you get
9 percolation. If they'd done as suggested in this letter of
10 crushing ore without the pelletizer, it would have been a
11 disaster, because the solution will not go down through the
12 ore. It binds out. That's why they needed the barrel test-
13 ing, they needed to do a lot of testing before you even con-
14 sider putting in a crusher. I know that now. I did not know
15 that as of March 7, 1979.

16 Q Do you use cement in this pelletizing process?

17 A No.

18 Q As far as you know, can that increased permeability be
19 achieved by adding cement to crushed material?

20 A Cement is an alternative. It's too expensive in our
21 area.

22 Q I see. So it's not impossible to enhance the permeabi-
23 lity of material in an alternative form, but alternative forms,
24 you've determined, are too expensive?

25 A I don't understand your question, but you can use lime,

1 or you can use cement. Which one is better, nobody really
2 knows. Lime is very cheap.

3 Q My question is this: I think I understand you to say
4 that unless you're using pellets, the type of system, the
5 type of leaching system you're using just won't work very
6 well, did I understand that correctly?

7 A That's correct, yes.

8 Q I think probably my question is, putting costs aside,
9 isn't it true that if crushed material were mixed with cement,
10 but not in pellet form, that the leaching process would also
11 work effectively?

12 A I find it very interesting that you wish to put cost
13 aside, because that was one of the problems with the project.
14 They were not willing to consider the economics of their deci-
15 sions.

16 Cement, as far as I know, was not talked about, as
17 far as I can recall at that time. It only recently came out.
18 Cement is just another alternative.

19 Q Okay. I'm not trying to put it aside, I'm trying to
20 isolate it so that we can focus on particular parts of the
21 question. And I would ask, to be sure that I've understood
22 you correctly, that is it fair to say that, yes, it's possible
23 to use the system by adding cement to crushed material not
24 in pellet form? Is that a fair statement?

25 A I don't know. I don't know how you would add it. I --

1 and what form, how much. I don't know. You need a metallur-
2 gist to make that -- I don't know.

3 Q Fine, I'm just trying to --

4 A I don't know that it was ever considered. The Bureau
5 of Mines did a study using cement, and lime. You can use either
6 one. It came out recently, I think, that report.

7 Q How would you describe the processes that were recom-
8 mended when both Dick Hewlett and Briscoe were actively involved
9 in the project?

10 A They tried a number of different methodologies, which
11 I can't tell you the different chemicals. I'm not a chemist,
12 and I don't understand chemistry -- which we use the general
13 term induced percolation. As we found out later, none of
14 those worked in the laboratory, let alone out in the field
15 whether you were using crushed ore or mine run, which means
16 non-crushed ore.

17 Q And when you use the term they wouldn't work, do you mean
18 that under no circumstances will they produce valuable pre-
19 cipitants?

20 A You'd have to define exactly what chemical you're using,
21 because if they're going to use Agua Regia, which is used in
22 the laboratory, sure it will work, but I guess it's a toxic
23 chemical, and you can't use it out in the field.

24 If you wanted to say that was part of induced percola-
25 tion, yes, that would work in the lab, but you can't use it

1 out in the field, and you have to take each specific chemical,
2 and you'd have to say, well, you know, did it work? I can't
3 answer that. I don't know all the answers.

4 Q Well, I'm a bit confused, because on the one hand you
5 seem to have said that the techniques recommended by Hewlett
6 and Briscoe won't work.

7 A Correct.

8 Q Didn't you also say a few moments ago that you don't
9 know whether they'll work, because you're not a chemist?

10 A No, but -- that's correct, I did say that. I don't
11 know whether they'd work, but since then, since around at the
12 end of 1979, I began talking to metallurgists, the University,
13 and the Bureau, and they all said it will not work. Metallur-
14 gists have tried it in the lab, and they're not able to get
15 it to work.

16 Q Was either Briscoe or Hewlett suggesting that you use
17 Agua Regia?

18 A Agua Regia?

19 Q In the field operation?

20 A No.

21 Q What kind of concentrates or precipitates are you get-
22 ting out of the project currently?

23 A Clarification. What kind, what do they look like, or
24 what?

25 Q Well, let's first identify the minerals that you feel

1 have economic value, that are being recovered.

2 A Silver and gold, small amount of gold, less than three
3 percent.

4 Q And what do you do with those precipitates after you
5 recover them?

6 A We have an elaborate system for handling precipitates,
7 because at that point it has some value.

8 We have the filters on it, what's called the pregnant
9 side locked off, so that when they clarify those filters, it
10 goes through a pipe, across the ceiling and into a locked
11 room where only two people have a key to that room, and the
12 precipitants are stored in that room.

13 Q In what form are they stored?

14 A They're first stored in a wet form in another filter.
15 They're taken out, and then they're dried in an oven.

16 Q Who takes them out, and who dries them?

17 A John Swallow -- the two people have keys to that are
18 John Swallow and Dusty Escapul.

19 Q Can either of those two people be in that room by them-
20 selves?

21 A Yes.

22 Q After the material is dried, what's then done with it?

23 A It's packaged and sent by the -- what's the brown truck,
24 UPS? United Parcel Service.

25 Q In what form is it packaged in?

1 A A container, plastic container, and insured.

2 Q What's the size and the approximate weight of those
3 containers?

4 A Fifty pounds. Ten gallons.

5 MR. ALLEN: Five gallons?

6 A Five gallons. Is it five gallons?

7 Q (By Mr. Kittle) Is any one besides Swallow and Escapul
8 involved in putting the dry precipitate in those containers?

9 A One other man, yeah.

10 Q Who's that?

11 A Can't think of his name.

12 Q How long has he worked with the operation?

13 A Just about from the beginning.

14 Q Are any of those three people, who at that point in the
15 process, have access to the precipitate, are any of them
16 bonded?

17 A No one is bonded, because you cannot get bonding for
18 that sort of thing. We've tried. It's not available.

19 Q How do you go about delivering the containers to United
20 Parcel?

21 A They pick them up.

22 Q And that would usually be in a truck driven by one per-
23 son, is that correct?

24 A That's correct.

25 Q Where do the concentrates go from there?

1 A To the Post Office.

2 Q All right. So it's not UPS that transports them to
3 its ultimate destination, but --

4 A I don't know how UPS works. UPS takes it wherever they
5 take it.

6 Q What's the ultimate destination of those precipitates?

7 A Chrysaor, C-h-r-y-s-a-o-r, Laboratories.

8 Q And where are they located?

9 A Bay Shore, New York.

10 Q And what does Chrysaor Laboratories do with the pre-
11 cipitates?

12 A They smelt it and refine it, and then undertake the
13 ultimate sale of the commodity.

14 Q And what's the ultimate commodity?

15 A It's bullion. Bullion in silver and gold.

16 Q Presently, is all of the precipitate resulting from
17 the operations being converted into bullion?

18 A Right now we're not producing very much at all. Produc-
19 tion is way low, so they're moving their quarters from Bay
20 Shore to Tappan, New York, and relining the furnace so there's
21 some that's sitting right now.

22 Q When did this moving process begin, as far as you know?

23 A Beginning of this month.

24 Q Prior to the commencement of their move, were precipi-
25 tates being stored, rather than converted into bullion?

1 A They were kept in a locked room awaiting processing.

2 Q And for what period of time were they kept?

3 A Until Chrysaor could gear up to handle the precipitates.
4 That taking 60, 90 days.

5 Q Now, I'd understood that six or seven months ago some
6 precipitates were being stored somewhere. Is it correct that
7 some precipitates were being stored somewhere at that time?

8 A As I stated, they were stored at Chrysaor awaiting pro-
9 cessing.

10 Q That's what I'm trying to get at to determine whether
11 the precipitates I'd heard about, that were being stored,
12 were the same precipitates you've described being stored at
13 Chrysaor, and evidently they are from what you said.

14 A If I understand your question, yes, I guess.

15 Q Well, let me ask, were there any other places that dry
16 precipitates would be stored?

17 A No.

18 Q How do you know when Chrysaor tells you we've recovered
19 X ounces of mineral from the precipitate you sent, that they
20 are accurately reporting all of the mineral which was recovered?

21 A Tombstone Exploration, upon their drying the precipi-
22 tates, mixes them in a barrel, trying to get a homogenous
23 sample, takes a sample out, and does a fire assay. They take
24 another sample out, and they send it to an umpire assayer,
25 called Rochine, R-o-c-h-i-n-e.

1 Q Where's Rochine located?

2 A Douglas.

3 Q When did it --

4 A To the best of my knowledge, he's in Douglas.

5 Q When did the process of using umpire assay first begin?

6 A We have all of our precip., as far back as we can go,
7 umpire assayed. The process started -- I'd have to check.

8 I don't know. A long time ago. A while ago.

9 Q Is it correct that there was a period of time when pre-
10 cipitates were being shipped when umpire assays were not being
11 made?

12 A In the beginning, yes.

13 Q Who would then --

14 A But we were not processing them, and Chrysaor was not
15 processing them.

16 Q They were simply storing them?

17 A Yes.

18 Q Who, within your company, performs the mixing and initial
19 assay that you've described?

20 A A man who sends out the precipitates.

21 Q Which man is that?

22 A John T. Mann, John Swallow, or his man.

23 Q His man, would that be the third person you've described?

24 A Yes. I can't think of his name.

25 Q What are the qualifications of John Swallow to perform

1 assays?

2 A He doesn't perform assays.

3 Q Who then, within the company, does perform that initial
4 assay?

5 A Gary Lindros. He's done fire assays for the State of
6 Maine mine, for a couple other mines.

7 Q So there are four people within the operation, then,
8 that have access to the precipitate, there would be Escapul --

9 A More.

10 Q Are there more than four?

11 A No. He receives a sample, which he processes. He
12 doesn't have access to it.

13 Q All right. How does he receive that sample?

14 A In a bag.

15 Q And who gathers the sample and delivers it to him?

16 A John Swallow or his man.

17 Q Where does Lindros perform his assay work?

18 A On the property.

19 Q He's an employee of Tombstone Exploration, is that right?

20 A Yes.

21 Q What kind of insurance do you have on that precipitate
22 while it's being shipped to Chrysaor?

23 A Full insurance by UPS.

24 Q How did you determine the amount for which a shipment
25 should be insured?

1 A We have a fire assay, so we know approximately how
2 much it is, and we insure it for more than its value.

3 Q What use is made of the umpire assays?

4 A It's another check done by a third party.

5 Q Okay. And what kind of check is made, and by whom?

6 A It's another assay made by a third party.

7 Q That I understand.

8 Then presumably that assay is compared with something
9 else?

10 A Correct.

11 Q What's the umpire assay compared with?

12 A TEI's assay.

13 Q That would be the assay performed by Lindros?

14 A That's correct.

15 Q Who makes that comparison?

16 A I do. My comptroller does, and my administrative assis-
17 tant, or Dusty Escapul.

18 Q And what are your qualifications for evaluating assays?

19 A I'm very good at reading numbers.

20 Q In the period of time when umpire assays have been avail-
21 able, what range of differences have you noted between the
22 Lindros assay and the umpire assay?

23 A They've varied.

24 Q To what extent have they varied?

25 A Some cases, they have been on target, and some cases,

1 they have been high, and sometimes they have been low.

2 Q Is that to say sometimes the variance has been great,
3 and sometimes variance has been small?

4 A That's to say that sometimes been great, sometimes
5 been right on, and sometimes it's been way low.

6 Q Well --

7 A It's been all of it above.

8 Q Those are the same words you used before, and I didn't
9 quite know what that meant.

10 When you say that they're high, presumably they refers
11 to both the Lindros assay, and the umpire assay?

12 A They vary. You know, sometimes one can be high, and
13 the other one can be low. It's difficult to get fire assay
14 -- well fire assaying is an art, it's not a science, and it's
15 difficult to get them right on.

16 Q So sometimes they're at variance with one another?

17 A Sure.

18 Q Is there often an appreciable variance between the two?

19 A Sometimes there is.

20 Q What do you do when there's an appreciable variance?

21 A Try and correct it.

22 Q How do you correct?

23 A Go back and re-run, and see whether we can determine what
24 the error is.

25 Q Would that mean making an additional umpire assay?

1 A Or doing it again at TEI, or running an additional
2 assay at Rochine. Could mean either.

3 Q Does Rochine customarily perform an assay when the
4 precipitate arrives?

5 A We send them the sample, and he performs the assay.

6 Q That's a customary part of the work performed by -- oh,
7 Rochine is the umpire assayer?

8 A That's correct.

9 Q Okay. There's no additional assay made by Chrysaor --

10 A That's correct.

11 Q -- when the precipitate arrives there?

12 What would you estimate is the approximate value of
13 gold or silver bullion that has been produced either by
14 Chrysaor or someone else resulting from your involvement
15 there at the Tombstone Heap Leach Project?

16 A I can't give you the ounces, I can give you the value
17 is approximately \$200,000.

18 Q That would be helpful.

19 Now, those values, are they used to off-set operating
20 costs?

21 A Yes.

22 Q And how's the bullion marketed?

23 A The silver is sold to wholesalers, who sell it in the
24 retail market, based upon Chrysaor's stamp. The gold is
25 sold to a jewelry manufacturer. The silver we're currently

1 getting the fix, and on gold we're getting, it varies,
2 depending on the market, five, six, \$7 above the fix. It
3 varies on a daily basis.

4 Q Have you ever given consideration to selling these
5 minerals forward in the commodities market?

6 A Yes, I have.

7 Q And has any selling forward been accomplished?

8 A No.

9 Q What were the reasons why determination was made
10 against that?

11 A When?

12 Q Evidently if it was not done at some time, a decision
13 was made that it --

14 A I've looked at it extensively. It's very difficult
15 to do. It requires bank lines for what's called variation
16 margin. If the values of the precious metal goes up, you
17 have to put up funds, dollar for dollar that day, which
18 means you have to have bank lines. We, at this point, can't
19 afford it. When we can afford it, I think we'll probably
20 do it, because I know how to do it.

21 Q Let me see if I understand that.

22 It sounds like if the value of the mineral goes up,
23 the seller, you have said that the seller must put in addi-
24 tional money?

25 A That's right.

1 Q Why would that be? It would seem like what the seller
2 has already said he'll put up his mineral. Why wouldn't it
3 be the converse?

4 A Because many people are very ignorant about this. We
5 can't put up our mineral, because we're not COMAX. You have
6 to have a COMAX mineral to put up the mineral. And if that's
7 the case, that margin is not off-settable against the other,
8 according to the Federal Reserve.

9 Q All right. Now, what's COMAX?

10 A Commodity -- do you know -- it's Commodity -- it's
11 approved by the Commodity Exchange. I don't remember what
12 it stands for.

13 Q Are you saying that if the Tombstone Heap Leach Project
14 were a larger operation, that it might be feasible to par-
15 ticipate in COMAX, but presently, that it's not?

16 A If it had unused bank lines, it would be feasible at
17 certain times to sell forward your production. And it's
18 something I'd like to do. But in its present financial
19 condition, we can't afford it.

20 Q I see. You're saying that the feasibility of this kind
21 of marketing approach is contingent upon the availability
22 of bank lines of credit which are not already committed?

23 A That's right. It's difficult to do. It's not as
24 easy as it seems.

25 Q Going back to the assays for a minute, something that

1 I would like to get a clarification on.

2 Within the company, you use a fire assay technique.

3 Is that same type of technique used by the umpire assayer?

4 A Correct. We also use atomic absorption. We use it
5 out in Tucson, and we also use it out in Chrysaor.

6 Q Is that also used, is the atomic absorption method
7 also used by the umpire assayer?

8 A No.

9 Q What is the purpose of using atomic absorption assay
10 method?

11 A It's another methodology for arriving at the same
12 question or the same answer.

13 Q So that gives you additional data that you can compare
14 against the results that are coming back from, say the umpire
15 assayer?

16 MR. ALLEN: How much longer do you think you're going
17 to be?

18 MR. KITTLE: I'd say not more than a half hour.

19 MR. ALLEN: Go ahead.

20 (Recess.)

21 Q (By Mr. Kittle) Tom, can you describe for me what's
22 going on at the Heap Leach Project now? For example, how
23 many people do you have working for you down there?

24 A Over 40.

25 Q What label would you use for the type of leaching

1 process that's now being employed?

2 A Heap Leaching.

3 Q Any specifics that would distinguish it from the induced
4 percolation?

5 A Induced percolation is a method of handling ore. We're
6 just doing straight Cyanization Heap Leaching, no different
7 than anybody else.

8 Q What you're doing today is processing the ore in a
9 manner that's different than was once discussed when the
10 project was beginning?

11 A Yes.

12 Q How do you manage the project? Do you reside in New
13 York State, is that right?

14 A That's correct.

15 Q Do you have on-site managers who assist you?

16 A Yes.

17 Q Who are those people?

18 A Dusty Escapul, Bob Lee, and John Swallow.

19 Q Now, you've told me a little bit about Swallow and
20 Escapul. I gather that they're closely involved in the
21 operation of the plant and the recovery of the precipitate?

22 Who is Lee?

23 A He and Dusty work together in the Sheriff's Office.
24 They're both former policemen.

25 Q What does Lee do for the company?

1 A He's in charge of the mining division.

2 Q What would some of his responsibilities be?

3 A He's in charge of the mining division; he's in charge
4 of the construction division. John Swallow is in charge of
5 the plant division, and the testing division.

6 Q And then Dusty Escapul?

7 A Is in charge of them, and Dusty reports to me.

8 Q What do you call the functions, or what do you call the
9 role that Dusty Escapul plays? You said he supervises Lee
10 and Swallow?

11 A He's the general manager. That's his title.

12 Q Does Dusty Escapul have any academic training that
13 you know of in mining or metallurgy, or geology?

14 A His father and his grandfather have been in the mining
15 business. His uncle, his two uncles, developed the State of
16 Maine Merle Crow processing units. He's been in the mining,
17 business, and associated with the mining business all of
18 his life. He's not a geologist or an engineer.

19 Q So his experience then, is practical experience, rather
20 than academic training?

21 A We call it hands-on management.

22 Q How about Swallow, does he have some academic training
23 in either the area of mining, metallurgy, or geology?

24 A I don't know what his educational background is. He
25 was in the Army, and ran platoons, you know, large groups of

1 men in the Army. And he's been in the mining business, but
2 I don't remember specifically what his background is.

3 Q How long do you suppose that he's been involved in the
4 mining business?

5 A I don't remember.

6 Q What kind of academic training would Lee have? Does
7 he have any academic training in metallurgy, or geology or
8 mining?

9 A He's spent 12 years with Phelps Dodge as a miner. He's
10 had a lot of mining experience.

11 Q That work as a miner, that's a description given to
12 a person who helps extract minerals from the ground and
13 delivers it elsewhere, is that right?

14 A Yes, and that's the business we're in. We're extract-
15 ing ore, okay, from the ground, and we're processing it, and
16 that's what his background is, extraction of ore.

17 Q All right. Was his background in processing ore also?

18 A No. But he's not running that division either.

19 Q I'm just trying to get handles on what his background
20 is.

21 Do any of these three people who head divisions, or
22 your general manager, do they have any formal training in
23 management that you know of?

24 A Oh, yes, extensive.

25 Q What training is that?

1 A John Swallow taught management in the Army. Bob Lee
2 was in the Sheriff's Department, I think he ran a bunch of
3 departments. I know both he and Dusty took management courses
4 through the police department.

5 Q What kind of courses were those, as far as you know?

6 A I think they were management by objective training
7 programs. That's been described to me. We've not gone into
8 any detail about it. You know, there are other people in
9 the organization that have the training that you're asking
10 about.

11 Q Good. I'd appreciate your telling me more about them.

12 A Chuck Nut (p), who runs our ore control, worked for
13 Phelps Dodge for 10 years with the best mineralogist in the
14 world, and he worked in the laboratory.

15 Q What's his background in management?

16 A He's not, one, he's not in a management function.
17 He's in charge of ore control, making sure we're putting on
18 the right kind of ore. He works very closely with Bailey
19 Escapul, who's a geologist trained here at the University,
20 but Bailey has been in mining all of his life, as was his
21 father and grandfather.

22 Q Are there any other key management people besides
23 Escapul, Swallow and Lee?

24 A Yes, there's quite a few. It's, we have quite a deep
25 organization.

1 Q Do you have anything like an organizational chart?

2 A Yes. Not with me.

3 Q Okay. I'll confer with Ken, but perhaps we could get
4 a copy of that, and that would help us better understand how
5 the organization works down there.

6 Tell me a little bit about the kinds of reports that
7 are being supplied to Tombstone Development Corporation peri-
8 odically?

9 A We have an agreement between TDC and TEI we'll report
10 on a monthly basis by the 15th of every month. Those reports
11 will include what's requested in their lease.

12 Q And basically, what's requested in the lease?

13 A Sales of metal ore moved. I have to look over the lease
14 to give you the rest of them.

15 Q They're entitled to some kind of percentage override?

16 A Correct.

17 Q Has any override been paid to them presently?

18 A No. They're not entitled to it.

19 Q At what point do they become entitled to an override?

20 A When we have accrued royalties in excess of the royal-
21 ties we've paid.

22 Q Paid to whom?

23 A To TDC.

24 Q And in the kind of operation you have, where bullion
25 is sold, where do royalties result?

1 A When you sell a certain amount in relationship to the
2 amount of ore that you move, causing an increase in the
3 minimum royalty to be charged, I think.

4 Q Are you equating the term royalty with the sale pro-
5 ceeds of bullion?

6 A No. I'm saying when you sell the bullion under formula
7 as described in the agreement, in the lease agreement, okay,
8 a royalty -- is it a royalty? I think that's what it's called.
9 A royalty might occur if that ratio gets to be a certain
10 level.

11 Q Yes. And I can see how TDC might become entitled to
12 a royalty, but you've indicated that the payment of that
13 royalty is a function of some other royalty.

14 A We pay minimum royalty of over \$7,500 a month.

15 Q Okay. So the basic lease payment to them, you're char-
16 acterizing as a royalty, and then there would be an override,
17 which is a second type of royalty.

18 A No, it would increase the minimum royalty, not an over-
19 ride.

20 Q Now, of the reports that are being supplied to TDC
21 currently, approximately what percentage of the minerals being
22 produced is silver, and approximately what percentage gold?

23 A I answered that previously.

24 Q I seem to have forgotten, can you refresh my memory?

25 A Three percent is, around three percent is gold.

1 Q And then --

2 A It varies from place to place, and there's not pat
3 answer to that.

4 Q So the balance of some 97 percent would be silver?

5 A Approximately.

6 Q Now, are similar types of reports also being sent to
7 Jim Briscoe?

8 A I don't know.

9 Q Is some kind of report being sent to him?

10 A I know from time to time we've sent reports. I don't
11 know what's being sent out to him now.

12 Q Who would know what's being sent to him now?

13 A Dusty.

14 Q There's no reason you know of, is there, that reports
15 would not be sent to the --

16 A No reason why it would be.

17 Q Well, I would suggest that he's a part owner of the
18 operation, and probably entitled to at least request it.
19 Would you disagree with that statement?

20 A I think that's the subject of this litigation.

21 Q Is it your position here today that Briscoe is not
22 entitled to receive reports concerning the operation?

23 A My position is today, in this case, we're suing him for
24 a number of different things.

25 Q I know that, Tom.

1 Are you saying that as a part of the lawsuit, that under
2 these circumstances, Briscoe is not entitled to receive reports
3 concerning the operation?

4 A I really don't care whether he gets them or not. I
5 don't object to him getting them. Doesn't make any differ-
6 ence to me, but this is the subject of this lawsuit. I don't
7 care, you know. If he wants them, I'd send them to him. I
8 don't care.

9 Q Fine. That's really, I guess, all I'm concerned about
10 at the moment. I'm not trying to put you in some kind of
11 corner where you say because he's entitled to receive a
12 report, that that compromises your position in this suit.

13 If he wishes reports, he can request them, and I'll
14 confidently report to him that you've no objection to that.

15 What kind of reports do you give your shareholders in
16 TEI?

17 A Financial.

18 Q Is there any kind of narrative that goes along with
19 the financial matters?

20 A No.

21 Q How often do you produce those financial reports?

22 A Whenever I feel like, which on a quarterly basis.

23 Q Do you do some kind of year-end summary?

24 A Every corporation has to do that for the IRS.

25 Q And your corporation does it also?

1 A Yes.

2 MR. ALLEN: I hope you are.

3 A I hope so, too.

4 Q (By Mr. Kittle) Tom, tell me as best you recall, the
5 circumstances surrounding the termination of SEA in any
6 active participation in the management of the Tombstone Heap
7 Leach Project.

8 A On July 29, I left for five weeks with my family to go
9 to Italy, and upon my return, Dick Hewlett was fired, Jim
10 was running the project. I came out to Tucson. Jim at that
11 point handed me a letter saying that he did not want anything
12 more to do with the project, and I said, "Fine, I'll take
13 it over."

14 Q Who fired Hewlett?

15 A Briscoe.

16 Q Briscoe?

17 A Briscoe.

18 Q Did you object to that action on Briscoe's part?

19 A I was out of town.

20 Q Had Briscoe talked to you prior to your departure for
21 the trip in Italy about the possibility of terminating
22 Hewlett?

23 A Yes.

24 Q What was, what were your thoughts about terminating
25 Hewlett when you spoke with Briscoe?

1 A That's all right, terminate him.

2 Q So when you learned that he'd been terminated, that was
3 not totally unexpected?

4 A That's correct.

5 Q To the best of your recollection, when you assumed the
6 active management of the Heap Leach Operation, approximately
7 how much money did TEI have invested?

8 A I'd have to check my records.

9 Q Would it have been more than \$150,000?

10 A I'd have to check my record. Probably, but I'd have
11 to check. I don't know.

12 Q Is it a correct statement that additional contributions
13 of capital have been made subsequent to your assuming the
14 management of the project?

15 A Yes.

16 Q Were those contributions at the request of Jim Briscoe?

17 A Jim Briscoe did not make a request for me to make addi-
18 tional funds, he wanted it to go under so that he could buy
19 the property and contacted TDC for sale.

20 Q And upon what do you base the view that Jim Briscoe
21 wanted the project to fail?

22 A I didn't say fail.

23 Q What do you mean by the term go under?

24 A So that he could take over the project. My information
25 comes from talking to TDC.

1 Q What do you mean when you use the term go under?

2 A So that he or some of the buyers that he had in mind
3 could take over the project.

4 Q I understand you're saying that Jim wanted to take over
5 the project. Was there something that Jim Briscoe wanted to
6 happen first?

7 A Get us out.

8 Q Do you believe that Jim Briscoe wanted this project
9 to be an initial failure?

10 A I believe Jim Briscoe committed fraud. I believe that
11 Jim Briscoe induced me into this project in order to collect
12 fees for Southwestern for SEA, itself.

13 Q Do you think that he wanted this project to be a finan-
14 cial failure?

15 A The way he ran it, it would seem obvious that he did.

16 Q Well, you know, I'm talking about the period of time
17 after you took it over, and made additional capital contri-
18 butions.

19 A I did not consult him after that.

20 Q So you don't know one way or the other whether he wanted
21 the project to be a financial failure?

22 A No, that's not true. He contacted TDC and said, "If
23 they're not meeting the requirements of the reporting, I
24 have a buyer who would like to come in there, and take it."
25 That's my understanding of the conversation I got from them.

1 Q All right. Would that necessarily have been detri-
2 mental to you and your group?

3 A It might have been.

4 Q In what respect would it have been detrimental?

5 A TDC would have walked away from the lease agreement,
6 and we would have been left there with our investment in the
7 ground, and no lease.

8 Q Why is that necessarily so?

9 A Because they have the lease.

10 Q But it does seem that one possibility is that if TEI
11 was having difficulty complying with payments required by
12 TDC --

13 A No, we weren't having, we were paying our payments as
14 required, and as due.

15 Q That's fine, but let's say, hypothetically, if they had
16 difficulties making those payments, then it seems quite pos-
17 sible that an outside buyer who would buy the position of
18 the project, paying funds to both Briscoe and TEI, might in
19 fact be advantageous for all concerned, depending on the
20 purchase price.

21 A Wrong.

22 Q Okay, why is that wrong?

23 A Because he went to TDC. He should have come to us if
24 he wanted to bring in another buyer. By going to TDC, he
25 cuts out TEI. He cuts us out. Then TDC makes a separate

1 deal with Briscoe's people, and we're out.

2 Q Was it your belief, then, that because he'd not spoken
3 to you of this matter, that he was trying to abrogate the
4 terms of the agreement that you had between each other?

5 A I think the facts speak for themselves. I think what
6 he was trying to do was very clear, take over the project,
7 get his own people in there, his own, I don't know who the
8 other company was, and get us out by going to TDC, his actions
9 said that's what he was doing. If he wanted to help us, okay,
10 he would have come to us and said, "I have somebody who's
11 interested, who wants to joint venture the project with you,"
12 then it would be a joint venture between TEI and this other
13 company to help carry the financial burden. He didn't do
14 that.

15 Q He's done that subsequently, is that not correct?

16 A He's mentioned that he has some people that might be
17 interested. Very vague.

18 Q Does that indicate to you that he's trying to prejudice
19 the financial interests of your group in this project?

20 A I don't know.

21 Q So your view that Jim Briscoe was trying to take advan-
22 tage of your group is based on a conversation that you had
23 with somebody at Tombstone Development Corporation, concern-
24 ing an inquiry from Jim Briscoe about whether or not your
25 payments were current under the lease?

1 A No, not whether our payments, whether we were meeting
2 the requirements of the lease.

3 Q I see. And from that inquiry, you interpreted that Jim
4 Briscoe was interested in seeing your group fail, so that he
5 could take advantage of that difficulty, and use it to his
6 own benefit, is that correct?

7 A I feel that when he went to TDC and said, "Are they
8 meeting the requirements of the reporting; if not, I have
9 somebody who's interested," that's subverting TEI.

10 Q Isn't it clear that if you were not meeting the report-
11 ing requirements, that his interest would be severely jeopard-
12 dized?

13 A One, if he'd read the lease, okay, he would not know
14 that, one, we were reporting. There's only two ways that
15 we can be thrown off the lease, and we were absolutely meet-
16 ing those two ways.

17 The way we weren't is we were not supplying ore moved,
18 which is not one of the areas that would invalidate the lease,
19 but in order to make TDC happy, we give them that information.

20 Q Isn't it correct that if the reporting requirements of
21 that lease were not being met, that the intent of Jim Briscoe
22 would be badly jeopardized?

23 A I'm not a lawyer. Depends on how they were not being
24 met. You'd have to define that by looking at the lease.
25 Obviously if they were not being, if they were not being met

1 in total, completely, obviously that would hurt Briscoe's
2 interest, but that wasn't the case, and he knew it.

3 Q Does it seem possible to you that his inquiry to
4 Tombstone Development Corporation was an attempt to ascertain
5 whether his interests were being jeopardized by a failure
6 to comply with reporting requirements?

7 A No. I think -- because then he wouldn't have said
8 that I have another buyer. He would have called up and said,
9 "Hey, TDC, is everything going well with TEI; are they report-
10 ing; are there any problems?" He didn't do that. He said,
11 "Gee, if they're not meeting the requirements of the lease,
12 I have another buyer."

13 Q Let me ask you a couple more questions, and I think
14 we're pretty well nearing the end here. I'd like to ask you
15 just a couple more questions about Dick Hewlett's involvement
16 with the Tombstone Heap Leach Project.

17 When did you first become aware that Dick Hewlett was
18 going to be involved in any manner in the Tombstone Heap
19 Leach Project?

20 A Jim Briscoe told me about it.

21 Q Did you learn any of this information from Dwight Lee?

22 A Oh, I suppose so. Dwight learned it from Jim.

23 Q And how would you characterize your understanding at
24 that time of what Dick Hewlett's involvement would be?

25 A Dick had come up with an induced percolation to

1 reprocess the heap, and he would be reporting to Jim Briscoe,
2 and Jim Briscoe and Dick Hewlett would own part of the, of
3 the project.

4 Q As things worked out in the early months following the
5 March 7 agreement, where did Dick Hewlett spend most of his
6 time?

7 A Tombstone.

8 Q And --

9 A And Tucson,

10 Q How was he compensated?

11 A Jim wanted him compensated at an annual salary of over
12 \$100,000 per year. I said there was no way that this project
13 could afford to pay Dick Hewlett at that rate. So he was
14 compensated for, at something about \$20,000, an annual salary
15 of around \$20,000 per year, paid out of funds advanced by
16 TEI.

17 Q Was Jim Briscoe recommending an annual salary of
18 \$100,000?

19 A It wasn't, it was around \$100,000.

20 Q Isn't it correct that what Briscoe was urging was
21 that Hewlett be compensated on an hourly basis on rates
22 which he considered to be consistent with what other consult-
23 ing geologists were being paid?

24 A But those rates worked out to be over \$100,000 per
25 year, and there's no way a small mining project can afford

1 to spend a hundred thousand dollars on a full-time employee
2 working down there.

3 Q As far as you know, what were Hewlett's thoughts on
4 the matter?

5 A He felt that he should not, we should not be expending
6 funds, that amount of funds for that purpose for him; we
7 should be paying the smaller amount. He didn't object at
8 all. He thought it was right.

9 Q And what was the frequency of contact that you had with
10 Hewlett while he was still involved with the project?

11 A Talked to him frequently, because he was asking for
12 money on a frequent basis.

13 Q So that contact was primarily by telephone, is that a
14 fair statement?

15 A The bulk of it was by telephone.

16 Q During the period of time when Hewlett was involved,
17 how frequently did you visit the project?

18 A I don't recall, but I'll say periodically.

19 Q I think you indicated earlier that at some point Briscoe
20 had spoken to you about the possibility of terminating
21 Hewlett, and you didn't particularly object.

22 What aspect of Hewlett's performance at the Heap Leach
23 Project were less than satisfactory from your point of view?

24 A Well, he was part of the whole scheme, and they said
25 that the project would work because the induced percolation,

1 which had no risk, it was tried and true and proven, and there
2 was no risk to it, would work, and we found out later that
3 it would not work, and that that was just a methodology of
4 getting the investors, which was ourselves, involved in this
5 project.

6 Q Did Jim Briscoe at any time tell you this project was
7 completely without risk?

8 A I have letters in my file that say that there was no
9 risk, that went out over his stationery out of his office.

10 Q Was that letter that Jim Briscoe sent to you?

11 A It was a letter signed by Dick Hewlett. At other times,
12 Jim Briscoe has said there was so little risk in this project
13 that he is very overextended in his business now, and back
14 then, that he was going to mortgage his house. That's how
15 little risk he thought was in this deal.

16 Q When did Jim Briscoe tell you personally that there
17 was only a small amount of risk involved in the project?

18 A When we started the project.

19 Q Would that have been before or after the March 7 letter?

20 A Before and after.

21 Q And I think you indicated, if I understood you correctly,
22 that Jim first contacted Dwight Lee about this project some
23 time in March of '79. The letter seems to be dated March 7.
24 If the initial contact was some time in the very first part
25 of March, would that mean that Jim's statement to you that

1 this project had very little risk, came some time between
2 March 1 and March 7?

3 A I can't recall exactly when it came. It could have
4 come at the end of the previous month. He rushed me into a
5 deal which is a typical maneuver by saying, well, if you don't
6 do it, I have got somebody in the side lines who's going to
7 do it; and if neither one of you do it, I'm going to mortgage
8 my house, and do it myself, because it doesn't require any
9 money, it's so riskless.

10 Q Now, you've further indicated, I believe, that contri-
11 butions of capital were made in this project after Jim Briscoe
12 was no longer actively involved in the project, and after
13 Dick Hewlett was no longer involved.

14 If you were dissatisfied with the results and the pro-
15 cess, what were reasons why you made the additional capital
16 contributions?

17 A We evaluated, -- after we got Hewlett and Briscoe and
18 SEA out of the project, we evaluated where we were. At that
19 point I had considerable amount invested in the project. I
20 felt if I run this project from New York with Dusty Escapul
21 as the general manager getting outside help where he needed
22 it, that in order not to lose everything I had in it, put
23 more money in it and try and make it go.

24 Q And how much do you estimate that you did have in it
25 when Dick Hewlett left the operation?

1 A I answered that previously. I don't recall. I'd have
2 to check my records.

3 Q You made reference to some professionals who you con-
4 sult with. Is John Dean one of those professionals?

5 A He's one.

6 Q Can you tell me in general terms what kind of assistance
7 you get from John Dean concerning the Heap Leach Project?

8 A John is a, has his doctorate in metallurgy; he's worked
9 with U. S. Nickel -- he ran the nickel project in Cuba solely.
10 He's a former professor, and taught. He's an old man, an
11 elder statesman. He's well known. He was asked at one time
12 to run one of the bureaus for the U. S. Bureau of Mines. He
13 not only helps me in the metallurgical area, he helps me in
14 all areas as a sounding board. He has an excellent reputa-
15 tion for his honesty and as well as his innovatability.

16 Q How long have you known John Dean?

17 A Since about, I guess May or June of '79, somewhere
18 around in there.

19 Q And how did you come to have any contact with John Dean?

20 A Friend of mine had suggested that I get in touch with
21 him, that he was knowledgable; he'd done another project in
22 the Tombstone area.

23 Q And did John Dean have an opportunity to review the
24 induced percolation system and make some evaluations?

25 A He read the material, and he had to come out and make

1 an evaluation.

2 Q What was his evaluation?

3 A It took quite a while to make that evaluation, because
4 he was not familiar with the induced percolation as described
5 by Dick Hewlett, and then Dick Hewlett kept changing the
6 chemistry around so if one idea didn't work, he would try
7 something else. So John Dean's problem was hitting a moving
8 target, and saying, "Hey, it won't work."

9 Q Did John Dean say that?

10 A Yes.

11 Q And when did he give you that report?

12 A In June or July.

13 Q Did he give you any other reports prior to that time?

14 A Yes.

15 Q Were any of them in written form?

16 A Some.

17 Q And to the best of your recollection, what was the
18 substance of those reports?

19 A There were many reports. You know, what question are
20 you asking?

21 Q Just trying to find out what kind of communications
22 you're having with your consultants.

23 What other professionals did you seek help from in the,
24 let's say Calendar Year 1979, after becoming involved in
25 this project?

1 A The head of the Department of Leaching, University of
2 Arizona.

3 Q Who is that?

4 A David Rabb.

5 Q How long have you known Rabb?

6 A First time I met him, June or -- sometime around, I'll
7 say the summer of that year.

8 Q Was he retained on a fee for services basis to assist
9 TEI?

10 A We didn't -- I don't think anything was ever done.

11 Q Are there any other professionals who you've compen-
12 sated to assist you in either evaluating or operating the
13 Tombstone Heap Project?

14 A Currently?

15 Q I'm primarily interested in Calendar Year 1979.

16 A Gee, I don't -- John Dean went and talked to Bureau.
17 I don't remember exactly when he did it. Talked to Lindstrom
18 and to the second or third man. John knew those people.
19 John -- we didn't compensate, but we talked to Charlie and
20 Louie Escapul, who are quite knowledgable, been in the mining
21 business, are professional miners, successful. There may be
22 others that I just can't recall at this time.

23 Q Let me ask you one last question, and I think it will
24 probably be my last one.

25 One of the important parts of this litigation involves

1 what percentage interest each of the parties should have in
2 the project, and in your complaint, I believe you stated that
3 it's your position that Jim Briscoe and companies Jim is
4 involved with, should have no interest whatever.

5 What documentation do you base that view on?

6 A On a number. I was induced to make the investment
7 through fraudulent means in the beginning. The amount of
8 money I've put in reduces him down to zero. I'm suing him
9 for the amount of money that I put in. And there are others
10 that I don't recall at this time.

11 Q Okay. Now, what is it about the existing documentation
12 that leads you to conclude that his percentage interest has
13 been reduced to zero?

14 A That paragraph.

15 Q If we have it nearby, could we take a look at it, and
16 you could help point out to me what language it is that you
17 are relying on.

18 A Page 4.

19 Q Okay. Would you, for the record, read the language
20 that you're relying on to support your position that Briscoe's
21 interest should be zero?

22 A "If the contributions of investors and the cash flow
23 resulting from the project are not sufficient to fund the
24 project at the level at which the parties desire to sustain
25 it, it's anticipated that the parties may seek additional

1 funds, in which event it's anticipated that it may be neces-
2 sary to reduce the respective interests of the parties to
3 enable the project to obtain additional funding."

4 Q Okay.

5 Looking at that language, have the contributions of the
6 investors, and the cash flow resulting from the project been
7 sufficient to fund the project at the desired levels?

8 A I don't think I understand your question. I've had to
9 put more money into the project, considerably.

10 Q So additional investor money has been put into this
11 project, is that what you're saying?

12 A Considerable amount of money has been put into this
13 project.

14 Q Has it been enough to run the project at the level
15 that you want?

16 A No. More money will probably have to go in.

17 Q What are things that you want to be doing now that you
18 can't do with the existing amount of capital contribution?

19 A Oh, I don't know. I want to buy another plant, want
20 to expand the plant division. There are a lot of things.

21 Q Do the mineral properties down there justify expansion?

22 A We hope so.

23 Q Do you have any interest in eventually selling the pro-
24 ject to a major mining company?

25

1 A My training in business has been to consider anything

2 Q Have you received any inquiries, direct, indirect,
3 tentative or otherwise, concerning a possible purchase of
4 the property?

5 A No.

6 Q If Briscoe heard of a possibility, are you at all
7 interested in learning about that from him?

8 A I'm always interested in talking to somebody who wants
9 to pay me money.

10 Q Do you have any dollar figure in mind that you think
11 that the entire project might be worth?

12 A No.

13 Q Any other thing you can think of here this morning that
14 would help me better understand the basis of the position
15 that you've taken in your complaint?

16 A No.

17 MR. KITTLE: I have no additional questions. I would
18 like the record to reflect that this deposition will be
19 continuing, and there's some possibility that I may wish to
20 resume the deposition at a later time.

21 MR. ALLEN: No questions, and I, if you will get me
22 my copy, and a signature page, I'll get it taken for you,
23 okay?

24

25

THOMAS H. SCHLOSS

* * * * *

1 STATE OF ARIZONA)
 2 COUNTY OF PIMA) ss:

3 BE IT KNOWN that I, PETER L. DiCURTI, took the fore-
 4 going deposition pursuant to the Rules of Civil Procedure
 5 of the Superior Court of the State of Arizona at the time
 6 and place stated in the caption hereto; that I was then and
 7 there a Notary Public in and for the County of Pima, State
 8 of Arizona; that by virtue thereof I was authorized to admin-
 9 ister an oath; that the witness THOMAS H. SCHLOSS, before
 10 testifying was duly sworn to testify the truth, the whole
 11 truth and nothing but the truth; that the testimony of said
 12 witness was reduced to writing under my direction; that the
 13 foregoing 98 pages contain a full, true and correct transcrip-
 14 tion of the notes of said deposition.

15 I FURTHER CERTIFY that I am not of counsel nor attorney
 16 for either or any of the parties to said action or otherwise
 17 interested in the event thereof, and that I am not related
 18 to either or any of the parties to said cause.

19 IN WITNESS WHEREOF I have hereunto subscribed my name
 20 and affixed my seal of office this 12th day of October, 1980.

21

22

 Notary Public

23

My Commission Expires:

24

February 2, 1981.

25

WALSH, E. J. DEAN
Deposition #1

Arizona Court Reporting

177 NORTH CHURCH AVENUE
TRANSAMERICA BUILDING
TUCSON, ARIZONA 85701
TELEPHONE (602) 623-3375

DEPOSITIONS
STATEMENTS
GENERAL REPORTING

RONALD L. LUNSFORD

October 31, 1980

Mr. Wade E. Speer
2121 S. Pantano Road
Tucson, Az 85710

Re: Tombstone Exploration v.
Southwest Exploration
No. 188423

Dear Mr. Speer:

Your deposition in the above-captioned case, taken on October 21st, 1980, is prepared and available to be read and signed in our office.

We are located at 177 North Church Avenue and are open Monday through Friday between the hours of 8:30 a.m. and 5:00 p.m.

We would appreciate it if you would take care of this as soon as possible since the original transcript must be filed with the Court. If the deposition is not signed by you within 32 days from the date of your receipt of this letter, we are required to file it with the Court along with a statement as to the reason, if any, that you did not sign it.

Any changes in the form or substance which you desire to make on this deposition can be made at our office and they will be entered upon the deposition along with a statement of the reasons given by you for making such changes.

Very truly yours,

Don L. Gautier, RPR

cc: Kenneth L. Allen
Jay Kittle

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

TOMBSTONE EXPLORATION, INC.,)
a Delaware corporation, et al.,)
Plaintiffs,)
-vs-)
SOUTHWEST EXPLORATION ASSOCIATES,)
INC., an Arizona corporation,)
Defendants.)

No. 188423

DEPOSITION OF: WADE EDWARD SPEER
October 21, 1980

APPEARANCES:

MR. KENNETH L. ALLEN, Attorney at Law,
239 North Church Avenue,
Tucson, Arizona 85701,
for the Plaintiffs;

MR. JAY KITTLE, Attorney at Law,
509 Transamerica Building,
Tucson, Arizona 85701,
for the Defendants.

COPY

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WITNESS

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Further Cross-Examination by Mr. Allen

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EXHIBITS

MARKED

Plaintiffs' Exhibit 1

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Memo from Mr. Speer

1 BE IT REMEMBERED that pursuant to Notice of
2 Taking Deposition in the above-styled and numbered cause,
3 the deposition of WADE EDWARD SPEER was taken upon oral
4 examination at 239 North Church Avenue, in the City of
5 Tucson, County of Pima, State of Arizona, before me,
6 Don L. Gautier, a Notary Public in and for the County of
7 Pima, State of Arizona, on the 21st day of October, 1980,
8 beginning at the hour of 10:30 A. M. on said day.

9 (Witness sworn.)

10 WADE EDWARD SPEER,
11 having been first duly sworn to tell the truth, the whole
12 truth and nothing but the truth, was examined and
13 testified as follows:

14 CROSS-EXAMINATION

15 BY MR. ALLEN:

16 Q Mr. Speer, state your full name for the
17 record, please.

18 A Wade Edward Speer.

19 Q Where do you reside, sir?

20 A 2121 South Pantano Road, Tucson.

21 Q Have you ever had your deposition taken
22 before?

23 A No, I never have.

24 Q Do you go by Ed or Wade?

25 A Ed.

1 Q Ed. Do you mind if I call you Ed?

2 A Fine.

3 Q Ed, let me explain a little bit about it
4 since you haven't had your deposition taken before.
5 As you may or may not know, there is a case pending
6 between some investors who I represent out of New York
7 and Mr. Jim Briscoe and various corporations that he is
8 involved in.

9 And it is my understanding you at one time
10 or maybe still do work for Southwestern Exploration
11 Associates; is that correct?

12 A I worked for them at one time, yes.

13 Q The purpose of your deposition, Ed, is to
14 find out facts, basically, both myself representing one
15 side and Mr. Kittle representing the other side, that may
16 or may not be important to the case but it is basically
17 a fact-finding situation.

18 The information that I have shows that you
19 had some involvement possibly with this project called
20 the Tombstone heap leach project down in Tombstone,
21 Arizona.

22 As we go through the course of the
23 deposition, I will be asking questions. If you don't
24 understand me, please tell me you don't understand and
25 I'll try to rephrase it or at least make it an

1 understandable question because if you do answer, I'm
2 going to assume that you understood the question and meant
3 to give the answer you gave. Okay?

4 A Okay.

5 Q Because the machine doesn't take down nods
6 of heads, although he can indicate that you nodded your
7 head, please answer verbally and with words other than
8 "Uh-huh" and "Uh-uh," if you would, please. Okay?

9 A All right.

10 Q Also since you are not -- at least I don't
11 believe you are -- represented by Mr. Kittle and don't
12 have an attorney here of your own, you have a right to
13 read and sign your deposition; in other words, read it
14 and make sure that Don took it down the way you thought
15 you answered it anyhow. And you can have the deposition
16 delivered to you, read it and make any corrections you
17 want before you sign it.

18 That is your choice to do or you can waive
19 it. It is up to you, basically.

20 A Okay.

21 Q All right?

22 A Does the deposition become public
23 information? What happens to it?

24 Q That's a good question. That's what I was
25 going to explain to you. A deposition can be used in a

1 court of law just like you were there. If by chance say
2 you are out of town at the time the trial goes on or
3 something has happened to you, whether you are either
4 injured, incapacitated or even killed, it can be used
5 just as though you were there.

6 It does become public record as far as it
7 becomes a part of the court record. In other words, an
8 original is filed with the court and it will be there
9 during the course of this litigation and until the case
10 is closed.

11 And it can also be used at the trial even if
12 you are there if the statements that you make in the
13 deposition are different than what you make in the court.
14 That is called impeachment.

15 Okay? So, that is really the purpose of the
16 deposition. It is to record your testimony so that we
17 can proceed hopefully thinking we know the facts.

18 Do you want to make a decision on whether
19 you want to read and sign it now or do you want to wait
20 until the end of the deposition and see what you think?

21 A I would like to read it and sign it.

22 Q All right. Are you employed at this time,
23 Ed?

24 A No, I'm not.

25 Q What is your business, occupation or

1 profession?

2 A Exploration geologist.

3 Q What was your last place or company of
4 employment?

5 A Southwestern Exploration.

6 Q Are you doing any consulting on your own
7 now?

8 A No, I'm not.

9 Q When did you terminate your employment with
10 Southwestern Exploration Associates?

11 A In December of '79.

12 Q Are you going to school or what are you
13 doing now?

14 A No.

15 Q I don't mean to be nosey.

16 A I've intended to take a year of vacation.

17 Q Fantastic. All right.

18 So, December of '79, you terminated your
19 employment with Southwestern Exploration. Again not
20 trying to be nosey but did you resign, were you
21 terminated or what?

22 A I resigned.

23 Q How long did you work for Southwestern?

24 A Two years.

25 Q In what capacity?

1 A I was Exploration Program Manager for the
2 New Mexico Program.

3 Q Was that your position during the complete
4 two years you were there?

5 A Yes. In addition, I was General Manager for
6 the last six months.

7 Q Of Southwestern?

8 A Of Southwestern.

9 Q First of all, in the first capacity, if you
10 could briefly or in as much detail as you need to, tell
11 me what was your job description; what did you do?

12 A Exploration Program Manager, an outside
13 client was funding exploration that we were doing as a
14 consulting company for them looking for particular metals
15 in New Mexico, just in the State of New Mexico. So, the
16 entire program was under my management and direction for
17 that outside client.

18 Q Did you operate out of Tucson or out of New
19 Mexico?

20 A Tucson.

21 Q It was your base of operations?

22 A Right.

23 Q Did you have any occasion while in that
24 capacity to do any work in your professional field at the
25 Tombstone heap leach down in Tombstone, Arizona?

1 A Yes. I discussed it several times with
2 Mr. Briscoe because he was involved in the Tombstone
3 venture. We often got together and discussed the
4 geology of Tombstone because we were both quite familiar
5 with Tombstone.

6 In addition, I spent a day or two or one or
7 two trips to Tombstone to see the operation that was
8 going on.

9 Q During the two years at Southwestern, who
10 was your immediate supervisor?

11 A Jim Briscoe.

12 Q No one else during any of that time was
13 between you and Jim, let's say?

14 A No.

15 Q As far as directing your employment?

16 A No, they weren't.

17 Q The last six months you were General Manager,
18 what was your job description? I thought you said six
19 months; is that correct?

20 A Yes, the last six months of '79.

21 Q What was your job description or if you
22 would describe it to me?

23 A That was mainly involved in personnel
24 management for the company itself.

25 Q Again, Jim your immediate supervisor and you

1 were maybe next in command; is that a fair statement or
2 not?

3 A Yes.

4 Q If you would, Ed, give us your educational
5 background from graduation of high school to the present.
6 Okay?

7 A All right. I have a Bachelor of Science
8 degree in geology from the University of Missouri and I
9 have a Master of Science degree in geology from the
10 University of Arizona.

11 Q Could you give me the years that you
12 obtained those degrees?

13 A The Bachelor's degree I got in '69 and the
14 Master's degree was completed in '77.

15 Q At Southwestern were you also called a
16 Senior Geologist?

17 A Yes.

18 Q But in the capacity as Exploration Program
19 Manager in New Mexico; true?

20 A Yes.

21 Q I have some organizational charts here and
22 I am not sure what they mean.

23 A Senior Geologist sounds a little odd, being
24 young.

25 Q No, it doesn't to me because I have run into

1 a lot of younger men who are Senior Geologists.

2 A That's a common term used in exploration.

3 Q You didn't have anything to do with land
4 status with the company or anything like that; is that a
5 fair statement?

6 A Yes. There was a separate Land Status
7 Department.

8 Q Well, let me make sure I don't misstate
9 something. Other than in your capacity as General Manager
10 that last six months, you might have had contact with
11 supervision of those different departments; would that be
12 a fair statement?

13 A More the management, personnel management
14 supervision, not the direct operations of those
15 departments.

16 Q When in point of time did you first become
17 acquainted in any capacity with Jim Briscoe, Ed?

18 A I have known Jim for almost ten years. I
19 worked for him once before here in Tucson.

20 Q Shortly after graduation from Missouri?

21 A Yes.

22 Q In what capacity?

23 A I was a field assistant for him doing some
24 field work.

25 Q For him personally or for a company?

1 A He had his own personal consulting company.

2 Q Had you done any work prior to -- I guess it
3 would be either late '77 or early '78 when you went to
4 work for Southwestern -- had you done any work in any
5 other capacity for Southwestern Exploration Associates?

6 A No.

7 Q When in point of time did you first become
8 acquainted with the Tombstone area from a geological
9 standpoint? Would that be something you became
10 acquainted with in college or what?

11 A Yeah. It's a classic mining district which
12 is a studied classbook example.

13 Q When did you first come into physical
14 contact with the Tombstone area? And I would now like to
15 keep it limited to where that particular heap leach
16 project that we are involved with in this suit is
17 located, in other words, right there around the town of
18 Tombstone. When did you first become acquainted with
19 it personally where you saw it or were on the property?

20 A That would have been in '76.

21 Q Prior to going to work for Southwestern?

22 A Yes.

23 Q What were the circumstances around that,
24 Ed?

25 A I went to work for the company that was

1 operating the heap leach.

2 Q Oh. Who was that?

3 A That was 71 Minerals.

4 Q In what capacity did you work with 71
5 Minerals?

6 A Geologist.

7 Q How long there at that particular project?

8 A I was there for six months.

9 Q What was 71 Minerals doing with that
10 particular property at that time?

11 A They were heap leaching the old waste dumps
12 from the old mining operations.

13 Q When did you first become acquainted, if
14 you ever did, with a Mr. Richard Hewlett?

15 A Several years before that. I had worked for
16 him in an earlier company that he had.

17 Q Okay. Approximately when? I'm not trying
18 to stick you to months or anything but if you can give me
19 a year.

20 A '71.

21 Q Was that in Arizona or somewhere else?

22 A Yes, Arizona. He had an office here in
23 Tucson.

24 Q What capacity did you work for him?

25 A Again as Exploration Geologist.

1 Q Okay. Did it have anything to do with the
2 Tombstone area, the work you were doing for him?

3 A No.

4 Q How long did you work with Hewlett in 1971?

5 A A year and a half.

6 Q During that period of time, Ed, did you have
7 any occasion to become acquainted --

8 A Excuse me. That was not --

9 Q Yes?

10 A Yes, that was in 1971. That was not 71
11 Minerals.

12 Q You were working for Hewlett. He had
13 another company here in town. Do you remember the name
14 of that?

15 A Sierra Mineral Management.

16 Q During your involvement with Hewlett for
17 that year and a half in 1971 and I guess '72, did you have
18 occasion to be involved in any kind of leaching projects
19 or processes?

20 A No, not any that were going on. It was
21 discussed. You know, in any mining exploration venture,
22 you discuss the possibilities.

23 Q The work that you did with 71 Minerals in
24 1976 involved the leaching of the old dumps there at
25 Tombstone; correct?

1 A They were leaching on the dumps.

2 Q They were leaching them?

3 A Yes.

4 Q Were you actively involved in that?

5 A No. No. My capacity was looking for
6 additional leachable ore in the district.

7 Q Have you ever heard the term "induced
8 percolation system"?

9 A Yes.

10 Q When did you first hear that or become aware
11 of it?

12 A It is a term that is used quite a bit as a
13 mining recovery process. I don't remember when I first
14 heard of it; probably in my college days.

15 Q This is some process that was known to you
16 before you met Mr. Hewlett?

17 A I don't recall.

18 Q Did you ever discuss this process to your
19 knowledge, if you recall, with Mr. Hewlett?

20 A Oh, yes.

21 Q What was his involvement, if any, that you
22 know of with the IPS or induced percolation system?
23 Was it something that he was trying to expand on or
24 develop or what were the circumstances basically around
25 his discussion about it?

1 A Okay. He had spent some period of time
2 studying and researching induced percolation and as an
3 extension of his earlier work at Tombstone on leaching,
4 he investigated the field quite thoroughly and, in
5 essence, was specializing in leaching recovery of ores.

6 From that he had a personal interest, I
7 suppose, which took him on into induced percolation and
8 I worked quite a bit with it. He worked with some people
9 out of Reno who were involved in it in testing the new
10 process.

11 Q Did you ever work directly with him in
12 regard to this process, first of all, in a laboratory
13 type surrounding?

14 A No. It really didn't involve the work of
15 a geologist, other than just discussions, conversations.

16 Q Would it be a fair statement, Ed, that most
17 of your discussions about this process with Hewlett were
18 more in an academic and educational background from the
19 standpoint of you learning or you listening to him talk
20 as opposed to actually putting it into practical use?

21 A Yes.

22 Q By your involvement, I mean.

23 A My expertise is not in mining or metallurgy.
24 So, there is very little input I could have into the
25 actual operation.

1 Q Okay.

2 A So, it was more just to keep me informed
3 what the company was doing.

4 Q All right. After the year and a half you
5 were with him in Sierra Mining Management or Minerals
6 Management --

7 A Minerals Management.

8 Q -- Minerals Management, did you have any
9 contact with him again until your employment with
10 Southwestern Exploration, professional contact?

11 A Give me the dates again that you are
12 talking about.

13 Q Sure. Between the time you left Sierra
14 Minerals Management -- which was his company, I under-
15 stand --

16 A Yes.

17 Q -- until your employment by Southwestern
18 Exploration Associates, did you have any contact with
19 Hewlett, professional contact?

20 A In a very indirect way. We were friends and
21 acquaintances. Not that we kept in touch but we both had
22 an interest in the mining operation and venture in
23 Nevada in which he was an original owner and I was a
24 geologist that worked at that mine. So, in that capacity,
25 we had some of the same friends and acquaintances.

1 Q What was the name of that mine?

2 A That was the McDermitt Mine.

3 Q Also sometimes known as Cordero?

4 A Cordero is the name of the previous mine
5 that was on the same property.

6 Q All right. You did have contact with him
7 professionally as an employee of Southwestern Exploration
8 Associates; did you not?

9 A Yes.

10 Q When did he as best you recall become
11 involved or in contact with the company Southwestern
12 Exploration?

13 A Gee, I would be afraid to give an exact
14 date. It was probably in '79.

15 Q Did you participate in any way, Ed, in any
16 presentations to prospective investors in the Tombstone
17 heap leach project?

18 Do you understand what I'm asking?

19 A Not exactly.

20 Q In 1978, your first year of employment with
21 SEA -- I'm going to call them SEA. It is easier for me.
22 Okay?

23 A Yes.

24 Q -- did you do any geological work on the
25 Tombstone properties in Tombstone, Arizona for SEA?

1 A Before I went to work for SEA?

2 Q No, no. During the first year?

3 A During the first year.

4 I'll say no but I'm guessing here. It is
5 the kind of thing that comes up in discussions.

6 Q Yes.

7 A There was certainly no funded work, extended
8 work done.

9 Q Really what I was looking for, Ed, is if
10 during 1978 -- I'm assuming that you were employed
11 sometime at the end of '77--right at the first of '78 if
12 you were there for two years and terminated in '79,
13 December?

14 A Right.

15 Q During that year of '78, do you have any
16 independent recollection of doing any in-field geological
17 work on the area known as the Tombstone heap leach
18 project which includes the contention and the area there
19 just to the west of Tombstone, the town of Tombstone?

20 A Yes. I'm hesitating because I don't know
21 the exact date. There was a time when before Mr. Hewlett
22 was hired by SEA that Mr. Briscoe and I discussed
23 Tombstone and Mr. Briscoe decided to put it together as
24 an exploration proposal as a promotional package.

25 Q Okay.

1 A And he sought my advice, discussion and
2 advice on that.

3 Q I understand the discussion. I am trying to
4 limit it to whether you did any in-field geological
5 study or work on the property itself; in other words,
6 where you visited it, took samples, did that type of
7 work.

8 Is that the same answer? I'm not trying to
9 pin you down on anything. I realize you may have
10 discussed it with Jim --

11 A Right.

12 Q -- as a prospective exploration project.

13 A And I visited the property once to talk to
14 some of the people involved.

15 Q As to the timing of that, you are not sure
16 when?

17 A That's right.

18 Q Okay, good enough.

19 Now, getting back to my question in regard
20 to participating in a presentation, did you ever see
21 prior to February 1st of 1979 a proposal on that
22 particular property put together by your company, SEA;
23 in other words, the exploration proposal to present to
24 prospective investors?

25 A I have never seen the proposal put together

1 by SEA.

2 Q That's good enough. At any time, you
3 haven't?

4 A At any time.

5 Q To your recollection, were you ever requested
6 to make any kind of geological report or opinions that
7 might have been included in any type of a project like
8 that; in other words, a proposal like that, if that is a
9 clear enough question? I don't know whether it is.

10 A My opinion about the property was asked
11 several times. Whether that was used in preparing some
12 sort of proposal or not, I don't know, because I wasn't
13 involved in those decisions.

14 Q I understand you may have been asked. Do
15 you recall ever writing an opinion as to the geological
16 feasibility or problems or benefits of that particular
17 area?

18 A A geological evaluation of Tombstone?

19 Q Right.

20 A No, I don't recall that.

21 Q Did you ever meet a gentleman by the name
22 of Tom Schloss?

23 A Yes, I knew Tom.

24 Q On more than one occasion?

25 A Yes.

1 Q Do you recall when approximately you may
2 have first met him?

3 A In the early 70's. I would say it must have
4 been '71 or '72.

5 Q Would that have been involved in the
6 McDermitt properties?

7 A Yes.

8 Q What were the circumstances around any
9 dealings or acquaintances you may have had with him
10 during that period of time?

11 A I was a geologist working for Dick Hewlett's
12 company and Mr. Hewlett had an agreement with Schloss.
13 Mr. Schloss was an investor.

14 But I was a geologist and not involved in
15 anything other than that. So, I met him out in the field
16 when I was at McDermitt. I realized that he was one
17 of the investors.

18 Q And visited with him in a casual way, I
19 would assume; correct?

20 A Yes.

21 Q Have you ever made any recommendations to
22 him in your professional capacity at any time since you
23 met him for the first time? Do you understand that?

24 A No, I'm not sure of what you are getting at.

25 Q Well, have you ever worked for Tom Schloss?

1 A No, I haven't.

2 Q Have you at the request of any of your
3 employers over the years made any recommendations or
4 given any opinions to Tom Schloss personally?

5 A Through my employers?

6 Q On behalf of your employers. Yeah, that's
7 good, either through them or at their request, have you
8 made any recommendations to him?

9 A I've made recommendations to my employers
10 which may have been passed on to Tom.

11 Q To your knowledge, you don't know whether
12 they were or not?

13 A I don't know if it was passed on or not.

14 Q All right. Do you remember being requested
15 by Mr. Briscoe to inspect the heap leaching operation at
16 Tombstone after it went into "operation"?

17 A Yes. You are talking about after Mr. Hewlett
18 was operating it?

19 Q Right. Did you become aware sometime in
20 '79 that Mr. Schloss had made an investment or part of an
21 investment in that project down there?

22 A Yes.

23 Q What were the circumstances around the
24 request by Mr. Briscoe for you to inspect the heap
25 leaching project in Tombstone?

PH15

1 A I was asked to go to Tombstone. Mr. Hewlett
2 had been working in Tombstone and so there was a need for
3 someone from Mr. Briscoe's home office to go to Tombstone
4 and observe the operation.

5 Because of my experience in exploration and
6 I knew most of the people at Tombstone, not just
7 Mr. Hewlett but I have lots of friends and acquaintances
8 at Tombstone anyway because I had worked there before,
9 he asked me to spend a day and go and take a look at it.

10 Q Did he give you directions on what you were
11 to look for or what you were to do when you went down
12 there?

13 A Nothing other than see the operation, see
14 what Mr. Hewlett is doing, what's been accomplished, how
15 things are progressing.

16 Q Did you know, Ed, the circumstances around
17 Mr. Hewlett's employment by SEA, what he was to be doing
18 for the company?

19 A In a general way.

20 Q That's good enough. Tell me the general
21 understanding.

22 A He was the manager of the Hydrometallurgical
23 Division of SEA. I was working in the Geology Division
24 of SEA. So, we didn't work together or cross paths
25 very much.

1 But he was the only employee of the
2 Hydrometallurgical Division so he pretty much had a free
3 rein to do what he wanted to do.

4 Q Did his job as Hydrometallurgical with SEA
5 change to your knowledge? In other words, did he move
6 out of the company into something else during his
7 employment there and your employment there?

8 A I'm not sure I understand what you are
9 getting at.

10 Q So we don't have to spend all day beating
11 around the bush here, it is my understanding that he took
12 over the running of the Tombstone heap leach for a period
13 of time, the actual operations of the company.

14 A He was in charge of it, yes.

15 Q To your knowledge, was he doing that through
16 SEA or was he doing it through some other entity?

17 A I assume that it was his capacity with SEA.

18 Q Was there a problem, a particular problem
19 or difficulty that Mr. Briscoe was concerned about when
20 he sent you down to take a look at this heap leaching
21 operation to report back to him that you are aware of?

22 A Yes. I'm not sure I could say it was a
23 particular, specific problem but there was concern about
24 things having taken longer than the original plans had
25 anticipated.

1 Q At the time again right prior to you going
2 down there when you were being instructed by Mr. Briscoe,
3 was there any concern or did he register any concern to
4 you orally of the costs or budget that was involved down
5 there?

6 A Yes, he did.

7 Q Can you tell me as best you can recall it
8 what he advised you his concern was or his desire for you
9 to check on was, if I can put it that way?

10 A Yes. Mr. Briscoe expressed quite directly
11 his concern that he had a client, Mr. Schloss, who had
12 invested money to operate the Tombstone operation and
13 since things were going slower and not as productive, as
14 fast as the original plans that Mr. Hewlett had given to
15 Mr. Briscoe, he was concerned then of what was going on,
16 how the money was being spent and was it being spent
17 correctly and were things being done as best they could
18 with the money that was available.

19 Q At that point in time, Ed, were you aware of
20 what type of budget or plans had been presented to the
21 investors --

22 A No.

23 Q -- as to time table?

24 A I was never involved in those things at all.
25 I felt like I was being sent down there with less

1 information than I needed but Mr. Briscoe never involved
2 me in this.

3 Q So, other than to give a report of your
4 observations, you really had nothing to compare with what
5 you should or shouldn't be doing in regard to a proposal
6 or project plan; correct?

7 A Yes.

8 Q Did you ever in any of your capacities with
9 SEA become aware of what the proposal was and what should
10 have been being done?

11 A No, I never did.

12 Q As a result of that trip, you made a report
13 to your employer, Mr. Briscoe; did you not?

14 A Yes.

15 Q Let me show you what I'll have marked as
16 Exhibit 1 and ask you if that is a copy of it?

17 (Brief pause.)

18 A Yes, that's it, that's my memo.

19 Q All right.

20 (Plaintiffs' Exhibit 1 marked for identification.)

21 After this recommendation to put more money
22 into the project and I think a general recommendation
23 from your observations contained in the last paragraph,
24 did you have any involvement professionally with the
25 project itself?

1 A I was not involved in any of the additional
2 work done at the property through the operation that was
3 going on already. I think I did visit the property --
4 I visited the property at one time and collected some
5 samples. I don't remember if it was before or after
6 this particular time.

7 Q Did you make any reports on that effort, in
8 other words, the collecting of samples, to Briscoe?

9 A A written report, a memo, I don't recall.
10 I should have but I don't really recall.

11 Q If you had taken samples and visited the
12 property in that capacity, would you have turned in a
13 time slip on the project itself?

14 A There would be records of my visit, yes.

15 Q In other words, based on your understanding
16 of the workings of SEA during 1979, was it the practice
17 if an employee of SEA went to a particular project and
18 put in time, that you would record that or give it to the
19 bookkeeper at SEA for billing purposes?

20 A I'm sorry, I didn't follow all of that.
21 I got lost halfway through it.

22 Q It was a long one. Based upon your
23 knowledge of the billing procedures at SEA during 1979,
24 if you as Senior Geologist or Program Director or whatever,
25 Program Manager, visited a particular project that SEA

1 was involved in at the request of Mr. Briscoe, would it
2 be your practice to put in a time slip for something so
3 that the company could bill for your time?

4 A Yes.

5 Q Do you have any independent recollection, Ed,
6 of actually doing billable type work on the Tombstone
7 heap leach project after May 6th, 1979?

8 A The date there would make it impossible for
9 me to answer because I just don't remember.

10 Q Really, after this visit where you make your
11 recommendations, do you have an independent recollection
12 of being on the property and doing any geological work
13 or any observatory type work?

14 A After that date?

15 Q Yes.

16 A I just don't remember.

17 Q Fair enough.

18 A Now, I know that some of the work, some of
19 the investigation that I did and discussing it with Dick
20 Hewlett or discussing it with Jim Briscoe was under the
21 interest of the project that I was working on in New
22 Mexico because the leaching process is also applicable to
23 uranium which is the project I was working on in New
24 Mexico.

25 Q All right.

1 A So, some of the time that I spent on
2 discussing Tombstone might not have been billed to the
3 Tombstone operation. It might have been billed to my
4 project.

5 Q After your visit to the Tombstone project
6 as shown by Exhibit 1 on May 6th, 1979, did you have
7 any discussions about the project with Tom Schloss?

8 A At times I discussed with Tom the project
9 but I don't remember if it was before or after May 6th.

10 Q Go ahead.

11 A And particular, we discussed the samples
12 that I had collected from Tombstone.

13 Q At any time between the first of January,
14 1979, and your termination with or your resignation from
15 SEA, did you make any representations to Tom Schloss, Ed,
16 about the project at Tombstone, the Tomstone heap leach
17 project? In other words, by "representations," I mean
18 that it was a good geological target or anything along
19 those lines in your capacity as a geologist.

20 A I don't remember exactly if. I do know that
21 I talked to Tom once or twice and I generally have
22 enthusiasm for Tombstone. So, I suppose or I'm sure that
23 I would have passed that on.

24 Q You also based on your past employment with
25 71 Minerals had knowledge or some knowledge at least, did

1 you not, Ed, of what had been done on the property prior
2 to Schloss and Briscoe's operation in 1979?

3 A I was on the property for six months in '76.

4 Q You knew that they were leaching the
5 old dumps; correct?

6 A Yes.

7 Q Did you know what type of solution they were
8 using to leach with?

9 A A cyanide solution, yes.

10 Q Were you aware before I believe February 9th,
11 1979, of the type of process that SEA was recommending
12 be used on the heap leach with Mr. Schloss and his
13 involvement?

14 A I didn't follow the question.

15 Q Were you aware prior to February 9th, 1979,
16 which is the date a contract was signed between Schloss
17 and Briscoe to operate that heap leach project -- what
18 I'm asking you is before that time did you know what type
19 of a leaching process SEA was recommending be used?

20 A I had discussed it a bit with Mr. Briscoe
21 and Mr. Hewlett but I'm not a metallurgist, so they were
22 just filling me in.

23 Q Do you recall what type of solution leach
24 process it was going to be that they were recommending?

25 A No, I don't.

1 Q Okay.

2 A Many different solutions are possible and
3 they were all discussed and talked about.

4 Q At the time you visited the property on May
5 6th, 1979, you were aware that sulfuric acid was a part
6 of the solution, were you not, because of your
7 observation of a tanker truck coming in; correct?

8 A Sulfuric acid is a solution that is used.
9 It is not the leach solution.

10 Q So, you are not aware of what type they were
11 using really at that time, May 6th?

12 A Yes, they could not have been using cyanide.
13 I definitely know that.

14 Q Okay.

15 A I think they were using one of the sodium
16 thiosulfides.

17 Q Good enough.

18 A Which follows the acid solution. I have
19 forgotten the term for it. First you put the acid on and
20 it is called a pre-soak.

21 Q Yes.

22 A Then you put on the actual leach solution
23 itself.

24 Q Had you seen anything in your work with SEA
25 while you were an employee there of reports on how this

1 system of Mr. Hewlett's was going to work or, you know,
2 a presentation of that type?

3 A Engineering data?

4 Q Yes.

5 A No, no.

6 Q Or chemical data?

7 A No.

8 Q Did Mr. Hewlett ever tell you what experience
9 he had had in the past with his process that he was going
10 to use at Tombstone; in other words, whether he had
11 tested it before or anything like that?

12 A In discussions, I got the impression that
13 this was all just a test, a metallurgical test to begin
14 with. It was not a proven, established recovery method.

15 And I assumed we were going into it under
16 the assumption that it was --

17 Q -- a test?

18 A -- a test.

19 Also testing not only the process and the
20 chemicals but also how they react to the particular ore
21 that is on that property. This is just standard
22 operations.

23 I don't recall Mr. Hewlett ever having used
24 the process on another property, if that's what you are
25 getting at.

1 Q So, based upon your discussions with
2 Mr. Hewlett, there was no question in your mind that this
3 was a new process that wasn't proven and that they were
4 really going to test it, not only from a chemical
5 standpoint but as to how it reacted on the particular
6 ores or dumps at Tombstone?

7 A Yes. And I'll follow that up by saying that
8 there wasn't just one test run. Mr. Hewlett performed
9 many tests while he was working at Tombstone, different
10 chemicals, different concentrations, different times and
11 that sort of thing.

12 Q And again in your capacity at least with
13 SEA, you at that point in time or at any time prior to
14 that were not aware of what representations Mr. Hewlett
15 and Mr. Briscoe may have made to the investors as to the
16 process that they were going to use?

17 A I never saw the reports. I was under the
18 assumption that they were going to do a crushing or that
19 crushing was involved. But whether that really was part
20 of the operation that was actually presented to Mr.
21 Schloss, I don't know.

22 Q Just out of my curiosity, based upon your
23 experience with Mr. Hewlett and Mr. Briscoe, would it
24 surprise you professionally -- and I use the word
25 "surprise" as best I can; okay? -- would it surprise you

1 professionally if it was presented to Mr. Schloss that
2 this method of Mr. Hewlett's was a proven process?

3 MR. KITTLE: May I ask that that question
4 be rephrased? I'm having a little trouble understanding
5 it.

6 MR. ALLEN: Well, I'm not sure I understand.
7 If you don't understand it, I'll
8 rephrase it.

9 THE WITNESS: Please rephrase it.

10 BY MR. ALLEN:

11 Q Okay. Would it surprise you that if the
12 method of recovery and leaching process that Mr. Hewlett
13 was going to use on the Tombstone heap leach was presented
14 to Schloss and investors as being a proven recovery
15 method?

16 MR. KITTLE: I object to the form of that
17 question because I think it calls for speculation about
18 information that this witness has already said he doesn't
19 have.

20 BY MR. ALLEN:

21 Q Can you answer it? See, we make objections
22 for the record. Okay?

23 A All right. Not being involved in the deals
24 that were made, the contracts that were made, I have no
25 information whatsoever there.

1 You asked what kind of an impression I would
2 have of a deal that they would make?

3 Q Yes.

4 A Professionally, I would think that
5 Mr. Briscoe and Mr. Hewlett would have explained what
6 they were getting into.

7 Q Okay.

8 A I particularly know working with Mr. Briscoe
9 as much as I have that things are done on a step by step
10 procedure, a systematic approach.

11 Q Fair enough.

12 A The last six months of '79 as General
13 Manager of SEA, would you have been familiar, Ed, with
14 the billing on particular projects for SEA?

15 A That's obviously a sensitive question. SEA
16 worked for several different clients.

17 Q Sure.

18 A And we kept a confidentiality of those
19 clients which meant that in the office, we had a rule
20 that someone who was involved in the management of one
21 project or one client's work would not get involved or
22 even know about the details of work involved in another
23 client's projects and works.

24 Q Yes.

25 A Obviously as General Manager, I kind of

1 cross over that line just a little bit.

2 Q Sure.

3 A But the answer to the question is no, it was
4 quite well-laid out that even though I was General
5 Manager, I was not to cross into such things as what was
6 being billed to other clients and how much it was and
7 that sort of thing.

8 Q The only person that would know that would
9 be Mr. Briscoe, I would assume; right? Somebody's got to
10 know.

11 A Or the bookkeeper.

12 Q The reason I asked that question, and I'll
13 preface it by this, did you become aware at a point in
14 time as General Manager that SEA withdrew from any
15 responsibility for the Tombstone project?

16 A No, I didn't know that specifically. I knew
17 that there arose some disagreement between the two
18 parties and SEA stopped their involvement, at least as
19 far as I was concerned from what I knew.

20 Q As General Manager, were you aware of whether
21 or not say in October, November and December of 1979,
22 there were any SEA employees working on behalf of the
23 Tombstone heap leach project?

24 A I would have to check the records. SEA
25 would have records of that.

1 Q The reason I ask that is that during the
2 time you were General Manager, in fact November 16th and
3 before, I believe, a gentleman by the name of Tom
4 Waldrip, Jr., the SEA Land Division Manager, wrote
5 numerous letters to creditors and prospective creditors
6 of the Tombstone heap leach project advising them that
7 "The Southwestern Exploration Associates, subsidiaries
8 and other related corporations have not had nor will in
9 the future accept any obligations or responsibilities
10 for debts incurred by the present Tombstone heap leach
11 operators; to wit, Tombstone Exploration, Inc."

12 Do you recall any of those things being
13 discussed in the company that you were away of?

14 A I recall that such a letter of that nature
15 was made up by Tom. Tom was kind of wearing two hats
16 there, not only Land Division Manager but he was, like
17 most of us in the company, wearing two hats. He was
18 also unofficially the manager from SEA's standpoint of
19 the Tombstone project.

20 But since that involved another client, I
21 was not involved in those things at all. My duties as
22 General Manager were only in the line of personnel
23 management within the company, not the goings on of
24 individual projects, except for my own projects.

25 Q Ed, are you aware of where Mr. Hewlett is

1 today?

2 A No, I'm not.

3 Q When was the last time you saw him or talked
4 to him?

5 A When he was still working for SEA.

6 Q You haven't had any other professional
7 contact with him since December of 1979?--

8 A No.

9 Q -- or before then?

10 MR. ALLEN: I think that is all.

11 Have you got any, Jay? Go ahead.

12 MR. KITTLE: No, I have no questions.

13 BY MR. ALLEN:

14 Q Let me just ask you this: My records show
15 that during some time between July 21st, 1979, and August
16 31st, 1979, you were billed out for \$30 on the Tombstone
17 project for one hour. I'm just curious if you know what
18 in the world that might have been?

19 A No, I wouldn't recall it. It might have
20 been a discussion with Jim.

21 Q Okay.

22 A What was the date on it again?

23 Q Between July 21st and August 31st, 1979.

24 A No. I was going to say it might have been
25 the hour I spent writing that memo but it is a different

1 date.

2 Q Yes. Just so I understand this system,
3 when you went to computer billing out there, there are
4 six letters before Exploration Program Manager and then
5 it says "CCE WES." I'm assuming the "WES" are your
6 initials.

7 A Right.

8 Q Can you tell me what the "CCE" is or is that
9 just a code?

10 A Each one of them is a separate code. I
11 don't remember what they were.

12 Q The reason I assumed that "WES" is your
13 initials, the one right above it is "JAB, Registered
14 Professional Geologist." That I believe we have
15 established is Mr. Briscoe's initials.

16 A Right.

17 Q Okay. Did you have, Ed, any kind of
18 ownership rights to the Tombstone project in any way; in
19 other words, a percentage interest in any of the SEA
20 subsidiaries' or companies' involvement with the Tombstone
21 project?

22 A No, I didn't.

23 Q You were strictly employed, paid a salary;
24 is that correct?

25 A Yes.

1 Q And that's true at least in regard to the
2 Tombstone project throughout your employment with SEA?

3 A Right.

4 Q Are you familiar with or do you know what
5 Austin Mining and Milling is?

6 A No, I don't.

7 Q How about SEA Hydromet, Inc.; do you know
8 what that is?

9 A That would be the corporation that
10 Mr. Briscoe and Dick Hewlett set up when Mr. Hewlett
11 came to work for SEA.

12 MR. ALLEN: Okay. I guess that's it.

13 MR. KITTLE: I do have one.

14 MR. ALLEN: I figured I would get you to
15 ask something if I waited long enough.

16 MR. KITTLE: I finally thought of one.

17 EXAMINATION

18 BY MR. KITTLE:

19 Q Recognizing that Jim Briscoe and Dick Hewlett
20 had set up this company together called SEA Hydromet,
21 when Dick did certain work down at the Tombstone heap
22 leach, how could you tell whether he was doing that as
23 an employee of SEA Hydromet or whether he was doing it
24 as somebody hired by Southwestern Exploration Associations?

25 A I would not know. I have no way of knowing.

1 MR. KITTLE: Fine. That's really the only
2 question I have.

3 FURTHER CROSS-EXAMINATION

4 BY MR. ALLEN:

5 Q Along those lines though, Ed, do you know
6 when in point of time that this Hydromet Corporation
7 was set up and what its relationship was with SEA?

8 That's a multiple question. First of all,
9 do you know when the Hydromet Corporation was set up?

10 A I could guess at times. I assume it was
11 when Mr. Hewlett showed up on the scene.

12 Q Okay.

13 A Sometime in '79. I'm afraid I can't help
14 you very much there. Mr. Briscoe never involved me in
15 his business activities, unless it was involved with my
16 project.

17 Q Southwestern Exploration Associates, Inc.,
18 based on your knowledge of it had more than one
19 subsidiary; correct?

20 A Yes.

21 Q They had a technical services group which
22 they had a corporation called SEA Photography, Inc.
23 Do you recall them?

24 A Yes.

25 Q And they had at some point in time this SEA

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Hydromet, Inc. which was the Hydrometallurgical Division?

A Right.

MR. ALLEN: That is all I have. Thank you,
sir.

(Deposition proceedings concluded 11:30 A. M.,
October 21, 1980.)

Wade Edward Speer

C E R T I F I C A T E

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STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

I, Don L. Gautier, a Notary Public duly
commissioned under the laws of the State of Arizona, in
and for the County of Pima, do hereby certify that I took
down in shorthand the questions propounded to and the
answers given by the witness at the time and place herein-
above set forth; that said witness, before testifying, was
by me duly sworn to speak the truth, the whole truth and
nothing but the truth in the cause aforesaid; and that
the foregoing is a full, true and correct transcript of
the testimony given by said witness.

I further certify that I am not an attorney
or counsel for either of the parties, or a relative or
employee of any attorney, counsel or party connected with
the action, or financially or otherwise interested in the
action.

WITNESS MY HAND AND SEAL at Tucson, Arizona,
this 29th day of October, 1980.

Notary Public

My Commission Expires:
August 29, 1982

PH's E41
10/21/80

~~DK~~
F. Land

TO: JAB

FROM: WES

DATE: May 6, 1979

RE: My trip to Tombstone on Wednesday, May 2, 1979, to inspect the heap leaching operation.

On May 2 I traveled to Tombstone, Arizona to see first-hand Dick Hewlett's heap leaching operation and to study its application to our uranium exploration program in New Mexico. However I was immediately struck with the inefficiency caused by the use of used equipment and the lack of proper supplies. I plainly saw several cases of excessive down time, delayed schedules and costly additional work that was due to non-functioning, used equipment and lack of proper supplies and equipment. In particular, scheduling of work that is of a consecutive nature is difficult, if not impossible, when one does not know if equipment is going to work when it is supposed to, or if one piece of equipment fails and this causes additional delays in the overall program. This was evident at Tombstone in the few hours that I was there where, for instance, the major expense for the day was delivery of a tanker trunk of sulphuric acid which had to be stored in a makeshift, unanticipated storage tank because the intended storage tank leaked and the sprinkler system was not yet in operation due to the use of salvaged, used pumps and plastic pipe. This situation reminded me of an expression a friend of mine used to use, "A dollar waiting on a dime." In the case at Tombstone, the lack of \$20 worth of plumbing and electrical supplies disrupted the entire day's work for about seven people and resulted in schedule disruptions which will take several days to correct.

My recommendation is obvious. Enough money should be appropriated to the job in order to get it done with new equipment and plenty of the necessary supplies before the job is underway. It can easily be seen that, given the present situation, some minor mechanical problem could come up and prevent the entire project from being completed. In other words the project could become a complete failure based on the failure or inappropriate use of a piece of used equipment. Of course, much more likely is that the project will take twice as long to accomplish as need be, resulting in an overall greater cost than if new equipment and sufficient supplies were utilized in the first place.

WES
WES/kar
P-418
cc: Tom Schloss