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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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SEP 15 2000

AZ CORP COMMISSION  
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Chairman

JIM IRVIN

Commissioner

WILLIAM A. MUNDELL

Commissioner

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In the matter of

DOCKET NO. S-03361A-00-0000

CALUMET SLAG, INC.,

an Arizona corporation

13433 N. 16<sup>th</sup> Avenue

Phoenix, Arizona 85029

MOTION TO ALLOW  
ADDITIONAL TELEPHONIC  
TESTIMONY

GARETH N. PATTON

23769 Blue Lead Mountain Road

Hill City, South Dakota 57745

JEFFERY G. CRAWFORD

1822 N. Barkley

Mesa, Arizona 85203

MATTHEW E. HUNZINGER

13031 N. 59<sup>th</sup> Drive

Glendale, Arizona 85304,

Respondents.

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby moves for leave to allow telephonic testimony by prospective Division witness Dirick Overhamm during the scheduled hearing in the above-referenced matter.

I.  
FACTS

The Division anticipates calling Dirick Overhamm ("Overhamm") as an integral witness to this hearing. Overhamm, an investor with Calumet, can provide probative testimony as to several of the Division's allegations in this matter. Specifically, Overhamm can testify as to the circumstances surrounding the offer of Calumet stock and his subsequent purchase of this stock.

1 Overhamm is attending a veteran's reunion in Florida during the newly scheduled hearing dates  
2 of October 4, 2000 through October 6, 2000, and he will consequently not be present to testify in  
3 person. He will, however, have access to a telephone to provide telephonic testimony during this  
4 hearing.

## 5 II. 6 ARGUMENT

7 The purpose of administrative proceedings is to provide for the fair, speedy and cost  
8 effective resolution of administratively justiciable matters. To effectuate that purpose, the  
9 legislature provided for streamlined proceedings and relaxed application of the formal rules of  
10 evidence. Specifically, A.R.S. § 41-1062(A)(1) provides for informality in the conduct of  
11 contested cases. The evidence submitted in an administrative hearing need not rise to the level of  
12 formality required in a judicial proceeding, as long as it is "substantial, reliable and probative."  
13 In addition, the Commission promulgated rules of practice and procedure to ensure just and  
14 speedy determination of all matters presented to it for consideration. *See, e.g.*, A.A.C. R-14-3-  
15 101(B); R14-3-109(K). Allowing Overhamm to testify by telephone retains all indicia of  
16 reliability and preserves Respondents' right to cross-examination.

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

24 Finally, fundamental fairness demands that Overhamm be allowed to testify  
25 telephonically. Overhamm was available to testify in person during the originally scheduled  
26 hearing date in mid August, and was again available to testify in person on two subsequent

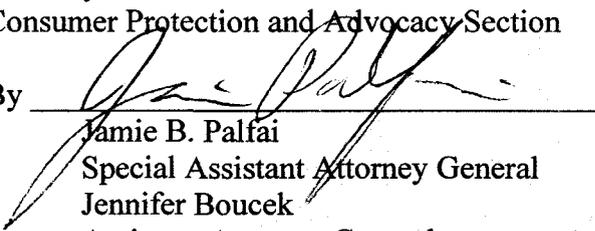
1 hearing dates established in September. The fourth continuance of this hearing, which has  
2 pushed this hearing into October, has caused Overhamm's conflict. The Division has initiated  
3 none of the four continuances. It follows that the Division should not have to strike a potential  
4 witness because it has acquiesced to the previous requests for continuances from other parties.

5  
6 **III.  
CONCLUSION**

7 Permitting Overhamm to testify telephonically at the hearing allows the Division to  
8 present relevant witness evidence that is expected to be reliable and probative, is fundamentally  
9 fair, and does not compromise Respondents' due process rights. Therefore, the Division  
10 respectfully requests that its motion for leave to present the telephonic testimony of Overhamm  
11 be granted.

12 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of September, 2000.

13  
14 JANET NAPOLITANO  
15 Attorney General  
16 Consumer Protection and Advocacy Section

17 By   
18 Jamie B. Palfai  
19 Special Assistant Attorney General  
20 Jennifer Boucek  
21 Assistant Attorney General  
22 Attorneys for the Securities Division of the  
23 Arizona Corporation Commission  
24  
25  
26

1 ORIGINAL AND TEN (10) COPIES of the foregoing  
2 filed this 15<sup>th</sup> day of September, 2000, with

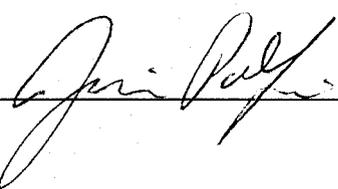
3 Docket Control  
4 Arizona Corporation Commission  
5 1200 West Washington  
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered this  
8 15<sup>th</sup> day of September, 2000, to:

9 Mr. Marc Stern  
10 Hearing Officer  
11 Arizona Corporation Commission/Hearing Division  
12 1200 West Washington  
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed  
15 this 15<sup>th</sup> day of September, 2000, to:

16 Michael Salcido, Esq.  
17 P. MICHAEL SALCIDO, P.C.  
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19 Phoenix, AZ 85018  
20 Attorney for Respondent Patton

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By  \_\_\_\_\_