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ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

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3 CARL J. KUNASEK  
Chairman  
4 JIM IRVIN  
Commissioner  
5 WILLIAM A. MUNDELL  
Commissioner  
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7  
8 **In the matter of** )  
9 CALUMET SLAG, INC., )  
10 an Arizona corporation )  
11 13433 N. 16<sup>th</sup> Avenue )  
12 Phoenix, Arizona 85029 )  
13 GARETH N. PATTON )  
14 23769 Blue Lead Mountain Road )  
15 Hill City, South Dakota 57745 )  
16 JEFFERY G. CRAWFORD )  
17 1822 N. Barkley )  
18 Mesa, Arizona 85203 )  
19 MATTHEW E. HUNZINGER )  
20 13031 N. 59<sup>th</sup> Drive )  
21 Glendale, Arizona 85304, )  
22 Respondents. )  
23

DOCKET NO. S-03361A-00-0000

**MOTION TO ALLOW TELEPHONIC TESTIMONY**

24  
25 The Securities Division ("Division") of the Arizona Corporation Commission  
26 ("Commission") hereby moves for leave to allow telephonic testimony by prospective Division  
witnesses Edward Kerr ("Kerr") and Robert Blakestad ("Blakestad") during the scheduled  
hearing in the above-referenced matter.

**I. FACTS**

The Division anticipates calling both Kerr and Blakestad as witnesses in this matter.  
Kerr, a geologist for over twenty years, examined the Calumet site in late 1994 at the request of

1 Cyprus Amax Minerals Co. Based on his evaluation of the Calumet site and his subsequent  
2 report, Kerr can provide probative testimony as to the Division's allegations in this matter.  
3 Specifically, Kerr can authenticate his Calumet report and can provide insight into the tests and  
4 observations that formed the basis of this report. Kerr now resides in Colorado, is semi-retired,  
5 and is attempting to launch and maintain a new business. Because of these factors, Kerr is  
6 unable to dedicate a block of time to attend a hearing in Phoenix.

7 Blakestad was the North American exploration manager for Cyprus Amax Minerals Co.  
8 in 1994. During that time, Blakestad supervised the exploration of the Calumet site and  
9 surrounding areas. Blakestad was responsible for hiring Kerr to evaluate the Calumet grounds,  
10 and he subsequently received and analyzed Kerr's report on the Calumet site. Blakestad later  
11 communicated with one or more of the above respondents concerning the results of the  
12 evaluation. Based on his role in connection with the Calumet evaluation, Blakestad can provide  
13 probative testimony as to the allegations by the Division in this matter. This testimony may  
14 include his assessment of the Calumet report and his authentication of the letter sent to the above-  
15 referenced respondents declaring, *inter alia*, the company's lack of interest in the slag pile.

16 Blakestad currently resides in Colorado and now works with International Taurus  
17 Resources, Inc. His out-of-state residence and demanding work schedule again present severe  
18 obstacles for setting aside time to attend the hearing in Phoenix.

## 19 II. 20 ARGUMENT

21 The purpose of administrative proceedings is to provide for the fair, speedy and cost  
22 effective resolution of administratively justiciable matters. To effectuate that purpose, the  
23 legislature provided for streamlined proceedings and relaxed application of the formal rules of  
24 evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of  
25 contested cases. The evidence submitted in an administrative hearing need not rise to the level of  
26 formality required in a judicial proceeding, as long as it is "substantial, reliable and probative."

1 In addition, the Commission promulgated rules of practice and procedure to ensure just and  
2 speedy determination of all matters presented to it for consideration. *See, e.g.,* A.A.C. R-14-3-  
3 101(B); R14-3-109(K). Allowing Kerr and Blakestad to testify by telephone retains all indicia of  
4 reliability and preserves Respondents' right to cross-examination.

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

12 Public policy also favors allowing Kerr and Blakestad to testify telephonically. The  
13 Division is able to judiciously allocate its limited resources to best serve and protect the Arizona  
14 investing public. The Division will save the costs of air travel, lodging, meals and incidentals for  
15 two days.

16 **III.**  
17 **CONCLUSION**

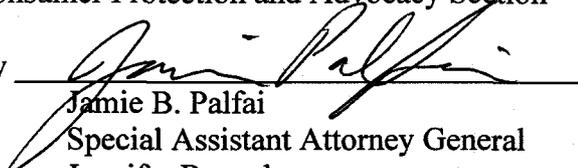
18 Permitting Kerr and Blakestad to testify telephonically at the hearing allows the Division  
19 to present relevant witness evidence that is expected to be reliable and probative, overcomes the  
20 hardship and burden of travel, and does not compromise Respondents' due process rights.

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1 Therefore, the Division respectfully requests that its motion for leave to present the telephonic  
2 testimony of Kerr and Blakestad be granted.

3 RESPECTFULLY SUBMITTED this 2<sup>nd</sup> day of August, 2000.

4  
5 JANET NAPOLITANO  
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7 Consumer Protection and Advocacy Section

8 By  \_\_\_\_\_  
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14 Arizona Corporation Commission  
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17 ORIGINAL AND TEN (10) COPIES of the foregoing  
18 filed this 2<sup>nd</sup> day of August, 2000, with

19 Docket Control  
20 Arizona Corporation Commission  
21 1200 West Washington  
22 Phoenix, AZ 85007

23 COPY of the foregoing hand-delivered this  
24 2<sup>nd</sup> day of August, 2000, to:

25 Mr. Marc Stern  
26 Hearing Officer  
Arizona Corporation Commission/Hearing Division  
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COPY of the foregoing mailed  
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