Michael W. Tankersley
Inspector General

EXPORT-IMPORT BANK
of the UNITED STATES

May 23, 2008

Congressman Edolphus Towns
Suite 2232
Rayburn House Office Building
Washington DC 20515

RE: Gideon Minerals USA, Inc. Claims Against Export-Import Bank Regarding Batu-Hijau Mine Determined to be Groundless

Dear Congressman Towns,

This letter is to communicate the results of the independent review and assessment by this office of the claims asserted by Gideon Minerals USA, Inc. ("Gideon") against The Export-Import Bank of the United States ("ExIm Bank") regarding ExIm Bank's $425 million loan (the "Batu Hijau Loan") to PT Newmont Nusa Tenggara ("PTNNT"). This matter was referred to this office by the Chairman of ExIm Bank on November 13, 2007.

PTNNT, an Indonesian company, is the operator of the Batu Hijau gold and copper mine (the "Batu Hijau Mine") located on the island of Sumbawa in Indonesia. ExIm Bank committed to make the Batu Hijau Loan to PTNNT in 1997 as part of a complex financing arrangement involving multiple lenders that supported the development of the Batu Hijau Mine. ExIm Bank funded the Batu Hijau Loan pursuant to that commitment in 2001. PTNNT is 80% owned by a joint venture between a subsidiary of Newmont Mining Corporation (together with its relevant affiliates, "Newmont") and Sumitomo Corporation (together with its relevant affiliates, "Sumitomo"). PTNNT is 20% owned by PT Pukuafu Indah, an Indonesian company. All of the evidence available to this office suggests that PT Pukuafu Indah is, and at all times relevant to this review has been, owned directly or indirectly by Jusuf Merukh, an Indonesian citizen. These transactions and relationships are described in greater detail in Appendix II.

Based upon the independent review of the documents and other actions by this office as described in Appendix I, it is our conclusion that Gideon has demonstrated no legal or factual basis to support any of the claims it has made against ExIm Bank. Three courts in the U.S. have in the past year found Gideon's tactics in pursuing its unsupported claims

relative to the Batu Hijau Mine to be frivolous and deserving of sanctions, conclusions with which we concur in this instance.

Gideon's principal unsupported claims[1] are that (a) Gideon is the owner of three Indonesian companies: PT Lebong Tandai, PT Tanjung Serapung and PT Pukuafu Indah (referred to together as "Gideon's Purported Indonesian Subs"), (b) PT Lebong Tandai or another of Gideon's Purported Indonesian Subs holds the exclusive right to own and operate the Batu Hijau Mine, (c) PTNNT does not have the right to operate the Batu Hijau Mine because the agreement between Newmont and one or more of Gideon's Purported Indonesian Subs providing for their joint actions to develop and operate the Batu Hijau Mine was terminated, (d) ExIm Bank erroneously loaned PTNNT $425 million in contravention of ExIm Bank's own written documents providing for the Batu Hijau Loan and in the mistaken belief PTNNT was the true owner of the Batu Hijau Mine, (e) ExIm Bank provided a $1 billion credit guarantee for the Batu Hijau Mine project that Lebong Tandai should be entitled to draw upon and (f) Gideon's Purported Indonesian Subs are entitled to have the sum of $425 million paid to them by ExIm Bank as a "redisbursement" of the proceeds of the Batu Hijau Loan.

Our investigation of this matter has found that:

A. There is no reason to believe that Gideon owns any interest in PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah. Gideon has provided no evidence of its ownership of these companies to this office or in its pleadings in the 2002 SDNY Litigation, the 2005 Colorado Litigation or the 2008 New York Litigation (as defined in Appendix I). Copies of documents signed by Jusuf Merukh reviewed by this office and numerous public reports (see Document L, Appendix III) support the conclusion that Jusuf Merukh directly or indirectly owns and controls each of PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah. Jusuf Merukh's signature as an officer of PT Pukuafu Indah appears on documentation supporting the Batu Hijau Loan, including the organization of PTNNT, that is contained in ExIm Bank's files.

With no proof that Gideon has any ownership of PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah, there is no legal or factual basis to support Gideon's assertion of any of its other claims. This evaluation could conclude with this finding and it would serve as a complete refutation of Gideon's right to assert the claims that it has made against ExIm Bank. This letter will address those other unsupported claims because Gideon has so persistently asserted those claims over a period of years, because

[1] Gideon's claims are described in letters from your office to ExIm Bank dated August 30, 2007 and September 28, 2007, in letters from Mr. Reifman, Gideon's counsel, to me dated January 17, 2008 and January 19, 2008, and in pleadings filed in the 2002 SDNY Litigation, the 2005 Colorado Litigation and the 2008 New York Litigation (as each term is defined in Appendix I).

Gideon's other unsupported claims are so clearly without legal or factual support and because this office undertook substantial work in documenting these conclusions that should be shared with the Congress, other government agencies and members of the public who might be misled by Gideon's continued assertion of its unsupported claims.

B. There is no evidence that any of PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah has the right to own or operate the Batu Hijau Mine. Detailed documentation of the Batu Hijau Loan in ExIm Bank files, particularly the Contract of Work issued by the Indonesian government in 1986 and a written confirmation by the Indonesian government of the continued existence of that Contract of Work in 2002 (Documents B, C, Appendix III), support the conclusion that PTNNT is currently, and at all relevant times to the Batu Hijau Loan has been, the exclusive holder of the right to operate the Batu Hijau Mine.

C. There is no evidence that any of PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah legally terminated agreements with Newmont that provide for the ownership and operation of the Batu Hijau Mine by PTNNT. Nor is there any evidence that if such a termination was effected orally, as alleged by Gideon, Gideon or any of Gideon's Purported Indonesian Subs thereafter attempted to confirm the termination in writing or pursued legal action to enforce the termination in Indonesia or in the United States, as would be required by the express terms of the relevant agreements. The continuing ownership of the 1986 Contract of Work by PTNNT that authorizes it to operate the Batu Hijau Mine, and the continuing agreements between PT Pukuafu Indah and Newmont relating to their ownership of PTNNT, support PTNNT's continuing rights as the lawful owner and operator of the Batu Hijau Mine, and effectively negate any claim by other parties, such as Gideon's Purported Indonesian Subs, to such rights. It does not appear that any of Gideon, PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah has ever undertaken direct litigation in Indonesia or in the U.S. against PTNNT or Newmont to assert Gideon's unsupported claim that PTNNT is not the legal owner of the Batu Hijau Mine.

D. There is no evidence that ExIm Bank erroneously made the $425 million Batu Hijau Loan to PTNNT instead of one of Gideon's Purported Indonesian Subs. All available evidence, consisting of detailed documentation of the Batu Hijau Loan in ExIm Bank files, including the initial application, legal due diligence records, detailed representations and warranties in definitive executed loan agreements, opinions of counsel, and supporting certificates and other documents, supports the conclusion that PTNNT is the correct borrower of Batu Hijau Loan and recipient of its proceeds. See Documents D, E, F, G and H, Appendix III.

E. ExIm Bank did not provide any loan, credit insurance or guarantee to support the Batu Hijau Mine project other than the $425 million direct loan committed to PTNNT. There is no $1 billion guarantee by ExIm Bank that Lebong Tandai or any other person can claim rights under. The assertion that there was $1 billion of credit support from

ExIm Bank appears to be a confused reading of ExIm Bank's press release regarding the transaction, which stated that the total financing for the Batu Hijau Mine totaled $1 billion, of which $575 million was provided by sources other than ExIm Bank. See Document I, Appendix III.

F. There is no documentary evidence, and no legal rationale, that would support Gideon's claim that any of PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah is entitled to have the sum of $425 million paid to them by ExIm Bank as a "redisbursement" of the proceeds of the Batu Hijau Loan. The extensive and uncontroverted evidence that ExIm Bank properly made the Batu Hijau Loan to PTNNT in accordance with its contractual obligations as set forth in the documents providing for the Batu Hijau Loan, and the complete absence of any evidence to support Gideon's assertions to the contrary, allow no other possible conclusion. Gideon has presented no legal analysis, and has provided no evidence, that would support the existence of any obligation by ExIm Bank to"redisburse" any amount of money to Gideon or Gideon's Purported Indonesian Subs.

Even if Gideon could prove any of its factual allegations as to its ownership of any of PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah or the Batu Hijau Mine (and it has provided no evidence to substantiate its ownership of any of them), it is our conclusion that as a legal matter, that evidence would at most support a direct claim against Newmont or PTNNT by PT Pukuafu Indah alleging breach of agreements between Newmont and PT Pukuafu Indah, or possibly disputing the ownership of the Batu Hijau Mine. It does not appear that any of Gideon or Gideon's Purported Indonesian Subs has pursued these sorts of direct claims against Newmont or PTNNT, despite what Gideon has described as more than ten years of attempting to assert its unsupported claims in other ways.

Gideon has approached various law enforcement agencies since 1999, including the Securities Exchange Commission, the Federal Trade Commission and the U.S. Department of Justice, to request that they take action against Newmont based upon Gideon's unsupported claims. None have taken any enforcement action against Newmont in response. Despite this inaction, Gideon and its counsel have claimed in public statements and in court filings that one or more of these agencies was pursuing active investigations of Newmont and the Batu Hijau Mine transactions.

Gideon has initiated litigation in three cases involving parties related to the transactions in question, asserting the unsupported claims described above and others not relevant to this discussion. In each of the 2002 SDNY Litigation, the 2005 Colorado Litigation and the 2008 New York Litigation, the court dismissed Gideon's unsupported claims at an early stage in the proceedings. In the Colorado litigation, both the U.S District Court and the 10th Circuit Court of Appeals levied personal sanctions against Gideon's counsel, finding that Gideon's actions in that case were groundless and had been undertaken to harass Newmont. In the 2008 New York Litigation the court has granted the defendant's

motion to dismiss Gideon's claims upon summary judgment and to impose sanctions based upon frivolous conduct in the litigation. See Document K, Appendix III.

Gideon's counsel has asserted to your office, to this office, to various courts and in public statements that the courts in one or both of the 2002 SDNY Litigation and the 2005 Colorado Litigation made findings and rendered decisions that supported Gideon's claims. Our review of the decisions of the courts in each of those actions showed that those assertions by Gideon's counsel have grossly mischaracterized the actions of the courts. See Documents J, K, Appendix III.

Conclusion

The independent review conducted by the ExIm Bank Office of Inspector General demonstrates conclusively that ExIm Bank did not err in its actions regarding the Batu Hijau Loan. Clear and convincing evidence in the ExIm Bank loan files confirms that ExIm Bank conducted appropriate and thorough due diligence and obtained appropriate documentary support to assure the accuracy and legality of its actions in approving the transaction and making the Batu Hijau Loan to PTNNT. Gideon has demonstrated no legal or factual basis to support any of the claims it has made against ExIm Bank

We did not cite in this letter all of the evidence we have considered in making our findings, as it is too voluminous to include. We are happy to meet with you at your convenience to discuss our findings and conclusions and the supporting documentation.

Sincerely yours,

Michael W. Tankersley
Inspector General

Cc: Chairman James L. Lambright
Congressman Luis Guitterez
Hon. Darryl C. Towns, New York State Assembly
Mark C. Treanor, Chairman ExIm Bank Advisory Board

Appendix I: Scope and Methodology of Review

This matter was referred to this office by the Chairman of ExIm Bank on November 13, 2007, following ExIm Bank's correspondence with your office during the period of August to October 2007.

I met in your office on December 7, 2007 with Alex Beckles, a member of your staff, and with Mr. Steven Reifman, counsel for Gideon, and two individuals who were identified as representatives of Gideon. After that meeting I obtained ExIm Bank's files related to the Batu Hijau Loan, which were voluminous, and examined them in view of the claims made by Gideon. I exchanged correspondence with your office and with Mr. Reifman in January 2008 relating the results of my initial review of Gideon's unsupported claims and reiterating to Mr. Reifman my request that he provide documents to support Gideon's claims. I discussed the Batu Hijau Loan and its documentation with lawyers from ExIm Bank's general counsel staff who were familiar with the Batu Hijau Loan and the claims made by Gideon. I also spoke with ExIm Bank's outside counsel in the initial Batu Hijau Loan transaction, with the general counsel of Newmont Mining Corp. and with trial counsel to Societe Generale in the 2008 New York Litigation and received supporting documentation from each of them. I reviewed pleadings, supporting documents and decisions of the court in each of the 2002 SDNY Litigation, the 2005 Colorado Litigation and the 2008 New York Litigation.

This office made requests to Gideon's counsel at the December 7, 2007 meeting held in your office, and in subsequent correspondence in January 2008, that written legal analysis and documentary evidence be provided that would support Gideon's claims. Despite assurances by Gideon's counsel that such documents would be provided, none were provided to support Gideon's claims. Assertions by Gideon's counsel that such documents could be found in the records of the 2002 SDNY Litigation and the 2005 Colorado Litigation were proven upon review to be inaccurate.

Pleadings, supporting documents and decisions of the court in three lawsuits relating to Gideon's claims were reviewed:

(i) Gideon Minerals U.S.A., Inc. et al v. JP Morgan Chase Bank, the Sumitomo Bank Ltd., The Bank of Tokyo-Mitsubishi, Ltd., Bank of Tokyo-Mitsubishi Trust Company, Japan Bank for International Cooperation, Kreditanstalt fur Wiederaufbau, White & Case, Arthur Andersen, Goldman Sachs, Societe Generale Bank and Export-Import Bank of the United States, U.S. District Court for the Southern District of New York (Case No. 02 Civ. 10140), Judge Martin presiding (the "2002 SDNY Litigation"). In this litigation Gideon sought, among other things, for the court to order the named lenders to turn over to Gideon $425 million which Gideon alleged represented proceeds of loans fraudulently made by the named lenders and secured by property of Lebong Tandai Group, and to enjoin ExIm Bank from interfering with Lebong Tandai Group's intention to "replace the note and lender" relative to the $425 million loan. The court

declined to issue the requested injunction, finding that Gideon had not shown a likelihood of succeeding upon the merits of its claims. The court subsequently dismissed Gideon's claims, with prejudice, finding that Gideon failed to state any claim the court could consider. The court noted that Gideon was free to pursue its claims in state court, an action Gideon did not follow through on until the 2008 New York Litigation described below.

(ii) UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Mining Corporation et al, U.S. District Court for the District of Colorado (Case No. 05-CV-1046) and related appellate proceedings before the U.S. Court of Appeals for the 10th Circuit (Case No. 07-1159) (the "2005 Colorado Litigation"). This was a securities class action suit brought against Newmont on behalf of stockholders in which Gideon attempted to intervene in order to assert its claim to ownership of the Batu Hijau Mine. The court refused to permit Gideon to intervene in that litigation, finding that their arguments to support intervention had no legal basis. Mr. Reifman, Gideon's counsel in that litigation, was personally sanctioned by the trial court for asserting various claims and filings in that litigation "for the purpose of harassment and vexation" (slip op. 2007 WL 2871013 (D. Colo.)) and was also separately sanctioned by the 10th Circuit Court of Appeals on similar grounds (slip op. 2008 WL152598 (C.A. 10 Colo.)).

(iii) PT Pukuafu Indah, PT Lebong Tandai, PT Tanjung Sera Pung and Gideon Minerals U.S.A., Inc. v. Societe Generale, Supreme Court of the State of New York, County of New York (Case No. 600490/08) (the "2008 New York Litigation"). In this case, Gideon attempted to assert against Societe Generale substantially the same claims made in the 2002 SDNY Litigation, to the effect that Societe Generale had unlawfully converted metals or ores taken from the Batu Hijau Mine through the execution of trades of derivative securities based upon the prices of those metals or ores for PTNNT or Newmont. According to a transcript of a hearing on May 6, 2008, Justice Ramos described Gideon's claims and tactics as "ludicrous" and granted Societe Generale's motions to dismiss Gideon's claims upon summary judgment and to impose sanctions based upon frivolous conduct in the litigation.

Gideon has attempted to offer as "evidence" to support its claims: (i) personal affidavits of officers of Gideon and affidavits of Jacques de Groote, identified as a former Executive Director of the World Bank and of the International Monetary Fund (designated by his native Belgium to represent its interests in each organization), that were filed in the 2002 SDNY Litigation and provided by Gideon in correspondence with your office (the "deGroote Affidavits"), (ii) excerpts of one of the agreements between Newmont and PT Pukuafu Indah described in Appendix II (the JVA), quoted out of context, (iii) Gideon's unsupported allegations against Newmont and others submitted in writing to various federal agencies in its unsuccessful efforts to cause them to take enforcement action against Newmont and (iv) pleadings and orders of the court in the 2002 SDNY Litigation and the 2005 Colorado Litigation. These documents do not constitute factual evidence of the core elements of Gideon's claims – that PTNNT is not

the lawful owner and operator of the Batu Hijau Mine and that ExIm Bank erroneously loaned $425 million to PTNNT. These documents were rejected by the courts in the 2002 SDNY Litigation, the 2005 Colorado Litigation and the 2008 New York Litigation as inadequate to support the claims being asserted by Gideon and have been similarly rejected as inadequate to substantiate Gideon's unsupported claims in this matter.

This office contacted Dr. deGroote to seek to confirm that he had executed the deGroote Affidavits and to confirm with greater specificity some of the statements contained in them. Dr. deGroote responded by phone and in a letter to confirm that he had supplied the deGroote Affidavits and did not disclaim any of the statements made in them, but declined to address other questions with greater specificity, citing the pending 2008 New York Litigation. The statements in the deGroote Affidavits, even when taken in their most favorable light, do not speak directly to the core elements of Gideon's unsupported claims and are not considered by this office to constitute evidence that would be relied upon by a court without further documentary support of the sort identified below. The affidavits of officers of Gideon are also not considered by this office to constitute evidence that would be relied upon by a court – the affidavits restate a number of the elements of Gideon's unsupported claims but do not provide any additional documentary evidence.

Gideon's failure to produce documentary evidence that might confirm portions of Gideon's unsupported claims is also considered by this office to be convincing evidence that Gideon's claims against ExIm Bank are false. Among the basic elements of Gideon's unsupported claims that should be supported by documents that would be expected to be easily available to Gideon if its claims were true are the following:

Gideon's unsupported claim to own PT Lebong Tandai, PT Tanjung Serapung or PT Pukuafu Indah would be proven by records such as share certificates, corporate records, purchase records, tax records or references to such ownership from reliable public sources. No such records have been provided by Gideon.

Gideon's unsupported claim that agreements with Newmont relating to the Batu Hijau Mine were terminated would be proven by written notices and other correspondence between the parties, as confirmed by their subsequent actions. No such records have been provided by Gideon.

Gideon's unsupported claim of a right to the proceeds of an ExIm Bank Batu Hijau Loan would be proven by written loan documents evidencing such rights or sound legal arguments and records supporting another party, such as one of Gideon's Purported Indonesian Subs, being the holder of those rights. No such records or legal arguments have been provided by Gideon.

Gideon's claimed right to own and operate mines on government lands in Indonesia would be proven by written and sealed Contracts of Work issued by the Indonesian

> government in the legal name of an entity that Gideon could prove that it owns, and by related confirming documents and correspondence. No such records have been provided by Gideon.

It is a fundamental requirement of our legal system that parties such as Gideon who assert claims against the government, or private parties, carry the burden of proving their case through sound legal argument and demonstrated facts. To invoke action by any of the executive, legislative or judicial branches of the federal government to consider their claims, they must present in good faith a summary of their case, supported by documentary evidence and reasonable legal argument, that supports their position. Gideon has provided neither sound legal argument nor documentary support for its unsupported claims against ExIm Bank. This office's independent review of Gideon's claims has confirmed that, in fact, most of the unsupported factual assertions by Gideon are directly contradicted by reliable documentary evidence obtained from other sources. The Summary of Batu Hijau Transactions in Appendix II details the documents reviewed by this office that support our conclusions in this regard, portions of which are included in Appendix III.

Appendix II: Summary of Batu Hijau Transactions.

Gideon has persistently asserted unsupported claims over a period of years that (a) PT Lebong Tandai holds the exclusive right to own and operate the Batu Hijau Mine, (b) PTNNT does not have the right to own and operate the Batu Hijau Mine because the agreement between Newmont and Gideon's Purported Indonesian Subs was terminated, and (c) ExIm Bank erroneously loaned PTNNT $425 million in contravention of ExIm Bank's own written documents providing for the Batu Hijau Loan and in the mistaken belief PTNNT was the true owner of the Batu Hijau Mine. As noted above, Gideon has provided no factual or legal support for these claims, it is extremely doubtful that Gideon has any such factual or legal support and there is substantial evidence in opposition to these unsupported claims, which is described below.

The following summary of the events and documents contradicting Gideon's unsupported claims is drawn from this office's independent review of copies of each of the source documents referenced. This summary is provided for the benefit of your office, and any other interested readers, because Gideon's unsupported claims are so clearly without legal or factual support and because this office undertook substantial work in documenting these conclusions that should be shared with you and other parties who might be misled by Gideon's continued assertion of its unsupported claims.

Joint Venture Agreement dated September 30, 1985 between PT Pukuafu Indah and Newmont Indonesia Limited

PT Pukuafu Indah and Newmont Indonesia Limited, a Delaware (US) corporation and indirect wholly-owned subsidiary of Newmont Gold Company ("Newmont"), entered into a Joint Venture Agreement dated September 30, 1985 ("JVA") (Document A, Appendix III) with the following objectives:

> to apply for and negotiate a Contract of Work [("COW")] with the government of the Republic of Indonesia for the right to prospect, explore, develop and exploit any mineral or metal occurrences within the Contract Area [the current site of the Batu Hijau Mine on the island of Sumbawa] [and] to form a P.T. Company to execute the Contract of Work [PTNNT] . . .

The JVA was executed by Jusuf Merukh on behalf of PT Pukuafu Indah.

In the JVA PT Pukuafu Indah represents that it is the "registered holder of or applicant for those mineral concessions ("K.P.'s") within . . . the western portion of the island of Sumbawa" that was part of the agreed Contract Area for the Batu Hijau Mine. PT Pukuafu Indah agreed to contribute to PTNNT all of its rights to the K.P.'s and any other rights to exploit minerals in that area that it had or that it might obtain in the future. PT Pukuafu Indah also agreed to work to obtain final approval of the COW that would grant

PTNNT authority from the Indonesian government to develop and operate the Batu Hijau Mine.

It is important to note that the "K.P." rights held by PT Pukuafu Indah in 1985 did not give it title to or ownership of any minerals on Sumbawa, or even the right to mine minerals under a mining lease or other legal arrangement. The K.P. rights held by PT Pukuafu Indah were legally equivalent to "staking a claim" with the Indonesian government that would preclude others from asserting the right to develop a mine in the designated location, but did not grant the right to develop and operate a mine in that location to PT Pukuafu Indah. The right to develop and operate a mine could only exist under Indonesian law if and when a COW for that area was issued by the Indonesian government, as the owner of most of the land and minerals contained in the Contract Area, and then only if the many conditions stated in the COW were met to the satisfaction of the Indonesian government. If PT Pukuafu Indah, as the holder of K.P. rights, failed to submit to the Indonesian government a satisfactory proposal to develop the mineral deposits on Sumbawa, it was at risk of losing those rights. Upon issuance of the COW for the area of the Batu Hijau Mine, the K.P. rights held by PT Pukuafu terminated.

The JVA provides that PT Pukuafu Indah would receive a 20% ownership interest in PTNNT upon its formation and Newmont would receive the remaining 80% ownership interest. In the JVA and related contemporaneous agreements, Newmont agreed to provide its know-how and capital to develop the Batu Hijau Mine, and to arrange all financing required by the project. Newmont also agreed to loan to PT Pukuafu Indah its share of all capital contributions to PTNNT required by the project so that PT Pukuafu Indah would not have to invest its own capital in the project.

<u>Organization of PTNNT; Issuance of Contract of Work by Indonesian Government</u>

Pursuant to the JVA, PTNNT was organized in November 1986 by Newmont and PT Pukuafu Indah as an Indonesian limited liability company owned 80% by Newmont and 20% by PT Pukuafu Indah. The Indonesian government then issued a COW to PTNNT dated December 2, 1986 (Documents B, C, Appendix III), granting PTNNT the sole and exclusive right to exploit the mineral deposits in the Contract Area on Sumbawa for a period of 30 years. The COW clearly identifies PTNNT as "sole contractor for the Government with respect to the Contract Area," making it clear that PTNNT was granted the right to develop and operate the Batu Hijau Mine on land owned by the government of Indonesia. Newmont, acting through and on behalf of PTNNT, then proceeded to do, and finance, the exploratory and development work that ten years later led to the application to obtain financing from ExIm Bank and other sources to develop the Batu Hijau Mine.

Financing of PTNNT – 1996/1997

ExIm Bank was approached by financial advisors to Newmont and Sumitomo in 1996 seeking ExIm Bank participation in the proposed $1 billion of financing projected to be required to develop and commence the operation of the Batu Hijau Mine. The initial proposal received by ExIm Bank in September 1996 clearly identifies PTNNT as the borrower, as the owner/operator of the Batu Hijau Mine and as being owned 20% by PT Pukuafu Indah and 80% by a joint venture between Newmont and Sumitomo.

ExIm Bank responded by issuing a Preliminary Project Letter dated November 11, 1996 (identifying the transaction as #071225, Indonesia) to Newmont, Sumitomo and The Chase Manhattan Bank outlining potential credit support by ExIm Bank in an amount of up to $850 million for the benefit of PTNNT as the designated project company and borrower and setting forth ExIm Bank's due diligence requirements and expected terms of the transaction (Document D, Appendix III). Following delivery of this letter, ExIm Bank and its counsel and other technical advisors undertook months of extensive due diligence activity to verify that (i) PTNNT held the clear legal right under the COW to develop the Batu Hijau Mine, (ii) that the proposed plans to develop the mine were feasible, (iii) that environmental issues relating to the project would be properly addressed, and (iv) that the legal structure of the various financing arrangements for the project were appropriate and would provide ExIm Bank's loan the legal protection required to provide a reasonable assurance of repayment.

The files documenting ExIm Bank's due diligence review are voluminous. All of the documents contained in these files that were reviewed by this office support the conclusions that (a) PTNNT has the legal right to develop and operate the Batu Hijau Mine under the COW, (b) PT Pukuafu Indah did not retain any right to develop or operate the Batu Hijau Mine after it assigned its rights to PTNNT in 1986, (c) Lebong Tandai and PT Tanjung Serapung have no legal interest in the Batu Hijau Mine, (d) PTNNT is the named borrower of the Batu Hijau Loan and in that capacity has executed numerous agreements and certificates to support the Batu Hijau Loan and other financing and (e) PTNNT received and applied the proceeds of the Batu Hijau Loan in accordance with its agreements with ExIm Bank and others.

The officers of ExIm Bank completed and submitted to the Board of Directors of ExIm Bank a completed memorandum describing the Batu Hijau Loan (Case No.: AP071225XX) dated May 2, 1997 which identifies PTNNT as the applicant and proposed obligor of a $425 million direct loan from ExIm Bank that would be funded upon completion of the project of developing the Batu Hijau Mine (the "1997 Board Memo") (Document E, Appendix III). Newmont and Sumitomo are identified in the Board Memo as the 80% owners of PTNNT and PT Pukuafu Indah is identified as a 20% local shareholder of PTNNT. The Board Memo goes on to note that Newmont and Sumitomo as the project sponsors were committed to provide $900 million in equity and

deeply subordinated debt, and that total debt for the project would be $1 billion, represented by loans of $500 million from the Export-Import Bank of Japan, and $75 million from Kreditanstalt fur Wiederaufbau of Germany, with a syndicate of commercial bank lenders led by The Chase Manhattan Bank funding a pre-completion construction loan of up to $425 million that would be repaid, or "taken out" by ExIm Bank (the "Batu Hijau Debt Financing Package") once PTNNT was ready to commence operation of the Batu Hijau Mine.

ExIm Bank, the other lenders and PTNNT executed and delivered comprehensive loan agreements, collateral agreements and related documents and certificates providing for the Batu Hijau Debt Financing Package dated as of July 30, 1997. The documents included certified copies of the organizational documents of PTNNT and its owners, certificates of the officers of PTNNT, evidences of necessary notices to and approvals of the Indonesian Government and opinions of counsel, including Indonesian counsel for PTNNT. Of particular relevance to ExIm Bank's Batu Hijau Loan were a Loan Agreement between The Chase Manhattan Bank and Bank of Montreal, as lenders, and PTNNT dated as of July 30, 1997 providing for up to $425 million in construction credit (the "Chase $425 Million Construction Loan Agreement") (Document F, Appendix III), a Common Security Agreement between PTNNT, The Chase Manhattan Bank, ExIm Bank and the other parties to the Batu Hijau Debt Financing Package dated as of July 30, 1997 (the "Common Security Agreement")(Document G, Appendix III) and a Loan Agreement between ExIm Bank and PTNNT dated as of July 30, 1997 (the "ExIm Loan Agreement"), which together set forth the principal terms of ExIm Bank's Batu Hijau Loan to PTNNT.

The Common Security Agreement identified PTNNT as the Borrower of all of the debt constituting the $1 billion Batu Hijau Debt Financing Package, of which ExIm Bank's share is clearly limited to $425 million. The Common Security Agreement contains clear and unambiguous representations that PTNNT owns the rights under the COW and that Newmont and Sumitomo are the 80% shareholders of PTNNT and PT Pukuafu Indah is the 20% shareholder of PTNNT. These representations are incorporated by reference in the Chase $425 Million Construction Loan Agreement and in the ExIm Loan Agreement. Each of those agreements clearly and unambiguously presents PTNNT as the designated borrower that is obligated to repay the indebtedness created under those agreements.

ExIm Bank issued a press release describing its commitment to loan up to $425 million to PTNNT to refinance the construction loan in conjunction with the execution of the ExIm Loan Agreement and the other documents included in the Batu Hijau Debt Financing Package (Document I, Appendix III). The press release also noted that the total amount of debt financing for the Batu Hijau Mine project would be $1 billion, naming the other parties providing portions of that amount.

ExIm Bank Funding of Batu Hijau Loan to PTNNT - 2001

By 2001, PTNNT had completed development of the Batu Hijau Mine using the proceeds of the Batu Hijau Debt Financing Package, and was ready to begin operating the Batu Hijau Mine. At that time ExIm undertook further extensive work to confirm that the Batu Hijau Mine had been developed by PTNNT in accordance with its agreements, relying upon independent consultants, its own business and engineering review, further written assurances of officers of PTNNT and its legal counsel and the execution of amendments to the ExIm Loan Agreement by ExIm Bank and PTNNT. All of these documents confirm that PTNNT was the correct borrower of the Batu Hijau Loan and that PTNNT was the owner and operator of the Batu Hijau Mine under the COW. Based upon these documents, on May 18, 2001 ExIm Bank disbursed the sum of $403,750,000 pursuant to the ExIm Loan Agreement (Document H, Appendix III), which amount was applied to repay PTNNT's obligations under the Chase $425 Million Construction Loan Agreement.

Since the funding of the Batu Hijau Loan by ExIm Bank in May 2001, PTNNT has operated the Batu Hijau Mine and has made regular payments of principal and interest on the Batu Hijau Loan, which has been paid down to a balance as of December 31, 2007 of $127.5 million.

This summary of events and facts relating to the Batu Hijau Loan has been reviewed by the Office of General Counsel of ExIm Bank and confirmed as accurate to the best of their knowledge and belief.

Recent Status of Batu Hijau Mine, PT Pukuafu Indah

According to the Annual Report on Form 10-K filed by Newmont Mining Corporation with the SEC for the year ended December 31, 2007 (Document M, Appendix III), PT Pukuafu Indah repaid indebtedness to Newmont of approximately $161 million during 2007, representing amounts advanced by Newmont to support the capital obligations of PT Pukuafu Indah under the JVA and related agreements during the development of the Batu Hijau Mine. Newmont reported income attributable to the interest of Sumitomo and PT Pukuafu Indah in the Batu Hijau mine for 2007 of $299 million, of which PT Pukuafu Indah's share would be $109 million. As a result of the repayment of indebtedness to Newmont during 2007, PT Pukuafu Indah is eligible to receive its full 20% pro rata share of cash distributions from PTNNT, which are reported to have been approximately $60 million for 2007. These reported facts appear fundamentally inconsistent with certain of the actions and positions taken in Gideon's First Amendment Petition delivered to Representative Towns, and in the filing of the 2008 New York Litigation, particularly Gideon's claim that it is the owner of PT Pukuafu Indah.

Appendix III - Relevant Documents

This appendix contains a number of documents that support the analysis presented in the text of the letter and in Appendices I and II. In order to save space, and also in view of ExIm Bank's treatment of substantially all of the documents in its files relating to the Batu Hijau Loan as sensitive business confidential information that is not available to the public, only portions of some documents were produced. The consent of Newmont and PTNNT was obtained for the inclusion of the documents marked with an asterisk. Document A was filed as an exhibit in the 2008 New York Litigation and so was publicly available.

A. Joint Venture Agreement between PT Pukuafu Indah and Newmont Indonesia Limited dated September 30, 1985 providing for the organization of PTNNT and the development of the Batu Hijau Mine. Section 7.1 states that PT Pukuafu Indah is not entitled to withdraw from the joint venture. Section 9.7.1 provides that the JV Agreement is governed by Indonesian law, and requires that all disputes under the JV Agreement or concerning any of its subject matter must be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

B. *Cover and first page of Contract of Work between the Government of the Republic of Indonesia and PTNNT dated December 2, 1986.

C. *Certificate of the Government of the Republic of Indonesia dated December 3, 2002 confirming PTNNT as the continuing holder of the Contract of Work, that it was valid and in good standing and that there was "no other valid license, lease, or entitlement issued by the government of the Republic of Indonesia that would permit another company or person to conduct gold or copper mining and related activities on the land covered by" the Contract of Work.

D. First page of letter from ExIm Bank to Newmont Gold Company, Sumitomo Corporation and The Chase Manhattan Bank dated November 11, 1996 and first page of Exhibit I containing proposed terms of transaction, indicating PTNNT as Project Company and Borrower and PT Pukuafu Indah as a shareholder of PTNNT.

E. Board Memorandum dated May 2, 1997 evidencing the transaction as approved by the ExIm Bank Board, indicating PTNNT as Applicant and Obligor, and indicating the amount financed by ExIm Bank as $425 million.

F. *First page, signature pages and Schedule 2.1 – Commitments, of the Loan Agreement dated as of July 30, 1997 between PTNNT, The Chase Manhattan Bank and Bank of Montreal indicating a $425 million loan commitment for development of the Batu Hijau Mine (the "Chase $425 Million Construction Loan Agreement)

G. *First page of Common Security Agreement dated as of July 30, 1997 reflecting all of the lenders to PTNNT and providing for their rights in the property of PTNNT pledged as collateral for its indebtedness to each of them, including the Contract of Work.

H. *Promissory Note dated May 17, 2001 in the amount of $403,750,000 payable by PTNNT to ExIm Bank.

I. Press Release announcing ExIm Bank providing $425 million of financing for Batu Hijau Mine development.

J. Opinion of Judge John S. Martin, Jr., United States District Court, Southern District of New York, dated August 5, 2003, dismissing Gideon's claims with prejudice.

K. Opinions of trial and appellate courts in UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Mining Corporation et al, U.S. District Court for the District of Colorado (Case No. 05-CV-1046) and related appellate proceedings before the U.S. Court of Appeals for the 10th Circuit (Case No. 07-1159) (the "2005 Colorado Litigation") imposing sanctions on Mr. Reifman, Gideon's counsel in that litigation, for asserting various claims and filings in that litigation "for the purpose of harassment and vexation."

L. Recent news articles referencing ownership of PT Pukuafu Indah by Drs. Jusuf Merukh.

M. Excerpts from Newmont Mining Corporation Form 10-K Annual Report for the year ended December 31, 2007 as filed with the Securities Exchange Commission referencing PTNNT, PT Pukuafu Indah and the Batu Hijau Mine.

(A)

NUSA TENGGARA BARAT

JOINT VENTURE AGREEMENT

between

P.T. PUKUAFU INDAH

and

NEWMONT INDONESIA LIMITED

CONFIDENTIAL

1. INTRODUCTION

1.1 Date

This Agreement is made as at the 30th day of September One thousand nine hundred and eighty-five.

1.2 Parties

This Agreement is made between :-

1.2.1 NEWMONT INDONESIA LIMITED a Delaware, United States of America corporation with an office at 18th Floor, A.M.P. Tower, 535 Bourke Street, Melbourne, Victoria, 3000, Australia (hereinafter called "Newmont") of the first part; and

1.2.2 P.T. PUKUAFU INDAH hereinafter called "Indah", a company constituted under the laws applicable in the Republic of Indonesia with its registered office at 14th Floor, Anthaloka Building Jl. Jenderal Sudirmar Jakarta, Republic of Indonesia of the second part;

and their respective successors and permitted assigns.

1.3 Background and Purposes

This Agreement witness that, whereas:-

1.3.1 Indah is the registered holder of or applicant for those mineral concessions (K.P's) within the island of Lombok and the western portion of the island of Sumbawa, Province of Nusa Tenggara, in the Republic

of Indonesia as specified in the First Schedule hereto, which cover in part the Contract Area as hereinafter defined;

1.3.2 Indah has invited Newmont to enter a joint venture with it for the purposes of:

1.3.2.1 an application for, negotiation and execution of a Contract of Work with the government of the Republic of Indonesia for the exclusive right to explore for, develop and exploit any mineral occurrences in the Contract Area;

1.3.2.2 subject to the execution of a Contract of Work the exploration evaluation and, if warranted, development and exploitation of any metal or mineral occurrences discovered in the Contract Area; and

1.3.2.3 the formation of a limited liability Indonesian Corporation to enter into and carry out the obligations under the Contract of Work;

1.3.3 The purpose of this Agreement is to provide for the Joint Venture between Indah and Newmont for implementing the objectives referred to in this Agreement, upon the

terms and subject to the conditions contained in this Agreement;

therefore, the Parties agree and declare as provided in this Agreement.

2. DEFINITIONS

2.1 In this Agreement unless the context otherwise requires:-

2.1.1 "Approved Programme" means, a programme and budget which has been approved by the Board of Directors pursuant to the provisions of Clause 5.4.1.2;

2.1.2 "Commencement Date" means the date on which the Joint Venture shall be deemed to have commenced which shall be the 6th day of May 1985, being the date of lodgement of the application for the Contract of Work as referred to in Clause 1.3.2.1 hereof;

2.1.3 "Contract Area" means the whole of the lands within a boundary outlined in red on the map annexed as the Second Schedule hereto, or such similar area as may be offered to the P.T. Company to be formed by the Joint Venturers by the government of the Republic of Indonesia under the terms of the Contract of Work;

2.1.4 "Contract of Work" means the Agreement to be executed between the government of the

3. JOINT VENTURE

3.1 Constitution

Indah and Newmont hereby associate with effect from the Commencement Date in a Joint Venture upon the terms and subject to the conditions contained in this Agreement.

3.2 Objects

The objects of the Joint Venture are to apply for and negotiate a Contract of Work with the government of the Republic of Indonesia for the right to prospect, explore, develop and exploit any mineral or metal occurrences within the Contract Area, to form a P.T. Company to execute the Contract of Work, and by the P.T. Company to explore, evaluate, develop and exploit such metal and mineral occurrences which are thereafter determined to be capable of economic exploitation.

3.3 Interests of Parties

The respective percentage Interests of the Parties in the Joint Venture, and in the initial capital of the P.T. Company to be formed to enter into the Contract of Work, unless and until varied as provided in this Agreement, shall be:-

3.3.1	Indah	-	twenty percent	(20%)
3.3.2	Newmont	-	eighty percent	(80%)

3.4. Application for Contract of Work

3.4.1 The Parties hereby acknowledge that the application to the government of the Republic of Indonesia for a Contract of Work over the area outlined on the Second Schedule hereto lodged for and on behalf of the Parties hereto on the Sixth (6th) day of May 1985, is the application to which this Joint Venture relates.

3.4.2 Newmont undertakes to keep Indah informed as to progress from time to time with negotiations for the Contract of Work with the government of the Republic of Indonesia and documentation required for the Articles of Association of the P.T. Company and incorporation of the P.T. Company for the purposes of the Contract of Work, and to advise Indah in writing as soon as practicable after receipt of any decision made in relation to approval of this Agreement or the Parties' applications hereunder.

3.4.3. Indah, its Directors and officers undertake to assist to the best of their abilities in facilitating and expediting the application by the Parties for the Contract of Work and incorporation of the P.T. Company referred to in Clause 3.4.2 hereof, and to this end will execute all such documents or deeds

specifically required for such applications for approval as may be requested by Newmont.

4. PROVISION OF SERVICES

4.1 Provision of Personnel and Technical Expertise

Newmont shall arrange for the Joint Venture and the P.T. Company to be provided with such technical and managerial staff and technical advice as may be required from time to time.

4.2 Reimbursement of Expenses

In consideration of the services provided under Clauses 4.1 hereof, Newmont shall be entitled to reimbursement therefor which shall include provision for recovery of all salaries, wages, pensions, insurances, benefits, administrative costs, overhead costs and direct travel, subcontractors and other actual out-of pocket costs as incurred, and a technical services fee as agreed from time to time by the Parties. Without limiting the generality of the foregoing, the Indonesian Partners hereby agree and acknowledge that Newmont shall be entitled to recover its administrative and overhead expenses in a manner and at a level consistent with the practice applied from time to time by Newmont or its affiliates in recovering such costs from other Joint Ventures in Australia and the South West Pacific.

4.3 Disclaimer of Responsibility

Newmont shall not be liable to any Party for any act

done or omitted to be done by Newmont in the performance of any provision of this Agreement if, in doing or omitting to do such act, Newmont acted in good faith.

5. THE P.T. COMPANY

5.1 Organisation and Administration of the P.T. Company

5.1.1 Newmont will, subject to the satisfactory conclusion of negotiations for a Contract of Work with the Government of the Republic of Indonesia, cause to be formed and incorporated, a P.T. Company to enter into the Contract of Work and to carry out the obligations thereby assumed. Newmont shall be responsible for the drawing up of the Memorandum and Articles of Association of the P.T. Company which would include, but not be limited to, the provisions set out in the following sub-clauses of this Clause 5.1.

5.1.2 The P.T. Company will be under the direction of a Board of Directors, who shall be not less than five (5) and not more than ten (10) in number. Each of Newmont and Indah will be entitled to nominate a number of persons as Directors in proportion to the percentage interest of its shareholding in the P.T. Company from time to time.

5.1.3 Upon incorporation of the P.T. Company, and unless and until there be more

the required governmental consents, including a consent to expand the Contract Area to include the New Area, and the P.T. Company shall within fourteen (14) days of receipt of the New Offer notify the offeror Party whether it accepts the New Offer. If the P.T. Company accepts the New Offer, the New Area shall thereupon be acquired for the P.T. Company and become subject to the provisions of this Agreement.

6.1.4 In the event that the P.T. Company wishes to accept the New Offer, but the Offeror Party is unable to obtain governmental consent to have the New Area included in the Contract Area, it shall transfer the New Area to the Parties hereto on the basis of a Joint Venture mutatis mutandis with this Agreement.

6.1.5 In the event that the P.T. Company does not wish to accept the New Offer the offeror Party may proceed with the taking up or acquisition of the New Area independently of the Joint Venture

6.2 Maintenance of the Mining Titles

6.2.1 Indah for as long as the Contract of Work application is current will maintain the Mining Titles on behalf of the Joint Venture. Newmont will provide assistance in this

respect to the extent only that it considers necessary and desirable.

6.2.2 No Party will do or omit to do any act or thing which may cause any Mining Title or the Contract of Work to be refused, cancelled or otherwise prejudiced.

6.3 Warranties and Covenants

6.3.1 Indah hereby warrants and covenants that:-

6.3.1.1 it hascomplied and will continue to comply with all terms and conditions of the Mining Titles;

6.3.1.2 as at the date hereof:-

6.3.1.2.1 there are no circumstances within its knowledge which constitute an actual or potential breach of the terms of the Mining Titles;

6.3.1.2.2 there are no rentals, rates or taxes charged, levied or to be charged or levied against the Mining Titles which are unpaid;

6.3.1.2.3 the Mining Titles are unencumbered and in

good standing and there are no unregistered or undisclosed dealing affecting any one or more of them; and

6.3.1.3 it will not deal with any third parties in respect of the Mining Titles and will not during the period of negotiation of the Contract of Work, allow access to the Mining Titles to any Party other than Newmont, nor allow to any Party access to data generated by Newmont from their activities thereon.

6.3.2 Each Party further covenants and agrees with the other that it will not during the term of the Joint Venture omit to do any act which it is by law or by the terms of the Mining Titles obliged to do nor that it will do any act which it is obliged by law or by the terms of the Mining Titles to refrain from doing, the failure to do or the doing of which (as the case may be) would be liable to jeopardize the rights of the Joint Venture thereunder, and in particular Indah covenants to keep the Mining Titles in good

standing until such time as they may be abandoned or relinquished in favour of the Joint Ventures Contract of Work application.

6.4 Dealings with Mining Titles and the Contract of Work

Each of the Parties will hold the Mining Titles and the application for the Contract of Work upon trust for the Parties entitled thereto pursuant to this Agreement and shall transfer or deal with the same only in accordance with the provisions of this Agreement and not otherwise.

7. WITHDRAWAL

7.1. Parties Rights to Withdraw

Newmont shall be entitled to withdraw without penalty from the Joint Venture upon ten (10) days written notice to that effect to Indah however Indah shall not be entitled to withdraw from the Joint Venture.

7.2 Effect of Notice of Withdrawal

In the event that Newmont gives a notice of withdrawal prior to the execution of a Contract of Work, the Joint Venture and each of the Parties rights and obligations related thereto will be at an end save and except as prescribed by Clause 7.4 hereof.

7.3 Obligations Upon Withdrawal

Upon the effective date of withdrawal, Newmont shall:-

7.3.1 promptly propose or otherwise obtain the removal of each of its incumbent Directors of the P.T. Compa[illegible]

7.3.2 offer to transfer and assign to Indah all of Newmont's shares in the P.T. Company, such transfer and assignment to be made for no other consideration than Indah indemnifying Newmont against any further obligations to or arising from the activities of the P.T. Company, and Indah's assumption of any ongoing obligations of Newmont; and

7.3.3 from time to time upon request of any shareholder of the P.T. Company, execute and deliver such other and further instruments and take and perform such further acts, as shall be appropriate under the circumstances to evidence or complete its withdrawal in an orderly and businesslike manner, without prejudice to the P.T. Company, provided always that the shareholder making such request shall be solely liable for all costs and expenses thereto.

8. ASSIGNMENTS

8.1 Extent of Right to Assign

8.1.1 Subject to the provisions of this Clause 8, Newmont may assign the whole of its Interest and shareholdings in the P.T. Company, or any part thereof, to a third party provided that no such assignment shall be made or

have any effect until all necessary Government approval thereto has been obtained.

8.1.2 Subject to the provisions of this Clause 8, and to Newmont in its sole discretion consenting thereto, Indah may assign the whole of its Interest and shareholdings in the P.T. Company to a third party Indonesian national but further provided that no such assignment shall be made or have any effect until all necessary Government approval thereto has been obtained.

8.2 Assignee to Covenant

Where an assignment is made to a third party such assignment shall have no force or effect whatsoever until such time as the third party has entered into a covenant with the other Parties binding it to observe and perform all the terms and conditions hereof so far as the same are applicable and in such form and containing such terms and conditions as the other Parties may reasonably require.

8.3 Other Parties to be Advised of Interest Assigned

In the event of the assignment by any Party of the whole or any part of its Interest to a third party, the assignor and the assignee shall forthwith advise the other Parties hereto in writing of the percentage Interest and shareholding in the P.T. Company so assigned.

8.4 Dealing with Interests

No Party hereto shall assign, transfer, encumber, part with possession of grant any power of attorney over or in any other way directly or indirectly deal with its Interest under this Agreement, its interest or any part of its interest in the application for the Contract of Work, any other property subject to this Joint Venture or its shareholding in the P.T. Company save as expressly permitted by the terms of this Agreement or with the consent of all Parties hereto.

9. MISCELLANEOUS

9.1 Relationship of Parties

9.1.1 The relationship between the Parties shall be limited to the performance of the objects provided for in this Agreement. This Agreement shall be construed as and shall constitute a joint venture only for carrying out such objects and nothing contained in this Agreement shall be treated as creating a new entity or as constituting any Party a general agent or representative of the other Parties. No Party shall have the right to pledge the credit of the other Parties. The rights and obligations of the Parties pursuant to this Agreement shall be several and neither joint nor joint and several.

9.1.2 The rights and interests and liabilities and

9.7 Governing Law and Jurisdiction

9.7.1 This Agreement shall be construed and take effect in accordance with the relevant law for the time being applicable in the Republic of Indonesia, provided that all disputes hereunder or concerning any of the subject matter hereof shall be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with the Rules all of whom shall have internationally recognised qualifications for such appointment together with a substantial background of business experience. Judgement on the award of a majority of the arbitrators may be entered in any court having jurisdiction. Nomination of the Arbitrators shall be accomplished as provided under the Rules, and if two or more parties are participating on the same side of a dispute, they shall nominate their arbitrator by common agreement.

9.7.2 The Parties recognise the possible inadequacy of money damages in the resolution of arbitratable disputes. Accordingly the parties consent hereby to the entry and enforcement of awards granting specific performance of any of the

terms of this Agreement, as well as money damages.

9.8 Duration of Agreement and Joint Venture

Unless sooner terminated by mutual agreement between the Parties or pursuant to any specific provisions contained in this Agreement, this Agreement and the Joint Venture shall continue while any Contract of Work is held pursuant to this Agreement provided that if due to withdrawal or otherwise, there should be only one Party to this Agreement, the Agreement shall be deemed to have terminated. To the extent required to make any termination of this Agreement effective without necessity of any Court or judicial action, the Parties hereby waive the provisions of Article 1266 of the Indonesian Civil Code.

9.9 Prior Agreements

This Agreement supersedes and replaces all agreements of any kind, written or oral, between the Parties with respect to the Contract Area.

9.10 Enabling Provision

The Parties hereto mutually agree that on request by any Party, the other Parties shall execute and provide to the requesting Party any notice, contract, deed or other instrument relating to this Agreement as the requesting Party may deem reasonably necessary to preserve or protect its Interest hereunder or to effectuate the provisions hereof.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first hereinbefore mentioned.

EXECUTED for and on behalf of NEWMONT INDONESIA LIMITED by:)

Assistant Secretary.

EXECUTED for and on behalf of P.T. PAKUAFU INDAH by:)

Direktur:

(B)

CONTRACT OF WORK

BETWEEN

THE GOVERNMENT OF THE

REPUBLIC OF INDONESIA

AND

PT NEWMONT NUSA TENGGARA

CONFIDENTIAL

CONTRACT OF WORK

This Agreement, made and entered into in Jakarta, in the Republic of Indonesia, on the Second day of December 1986, by and between the Government of the Republic of Indonesia, represented herein by the Minister of Mines and Energy of the Government of the Republic of Indonesia (hereinafter called the Government) and PT. Newmont Nusa Tenggara (an Indonesian judicial body incorporated by Notarial Deed Numbered 164 dated 18 November 1967, Ministerial Decree Numbered C2-2295-HT.01.01-TH'82 dated 29 November 1982), hereinafter called " the Company ", all of the shares in which at the time of its incorporation are owned by :

1. Newmont Indonesia Limited, a company incorporated in the State of Delaware, USA, and having its registered office at 18th Floor, AMP Tower 535, Bourke Street, Melbourne, Victoria, Australia 3000 (hereinafter called " Newmont ").

2. PT. Pukuafu Indah, an Indonesian judicial body incorporated by Notarial Deed Numbered 22 dated September 25, 1978 Ministerial Decree Numbered Y.A.5/365/3 dated November 27, 1978 whose adress is Arthaloka Building 14th Floor, Jalan Jenderal Sudirman, Jakarta . Indonesia.

WITNESSETH THAT:

A. All mineral resources contained in the territories of the Republic of Indonesia, including the offshore areas, are the national wealth of the Indonesian Nation, and the Government is desirous of developing the full potential of mining within its territories;

B. The Government is desirous of advancing the economic development of the people of Indonesia and to that end desires to encourage and promote the exploration and development of the mineral resources of Indonesia and, if an ore deposit of commercial quantity is found to exist, to take all appropriate measures, consistent with the needs of the people and the requirements of the Government, to facilitate the development of such ore deposit and the operation of mining enterprises in connection therewith;

C. The Government, through the operation of mining enterprises, is desirous of creating growth centers for regional development, creating more employment opportunities, encouraging and developing local business, and ensuring that skills, know-how and technology are transferred to Indonesian nationals, acquiring basic data regarding and related to the country's mineral resources and preserving and rehabilitating the natural environment for further development of Indonesia;

C

DEPARTMENT OF ENERGY AND MINERAL RESOURCES OF RI
DIRECTORATE GENERAL OF GEOLOGY AND MINERAL RESOURCES
DIRECTORATE OF MINERAL AND COAL DEVELOPMENT

Number: 2967/40/DPM/2002 December 3, 2002
Classification: Urgent
Subject: Confirmation

President Director
PT Newmont Pacific Nusantara
Wisma Standard Chartered Bank Fl. 14
Jl. Jenderal Sudirman Kav. 33A
Jakarta 10220

In reference to your letter No. 240/KW/NPN/2002 of December 3, 2002, we verify the following:

1. PT Newmont Nusa Tenggara (PT NNT) holds a Contract of Work covering land in Lombok and Sumbawa (the PT NNT CoW). Based on our current records, the shares in PTNNT are owned 20% by PT Pukuafu Indah, 35% by Nusa Tenggara Mining Corporation (which holds the shares for the benefit of the Nusa Tenggara Partnership), and 45% by Newmont Indonesia Limited (which holds the shares for the benefit of the Nusa Tenggara Partnership).

2. PT Newmont Minahasa Raya (PT NMR) holds a Contract of Work covering land in North Sulawesi (the PTNMR CoW). Based on our current records, the shares in PTNMR are owned 20% by PT Tanjung Serapung and 80% by Newmont Canada Limited.

3. Both the PTNNT CoW and the PTNMR CoW are valid and in good standing. The government has issued no notice of any default under or in respect of either the PTNNT CoW or the PTNMR CoW. There is no other valid license, lease, or entitlement issued by the government of the Republic of Indonesia that would permit another company or person to conduct gold or copper mining and related activities on the land covered by PTNNT CoW or the PTNMR CoW.

This confirmation is issued to be used accordingly.

Director

Mahyudin Lubis

Cc:
Director General of Geology and Mineral Resources

Nomor : 2967/40/DPM/2002
Sifat : Segera
Lampiran : -
Perihal : Konfirmasi

4 Desember 2002

Yang terhormat
Presiden Direktur
PT Newmont Pacific Nusantara
Wisma Standard Chartered Bank Lantai 14
Jl. Jenderal Sudirman Kav. 33A
Jakarta 10220

Sehubungan dengan surat Saudara No. 240/KW/NPN/2002 tanggal 3 Desember 2002, bersama ini kami menegaskan hal-hal sebagai berikut :

1. PT Newmont Nusa Tenggara (PT NNT) memegang Kontrak Karya yang wilayah kerjanya berada di daerah Lombok dan Sumbawa (KK PT NNT). Sesuai dengan catatan yang ada pada kami komposisi kepemilikan saham sebagai berikut : 20% saham dimiliki oleh PT Pukuafu Indah, 35% oleh Nusa Tenggara Mining Corporation (memegang saham untuk kepentingan Nusa Tenggara Partnership), dan 45% oleh Newmont Indonesia Limited (memegang saham untuk kepentingan Nusa Tenggara Partnership).
2. PT Newmont Minahasa Raya (PT NMR) memegang Kontrak Karya yang wilayah kerjanya berada di daerah Sulawesi Utara (KK PT NMR). Sesuai dengan catatan yang ada pada kami, saham-saham di PT NMR dimiliki oleh PT Tanjung Serapung sebesar 20% dan Newmont Canada Limited sebesar 80%.
3. KK PT NNT dan KK PT NMR adalah sah dan masih berlaku. Pemerintah Republik Indonesia hingga kini belum pernah mengeluarkan pemberitahuan mengenai kelalaian berdasarkan atau berkenaan dengan KK PT NNT dan KK PT NMR. Hingga saat ini tidak ada surat izin, kontrak atau penyertaan hak yang dikeluarkan oleh Pemerintah Republik Indonesia yang mengizinkan perusahaan atau orang lain untuk melakukan kegiatan penambangan emas atau tembaga atau kegiatan terkait lainnya di wilayah yang tercakup dalam KK PT NNT maupun KK PT NMR.

Demikian konfirmasi ini kami berikan untuk dapat dipergunakan sebagai mana seharusnya.

Direktur,

Irwandy Arif Lubis
NIP 100002650

Tembusan
Direktur Jenderal Geologi dan Sumberdaya Mineral

C-2

(D)

EXPORT-IMPORT BANK
OF THE UNITED STATES

November 11, 1996

Ms. Patricia Flanagan
Vice President and Treasurer
Newmont Gold Company
1700 Lincoln St.
Denver, Colorado 80203 Fax: 303-837-6011

Mr. Tadao Matsumoto
General Manager - Project Finance Department
Sumitomo Corporation
3-11-1, Kandanishikicho, Chiyoda - ku
Tokyo, 101 Japan Fax: 03-3296-3389

Mr. Lawrence Gaffaney
Vice President - Global Mining and Metals Group
The Chase Manhattan Bank
One Chase Manhattan Plaza, 5th floor
New York, NY 10081 Fax: 212-552-7773

Re: PPL #071225, Indonesia; The Batu Hijau Copper-Gold Project
Expiry Date: May 14, 1997

Ladies and Gentlemen:

We have completed our initial review of the Batu Hijau Copper-Gold Project (the "Project") and are pleased to present to the Sponsors our Preliminary Project Letter (the "PPL"). We believe the Project has merit and are prepared to continue to commit Ex-Im Bank resources toward the financial closing of this Project. This PPL incorporates Project documents, correspondence, and information received through November 1, 1996, as listed in Appendix B.

The purpose of this PPL is to enable you to take into account Ex-Im Bank's likely terms, policies, and requirements as you continue to structure the Project. Based on our initial review, we are quite encouraged by the progress made on this Project to date. In addition, our Ex-Im Bank team was favorably impressed with the Project based on their due diligence trip to Indonesia in October.

EXHIBIT 1

INDICATIVE TERM SHEET

Name of Project:	The Batu Hijau Copper-Gold Mining Project
Name of Project Company and Borrower:	P.T. Newmont Nusa Tenggara
Location:	Sumbawa, Nusa Tenggara Barat, Indonesia
Principal Host Country:	Indonesia
Suppliers/Contractors:	Newmont Gold Mining Corporation Fluor Daniel Engineers and Constructors, Ltd. Various Suppliers and Contractors to be determined
Shareholders in Project Company:	Newmont Indonesia Limited (wholly-owned subsidiary of Newmont Gold Mining Corporation) Nusa Tenggara Mining Corporation (wholly-owned subsidiary of Sumitomo Corporation) P.T. Pukuafu Indah
Estimated Project Value:	$1.976,000,000
Estimated U.S. Export Value:	$1,000,000,000
Estimated Ex-Im Bank Value:	$ 850,000,000
Estimated Ex-Im Bank Support:	
Standard Support:	Total Contract Price (U.S.Costs plus Eligible Foreign Components) $1,000,000,000
	Financed Portion (85% of Total Contract Price. This does not include Ex-Im Bank's Exposure Fee which may be financed.) $ 850,000,000

(E)

EXPORT-IMPORT BANK OF THE UNITED STATES
MEMORANDUM TO THE BOARD OF DIRECTORS

Date: 05/02/97

Division: PROJECT FINANCE
Country: INDONESIA

Case No: AP071225XX
Date Application Received: 09/11/96

Loan Type: DIRECT LOAN POST-COMPLETTION

Guarantee Type: NONE
Guarantee Cover: N/A
Term: LONG

Request for: FINAL COMMITMENT (NEW)

Applicant	P.T. Newmont Nusa, Tenggara, Mataram, Lombok, Indonesia
Obligor	P.T. Newmont Nusa, Tenggara, Mataram, Lombok, Indonesia
Buyer	P.T. Newmont Nusa, Tenggara, Mataram, Lombok, Indonesia
Guarantor	NONE
Exporter	VARIOUS
Supplier	VARIOUS
Gteed Lender:	NONE

Project: COPPER AND GOLD MINING

Product: HEAVY MACHINERY AND EQUIPMENT

Amounts		DIRECT LOAN
U.S. Content (Exp Fee Included? NO)		$ 500,000,000
Eligible Foreign Components		0
Total Contract Price		500,000,000
Minimum Cash Payment	(15%)	75,000,000
Amount of Contract Financed	(85%)	425,000,000
Local Content		75,000,000
Interest During Construction		77,900,000
Max. Exposure Fee Amt. (Financed? YES)		31,668,920
Total Exim Loan		609,568,920
Total Exim Guarantee		0

Fees/Subsidy	
Exposure Fee Range per $100	TBD
Subsidy Charge per $100	0
Subsidy Amount	0
Commitment Fee	0.50000%

Loan Rate
Eximbank Loan (CIRR)

Repayment Term	Payments	Frequency	Repayment Starting Date	but not Later Th
Exim Loan	20	S	6 MONTHS FROM PROJECT COMMISSIONING	12/15/00

Total Term: 12 Years 8 Months Loan Expiry Date: 11/30/00

Risk Category: PRIVATE

Small Business: 10.0%

Special Issues: ECONOMIC IMPACT, INTEREST DURING CONSTRUCTION, LOCAL COST

Special Conditions: SEE ATTACHMENT 1 IN MEMO

Recommendation: APPROVAL, SUBJECT TO NAC AND CONGRESSIONAL REVIEW

Loan Officer: DONALD HULTMAN

Concur: Dianne S. Rudo, V.P
Project Finance Division

Counsel: LISA GEBERTH

(F)

LOAN AGREEMENT dated as of July 30, 1997 between P.T. NEWMONT NUSA TENGGARA, a limited liability company organized under the laws of the Republic of Indonesia (the "Borrower"); each of the lenders identified under the caption "Lenders" on the signature pages hereof or which, pursuant to Section 2.15(b) or Section 8.04 hereof, shall become a Lender hereunder (individually, a "Lender" and, collectively, the "Lenders"); and THE CHASE MANHATTAN BANK, as administrative agent (in such capacity, together with its successors in such capacity, the "Administrative Agent").

For purposes of financing in part the development and operation by the Borrower of the Batu Hijau copper-gold mining facilities in the Republic of Indonesia, the Borrower is entering into various loan and credit agreements, including this Agreement, setting forth the terms upon which certain financing is to be provided for such development and operation. In conjunction therewith, the Borrower has entered into a common security agreement (the "Common Security Agreement" referred to below) containing certain representations, covenants, undertakings and security for the common benefit of the lenders party to such loan and credit agreements; the indirect owners of the Borrower have entered into a completion agreement (the "Completion Agreement" referred to below) under which each of them will severally guarantee, subject to the terms and conditions thereof, repayments under such loan and credit agreements; and the indirect owners of the Borrower have entered into a transfer restrictions and sponsor support agreement (the "Transfer Restrictions and Sponsor Support Agreement" referred to in the Common Security Agreement), for the common benefit of such lenders. Based on the foregoing, the Lenders are prepared, subject to the terms and conditions herein set forth, to make loans to the Borrower in an aggregate principal amount up to $425,000,000 for the development and operation of the Batu Hijau copper-gold mining facilities.

The parties hereto agree as follows:

ARTICLE I

Definitions

SECTION 1.01. Defined Terms. Except as otherwise expressly provided herein, capitalized terms used herein which are defined in the Common Security Agreement (including Appendix A thereto) shall have the same meanings herein as therein. As used in this Agreement, the following terms have the meanings specified below:

"Acquisition List" means a list of Items, approved by US-Exim, containing with respect to each Item a brief description, the Supplier's DUNS numbers, the product SIC Codes, the quantity and estimated invoice cost and the estimated date of shipment, to which a copy of each related Purchase Contract is attached.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

P.T. NEWMONT NUSA TENGGARA

By_____
Title: President Director

ADMINISTRATIVE AGENT

THE CHASE MANHATTAN BANK,
as Administrative Agent,

By_____
Title:

LENDERS

THE CHASE MANHATTAN BANK

By_____
Title:

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.

P.T. NEWMONT NUSA TENGGARA

By_____
Title:

ADMINISTRATIVE AGENT

THE CHASE MANHATTAN BANK,
as Administrative Agent,

By Robert W Matthews
Title:
Robert W. Mathews
Vice President

LENDERS

THE CHASE MANHATTAN BANK

By Robert W Matthews
Title:
Robert W. Mathews
Vice President

BANK OF MONTREAL

By _____
Title: DIRECTOR

Schedule 2.01

Commitments

Lender	Commitment
The Chase Manhattan Bank	$405,000,000
Bank of Montreal	20,000,000
	$425,000,000

(G)

COMMON SECURITY AGREEMENT

This Agreement, dated as of July 30, 1997, is made among:

P.T. NEWMONT NUSA TENGGARA, a limited liability company organized under the laws of Indonesia,

NUSA TENGGARA PARTNERSHIP, a partnership organized under the laws of the Netherlands,

NEWMONT INDONESIA LIMITED, a company organized under the laws of the State of Delaware, United States of America,

NUSA TENGGARA MINING CORPORATION, a company organized under the laws of Japan,

THE EXPORT-IMPORT BANK OF JAPAN, a governmental financial institution of Japan,

KREDITANSTALT FÜR WIEDERAUFBAU, a public corporation under the laws of Germany,

EXPORT-IMPORT BANK OF THE UNITED STATES, an agency of the United States of America,

THE BANK OF TOKYO-MITSUBISHI, LTD., a banking institution organized under the laws of Japan, as Co-Facility Agent under the J-Exim Senior Loan Agreement,

THE SUMITOMO BANK, LIMITED, a banking institution organized under the laws of Japan, as Co-Facility Agent under the J-Exim Senior Loan Agreement,

THE CHASE MANHATTAN BANK, a banking institution organized under the laws of the State of New York, United States of America, for itself and, as Administrative Agent, for and on behalf of each Bank Lender, and

BANK OF TOKYO-MITSUBISHI TRUST COMPANY, a trust company organized under the laws of the State of New York, United States of America, not in its individual capacity except as expressly set forth in this Agreement but solely as Trustee and Security Agent.

WHEREAS:

A. The Borrower proposes to Incur and secure Senior Debt and has authorized the execution and delivery of this Agreement;

H

US $403,750,000

17 May 2001

Promissory Note

FOR VALUE RECEIVED, PT. Newmont Nusa Tenggara, a limited liability company organized and existing under the laws of the Republic of Indonesia (the **Maker**) by this promissory note (this **Note**) hereby unconditionally promises to pay to the order of the Export-Import Bank of the United States, an agency of the United States of America (**Eximbank**) and its respective successors and permitted assigns at the Federal Reserve Bank of New York the principal sum of four hundred three million seven hundred fifty thousand United States dollars (US$403,750,000), or such lesser amount as shall be advanced by Eximbank to the Maker under the Eximbank Credit Agreement (as hereinafter defined), in installments as hereinafter provided and to pay interest on the principal balance hereon from time to time outstanding, as hereinafter provided, at the rate of 7.66% per annum. All capitalized terms not defined herein have the meanings assigned to them in the Eximbank Credit Agreement dated as of July 30, 1997, between the Maker and Eximbank (the **Eximbank Credit Agreement**). Any notations by Eximbank on this Note regarding payments made on account of the principal thereof, in absence of manifest error, shall be conclusive and binding.

The principal hereof shall be due and payable in twenty (20) equal semi-annual installments on the dates (each, a **Repayment Date**) and in the amounts set forth in the Eximbank Credit Agreement; provided that (i) the number of semi-annual principal installments hereunder shall be reduced by the number of semi-annual principal installments, if any, paid under the Bank Lenders Senior Loan Agreement prior to the Eximbank Disbursement Date and (ii) on the last such Repayment Date the Borrower shall repay in full the principal amount of the Eximbank Credit then outstanding. Interest on the amount of said principal amount remaining unpaid from time to time is due and payable on each Payment Date of each year, as set forth in the Eximbank Credit Agreement, until the principal hereof is paid in full, whether at stated maturity, by declaration of acceleration or otherwise. Interest will be calculated on the basis of the actual number of days elapsed (including the first day, but excluding the last day) over a 365 day year, as applicable.

If all or part of principal or accrued interest owing under this Note is not paid in full when due (whether at stated maturity, by declaration of acceleration or otherwise), the Maker shall pay to Eximbank on demand interest on such unpaid amount (to the extent permitted by Applicable Law) for the period from the date such unpaid amount was due until such amount shall have been paid in full at an interest rate equal to the higher of (i) one percent (1%) per annum above the interest rate applicable under the first paragraph above and (ii) the New Borrowing Rate.

This is the Note referenced in Section 3.7 of the Eximbank Credit Agreement. This Note is (i) entitled to the benefits of, and is governed in all respects by, the terms of the Eximbank Credit Agreement, (ii) an absolute and unconditional obligation for the payment of principal and interest (including default interest) hereon free and clear of and without deduction for any Taxes, as provided in Section 3.5 of the Eximbank Credit Agreement, restrictions and conditions of whatever nature, (iii) subject to the acceleration of the maturity hereof upon the happening of certain stated events, as provided in the Eximbank Credit Agreement, (iv) one

of the Senior Debt Obligations referred to in, and entitled to the benefits of, the Common Security Agreement, and (v) secured by the Security Documents. The principal amount hereof may be prepaid in accordance with the terms of the Eximbank Credit Agreement. All payments received hereunder shall be applied in accordance with the priority set forth in Section 3.9 of the Eximbank Credit Agreement.

The Maker hereby waives demand, diligence, presentment, protest and notice of every kind, and warrants to the holder that all actions and approvals required for the execution and delivery hereof as a legal, valid and binding obligation of the undersigned, enforceable in accordance with the terms hereof, have been duly taken and obtained. The failure of the holder hereof or of Eximbank to exercise any of its rights hereunder in any instance shall not constitute a waiver thereof in that or any other instance.

THIS NOTE SHALL FOR ALL PURPOSES BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF NEW YORK OF THE UNITED STATES OF AMERICA WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF OTHER THAN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW.

The Borrower submits to the non-exclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State Court sitting in New York for the purposes of all legal proceedings arising out of or relating to this Note.

PT. Newmont Nusa Tenggara

By: 

Name: Russell D. Ball

Title: Attorney for President Director

Dated: 17 May 2001

Promissory Note No. _____

I

News from the Export-Import Bank of the United States

FOR IMMEDIATE RELEASE
AUGUST 4, 1997
Contact: Marianna Ohe 202-565-3200

Supports Tens of Thousands of U.S. Jobs in 26 States

EX-IM BANK BACKS U.S. EXPORTS FOR INDONESIAN COPPER-GOLD MINE

The Export-Import Bank of the United States (Ex-Im Bank) is providing $425 million in project financing to back exports of goods and services by **Newmont Gold Co., Denver, CO. Fluor Daniel Corp., Golden, CO** , and other U.S. suppliers to develop the **Batu-Hijau Copper-Gold Project**, one of the world`s largest copper and gold deposits in Sumbawa, Indonesia.

Overall, Ex-Im Bank`s participation will leverage $1 billion of U.S. procurement supporting over 14,000 American jobs directly (Commerce Department estimate) and thousands more through subsuppliers. Specifically, over 7,000 of these jobs are directly related to Ex-Im Bank`s $425 million limited recourse project financing.

Fluor Daniel, the primary contractor, will provide engineering, procurement and construction services. In addition to mining machinery and equipment provided by **Caterpillar Americas Co., Peoria, IL**, the project involves numerous small business suppliers and service contractors in 26 states.

"Without Ex-Im Bank support, much of this project would have been lost to foreign competitors," said William D. Trammell, Manager-Project Financing, Fluor Daniel.

The Batu-Hijau project, located in a remote and sparsely populated area of Indonesia, involves construction of port facilities, a power plant, roads, telecommunications facilities, and a mine which includes a concentrator, a crushing station and conveyor systems. The **sponsors of the project are Newmont and Sumitomo Corp. of Japan.** Production from the mine is expected to average 700,000 tons of copper-gold concentrate per year when completed. The concentrate will be sold through long-term contracts to smelters located primarily in Asia. The deposit is estimated to contain approximately 10.6 billion pounds of copper and 12.1 million ounces of gold in proven and probable reserves.

"We were delighted with the speed with which Ex-Im Bank came to the table to fulfill the financing strategy of the sponsors," said Newmont Vice President and Treasurer Patricia A. Flanagan.

Barbara A. O`Boyle, Acting Vice President of Ex-Im Bank`s Project Finance Division, said the transaction is the Division`s first mining project in Asia. "We are delighted to open the door for U.S. exporters into another sector of the dynamic Indonesian market," she said. Ex-Im Bank already is providing project financing in Indonesia for the Paiton and Jawa power projects and the Cilicap refinery debottlenecking project.

A syndicate of commercial bank lenders led by Chase Manhattan Bank, New York, NY, will provide a $425 million construction loan for the Batu-Hijau project. At project completion, Ex-Im Bank will replace the commercial bank financing with a $425 million loan. The loan will be repaid in 20 semiannual installments starting six months from operational completion, or June 15, 2001, whichever is earlier. Other lenders to the project include the Export-Import Bank of Japan ($500 million) and Kreditanstalt fur Wiederaufbau, Germany`s export credit agency ($75 million).

Limited recourse project financing is a type of private financing in which repayment is based on project revenues, rather than a guarantee of the debt by the host country government. Demand for this type of financing has increased dramatically in recent years as developing countries seek to build infrastructure without adding to their governments` debt. So far in fiscal 1997, Ex-Im Bank has approved $2.1 billion in project financing and anticipates that as much as $500 million of additional business will be authorized this year.

Ex-Im Bank is an independent federal government agency that supports American jobs by financing U.S

exports around the world. In the past five years Ex-Im Bank has authorized $65.6 billion of financing in over 10,000 transactions. Annually, the Bank sustains an estimated 200,000 U.S. jobs directly, and another one million jobs indirectly.

Original URL: http://www.exim.gov/pressrelease.cfm/B101A4BD-1032-5B0F-B34C0666D1AF33DF/

Export-Import Bank of the United States
811 Vermont Avenue, N.W.
Washington, DC 20571
Tel: 1 (202) 565-3946 (EXIM) or 1 (800) 565-3946 (EXIM)

I-2

(J)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
GIDEON MINERALS U.S.A., INC., for and on behalf of its wholly owned subsidiaries, PT LEBONG TANDAI, PT TANJUNG SERA PUNG, and PT PUKUAFU INDAH,

Plaintiffs,

-v.-

02 Civ. 10140

JP MORGAN CHASE BANK, THE SUMITOMO BANK, LTD., THE BANK OF TOKYO-MITSUBISHI, LTD., BANK OF TOKYO-MITSUBISHI TRUST COMPANY, JAPAN BANK FOR INTERNATIONAL COOPERATION, KREDITANSTALT FUR WIEDERAUFBAU, WHITE & CASE, ARTHUR ANDERSON, GOLDMAN SACHS, SOCIETE GENERAL BANK, and EXPORT-IMPORT BANK OF THE UNITED STATES,

OPINION & ORDER

Defendants.
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JOHN S. MARTIN, Jr., District Judge:

Plaintiffs, who allege that they own certain mineral rights in Indonesia bring this action against the Export-Import Bank, various financial institutions, a law firm, and an accounting firm. The basic allegation is that these parties were involved in transactions in which the mineral rights which Plaintiffs own in Indonesia were pledged to secure loans made to Newmont Mining Corporation and certain of its subsidiaries (hereinafter, collectively referred to as "Newmont").[1] It is also alleged that

[1] As filed the Complaint did not name Newmont, which is clearly a necessary party under Fed. R. Civ. P. 19. Plaintiffs are prepared to amend the complaint to add Newmont. However, the

one of the Defendants is engaged in selling the minerals which are alleged to have been improperly mined from their property by Newmont.

The Court previously denied from the bench Plaintiffs' application for a preliminary injunction, noting that Plaintiffs have not established a likelihood of success on the merits. Presently before the Court are motions by each of the Defendants to dismiss the Complaint.

While Plaintiffs obviously believe that they have been aggrieved by the conduct of Newmont and the related actions of the Defendants in this case, they fail to appreciate the limited role of the federal courts in our federal system. If the allegations of the complaint are true, it may be that Plaintiffs have a cause of action against Newmont and, perhaps, some of the Defendants here for breach of contract or conversion under state law. However, the complaint fails to allege a federal cause of action and there is no diversity of citizenship alleged, nor could there be, since one of the Plaintiffs and one of the Defendants are considered citizens of the State of New York.

Although the complaint states that jurisdiction is based on the Fourteenth Amendment, Title 18 United States Code § 656 and

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Court directed Plaintiffs to withhold seeking leave to amend until the present motions were decided. Since the Complaint is to be dismissed and adding the Newmont parties would not cure the defects in the Complaint, Plaintiffs' application to amend the complaint to add additional parties is denied as moot.

the Sarbanes-Oxley Act of 2002, none of those provisions supports jurisdiction in this case.

The Fourteenth Amendment is clearly not applicable here since a cause of action under that amendment requires some form of state action and none is alleged. To the extent the actions of the Export-Import Bank might give rise to a due process claim under the Fifth Amendment, the Complaint alleges only that the Bank was induced by fraudulent representations to make limited recourse financing available to certain entities. There are no allegations that would support a claim that the Bank either denied Plaintiffs' due process or denied them the equal protection of the law.

Section 656 of Title 18 is a criminal statute which does not provide a private right of action to the victim of the crime. See Federal Savings & Loan Ins. Co. v. Reeves, 816 F.2d 130, 137-38 (4th Cir. 1987). Although Plaintiffs refer generally to the Sarbanes-Oxley Act, they do not point to any specific provision in that Act which provides them with a cause of action here. This is for the very good reason that Sarbanes-Oxley did not create any cause of action that would be relevant here.[2]

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[2] Sarbanes-Oxley created only two private causes of action: one that involves recovery of profits from insider trading, 15 U.S.C. § 7244, and one that provides protection for whistle blowers, 18 U.S.C. § 1514A.

Since the Complaint fails to allege any cause of action within the jurisdiction of the federal courts, the Complaint is dismissed. Plaintiffs have now filed two complaints which fail totally to allege a claim within the jurisdiction of the federal courts. In addition, at argument on Plaintiffs' requests for preliminary relief, the Court pointed out to Plaintiffs' counsel the defects in the complaint. Therefore, the Plaintiffs are denied leave to replead and the Complaint is dismissed with prejudice to a further filing in this Court, but without prejudice to whatever right the Plaintiffs may have to pursue their claims in state court or in the courts in Indonesia.

SO ORDERED.

Dated: New York, New York
August 5, 2003

JOHN S. MARTIN, JR.
U. S. D. J.

HUFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Mining Corp.
D.Colo.,2007.
Only the Westlaw citation is currently available.
United States District Court,D. Colorado.
UFCW LOCAL 880-RETAIL FOOD EMPLOYERS JOINT PENSION FUND, on Behalf of Itself and All Others Similarly Situated, Plaintiff.
v.
NEWMONT MINING CORP., Wayne W. Murdy, Pierre Lassonde, and Bruce D. Hansen, Defendants.
John S. Chapman, Individually and On Behalf of All Other Similarly Situated, Plaintiffs,
v.
Newmont Mining Corp., Wayne W. Murdy, Pierre Lassonde, and Bruce D. Hansen, Defendants.
Zoe Myerson, Individually and On Behalf of All Others Similarly Situated, Plaintiffs,
v.
Newmont Mining Corp., Wayne W. Murdy, Pierre Lassonde, and Bruce D. Hansen, Defendants.
Civil Action Nos. 05-cv-01046-MSK-BNB, 05-cv-01100-MSK-CBS, 05-cv-01141-MSK-BNB.

Sept. 26, 2007.

OPINION AND ORDER IMPOSING SANCTION AGAINST JAMES W. ANDERSON, JR. AND STEVEN REIFMAN

MARCIA S. KRIEGER, United States District Judge.

*1THIS MATTER comes before the Court pursuant to the Response (# 94) of Proposed Intervenors Gideon Minerals, U.S.A., Inc., PT Lebong Tandai, PT Tanjung Sera Pung, and PT Pukuafau Indah (collectively, "Gideon"), by and through their attorneys James W. Anderson and Steven W. Reifman, in response to this Court's March 30, 2007 Opinion and Order Denying Motion to Intervene and Directing Counsel to Show Cause Why Sanctions Should Not be Imposed (# 93).

Procedural Context

Familiarity with the Court's prior Orders is assumed. The Court directed Gideon to show cause with regard to three issues: (i) why it should not be sanctioned pursuant to Fed.R.Civ.P. 11(b)(1) and (2) for filing 9 substantive documents in this case while its request for leave to intervene remained *sub judice,* and thus, its ability to participate in this action remained undecided; (ii) why it should not be sanctioned pursuant to Fed.R.Civ.P. 11(b)(1) for filing Docket # 76, 79, and 89, all of which appeared to be irrelevant to the matters at issue in this litigation; and (iii) why it should not be sanctioned pursuant to Fed.R.Civ.P. 11(b)(1) and (2) for filing Docket # 78 and 92, which appeared to be substantively identical to previous filings in the action. The Court advised Gideon that sanctions, if imposed for these actions, might be imposed personally against its counsel.

Gideon filed a timely response (# 94) to the Order to Show Cause. At the outset, it denied having "engaged in any act designed to harass the opposing parties."It then noted the pendency of a Petition for Writ of Mandamus (# 87) it had filed with the 10th Circuit Court of Appeals, speculating that such filing might deprive this Court of further jurisdiction.[FN1]Next, Gideon noted that "this Court's Opinion and Order refers to the intervening parties only as Gideon," rather than as four distinct entities. It emphasized that "This is not just a technicality, it is critical to the investing public."Turning to the substantive response, Gideon first explained that it filed the 9 documents without first obtaining permission to intervene because "This Court did not rule for almost six [ ] months on the motion," and that, "[a]s any dutiful advocate would do," Gideon's counsel "consulted the court rules, the Constitution and case law for support and guidance so as to act zealously for his clients."It goes on to state that because it was entitled to intervene as a matter of right because the parties to this action did not object to the Motion to Intervene, relying on *Exchange Natl. Bank v. Abramson,* 45 F.R.D. 97 (D.Minn.1968). This portion of the response also freely, and incomprehensibly, mixes in certain explanations regarding Gideon's filing for entry of default under Fed.R.Civ.P. 55. Gideon goes on to explain that its multiple filings "are a direct product of a limited electronic system that the Federal Courts have implemented," and that "the rigors and pigeon holing of the system thus necessitat[ed] the

refilings."[FN2]Gideon contends that "In our sworn duty as advocates, we were nearly duty bound to respond in some fashion" to attempts by the parties to settle this action.

FN1. The Petition was denied by the 10th Circuit on May 15, 2007 **(# 103).**

FN2. The response blames some of this difficulty on the fact that Gideon was "not technically parties to the proceedings."

*2 Turning to those documents cited by the Court as irrelevant or redundant, Gideon contends that its Second Request for Entry of Default **(# 76)** was filed because the Clerk of the Court failed to perform the "ministerial act" of entering default upon Gideon's first request. Its Third Request for Entry of Default **(# 78)** was filed in response to a filing **(# 77)** by the Plaintiffs, and was intended to "advise[ ] the clerk that nothing in Docket # 77 justified refraining from entering the default as a ministerial act."Gideon explains that "We have found no authority to allow the court to intercede, nor for the clerk to refrain from entry of a Request for Entry of Default," and that its multiple requests for entry of default "were not redundant as the court stated, but were done in response to the situation as it evolved."With regard to Gideon's filing of a Supplement **(# 92)** that merely restated prior argument, Gideon contends that "such Supplement does not violate any rule, and argues that "The rule of law does not make filings or actions in litigation improper simply because no specific rule allows for same."Gideon goes on to contend that "the Supplemental Motion included some additional legal authority and made additional arguments in paragraphs 10 and 11."With regard to its filing of a Notice of the Public Accounting Oversight Board etc. **(# 89),** Gideon explains that it was intended to show that "we would not limit our efforts in achieving unfettered use of our assets in the global capital markets," and explains that it has been extensively involved in administrative investigations of the Defendants. Finally, with regard to the "Request for Judicial Notice" **(# 79),**Gideon explains that it, too, "was likewise an effort to apprise this Court of the impact of the infractions of Defendant Newmont."

Analysis

As relevant here, Fed.R.Civ.P. 11 requires an attorney to certify that each paper he or she submits to the Court is not presented for improper purposes and contains claims that are warranted by existing law or a non-frivolous argument for a change in the law. Specifically, Fed.R.Civ.P. 11(b)(1) permits the Court to sanction the signer of any filing that is "presented for improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation."Fed.R.Civ.P. 11(b)(2) permits sanctions where the document contains legal contentions that are not "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law."

Rule 11 is intended to prevent abuses arising from bad faith, negligence and, to some extent, professional incompetence. *White v. General Motors Corp.*, 908 F.2d 675, 680 (10th Cir.1990). In determining whether an attorney's conduct violates Rule 11, the Court applies an objective standard, examining whether a reasonable, competent attorney would believe, under the circumstances, that the particular filing was permissible and warranted. *White v. General Motors Corp.*, 908 F.2d 674, 681 (10th Cir.1990).

1. *Warranted by existing law*

*3 The Court turns first to whether Gideon has shown that the nine challenged filings assert claims or seek relief that is either warranted under existing law or justified by a good faith argument under Rule 11(b)(2). A brief recital of the underlying circumstances will help edify this issue, and the Court will then analyze the offending documents in relevant groups.

The Plaintiffs, shareholders of Defendant Newmont Mining, Inc. ("Newmont"), bring this action sounding in securities fraud, alleging that certain public statements made by Newmont as to the quality and quantity of the output of its Batu Hijau mine in Indonesia were untrue. *See Docket* # 35 at 1-4. Gideon purports to have a dispute with Newmont as to the ownership of the Batu Hijau mine, and contends that "the Batu Hijau mine[is] not and never [was] the property nor the subject of the business enterprise of"Newmont. *Docket* # 51 at 2. Gideon sought to intervene in this matter, alleging that a judgment on the Newmont shareholders' securities

fraud claims "would have the impact of impliedly or directly creating [a loss to Gideon] since the underlying Plaintiffs' claims state that the mines in question are owned by [Newmont] when in fact said mines are owned by [Gideon]."*Id.* at 3.Gideon offered no explanation as to how a judgment in favor of the Plaintiffs on the claims of securities fraud would operate to directly or indirectly affect its claims of title to the mine, and for this reason, this Court promptly denied Gideon's motion. *See Docket* # 55 at 3.

Gideon then filed an Amended Motion to Intervene, purporting to clarify the Court's alleged misunderstanding that Gideon was seeking to litigate title to the mine. However, Gideon's protestations notwithstanding, it was clear from the Amended Motion that that the gravamen of its claim was indeed a dispute over the ownership of the mine. *See Docket* # 57 at 6 ("this litigation infringes upon [Gideon's] ... current and active business of selling, pledging, and otherwise transacting business in the global financial markets using its [claim to the output of the mine] ... [A]ny settlement or other disposition of this class action lawsuit that does not address [ownership of the mine] will continue to mislead this Court, the class action Plaintiffs, and the global financial markets regarding [Newmont's] alleged rights in a [claim of ownership] that in fact, does not exist."Both the Plaintiffs and Defendants in this action filed timely responses **(# 65, 66)** to Gideon's Amended Motion to Intervene, noting that the renewed motion did not cure the defects noted by the Court in its prior order denying intervention.

a. Opposition to proposed settlement and requests for entry of default

Shortly after Gideon filed its Amended Motion to Intervene, the parties to this action advised the Court that they had reached a settlement, and requested that the Court preliminarily approve that settlement. **(# 66, 67).** On the same date, Gideon filed its reply **(# 73)** in support of its Amended Motion to Intervene, rendering that motion fully briefed and ready for disposition. At the same time it filed its reply, Gideon commenced the course of action giving rise to the instant issue of sanctions. In particular, over the next three weeks, despite not having secured permission to participate in this action, Gideon filed the following documents:

*4 • A response **(# 74)** in opposition to the parties' request for preliminary approval of their settlement, alleging that the proposed settlement did not resolve Gideon's claims. This document was signed by both Mr. Anderson and Mr. Reifman as counsel for Gideon.

• A Motion for Entry of Default **(# 75)** against the Defendants. This document is signed by both Mr. Anderson and Mr. Reifman.

• A Second Motion for Entry of Default **(# 76)**, signed by both Mr. Anderson and Mr. Reifman. In addition to again requesting entry of default against the Defendant, this motion complained that the Clerk of the Court had, without authority, referred Gideon's first Motion for Entry of Default to this Court for consideration.

• A Third Motion for Entry of Default **(# 78)**, signed by both Mr. Anderson and Mr. Reifman, which was largely devoted to responding to a filing by the Defendants **(# 77)** objecting to Gideon's first two motions seeking default.

This Court finds that, under Rule 11(b)(2), all four of these documents were not warranted by existing law or a good faith argument in support. All four of these documents-and indeed, all of the documents at issue in this Order-were filed by Gideon after its Motion to Intervene had been denied by the Court and while its Amended Motion to Intervene was pending. Gideon appears to assume that, simply by filing a motion seeking to intervene as of right under Rule 24(a), one automatically gains the ability to participate in the action as a party, yet it offers no authority supporting this conclusion. The one case that Gideon has cited for this proposition, *Exchange Natl. Bank v. Abramson,* 45 F.R.D. 97 (D.Minn.1968), simply does not stand for that proposition. In that case, the plaintiff failed to respond to a putative intervenor's motion seeking leave to intervene, and, there being no opposition, the court granted intervention. *Id.* at 101.When the intervenor later amended the complaint in intervention to strengthen its claim against the plaintiff, the plaintiff objected, arguing that intervention should never have been permitted in the first place. *Id.* The court held that the plaintiff's silence in the face of the initial motion to intervene prevented it from contesting the propriety of intervention at a later time. *Id.* at 102.

Abramson has no similarity, either factually or

legally, to the issues in this case. First, unlike *Abramson* and perhaps most disturbingly, Gideon baldly misstates the record as to whether the parties to this case objected to its Amended Motion to Intervene. Although Gideon repeatedly insists that the parties to this action did not object to its Amended Motion to Intervene, the docket clearly indicates that both the Plaintiffs and the Defendants filed timely oppositions to Gideon's motion. *See Docket* # 65, 68. Because the parties here opposed intervention, *Abramson* has no persuasive value whatsoever. Moreover, even assuming that Gideon was correct in its assertion that no opposition to its motion to intervene was raised, *Abramson* does not stand for the proposition that a request to intervene automatically permits the putative intervenor to thereafter participate as a party. Gideon has cited no authority whatsoever for that proposition, and indeed, that proposition appears to be at odds with the common understanding of Rule 24. *See e.g. Warheit v. Osten,* 57 F.R.D. 629, 630 (E.D.Mich.1973) ("intervention is never automatic, and certain minimal criteria must always be met by the would-be intervenor"). Indeed, to suggest that one is deemed to become a party simply because one has filed a motion *claiming* to meet the criteria of Rule 24(a) would be to abrogate the role of the Court in evaluating motions to intervene. This case presents a prime example-although Gideon may have believed it possessed all of the attributes necessary to entitle it to intervene under Rule 24(a), this Court disagreed, and intervention was denied. Gideon's conception of intervention would remove the Court from this process entirely. Gideon has neither pointed to existing law that supports this conception of intervention, nor has it offered a good faith argument that the rules governing intervention can be interpreted to operate this way.

***5** Moreover, even assuming that Gideon's pending request to intervene entitled it to participate in this lawsuit, its repetitive filing of requests seeking entry of default would nevertheless violate Rule 11(b)(2). Until such time as the Court granted Gideon's motion to intervene and directed the filing of a Complaint in Intervention, the Defendants were under no obligation to respond to Gideon's *proposed* complaint.

Gideon proffers no authority nor articulation of a good faith argument for the general proposition that a party is required to answer the complaint of a putative intervenor until the Court has granted intervention. As to Gideon's second and subsequent requests for entry of default violated Rule 1 1(b)(2), Gideon proffers no explanation as to why it had a good faith legal basis to file repetitive motions seeking the same relief that remained *sub judice* as a result of its first request for entry of default. Gideon contends that its second and subsequent requests were an attempt to get the Clerk of the Court to enter default, rather than permitting the Clerk to defer to chambers the question of whether entry of default should occur, but offers no authority or good faith argument that the Clerk of the Court was not entitled to do so. Although Rule 55(a) states that the Clerk "shall" enter default when certain conditions are met, nothing in that rule prevents the Clerk from consulting with chambers if questions arise whether the predicates of Rule 55(a) are met. Indeed, "the clerk's function is not perfunctory[; b]efore entering a default, the clerk must examine the affidavits filed and find that they meet the requirements of Rule 55(a)."*Wright & Miller, Federal Practice and Procedure* (Civil 3d), § 2682. Here, Gideon's unique interpretation of its ability to seek default on a complaint in intervention that had yet to be approved is precisely the kind of situation in which the Clerk of the Court would reasonably seek clarification from chambers as to whether default should enter. Thus, Gideon has failed to offer a legitimate argument as to why its second and subsequent requests for entry of default were proper as well.

Accordingly, the Court finds that all of the documents in this group violated Rule 11(b)(2).

b. Filings concerning accusations in other fora

Approximately one month after moving to intervene, Gideon filed a document entitled "Request for Judicial Notice" **(# 79).** The document requested that the Court "take Judicial Notice that [Gideon] will be filing a new action with the Securities and Exchange Commission to reflect the current legal and factual reality in this Federal District Court case, and will be filing notice of same with 11 other nations ..." The document explains that Gideon "must make every effort to encourage the Defendants to cease their fraudulent activities in violation of the securities laws of the United States of America, and these 11 other countries."At approximately the same time,

Gideon filed a Notice and Request to Direct the Clerk to Enter Default (# 81) against the Defendants. This document iterates that the Clerk of the Court should have promptly entered default against the Defendants, and goes on to state that "the Court should note that at this writing we are registering [Newmont's] defaults with officials of the Central Bank of the EU through our financial advisors who are former officials of the International Monetary Fund, the World Bank and various other Global Financial officials in France and Asia."It explains that "the purpose of this notice is to further inform the court of [Gideon's] use of their financial assets in the acquisition and development of mines, and the implementation of a disgorgement plan that will be marginally disruptive to the financial markets."

***6** Gideon has not shown that the filing of these documents was justified by existing law. At best, these filings request that the Court take judicial notice of certain facts under Fed.R.Evid. 201.[FN3]However, these documents are little more than glorified press releases, trumpeting Gideon's efforts to attack the Defendants in other *fora*.Gideon offers no explanation as to how the fact that it was filing an action with the Securities and Exchange Commission or complaints with foreign officials was relevant to any issue in this case, much less the proper subject for judicial notice under Rule 201. Gideon's response to the Order to Show Cause on this issue is a feeble assertion that the Request for Judicial Notice was "an effort to apprise this Court of the impact of the infractions of Defendant Newmont," without any explanation as to why that information was relevant and properly the subject of judicial notice. Accordingly, the Court finds that these two documents are sanctionable under Rule 11(b)(2).

> FN3. To the extent that Docket # 81 was arguably a request for entry of default, it is also sanctionable under Rule 11(b)(2) for the reasons stated above with regard to Gideon's requests for entry of default.

c. Filings concerning Magistrate Judge's rulings

In early March 2007, the Court referred Gideon's first three still-pending requests for entry of default to the Magistrate Judge for disposition pursuant to 28 U.S.C. § 636(b)(1)(a), and the Magistrate Judge promptly denied them (# 83), finding that all three motions were "frivolous," and discussing the propositions set forth above. Gideon immediately filed a Motion for Relief (# 84) from the Magistrate Judge's ruling, arguing that pursuant to 28 U.S.C. § 636(c), Gideon had not consented to the Magistrate Judge determining the issue; acknowledged that "we agree" with the Magistrate Judge's statement that the Court, in addition to the Clerk, has the authority to rule on entries of default, but states that Gideon "filed no Motion to place these Requests for Default before a judicial officer"; and argues that "a Motion for Intervention which includes an attached Complaint for Intervention requires a party to respond to both the Motion and the Complaint for Intervention," again citing *Exchange Natl. Bank v. Abramson,* 45 F.R.D. 97 (D.Minn.1968) for that proposition.[FN4]Two days later, Gideon filed a Supplement (# 86) to its Motion for Relief from the Magistrate Judge's Order. This Supplement duplicates the entire contents of the prior motion, and adds two additional paragraphs, one arguing that "Not one single citation in the Order of the Magistrate supports any of the legal conclusions arrived at in the Order," and the second paragraph makes a cumbersome argument that attempts to differentiate between Gideon's "requests" for entry of default directed at the Clerk of the Court and "motions" that warrant judicial intervention, but states that, even if construed as motions for entry of default, the Defendants never responded to them .[FN5]

> FN4. Gideon supplies a block quote from *Abramson* that makes no reference whatsoever to the proposition it asserts.
>
> FN5. This final assertion is patently false. *See Docket* # 77.

On its face, Gideon's responses to the Magistrate Judge's ruling might be construed as a proper objection under Fed.R.Civ.P. 72, and in that respect, would not be sanctionable. However, the Court finds that the contents of those documents themselves are so bereft of reasonable support in law as to be sanctionable nevertheless. Gideon asserts that its consent was necessary under 28 U.S.C. § 636(c) to permit the Magistrate Judge to determine the matter, ignoring the fact that the reference was made pursuant to 28 U.S.C. § 636(b)(1)(A), which does not require consent. Gideon's arguments with regard to the ability of the Court to adjudicate requests for entry of default are misplaced as well. Gideon

acknowledges that the Magistrate Judge was correct in finding that "the fact that Rule 55(a) gives the clerk authority to enter a default is not a limitation on the power of the court to do so,"*Wright & Miller, supra* at § 2682, but argues that it never requested that the Court, rather than the Clerk, do so. However, Gideon cites no authority and offers no argument as to whether the ability of the Court to consider Rule 55(a) requests is dependent upon the form by which the party making the request frames it. As the quote from Wright & Miller explains, the rule does not limit the ability of the Court to consider a request for entry of default, and there is no reason to assume that a party's framing of the request can somehow have an effect that the rule itself does not have.

*7 Accordingly, the Court finds that the absence of any reasoned argument by Gideon to the contents of its objections to the Magistrate Judge's ruling is sanctionable under Rule 11(b)(2).

d. Notice of Public Accounting Oversight Board

On March 8, 2007, Gideon filed a document entitled "Notice of the Public Accounting Oversight Board [...] Fraud Inquiry of Defendant Newmont"(# 89). This document requested that the Court "take judicial notice" that the U.S. Securities and Exchange Commission was engaging in some sort of "fraud inquiry" of the Defendants. The document purported to attach an "Auditor's statement of communication in regard to this investigation," but in fact, attached a copy of a letter from a Certified Public Accountant for Gideon to the Assistant Director of Enforcement of the Public Company Accounting Oversight Board, purporting to submit "real-time examples" of Newmont engaging in securities fraud.

For the same reasons stated above with regard to Gideon's requests for judicial notice regarding actions in other fora, this document is also sanctionable under Rule 11(b)(2).

2. *Improper purpose*

The Court also considers whether Gideon interposed these documents for an improper purpose under Rule 11(b)(1). The Court finds that all of the documents are sanctionable as having been imposed solely for the purpose of harassment and vexation. This improper purpose is best exemplified by Gideon's various requests for judicial notice. These documents are clearly not germane to this litigation. Rather, it is clear that Gideon's purpose in filing these documents was to attempt to intimidate the Defendants by threatening to invoke numerous proceedings around the world against them, and to heighten the notoriety of Gideon and its claims.

The Court finds that Gideon's only purpose in seeking to intervene in this action, and its subsequent filing of the 9 documents at issue here, was for the purpose of hijacking this action to address issues that Gideon wanted addressed, notwithstanding the fact that those issues had no legal significance in the context of this case and had only the thinnest factual connection to the Plaintiffs' claims. The Court's denial of Gideon's first attempt to intervene put Gideon on notice that its theory warranting intervention was flawed. Rather than reconsider whether this was indeed an appropriate action to attempt to raise its own claims in, Gideon proceeded bullishly, not only filing a renewed motion to intervene that did not materially alter its already-rejected theory, but proceeding to aggressively file numerous frivolous documents, all for the purpose of usurping the focus of the litigation from the parties' issues to Gideon's. Whether the Court deems this conduct to be for purposes of harassment, vexation, or some other label is irrelevant; it was clearly improper under Rule 11(b)(1), and sanctions are appropriate on this ground as well.

Amount of sanction

*8 A sanction imposed under Rule 11 is intended to serve several purposes: deterring future litigation abuse, punishing present litigation abuse, compensating victims of litigation abuse, and streamlining the court's docket and facilitating case management. *White*, 908 F.2d at 683. Deterrence is the primary purpose, however. *Id.* The Court should select the least severe sanction necessary to achieve the appropriate deterrence and punishment effects. *Id.* at 684. *White* lists several factors that the Court must consider in fixing an appropriate sanction: (i) the lodestar amount of the opponents' fees, (ii) the minimum necessary to achieve deterrence, (iii) the sanctioned party's ability to pay, and (iv) other factors, such as the offending party's history, experience, ability, the severity of the violation, the risk of chilling effects on zealous advocacy, and so

on. *Id.* at 684-85.

Turning to the first issue, the lodestar calculation, the Court finds this factor irrelevant in this case. Although Rule 11 sanctions typically reflect the attorney's fees incurred by the sanctioned party's opponent, it is appropriate to consider the reasonableness of those fees. However, here, the sanction is imposed at the imposition of the Court, not at the request of any party, and no party has sought to put forward the amount of fees it has incurred as a result of Gideon's counsel's conduct. The Court notes that, in general, the parties to this action have admirably refused to be goaded into responding at length to Gideon's frivolous filings, and thus, have likely incurred only minimal attorney's fees as a result.

The second factor is the minimum amount necessary to achieve deterrence. As *White* points out, Rule 11 sanctions should not be used as a tool to financially drive incompetent or unethical counsel out of practice; that is the role of disciplinary committees. *Id.* at 684.Rather, the Court must attempt to limit the sanction to the amount necessary to deter counsel from future conduct of a similar nature. *Id.* at 685.With regard to this factor, the Court makes several observations. First, the Court notes that this was not isolated or sporadic conduct by Gideon's counsel. Rather than being dissuaded by the Court's initial denial of its request to intervene, Gideon continued to press the same defective theory. It did the same with its multiple motions seeking entry of default, and its multiple filings of inflammatory material under the auspices of seeking "judicial notice." The pattern has not yet abated. Notwithstanding the looming threat of sanctions from this Court's Order to Show Cause, Gideon has continued to file papers despite it having been twice denied leave to intervene and it having no current right to participate in this litigation. *See e.g. Docket #* 100 (Gideon's Motion to Stay); 117 (Gideon's "Notice of Congressional Inquiry").[FN6] Any sanction must therefore be significant enough to effectively stop Gideon's persistent and frivolous attempt to hijack this litigation for its own purposes.

> FN6. Indeed, some of these papers are as frivolous and sanctionable as those addressed by the Court, although the Court confines its sanctions analysis to only those filings encompassed by its Order to Show Cause.

*9 As to the third *White* factor, Gideon's counsel's ability to pay, the record is bare. The Court's Order to Show Cause specifically advised counsel that the Court was entertaining the imposition of monetary sanctions directly against them,[FN7] and yet, their response raises no issue as to their ability to pay a monetary sanction. The court in *White* made clear that inability to pay is in the nature of an affirmative defense, and it is the burden of the sanctioned party to put forward evidence demonstrating such inability. 908 F.2d at 685. Because Gideon's counsel has not come forward with evidence as to their inability to pay, this factor carries no weight in the fixing of the amount of the sanction.

> FN7. Given that the offending conduct involves the taking of frivolous legal positions, and insofar as the Court's Order to Show Cause only invoked Rule 11, the Court considers sanctions are appropriate against Gideon's counsel, not Gideon itself.

Finally, *White* requires the Court to consider a variety of miscellaneous factors. The record does not reflect Gideon's counsel's level of experience or history of practice in this District, but that factor has little bearing on the issue. Whether Gideon's counsel are wizened litigators or freshly-minted attorneys is largely irrelevant, as all counsel admitted to this District are expected to demonstrate adequate competence. In the absence of evidence on this factor, the Court will assume Gideon's counsel to be moderately experienced, but ultimately, all counsel admitted to practice in this District are expected the demonstrate at least minimal competency, and regardless of their level of experience, Gideon's counsel's performance fell well below this threshold. The Court must also consider the severity of the violation and the extent of bad faith by counsel. The Court finds the sheer number of frivolous filings indicates that Gideon's counsel's conduct was of more than minimal severity, and indeed had the purpose and effect of disrupting and somewhat prolonging litigation that was otherwise nearing its end.

The Court also considers whether the sanction will have a chilling effect on zealous advocacy. Gideon has raised this issue in its response to the

HUFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Mining Corp.
C.A.10 (Colo.),2008.
Only the Westlaw citation is currently available.This case was not selected for publication in the Federal Reporter.Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Tenth Circuit Rule 32.1. (Find CTA10 Rule 32.1)

United States Court of Appeals,Tenth Circuit.

UFCW LOCAL 880-RETAIL FOOD EMPLOYERS JOINT PENSION FUND, on behalf of itself and all others similarly situated; Pompano Beach Police and Firefighter's Retirement System; Kamel Aouidad, an individual; John S. Chapman; Zoe Myerson, Plaintiffs-Appellees,
v.
NEWMONT MINING CORPORATION; Wayne W. Murdy; Pierre Lassonde; Bruce D. Hansen; David H. Francisco, an individual; Thomas L. Enos, an individual; Russell Ball, an individual; Robert J. Gallagher, an individual, Defendants-Appellees.
Gideon Minerals U.S.A., Inc., and its wholly owned subsidiaries; PT Lebong Tandai; PT Pukuafu Indah; PT Tanjung Sera Pung, Intervenors-Appellants.

No. 07-1159.

Jan. 16, 2008.

Background: Shareholders brought securities fraud action against, inter alia, mining corporation, alleging that defendants had made false statements regarding quantity and quality of output of corporation's mines. Mineral company and its subsidiaries, which were involved in dispute with corporation regarding ownership of mines, moved to intervene and requested entry of default against defendants. The United States District Court for the District of Colorado, 2007 WL 988187, denied motion and struck requests. Mineral company and subsidiaries appealed, and defendants moved for award of damages, double costs, and attorney fees based on alleged frivolous and vexatious behavior of mineral company and subsidiaries on appeal.

Holdings: The Court of Appeals, Monroe G. McKay, Circuit Judge, held that:

(1) mineral company and subsidiaries waived argument that district court erred in denying amended motion to intervene;

(2) no basis existed for entry of default against defendants;

(3) lack of consent by mineral company and subsidiaries to having magistrate judge hear or determine any proceedings did not provide grounds for vacating magistrate judge's order; and

(4) award of just damages, double costs, and attorney fees was warranted.

Affirmed.

[1] Federal Courts 170B 0

170B Federal Courts
Would-be intervenors waived argument that district court erred in denying their amended motion to intervene in securities fraud action when would-be intervenors did not offer any legal or factual support for argument on appeal.

[2] Federal Civil Procedure 170A 0

170A Federal Civil Procedure
No basis existed for district court's entry of default against defendants in securities fraud action, as requested by would-be intervenors, given that would-be intervenors' amended motion to intervene had not been granted and their proposed complaint had not been accepted for filing, such that defendants had no obligation to plead or otherwise defend against proposed complaint. Fed.Rules Civ.Proc.Rule 55(a), 28 U.S.C.App.(2000 Ed.).

[3] Federal Civil Procedure 170A 0

170A Federal Civil Procedure
Even if parties' consent was required by statute for rulings referred by district court to magistrate judge, would-be intervenors were not parties to case, and

therefore their lack of consent to having magistrate judge hear or determine any proceedings did not provide grounds for vacating magistrate judge's order. 28 U.S.C.A. § 636.

|4| Federal Courts 170B 0

170B Federal Courts
Would-be intervenors' filing of frivolous appeal and conduct manifesting intentional or reckless disregard of their attorney's duties to court warranted granting of motion by defendants in securities fraud action for just damages, double costs, and attorney fees on appeal from denial of amended motion to intervene and would-be intervenors' requests for entry of default against defendants. 28 U.S.C.A. § 1927; F.R.A.P.Rule 38, 28 U.S.C.A.

|5| Federal Courts 170B 0

170B Federal Courts
Would-be intervenors' appeal from denial of their amended motion to intervene in securities fraud action and requests for entry of default against defendants was "frivolous," within meaning of rule allowing Court of Appeals to award just damages and single or double costs for filing of frivolous appeal, given that result of appeal was obvious and would-be intervenors' arguments of error were wholly without merit. F.R.A.P.Rule 38, 28 U.S.C.A.

|6| Federal Courts 170B 0

170B Federal Courts
Would-be intervenors in securities fraud action unreasonably and vexatiously multiplied the proceedings by filing frivolous appeal from denial of their amended motion to intervene and requests for entry of default against defendants and by making other filings in Court of Appeals, including petition for writ of mandamus, motion for stay pending appeal, and motion for order to show cause and for sanctions, all of which were denied. 28 U.S.C.A. § 1927.

Jeffrey A. Berens, Kip Brian Shuman, Shuman & Berens, Denver, CO, Henry Rosen, Lerach Coughlin Stoia Geller Rudman & Robbins, San Diego, CA, Jeffrey S. Nobel, Seth Klein, Schatz, Nobel, Izard, Hartford, CT, for Plaintiffs-Appellees.

Pamela R. Mackey, Lee D. Foreman, Haddon, Morgan, Mueller, Jordan, Mackey & Foreman, Denver, CO, for Defendants-Appellees.
Steven W. Reifman, Farmington Hills, MI, James W. Anderson, Jr., Detroit, MI, for Intervenors-Appellants.

Before KELLY, McKAY, and ANDERSON, Circuit Judges.

ORDER AND JUDGMENT[FN*]

MONROE G. McKAY, Circuit Judge.

*1 Gideon Minerals U.S.A., Inc., and its wholly owned subsidiaries; PT Lebong Tandai; PT Tanjung Sera Pung; and PT Pukuafu Indah (collectively "Gideon") appeal from the district court's order denying its amended motion to intervene and striking its requests for entry of default against defendants. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Procedural Background

The underlying action here is a securities fraud case, which involved shareholders of defendant Newmont Mining alleging that defendants made various false statements as to the quantity and quality of the output of its mines. More than a year after the commencement of this action, Gideon sought to intervene as of right pursuant to Fed.R.Civ.P. 24(a)(2). The district court denied the motion to intervene on September 1, 2006, finding that nothing in the adjudication of the securities fraud claims by the plaintiffs against the defendants would affect Gideon's rights in its dispute with defendant Newmont Mining over the ownership of the mines.

On October 3, Gideon filed an amended motion to intervene and a proposed complaint. Defendants filed a response, asserting that there was no material difference between the amended motion to intervene and the original motion to intervene. Defendants further stated that because the district court denied the original motion to intervene without briefing by defendants, they did not intend to file a substantive response to the amended motion to intervene unless directed to do so by the court.

While the amended motion to intervene was

pending, Gideon proceeded to file an "Attorneys[']Statement of Default by Defendants," a "Second Request for Entry of Default by Clerk," and a "Request [to] the Clerk, Pursuant to Intervening Plaintiffs[']Rights to Procedural Due Process, to Enter the Default of Defendants." Aplt.App. at 64, 69, and 73. On March 5, the magistrate judge construed these filings as motions for entry of default pursuant to Fed.R.Civ.P. 55(a), found them to be frivolous, and denied them. Gideon objected to the magistrate judge's order.

On March 30, the district court entered an order denying the amended motion to intervene for the same reasons it had denied the original motion to intervene and striking all of Gideon's filings since November 7, 2006, including the requests for entry of default, because Gideon was not a party and had no standing to file any pleadings in the case. Gideon now appeals from that order. Defendants have filed a motion pursuant to Fed. R.App. P. 38 and 28 U.S.C. § 1927 seeking damages, doubles costs, and attorneys' fees against Gideon for its alleged frivolous and vexatious behavior before this court.

Gideon's Appeal

Gideon presents as its first argument on appeal the following proposition: "It was error for the United States District Judge and Magistrate Judge to issue orders denying the Motion to Intervene and interfere with the entry of the Defaults of the Defendants, when these issues had been resolved, as the Defendants were already in default."Aplt. Br. at 8. We review de novo the denial of a motion to intervene as of right. *See City of Stilwell v. Ozarks Rural Elec. Coop. Corp.*, 79 F.3d 1038, 1042 (10th Cir.1996). We review for abuse of discretion the denial of a motion for default. *See Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir.2003).

*2 [1] Although Gideon makes the conclusory assertion in its statement of the issue that the district court erred in denying its Motion to Intervene, [FN1] it presents no argument as to *how* the district court's determination was erroneous. *See* Aplt. Br. at 8-13. Gideon does make an attempt to distinguish some legal authority cited in the magistrate judge's order of March 5, 2007, *see id.* at 11, which refers to a case involving intervention as of right, but the magistrate judge was simply providing the case citation for the proposition that Gideon was not a party to the action because its motion to intervene had not yet been granted, *see* Aplt.App. at 80. The magistrate judge was not making any determination on the pending Amended Motion to Intervene. *See id.* at 80 n. 1 ("The district judge has retained to herself for determination and has not referred to me the Amended Motion to Intervene."). Accordingly, Gideon's argument about the magistrate judge's order is not relevant to its position that the district court erred in denying its Amended Motion to Intervene. Because Gideon does not offer any legal or factual support for its argument that the district court erred in denying its Amended Motion to Intervene, this argument is waived. *See Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664, 679 (10th Cir .1998) ("Arguments inadequately briefed in the opening brief are waived").

[2] As for its argument that the district court erred in rejecting its requests for entry of default, Gideon asserts that it was entitled to entry of default against defendants simply because it filed a request asking for such default under Fed.R.Civ.P. 55(a). It refuses to acknowledge the fact that at the time it filed its requests for default it was not a proper plaintiff in the action in district court-its initial motion to intervene had been denied, and its amended motion to intervene was pending before the district court. Moreover, the Amended Motion to Intervene did not itself seek a "judgment for affirmative relief," [FN2] *id.*, and therefore does not fall within the plain language Rule 55(a). Although a proposed complaint was attached to the motion, "[t]he purpose of the rule requiring the motion to state the reasons [for intervention] and accompanying the motion with a pleading setting forth the claim or defense is to enable the court to determine whether the applicant has the right to intervene...."*Miami County Nat'l Bank v. Bancroft*, 121 F.2d 921, 926 (10th Cir.1941). Because the Amended Motion to Intervene had not been granted and the proposed complaint had not been accepted for filing, defendants had no obligation to plead or otherwise defend against the complaint; accordingly, there was no basis for the district court to enter default against the defendants under Rule 55. *Cf. Ashby*, 331 F.3d at 1152 (noting that "entry of default against [a party], before it had any obligation to file an answer, would have been incorrect as a matter of law."). Gideon has not shown that the district court abused its discretion in its treatment of Gideon's requests for default.

K-11

*3 [3] Gideon presents as its second issue the following argument: "A magistrate judge in a civil matter cannot make judicial rulings without the statutorily required consent of a party in a civil case pursuant [to] 28 USC 636(c)." Aplt. Br. at 14. Gideon asserts that it did not consent for the magistrate judge to hear or determine any proceedings and that therefore the magistrate judge's March 5, 2007 order should be vacated. Gideon fails to acknowledge, however, that the order by the district court referring certain matters to the magistrate judge was made pursuant to § 636(b)(1)(A) and (B), *see* Aplee. Supp.App. at 1-2, and those provisions do not require consent from a party. And, even if consent was required, Gideon again ignores the fact that it was not a "party" to the case. Gideon's meritless argument provides no basis for this court to interfere with any orders by the magistrate judge or the district court.

Finally, as its third argument, Gideon essentially repeats its first argument that the magistrate judge and the district court erred in denying and then striking its requests for entry of default. Although Gideon continues to cite to Rule 55 to support its argument, it again provides no explanation as to how Rule 55 applies to a situation where (1) a non-party has not been granted the right to intervene; and (2) there is no properly filed complaint that would require a response on the part of defendants. This duplicative and unsupported argument is meritless.

Defendants' Motion for Damages, Double Costs, and Attorneys' Fees

[4] Defendants filed a motion pursuant to Fed. R.App. P. 38 and 28 U .S.C. § 1927 seeking damages, double costs, and attorneys' fees against Gideon for its "pattern of frivolous and vexatious behavior before this Court."Mot. at 2. Gideon filed a response opposing the motion. Rule 38 provides: "If a court of appeals determines that an appeal is frivolous, it may, after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee."Section 1927 provides:

Any attorney or other person admitted to conduct cases in any court of the United States or any Territory thereof who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct.

[5][6] We agree with the defendants that the present appeal is frivolous because "the result is obvious" and Gideon's "arguments of error are wholly without merit."*Braley v. Campbell,* 832 F.2d 1504, 1510 (10th Cir.1987) (en banc). We agree also that Gideon has unreasonably and vexatiously multiplied the proceedings in this case by filing a frivolous appeal and by its other filings in this court. In addition to this appeal, Gideon filed a petition for a writ of mandamus, a motion for a stay pending appeal, and a motion for an order to show cause and for sanctions. These filings were all denied.

*4 We denied the petition for a writ of mandamus, which sought an order requiring the district court to enter default in Gideon's favor, for the following reason: "the district court denied [Gideon's] amended motion to intervene and struck all of [its] requests for default. Accordingly, there is no basis for this court to order the district court to enter default in [its] favor."*In re Gideon Minerals,* No. 07-1090, Order filed May 16, 2007. This order, in addition to the district court's order, put Gideon on notice that it had no meritorious basis on which to appeal. We denied Gideon's request for a stay pending appeal because it failed to comply with the applicable federal and 10th Circuit rules for appellate procedure. Finally, we note that Gideon's behavior appears to be a continuation of the abusive practices that it engaged in during the proceedings in the district court, and for which it has been sanctioned by that court.

Because this appeal is frivolous and because Gideon's conduct "manifests intentional or reckless disregard of the attorney's duties to the court,"*Braley,* 832 F.2d at 1512, we GRANT defendants' motion for just damages, double costs, and attorneys' fees.

We AFFIRM the judgment of the district court. We REMAND to the district court for the limited purpose of determining the amount of the damages and fees to be awarded to defendants.

FN* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this

appeal. *See*Fed. R.App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R.App. P. 32.1 and 10th Cir. R. 32.1.

FN1. Although Gideon refers to its "Motion to Intervene," Aplt. Br. at 8, we presume that it meant to refer to its "Amended Motion to Intervene." The original Motion to Intervene was denied on September 1, 2006, and the instant appeal was not filed until April 13, 2007. Accordingly, the Notice of Appeal was not timely filed from the denial of the original Motion to Intervene, but it was timely filed from the denial of the Amended Motion to Intervene, which occurred on March 30, 2007. *See*Fed. R.App. P. 4(a)(1)(A).

FN2.Rule 55(a) states: "Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

C.A.10 (Colo.),2008.
UFCW Local 880-Retail Food Employers Joint Pension Fund v. Newmont Mining Corp.
Slip Copy, 2008 WL 152598 (C.A.10 (Colo.))

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Recent Articles Referencing Ownership of Pukuafu Indah by Jusuf Merukh

Indonesia Temporarily Postpones Sale of Newmont's Martabe Gold Mine
AFX News Limited, Investor Daily & Bisnis Indonesia, 19 June 2006

The government has temporarily postponed the tender process for Newmont Mining Corp's Martabe gold mine in Indonesia's North Sumatra province after an eliminated bidder lodged an objection, an energy ministry official said. Newmont recently short listed PT Antam and Australian firm Agincourt Resources out of five interested investors to bid for mine. But one of the failing bidders, businessman Jusuf Merukh, filed an objection with government authorities claiming that Newmont has promised to sell the mine to him, said Mangantar Marpaung, director for coal and geothermal development at the energy ministry. 'We sent a letter to Newmont requesting them to first settle the problem with Jusuf Merukh.' Marpaung told reporters. In a letter to the ministry, Merukh claimed he was promised by Newmont that he would take over the mine and that accordingly he filed a bid of US$ 91.75 million. The Director General of Mineral, Coal and Geothermal of the Energy and Mineral Resources Department, Simon Sembiring, said that the protest was filed by Jusuf Merukh, because of the government's intervention. Merukh, who is also the owner of Lebong Tandai Group and a minority shareholder of Newmont Nusa Tenggara through PT Pukuafu Indah, has urged the government to cancel its bid process decision. Merukh claimed that Pukuafu has purchased 100% of Newmont Corp's shares in Newmont Horas Nauli on 16 February 2006 for US$ 300 million. Newmont is selling all of its' 90% stake in PT Newmont Horas Nauli, which operates the Martabe mine, for US$ 114 mln. PT Austindo Nusantara Jaya owns the other 10%. The government is currently undertaking verification procedures of the shortlisted bidders but the decision as to who will win the bid will be left to Newmont. Separately, Noke Kiroyan, president of Newmont's Indonesian unit, Newmont Pacific Nusantara, said the winner of the tender is expected to be decided next week and that Merukh should honour Newmont's decision excluding him from the shortlist. Kiroyan has said exploration indicates the mine holds about 3 mln ounces of gold reserves.

http://www.mitrais.com/mining/miningNews060623.asp

Newmont Indonesia to announce buyer of Martabe mine next week

JAKARTA, June 22 (XFN-ASIA) - Newmont Mining Corp will next week decide the winner of its tender for the Martabe gold mine in North Sumatra province despite the objection of an eliminated bidder, an official of Newmont's Indonesia unit said.

Earlier this week, the energy ministry said it has temporarily suspended the tender process for Martabe and requested Newmont to settle the problem with eliminated bidder Jusuf Merukh.

The dispute emerged after Newmont shortlisted PT Antam and Australian firm Agincourt Resources while eliminating three other bidders including Merukh, an Indonesian mining entrepreneur.

Merukh's firm PT Pukuafu Indah owns a 20 pct stake in copper and gold miner PT Newmont Nusa Tenggara.

'There is nothing new. Our position is clear that from five bidders we have shortlisted two. And we will choose one of the two,' Noke Kiroyan, president of Newmont Pacific Nusantara, told XFN-Asia.

Newmont Nusa Tenggara and Newmont Pacific Nusantara are both local units of US-based Newmont Ming.

Kiroyan said Newmont did not enter into any deals that could have granted Merukh any privileges to acquire the Martabe mine.

'It is not our business if Merukh has been involved in any deal with other parties,' he added.

Mangantar Marpaung, director for coal and geothermal development at the energy ministry, said earlier that Merukh, in the complaint he filed with the ministry, claimed Newmont had promised to sell the mine

to him.

In the document he filed, Merukh also claimed that his firm, Pukuafu Indah, had reached an agreement with IKB Deutsche Industriebank AG for the latter to become a standby lender for the project.

Prior exploration has indicated that the Martabe mine holds about 3 mln ounces of gold reserves.

Indonesia's Merukh plans to build 2 copper smelters at cost of up to 10 bln usd

JAKARTA, June 22 (XFN-ASIA) - Mining entrepreneur Yusuf Merukh said he plans to build two copper smelters in Papua and Sumbawa with an annual capacity of around 500,000 tons each.

He told reporters that the total investment for the two smelters could reach 10 bln usd.

Merukh said he is now seeking approval from the energy and mineral resources ministry and hopes to start the projects next year.

"The project is being considered to respond rising metal prices," he said.

He gave no further details.

Merukh's firm PT Pukuafu Indah is the owner of a 20 pct stake in copper and gold miner PT Newmont Nusa Tenggara, the Indonesian unit of US mining giant Newmont Mining Corp.

http://kerrycollison.net/index.php?/archives/2491-Oil,-Gas-Mining-updates-from-Jakarta.html

The Jakarta Post.com Business News April 14, 2007

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West Sumbawa moves to secure Newmont Nusa Tenggara stake

Ridwan Max Sijabat, The Jakarta Post, Jakarta

West Sumbawa regency in West Nusa Tenggara said it has established a new consortium with investors from the Middle East, Europe and Southeast Asia to raise US$109 million for the acquisition of a 3 percent stake in gold and copper miner PT Newmont Nusa Tenggara.

"We will have better financing from the new investors to acquire NNT's shares, and so we won't join the PT Bumi Resources-led consortium," Ryad Chairil, a lawyer for the West Sumbawa regency government, said Friday in Jakarta.

He did not explain why the West Sumbawa government was unwilling to partner up with Bumi Resources.

West Sumbawa Regent Zulkifli Muhadli has said that the regency would take advantage of the NNT's mandatory share divestment to increase its stake in the copper and gold mining firm so as to benefit local people.

The company, which operates a copper and gold mine at Batu Hijau, West Sumbawa, is controlled by the United States-based Newmont Corporation and Japan's Sumitomo Metal Mining Corp.

PT Pakuafu Indah, which is owned by Indonesian businessman Jusuf Merukh, also has a 20 percent stake in the firm.

According to its current contract of work, Newmont and its principal partner are required to reduce their ownership in the operation to 49 percent after ten years of production.

Following the planned purchase of a three percent stake this month, the Sumbawa government-led consortium says it will buy another seven percent in stages up until 2010.

Ryad stressed that the regency had been approached by a large number of interested investors, including local firms, regarding the planned acquisition, adding that the regency would select those firms that offered the greatest advantages to the regency as its partners.

Business News

Banten and Elnusa may build major oil refinery

More gas stations to sell Biopertamax

SOE loan debacle nearing end

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"The most important thing is that the West Sumbawa administration complies with all the legal requirements of the contract and pursues the region's interests," he said.

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Excerpts from Newmont Mining Corporation Form 10-K Annual Report for the year ended December 31, 2007 as filed with the Securities Exchange Commission

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Our Interest in the Batu Hijau Operation in Indonesia May Be Reduced Under the Contract of Work

Under the Contract of Work, beginning in 2005 and continuing through 2010, a portion of the shares of P.T. Newmont Nusa Tenggara, the subsidiary that owns Batu Hijau ("PTNNT") must be offered for sale, first, to the Indonesian government or, second, to Indonesian nationals, equal to the difference between the following percentages and the percentage of shares already owned by the Indonesian government or Indonesian nationals (if such number is positive): 23% by March 31 2006; 30% by March 31, 2007; 37% by March 31, 2008, 44% by March 31, 2009; and 51% by March 31, 2010. The price at which such interest must be offered for sale to the Indonesian parties is the highest of the then-current replacement cost, the price at which shares would be accepted for listing on the Jakarta Stock Exchange, or the fair market value of such interest as a going concern, as agreed with the Indonesian government. Pursuant to this provision, it is possible that the ownership interest of the Newmont/Sumitomo partnership in PTNNT, owner of Batu Hijau, could be reduced to 49%.

P.T. Pukuafa Indah ("PTPI"), an unrelated Indonesian company, has owned and continues to own a 20% interest in PTNNT, and therefore the Newmont/Sumitomo partnership was required to offer a 3% interest for sale in 2006 and an additional 7% interest in 2007. A further 7% interest will be offered for sale in March 2008. In accordance with the Contract of Work, an offer to sell a 3% interest was made to the government of Indonesia in 2006 and an offer for an additional 7% interest was made in 2007. While the central government declined to participate in the offer, local governments in the area in which the Batu Hijau mine is located have expressed interest in acquiring shares, as have various Indonesian nationals. In January 2008, the Newmont/Sumitomo partnership agreed to sell, under a carried interest arrangement, 2% of PTNNT's shares to Kabupaten Sumbawa, one of the local governments, subject to satisfaction of closing conditions. On February 11, 2008, PTNNT received notification from the Department of Energy and Mineral Resources (DEMR) alleging that PTNNT is in breach of its divestiture requirements under the Contract of Work and threatening to issue a notice to terminate the Contract of Work if PTNNT does not agree to divest the 2006 and 2007 shares, in accordance with the direction of the DEMR, by February 22, 2008. Newmont and Sumitomo believe there is no basis under the

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Batu Hijau, Indonesia

Batu Hijau is located on the island of Sumbawa, approximately 950 miles (1,529 kilometers) east of Jakarta. Batu Hijau is a large porphyry copper/gold deposit which Newmont discovered in 1990. Development and construction activities began in 1997 and start-up occurred in late 1999. In 2007, copper sales were 427.5 million pounds (204.2 million equity pounds), while gold sales were 494,300 ounces (233,300 equity ounces). At year-end 2007, we reported 4.1 billion equity pounds of copper reserves and 4.2 million equity ounces of gold reserves at Batu Hijau.

We operate Batu Hijau, a producer of copper/gold concentrates, and have a 45% ownership interest therein, held through a partnership with an affiliate of Sumitomo Corporation. We have a 56.25% interest in the partnership and the Sumitomo affiliate holds the remaining 43.75%. The partnership, in turn, owns 80% of P.T. Newmont Nusa Tenggara ("PTNNT"), the subsidiary that owns Batu Hijau. The remaining 20% interest in PTNNT is owned by P.T. Pukuafu Indah ("PTPI"), an unrelated Indonesian company. Because PTPI's interest was a carried interest, and because PTPI had been advanced a loan by the partnership, we reported a 52.875% economic interest in Batu Hijau, which reflected our actual economic interest in the mine until such time as the loan was fully repaid (including accrued interest). On May 25, 2007, PTPI fully repaid the loan (including accrued interest) and as a result, our economic interest was reduced from 52.875% to 45% and we recorded a net charge of $25 (after-tax) against *Minority interest expense* in the second quarter of 2007.

In Indonesia, rights are granted to foreign investors to explore for and to develop mineral resources within defined areas through Contracts of Work entered into with the Indonesian government. In 1986, PTNNT entered into a Contract of Work with the Indonesian government covering Batu Hijau, under which PTNNT was granted the exclusive right to explore in the contract area, construct any required facilities, extract and process the mineralized materials, and sell and export the minerals produced, subject to certain requirements including Indonesian government approvals and payment of royalties to the government. Under the Contract of Work, PTNNT has the right to continue operating the project for 30 years from operational start-up, or longer if approved by the Indonesian government.

Under the Contract of Work, beginning in 2005 and continuing through 2010, a portion of PTNNT's shares must be offered for sale, first, to the Indonesian government or, second, to Indonesian nationals, equal to the difference between the following percentages and the percentage of shares already owned by the Indonesian

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government or Indonesian nationals (if such number is positive): 23% by March 31, 2006; 30% by March 31, 2007; 37% by March 31, 2008, 44% by March 31, 2009; and 51% by March 31, 2010. The price at which such interest must be offered for sale to the Indonesian parties is the highest of the then-current replacement cost, the price at which shares would be accepted for listing on the Jakarta Stock Exchange, or the fair market value of such interest as a going concern, as agreed with the Indonesian government. Pursuant to this provision, it is possible that the ownership interest of the Newmont/Sumitomo partnership in PTNNT, owner of Batu Hijau, could be reduced to 49%.

PTPI has owned and continues to own a 20% interest in PTNNT, and therefore the Newmont/Sumitomo partnership was

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required to offer a 3% interest for sale in 2006 and an additional 7% interest in 2007. A further 7% interest will be offered for sale in March 2008. In accordance with the Contract of Work, an offer to sell a 3% interest was made to the government of Indonesia in 2006 and an offer for an additional 7% interest was made in 2007. While the central government declined to participate in the offer, local governments in the area in which the Batu Hijau mine is located have expressed interest in acquiring shares, as have various Indonesian nationals. In January 2008, the Newmont/Sumitomo partnership agreed to sell, under a carried interest arrangement, 2% of PTNNT's shares to Kabupaten Sumbawa, one of the local governments, subject to satisfaction of closing conditions. On February 11, 2008, PTNNT received notification from the Department of Energy and Mineral Resources (DEMR) alleging that PTNNT is in breach of its divestiture requirements under the Contract of Work and threatening to issue a notice to terminate the Contract of Work if PTNNT does not agree to divest the 2006 and 2007 shares, in accordance with the direction of the DEMR, by February 22, 2008. Newmont and Sumitomo believe there is no basis under the Contract of Work for this notification and no grounds for terminating the Contract of Work, and are currently evaluating possible responses to the February 11, 2008 default notice, including filing for international arbitration as provided for under the Contract of Work. Newmont and Sumitomo are in discussions with officials of the Government of Indonesia to attempt to clarify or resolve this issue.

The Company has been in discussions to renew its forest use permit (called a pinjam pakai) for over two years. This permit is a key requirement to continue to efficiently operate the Batu Hijau mine. The permit renewal has not been received and in the event it is not received by May 2008, it could have an adverse impact on operating and financial results.

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The following is a summary of consolidated gold and copper sales, net:

	Years Ended December 31,		
	2007	2006	2005
Gold			
Nevada, USA	$ 1,616	$ 1,441	$ 1,053
Yanacocha, Peru	1,093	1,543	1,490
Australia/New Zealand:			
Tanami, Australia	305	250	221
Kalgoorlie, Australia	224	198	183
Jundee, Australia	214	190	154
Waihi, New Zealand	66	71	73
	809	709	631
Batu Hijau, Indonesia	351	264	318
Ahafo, Ghana	306	124	—
Other Operations:			
Kori Kollo, Bolivia	60	77	44
La Herradura, Mexico	61	48	36
Golden Giant, Canada	8	35	73
	129	160	153
Corporate	1	(30)	(52)
	$ 4,305	$ 4,211	$ 3,593
Copper			
Batu Hijau, Indonesia	$ 1,221	$ 671	$ 672

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Minority interest in income of subsidiaries was as follows:

	Years Ended December 31,		
	2007	2006	2005
Batu Hijau	$ 299	$ 103	$ 119
Yanacocha	108	256	256
Other	3	4	5
	$ 410	$ 363	$ 380

Minority interest in income of subsidiaries increased in 2007 from 2006 as a result of increased earnings at Batu Hijau and a $25 charge in 2007 related to the repayment of the carried interest loan at Batu Hijau, partially offset by decreased earnings at Yanacocha (see Results of Consolidated Operations, Batu Hijau Operations and Yanacocha Operations). The 2006 decrease from 2005 resulted from lower production and earnings at Batu Hijau (see Results of Consolidated Operations, Batu Hijau Operations).

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Batu Hijau Operations

	Gold Ounces or Copper Pounds Sold			Costs Applicable to Sales[1]			Depreciation, Depletion and Amortization		
	2007	2006	2005	2007	2006	2005	2007	2006	2005
Gold	(ounces in thousands)			($ per ounce)			($ per ounce)		
Batu Hijau[2][3]	494	435	720	$ 243	$ 209	$ 152	$ 50	$ 46	$ 47
Copper	(pounds in millions)			($ per pound)			($ per pound)		
Batu Hijau[2][3]	428	435	573	$ 1.10	$ 0.71	$ 0.53	$ 0.22	$ 0.15	$ 0.15

(1) Excludes depreciation, depletion and amortization, loss on settlement of price-capped forward sales contracts.

(2) Consolidated gold ounces or copper pounds sold includes minority interests' share.

(3) Economic interest decreased to 45% from 52.875% on May 25, 2007.

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Consolidated copper sales decreased slightly in 2007 from 2006, due to increased year-end concentrate inventories, partially offset by 7% higher production. Consolidated gold sales increased in 2007 from 2006 due to 22% higher production, partially offset by increased year-end concentrate inventories. Increased mill throughput from an improved grinding circuit control system was offset by extended mill downtime in the fourth quarter of 2007 to repair a damaged mill motor. Copper production increased due to a 9% increase in ore grade, partially offset by slightly lower recoveries. Gold production increased due to a 17% increase in ore grade and a 3% increase in recovery. Concentrate inventories increased due to the timing of shipments. *Costs applicable to sales* per pound of copper and per ounce of gold increased in 2007, compared to 2006 due to the significant processing of ore from stockpiles and higher proportion of waste tons mined. The ratio of waste tons to ore tons increased from 1.3 in 2006 to 7.3 in 2007. In 2007, most of the mining occurred with Phase 5 waste stripping to prepare this phase for future production, while 2006 mining occurred substantially in Phase 4 ore. *Costs applicable to sales* also increased due to higher labor and maintenance costs and regional taxes.

The average realized net copper price increased to $2.86 per pound in 2007 from $1.54 per pound in 2006, as the final copper hedge contract deliveries were made in February 2007.

Batu Hijau revised its mine plan in 2006 to address geotechnical instability of the operation's east pit wall and harder than modeled ore. Production was impacted by lower grades due to the mining sequence, as well as lower mill throughput due to processing harder ore. Copper and gold sales decreased in 2006 from 2005 as a result of 20% lower copper and 34% lower gold ore grades, and 6% lower mill throughput. Total tons mined were 30% higher in 2006 from 2005 primarily due to the addition of new mining equipment, shorter hauling distance and increased shovel productivity. *Costs applicable to sales* per pound of copper and per ounce of gold increased due to lower production, the expansion of the mining fleet and increased diesel, tire, labor and process maintenance costs, partially offset by an increased allocation of costs to stockpile inventories. Short-term stockpiles were built in 2006 for processing in 2007.

Consolidated sales are expected to decrease in 2008 to approximately 325,000 to 365,000 ounces of gold and approximately 345 to 365 million pounds of copper as a result of mine plan sequencing that will lead to additional Phase 5 waste stripping compared to 2007. Consolidated gold and copper sales are expected to be impacted by lower grades and throughput and lower copper recoveries. *Costs applicable to sales* are expected to increase in 2008 to approximately $285 to $325 per ounce of gold and approximately $1.30 to $1.40 per pound of copper. Increasing operating costs are expected to result primarily from higher waste removal costs, as well as rising fuel, energy and consumables prices.

We have a 45% ownership interest in the Batu Hijau mine, held through a partnership ("NTP") with an affiliate of Sumitomo Corporation of Japan. We have a 56.25% interest in NTP and the Sumitomo affiliate holds the remaining 43.75%. NTP in turn owns 80% of P.T. Newmont Nusa Tenggara ("PTNNT"), the Indonesian subsidiary that owns Batu Hijau. We identified NTP as a Variable Interest Entity as a result of certain capital structures and contracted relationships and have fully consolidated Batu Hijau in the consolidated financial statements since January 1, 2004. The remaining 20% interest in PTNNT is owned by P.T. Pukuafa Indah ("PTPI"), an unrelated Indonesian company. Because PTPI's interest was a carried interest, and because PTPI had been advanced a loan by NTP, we reported a 52.875% economic interest in Batu Hijau, which reflected our actual economic interest in the mine until such time as the loan was fully repaid (including accrued interest). On May 25, 2007, PTPI fully repaid the loan (including accrued interest) from NTP. As a result of the repayment, our economic interest in Batu Hijau was reduced from 52.875% to 45% and a net charge of $25 (after-tax) was recorded against *Minority interest expense* in the second quarter of 2007.

Under the Contract of Work, beginning in 2005 and continuing through 2010, a portion of PTNNT's shares must be offered for sale, first, to the Indonesian government or, second, to Indonesian nationals, equal to the difference between the following percentages and the percentage of shares already owned by the Indonesian government or Indonesian nationals (if such number is positive): 23% by March 31, 2006; 30% by March 31, 2007; 37% by March 31, 2008, 44% by March 31, 2009; and 51% by March 31, 2010. The price at which such

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interest must be offered for sale to the Indonesian parties is the highest of the then-current replacement cost, the price at which shares

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would be accepted for listing on the Jakarta Stock Exchange, or the fair market value of such interest as a going concern, as agreed with the Indonesian government. Pursuant to this provision, it is possible that the ownership interest of the Newmont/Sumitomo partnership in PTNNT, owner of Batu Hijau, could be reduced to 49%.

PTPI has owned and continues to own a 20% interest in PTNNT, and therefore the Newmont/Sumitomo partnership was required to offer a 3% interest for sale in 2006 and an additional 7% interest in 2007. A further 7% interest will be offered for sale in March 2008. In accordance with the Contract of Work, an offer to sell a 3% interest was made to the government of Indonesia in 2006 and an offer for an additional 7% interest was made in 2007. While the central government declined to participate in the offer, local governments in the area in which the Batu Hijau mine is located have expressed interest in acquiring shares, as have various Indonesian nationals. In January 2008, the Newmont/Sumitomo partnership agreed to sell, under a carried interest arrangement, 2% of PTNNT's shares to Kabupaten Sumbawa, one of the local governments, subject to satisfaction of closing conditions. On February 11, 2008, PTNNT received notification from the Department of Energy and Mineral Resources (DEMR) alleging that PTNNT is in breach of its divestiture requirements under the Contract of Work and threatening to issue a notice to terminate the Contract of Work if PTNNT does not agree to divest the 2006 and 2007 shares, in accordance with the direction of the DEMR, by February 22, 2008. Newmont and Sumitomo believe there is no basis under the Contract of Work for this notification and no grounds for terminating the Contract of Work, and are currently evaluating possible responses to the February 11, 2008 default notice, including filing for international arbitration as provided for under the Contract of Work. Newmont and Sumitomo are in discussions with officials of the Government of Indonesia to attempt to clarify or resolve this issue.

The Company has been in discussions to renew its forest use permit (called a pinjam pakai) for over two years. This permit is a key requirement to continue to efficiently operate the Batu Hijau mine. The permit renewal has not been received and in the event it is not received by May 2008, it could have an adverse impact on operating and financial results. Representatives of the Indonesian government, including the Ministry of Forestry, have assured us that the permit will be issued in due course.

For more information on the results of the Batu Hijau operations, see Note 30 to the Consolidated Financial Statements.

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NEWMONT MINING CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in millions, except per share, per ounce and per pound amounts)

NOTE 9 MINORITY INTEREST IN INCOME OF CONSOLIDATED SUBSIDIARIES

	At December 31,		
	2007	2006	2005
Batu Hijau	$ 299	$ 103	$ 119
Yanacocha	108	256	256
Other	3	4	5
	$ 410	$ 363	$ 380

Newmont has a 45% ownership interest in the Batu Hijau mine, held through a partnership ("NTP") with an affiliate of Sumitomo Corporation of Japan. Newmont has a 56.25% interest in NTP and the Sumitomo affiliate holds the remaining 43.75%. NTP in turn owns 80% of P.T. Newmont Nusa Tenggara ("PTNNT"), the Indonesian subsidiary that owns the Batu Hijau mine. Newmont identified NTP as a Variable Interest Entity as a result of certain capital structures and contractual relationships and has fully consolidated Batu Hijau in its consolidated financial statements since January 1, 2004. The remaining 20% interest in PTNNT is owned by P.T.

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Pukuafa Indah ("PTPI"), an unrelated Indonesian company. Because PTPI's interest was a carried interest, and because PTPI had been advanced a loan by NTP, Newmont reported a 52.875% economic interest in Batu Hijau, which reflected its actual economic interest in the mine until such time as the loan was fully repaid (including accrued interest). On May 25, 2007, PTPI fully repaid the loan (including accrued interest) from NTP. As a result of the loan repayment, Newmont's economic interest in Batu Hijau was reduced from 52.875% to 45% and the Company recorded a net charge of $25 (after-tax) against *Minority interest expense* in the second quarter of 2007.

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NOTE 30 SEGMENT AND RELATED INFORMATION

Newmont predominantly operates in a single industry, namely exploration for and production of gold. Newmont's major operations include Nevada, Yanacocha, Australia/New Zealand, Batu Hijau and Africa. Newmont also has an Exploration Segment.

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The Exploration Segment is responsible for all activities, regardless of location, associated with the Company's efforts to discover new mineralized material that will advance into proven and probable reserves.

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NEWMONT MINING CORPORATION

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in millions, except per share, per ounce and per pound amounts)

The Company identifies its reportable segments as those consolidated mining operations or functional groups that represent more than 10% of the combined revenue, profit or loss or total assets of all reported operating segments. Consolidated mining operations or functional groups not meeting this threshold are aggregated at the applicable geographic or corporate level for segment reporting purposes. Earnings from operations do not reflect general corporate expenses, interest (except project-specific interest) or income taxes (except for equity investments). Intercompany revenue and expense amounts have been eliminated within each segment in order to report on the basis that management uses internally for evaluating segment performance.

. . . . .

(Other operations omitted)	Batu Hijau
Year Ended December 31, 2007	
Sales, net:	
Gold	$ 351
Copper	$ 1,221
Cost applicable to sales:	
Gold	$ 120
Copper	$ 471
Loss on settlement of price-capped forward sales contracts	$ —
Midas redevelopment	$ —
Depreciation, depletion and amortization:	
Gold	$ 25
Copper	$ 96
Other	$ —
Exploration	$ —
Advanced projects, research and development	$ —
Write-down of goodwill	$ —
Write-down of investments	$ —
Write-down of long-lived and other assets	$ —
Other income	$ 9
Interest expense, net	$ 37
Pre-tax income (loss) before minority interest and equity income of affiliates	$ 829
Equity (loss) income of affiliates	$ —
Capital expenditures	$ 74

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