



0000116550

19

ORIGINAL

RECEIVED ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

DOCKETED

MAY 13 2002

WILLIAM A. MUNDY P 4: 52  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

AZ CORP COMMISSION  
DOCUMENT CONTROL

DOCKETED BY [Signature]

In the matter of: )  
Ronald Lee Keel )  
1849 Viola Drive )  
Sierra Vista, Arizona 85635 )  
Donald Ramey )  
211 N. 4<sup>th</sup> Street )  
Sierra Vista, Arizona 85636 )  
Meracana Mining Corporation )  
1849 Viola Drive )  
Sierra Vista, Arizona 85635, )  
Respondents. )

DOCKET NO. S-03418A-01-0000

SECURITIES DIVISION'S MOTION  
TO QUASH RESPONDENT  
RAMEY'S NOTICE OF  
DEPOSITION & SUBPOENA TO  
JERRY LOWE

(EXPEDITED ORAL ARGUMENT  
AND RULING REQUESTED)

The Securities Division requests that the Arizona Corporation Commission quash respondent Donald Ramey's, hereinafter "Respondent," Notice of Deposition and Subpoena to Jerry Lowe on the basis that: Respondent is seeking through a deposition and a subpoena confidential information from an employee of the Commission that can not be disclosed without violating A.R.S. 44-2042(A) and A.A.C. R14-4-303(A), the Rules of Civil Procedure do not apply, Respondent is not entitled to depose Jerry Lowe by applicable rules and statutes and the Securities Division's work product materials and information are protected from discovery.

On or about April 26, 2002, Respondent served upon Jerry Lowe a Notice of Deposition and a Subpoena for the production of documents. The Notice of Deposition reads that pursuant to applicable Rules of Civil Procedure the deposition of Mr. Lowe will be taken on Thursday May 16, 2002. The subpoena reads that Mr. Lowe is commanded to produce: "Any and all books, papers, documents, questionnaires or other tangible items relating to or concerning in any way, Meracana Mining Corporation, Ronald Lee Keel, or Donald Ramey" on Thursday May 16,

1 2002, at the time of the deposition. Jerry Lowe is an investigator with the Securities Division  
2 and is assigned to this case. A copy of the Notice of Deposition and a copy of the Subpoena are  
3 attached as Exhibits A and B, respectively.

4 The legal grounds for this motion follow.

5 I.

6 ALL INFORMATION AND DOCUMENTS OBTAINED BY THE SECURITIES  
7 DIVISION IS CONFIDENTIAL PURSUANT TO A.R.S. § 44-2042(A) & A.A.C. 14-4-303(A)

8 Respondent presumably seeks to depose Jerry Lowe to discover information such as:  
9 who Mr. Lowe has spoken with concerning the case, what each person told Mr. Lowe, what  
10 documents he has obtained and from whom and what other information he has been given  
11 and the source of that information. Respondent, through a subpoena, wants to view all  
12 documents and information the Securities Division has regarding all respondents. This  
13 request by Respondent encompasses the entire file the Securities Division has on this case.

14 By statute, all information and documents the Securities Division has obtained in the  
15 investigation of this case are confidential and can not be disclosed to Respondent. The  
16 applicable statute reads in part as follows:

17 The names of complainants and all information or documents obtained by any  
18 officer, employee or agent of the commission, including the shorthand  
19 reporter or stenographer transcribing the reporter's notes, in the course of any  
20 examination or investigation are confidential unless the names, information or  
21 documents are made a matter of public record. . . .

22 A.R.S. § 44-2042(A). This same paragraph goes on to explain that an employee or agent of  
23 the commission shall not disclose this confidential information to anyone other than specified  
24 persons such as another employee of the commission, the attorney general or regulatory  
25 officials unless the commission or director (of the Securities Division) authorizes the  
26 disclosure of the information or documents as not contrary to the public interest. See A.R.S.  
§ 44-2042(A).

1 This confidentiality statute was added to title 44 Chapter 12, in the year 2000. The  
2 statute is found in The Securities Act of Arizona and is specific to all securities related  
3 investigations conducted by employees of the commission such as those working for the  
4 Securities Division. This statutory addition was implemented to supersede any conflicting  
5 statute or rule allowing disclosure of information and documents obtained during an  
6 investigation by the Securities Division. An Arizona Administrative Code Rule, A.A.C.  
7 R14-4-303, which is titled "Confidentiality" has almost identical language as A.R.S. § 44-  
8 2042(A). This rule, like the confidentiality statute referred to above, applies specifically to  
9 the Securities Division as it is found in Chapter 4 of Title 14 of the Arizona Administrative  
10 Code. Chapter 4 of Title 14 is titled "Corporation Commission – Securities."

11 Last month, disclosure to Respondent of several hundred pages of documents was  
12 authorized. These documents were delivered to Respondent's counsel based upon prior  
13 discussions and an agreement between Respondent's counsel and the Securities Division.  
14 The documents disclosed to Respondent's counsel are those that the Securities Division, as of  
15 now, plans on using as exhibits at the hearing for this case scheduled in August. No other  
16 documents have been authorized for disclosure to Respondent and no other documents will  
17 be disclosed to Respondent in the future unless they are intended to be used as exhibits at the  
18 hearing. Therefore, pursuant to A.R.S. § 44-2042(A) and A.A.C. R14-4-303(A), no other  
19 information or documents whether it be information provided by Mr. Lowe in a deposition or  
20 documents produced by subpoena, can legally be disclosed to Respondent. The exception is  
21 any documents, not already disclosed, the Securities Division plans on using at a hearing.

22 II.  
23 RULES OF CIVIL PROCEDURE DO NOT ALLOW  
24 FOR DEPOSITION OF JERRY LOWE

25 Respondent noticed the deposition of Mr. Lowe pursuant to the applicable Rules of  
26 Civil Procedure. See Exhibit A. Rule 30(a), Rules of Civil Procedure, dictates when a  
deposition can be taken after commencement of an action. Only depositions of parties, any

1 expert witness expected to testify at trial and document custodians can be taken after an  
2 action has been filed. Rules of Civil Procedure Rule 30(a). If the deposition of a document  
3 custodian is taken then it is solely for the purpose of securing production of documents and to  
4 establish evidentiary foundation for documents. Rules of Civil Procedure Rule 30(a). Rule  
5 30(a) prohibits deposing any other person unless by agreement of all parties or by order of  
6 the court. Rules of Civil Procedure Rule 30(a). The Securities Division does not agree to  
7 allow Respondent to take the deposition of Mr. Lowe.

8 Respondent might argue that Mr. Lowe is a party to the action or that Mr. Lowe is an  
9 expert. Neither of these possible assertions is true. The Arizona Corporation Commission  
10 through the Securities Division is a party to the action, not Mr. Lowe. Mr. Lowe is not an  
11 expert on any subject involved in this administrative action. The Securities Division will not  
12 present Mr. Lowe as an expert on any subject at the hearing for this case.

13 Regardless of whether or not Mr. Lowe is categorized as an expert or a party to the  
14 action is meaningless. This is because A.R.S. § 44-2042(A) and A.A.C. R14-4-303 preclude  
15 application of any Rule of Civil Procedure pertaining to discovery of information and  
16 documents. In addition, the Corporation Commission Rules of Practice and Procedure found  
17 in Title 14, Chapter 3, of the Arizona Administrative Code prevents Respondent from taking  
18 Mr. Lowe's deposition. This analysis and argument is set-forth below.

### 19 III.

#### 20 RESPONDENT CAN NOT TAKE DEPOSITION OF JERRY LOWE UNDER RULES OF PRACTICE AND PROCEDURE BEFORE THE CORPORATION COMMISSION

21 In Rule 14-3-101(A) of the Arizona Administrative Code the scope and construction  
22 of the Corporation Commission Rules of Practice and Procedure is set-forth. The first  
23 paragraph of this rule, A.A.C. R14-3-101(A), reads in part:

24 Procedure governed. Except as may be other wise directed by the  
25 Commission, and when not in conflict with law or the regulations or orders of  
26 this Commission, these Rules of Practice and Procedure shall govern in all

1 cases before the Corporation Commission including but not limited to those  
2 arising out of . . . .

3 A.A.C. R14-3-101(A).

4 According to the language in A.A.C. R14-3-101(A), as set-forth above, the  
5 Rules of Practice and Procedure do not govern when in conflict with the law. A.A.C.  
6 R14-3-101(A). The law for the Securities Division is A.R.S. § 44-2042(A) and  
7 A.A.C. R14-4-303(A), both of which specifically control the legality of disclosing  
8 information and documents by the Securities Division.

9 The above analysis and arguments are compelling reasons why the deposition  
10 of Mr. Lowe is also barred under A.A.C. R14-3-109(P). Depositions according to  
11 A.A.C. R14-3-109(P) can be taken of witnesses as prescribed by law and the Rules of  
12 Civil Procedure. However, based on the arguments listed above, Mr. Lowe's  
13 deposition pursuant to R14-3-109(P) is barred by the language of A.A.C. R14-3-  
14 101(A) because A.A.C. R14-3-109(P) conflicts with the law, A.R.S. § 44-2042(A)  
15 and A.A.C. R14-4-303(A), both of which proscribe divulging information and  
16 documents obtained during the course of an investigation.

17 IV.

18 RESPONDENT'S SUBPOENA SHOULD BE QUASHED PURSUANT TO  
19 APPLICABLE STATUTES AND RULES

20 Respondent's subpoena contains language that it is issued pursuant to A.A.C.  
21 R14-3-109 and Rule 45, Arizona Rules of Civil Procedure. Exhibit B. Respondent's  
22 Subpoena like the Notice of Deposition, should be quashed because the information  
23 and documents Respondent seeks is confidential and can not be disclosed pursuant to  
24 A.R.S. § 44-2042(A) and A.A.C. R14-4-303(A).

25 In addition, the language of A.A.C. R14-3-109(O) alone dictates that the  
26 subpoena must be quashed. This rule explains that a subpoena can be issued upon  
written application. The written application must specify, ". . . as clearly as possible,

1 the books, waybills, papers, accounts or other documents desired.” Respondent has  
2 not specified as clearly as possible what he is seeking to subpoena. Respondent’s  
3 subpoena requests everything the Securities Division has concerning all respondents.  
4 Exhibit B. The Respondent, in essence, wants the Securities Division to bring its  
5 entire file and open it to Respondent for his review and copying. This is an abuse of  
6 the subpoena power.

7 The commission or a presiding officer can quash a subpoena that is  
8 unreasonable or oppressive. A.A.C. R14-3-109(O). Respondent’s subpoena is  
9 overreaching, unreasonable and oppressive and should therefore be quashed in its  
10 entirety.

11 V.

12 WORK PRODUCT PRIVILEGE PREVENTS RESPONDENT FROM  
13 DISCOVERY OF PRIVILEGED DOCUMENTS AND INFORMATION

14 The Securities Division’s file contains documents, reports, memos,  
15 investigatory records and other information that was prepared by legal counsel and  
16 investigative staff of the Securities Division. Most of these documents were prepared  
17 in anticipation of the filing of an administrative action against respondents. Therefore,  
18 these documents, reports, memos, investigatory records and other information  
19 prepared in anticipation of an administrative action are work product material and are  
20 protected from discovery by the work product privilege. Brown v. Superior Court In  
21 & For Maricopa County, 137 Ariz. 327, 670 P.2d 725 (1983). Accordingly, all work  
product in the file for this case is non-discoverable by Respondent.

22 ...

23 ...

24 ...

25 ...

26 ...

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

VI.  
CONCLUSION

Based upon the legal arguments outlined above, the Securities Division moves to quash Respondent's Notice of Deposition and Respondents Subpoena, both to Jerry Lowe. The Securities Division has provided Respondent with all documents it plans on using at the hearing in this case and the Securities Division will provide Respondent, prior to the hearing, with any other documents it intends to introduce into evidence at a hearing in this case.

RESPECTFULLY SUBMITTED this 13<sup>th</sup> day of May, 2002.

**Janet Napolitano**  
Attorney General for the State of Arizona

  
**Anthony B. Bingham**  
Special Assistant Attorney General  
**Moira McCarthy**  
Assistant Attorney General  
Attorneys for the Securities Division of the  
Arizona Corporation Commission

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Original and ten copies  
docketed with Docket Control  
this 13<sup>th</sup> day of May, 2002  
Copy of the foregoing mailed and/or faxed  
this 13<sup>th</sup> day of May, 2002, to:

Robert D. Stachel, Jr., Esq.  
Jana E. Flagler, Esq.  
Cardinal & Stachel, P.C.  
2151 S. Highway 92, Suite 100  
Sierra Vista, Arizona 85635  
Attorneys for Respondent Ramey

Ronald Lee Keel  
1849 Viola Drive  
Sierra Vista, Arizona 85635  
Respondent

Richard Keel  
5496 Fitz Avenue  
Portage, IN 46368

1 Robert D. Stachel, Jr.  
2 Jana E. Flagler, Esq.  
3 CARDINAL & STACHEL, P.C.  
4 2151 S. Highway 92, Suite 100  
5 Sierra Vista, Arizona 85635  
6 Phone (520) 452-1002  
7 Fax (520) 452-1008  
8 Attorneys for Respondent Ramey  
9 Arizona State Bar Number 018643 and 014406

6 BEFORE THE ARIZONA CORPORATION COMMISSION

7 WILLIAM A. MUNDELL  
8 CHAIRMAN  
9 JIM IRVIN  
10 COMMISSIONER  
11 MARC SPITZER  
12 COMMISSIONER

Docket No. S-03418A-01-0000

NOTICE OF DEPOSITION

10 IN THE MATTER OF:

11 RONALD LEE KEEL; DONALD  
12 RAMEY; and MERACANA MINING  
13 CORPORATION,

14 Respondents.

15 TO: JERRY LOWE  
16 ARIZONA CORPORATION COMMISSION  
17 1200 WEST WASHINGTON  
18 PHOENIX ARIZONA 85007

18 NOTICE IS HEREBY GIVEN that, pursuant to the applicable Rules of Civil  
19 Procedure, the deposition of the above-named person will be taken at the following time and  
20 place:

21 PLACE: HAWKINS & CAMPBELL

22 ADDRESS: 800 N. 4<sup>TH</sup> STREET  
23 PHOENIX, ARIZONA 85004

24 DATE: THURSDAY, MAY 16, 2002

25 TIME: 1:00 P.M.

26 DATED this 5<sup>th</sup> day of April, 2002.

27 LAW OFFICE OF CARDINAL & STACHEL

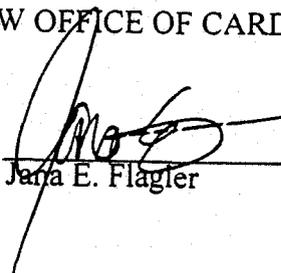
28 By:   
Jana E. Flagler

EXHIBIT A

CARDINAL & SACHSEL, P.C.  
2151 South Highway 92, Suite 100  
Sierra Vista, Arizona 85635  
Tele. (520) 452-1002 Fax (520) 452-1008

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Copies of the foregoing  
mailed this 5<sup>th</sup> day of  
April, 2002, to:

W. Mark Sendrow, director  
Securities Division  
ARIZONA CORPORATION COMMISSION  
1300 West Washington Street  
Phoenix, Arizona 85007

Anthony Bingham  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
1275 West Washington Street  
Phoenix, Arizona 85007

Ronald Lee Keel  
c/o Sunbridge Park Villa Healthcare  
2001 N. Park Avenue  
Tucson., Arizona 85719

Meracana Mining Corporation  
c/o Richard Keel  
5496 Fitz Avenue  
Portage, IN 46368

Donald Ramey

1 Robert D. Stachel, Jr.  
2 Jana E. Flagler, Esq.  
3 CARDINAL & STACHEL, P.C.  
4 2151 S. Highway 92, Suite 100  
5 Sierra Vista, Arizona 85635  
6 Phone (520) 452-1002  
7 Fax (520) 452-1008  
8 Attorneys for Respondent Ramey  
9 Arizona State Bar Number 018643 and 014406

6 BEFORE THE ARIZONA CORPORATION COMMISSION

7 WILLIAM A. MUNDELL  
8 CHAIRMAN  
9 JIM IRVIN  
10 COMMISSIONER  
11 MARC SPITZER  
12 COMMISSIONER

Docket No. S-03418A-01-0000

SUBPOENA

10 IN THE MATTER OF:

11 RONALD LEE KEEL; DONALD  
12 RAMEY; and MERACANA MINING  
13 CORPORATION,

14 Respondents.

15 IN THE NAME OF THE STATE OF ARIZONA TO:

16 TO: JERRY LOWE

17 Pursuant to Rule R14-3-109, Arizona Administrative Code, and Rule 45, Arizona Rules of Civil  
18 Procedure, you are hereby commanded to appear and give testimony in the above-entitled  
19 matter at the time and place as follows:

20 PLACE: HAWKINS & CAMPBELL

21 ADDRESS: 800 N. 4<sup>TH</sup> STREET  
22 PHOENIX, ARIZONA 85004

23 DATE: THURSDAY, MAY 16, 2002

24 TIME: 1:00 P.M.

25 You are further commanded to produce and permit for copying, all designated books,  
26 documents or tangible things in your possession, custody, and/or control, or to permit inspection  
27 of premises, at a time and place therein specified below:

28 Any and all books, papers, documents, questionnaires or other tangible items  
relating to or concerning in any way, Mercana Mining Corporation, Ronald  
Lee Keel, or Donald Ramey.

EXHIBIT B



1 Rules of Civil Procedure.

2 If this subpoena;

3 (i) requires disclosure of a trade secret or other confidential research,  
4 development, or commercial trade information; or

5 (ii) requires disclosure or an unretained expert's opinion or information not  
6 describing specific events or occurrences in dispute and resulting from the expert's study made  
7 not at the request of any party; or

8 (iii) requires a person who is not a party or an officer of a party to incur  
9 substantial travel expense;

10 The court may either quash or modify the subpoena, or the court may order you to appear  
11 or produce documents only upon specified conditions, if the party who served the subpoena  
12 shows a substantial need for the testimony or material that cannot be otherwise met without  
13 undue hardship and assures that you will be reasonable compensated. See Rule 45(c)(3)(B) of  
14 the Arizona Rules of Civil Procedure.

15 **ADA NOTIFICATION**

16 **REQUESTS FOR REASONABLE ACCOMMODATION FOR PERSONS WITH  
17 DISABILITIES MUST BE MADE TO THE COURT BY PARTIES AT LEAST 3  
18 WORKING DAYS IN ADVANCE OF A SCHEDULED COURT PROCEEDING.**

19 Given under my hand and seal of the Court this \_\_\_\_ day of \_\_\_\_\_, 2002.

20 By: \_\_\_\_\_  
21 DEPUTY CLERK

22 Copies of the foregoing  
23 mailed this \_\_\_\_ day of  
24 \_\_\_\_\_, 2002, to:

25 W. Mark Sendrow, director  
26 Securities Division  
27 ARIZONA CORPORATION COMMISSION  
28 1300 West Washington Street  
Phoenix, Arizona 85007

Anthony Bingham  
Assistant Attorney General  
ARIZONA ATTORNEY GENERAL'S OFFICE  
1275 West Washington Street  
Phoenix, Arizona 85007

Ronald Lee Keel  
c/o Sunbridge Park Villa Healthcare  
2001 N. Park Avenue  
Tucson., Arizona 85719

CARDINAL & STACHEL, P.C.  
2151 South Highway 92, Suite 100  
Sierra Vista, Arizona 85635  
Tele. (520) 452-1002 Fax (520) 452-1008

**CARDINAL & STACHEL, P.C.**  
2151 South Highway 92, Suite 100  
Sierra Vista, Arizona 85635  
Tele. (520) 452-1002 Fax (520) 452-1008

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Meracana Mining Corporation  
c/o Richard Keel  
5496 Fitz Avenue  
Portage, IN 46368

Donald Ramey