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BEFORE THE ARIZONA CORPORATION COMMISSION RECEIVED

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1 WILLIAM A. MUNDELL
2 Chairman
3 JIM IRVIN
4 Commissioner
5 MARC SPITZER
6 Commissioner

AZ CORP COMMISSION
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Arizona Corporation Commission
DOCKETED

6 In the matter of:

OCT 10 2002

7 Ronald Lee Keel
8 1849 Viola Drive
9 Sierra Vista, Arizona 85635

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DOCKET NO. S-03418A-01-0000

9 Donald Ramey
10 211 N. 4th Street
11 Sierra Vista, Arizona 85636

**MOTION TO ALLOW TELEPHONIC
TESTIMONY**

11 Meracana Mining Corporation
12 1849 Viola Drive
13 Sierra Vista, Arizona 85635,

(A.L.J. Philip J. Dion III)

14 Respondents.

15 The Securities Division ("Division") of the Arizona Corporation Commission
16 ("Commission") hereby moves the Commission to allow telephonic testimony during the
17 scheduled hearing in this matter. This motion is supported by the accompanying Memorandum
18 of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS

20 The hearing in this matter is currently set to commence on October 21, 2002. The Division
21 anticipates introducing the testimony of five witnesses, Eugene Beaver, Sierra Vista, AZ; Vincent
22 Fessio, Marina, CA; Charles Hazlett, Milton, FL; Donald Ramey (Respondent), Sierra Vista, AZ;
23 and Delbert Smallwood, Hobart, IN, by telephone. Witnesses Beaver, Hazlett and Smallwood are
24 investors in Meracana Mining Corporation ("Meracana") who spoke with Respondent Keel
25 concerning their investments. Witness Fessio was a geologist who contracted with Meracana and
26 provided geological services in Costa Rica. Witness Ramey is a Respondent in this matter who

1 has signed a Consent Order that will be presented to the Commission on October 24, 2002. All
2 five of these witnesses will provide factual testimony probative of the allegations against
3 Respondent Keel and Meracana in the Notice of Opportunity For Hearing. Travel by the out of
4 state witnesses to Arizona to attend the hearing will be unduly burdensome and impractical in
5 comparison to the time each is expected to testify. Travel by Mr. Beaver and Mr. Ramey from
6 Sierra Vista, AZ to Phoenix, AZ will be unnecessarily time consuming and burdensome in
7 comparison to what will likely be brief testimony by each witness.

8 II. ARGUMENT

9 The purpose of administrative proceedings is to provide for the fair, speedy and cost
10 effective resolution of administratively justiciable matters. To effectuate that purpose, the
11 legislature provided for streamlined proceedings and relaxed application of the formal rules of
12 evidence. Specifically, A.R.S. §41-1062(A)(1) provides for informality in the conduct of
13 contested cases. The evidence submitted in an administrative hearing need not rise to the level of
14 formality required in a judicial proceeding, as long as it is "substantial, reliable and probative."
15 The Commission's rules of practice and procedure ensure just and speedy determination of all
16 matters presented to it for consideration. See, A.A.C. R14-3-101(B); R14-3-109(K). Allowing
17 Eugene Beaver, Vincent Fessio, Charles Hazlett, Donald Ramey and Delbert Smallwood to testify
18 by telephone retains all indicia of reliability and preserves Respondent's rights to cross-
19 examination.

20 Courts in other states have acknowledged that telephonic testimony in administrative and
21 civil proceedings is permissible and consistent with the requirements of procedural due process.
22 See Babcock v. Employment Division, 72 Or.App. 486, 696 P.2d 19 (1985) (court approved
23 Oregon Employment Division's procedure to conduct entire hearing telephonically); W.J.C. v.
24 County of Vilas, 124 Wis.2d 238, 369 N.W.2d 162 (1985) (court permitted telephonic expert
25 testimony in commitment hearing). Both of these courts concluded that fundamental fairness
26 weighed in favor of permitting telephonic testimony.

1 III. CONCLUSION

2 Permitting Eugene Beaver, Vincent Fessio, Charles Hazlett, Donald Ramey and Delbert
3 Smallwood to testify telephonically at the hearing does not compromise Respondent's due process
4 rights. Therefore, the Division respectfully requests that these witnesses be permitted to give
5 telephonic testimony in this matter.

6 Respectfully submitted this 10th day of October, 2002.

7
8 **Janet Napolitano**

Attorney General for the State of Arizona

9 

10 **Anthony B. Bingham**

Special Assistant Attorney General

11 **Moira McCarthy**

Assistant Attorney General

12 Attorneys for the Securities Division of the
13 Arizona Corporation Commission

14 Original and ten copies
15 of the foregoing hand-delivered
this 10th day of October, 2002, to:

16 Docket Control
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19 A copy of the foregoing e-mailed and/or
mailed this 10th day of October 2002, to:

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