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In the matter of

DOCKET NO. S-03361A-00-0000

CALUMET SLAG, INC.,
an Arizona corporation
13433 N. 16th Avenue
Phoenix, Arizona 85029

POST HEARING MEMORANDUM
BY SECURITIES DIVISION

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. 59th Drive
Glendale, Arizona 85304,

Respondents.

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") hereby submits the following Post Hearing Memorandum in the above-encaptioned matter.

STANDARD OF PROOF

In administrative actions brought by the Commission, the well-recognized standard of proof for alleged violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.*, is the "preponderance of the evidence." *See, e.g., Steadman v. Securities and Exchange Commission*, 450 U.S. 91 (1981) (Securities and Exchange Commission properly applied the 'preponderance of the evidence' standard

1 when determining administrative proceeding); *Geer v. Ordway*, 156 Ariz. 588, 589, 754 P.2d 315, 316
2 (App.1987) (in context of administrative hearing, proper standard of proof is preponderance of the
3 evidence). It follows that this standard is equally applicable in the administrative proceeding presently
4 at issue.

5 DISCUSSION

6 The Division submits that the evidence educed in this hearing plainly supported each of the
7 charges brought by the Division against Respondent Garreth Patton ("Patton"). Regarding the
8 evidence of registration violations, Patton simply made no effort to refute these charges. Indeed, the
9 only attention Patton paid to these charges related to the approximate number of such violations. With
10 respect to the fraud allegations against Patton, the evidence supporting these claims was equally
11 compelling; testimony consistently recounted Patton enticing investors to invest in an abandoned slag
12 pile through the systematic use of material misrepresentations and omissions.

13 During the hearing, Patton attempted to portray himself as little more than a detached officer of
14 a company who freely sold his shares at the direction of others to further the goals of the company. An
15 examination of the evidence quickly exposes this façade. Patton was involved from day one in the
16 development, implementation and control of the Calumet Slag scheme; documents introduced at
17 hearing show that as its founder and president, Patton unwaveringly promoted the Calumet project for
18 eight years following its inception. As a result of these efforts, Patton received and deposited several
19 hundred thousand dollars in investor funds into his personal bank accounts in Arizona and South
20 Dakota. Equally revealing, evidence depicts Patton as the single Calumet officer directly involved in
21 each of the projects undertaken by Calumet during its inauspicious eight year history. Based on these
22 facts and the themes elicited through witness testimony, Patton's attempt at blaming empty chairs for
23 the illicit conduct of Calumet Slag invariably rings hollow.

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I.

OFFER OR SALE OF UNREGISTERED SECURITIES

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3 The Division initially alleged that from 1994 forward, Patton repeatedly offered and sold
4 securities within or from Arizona in violation of A.R.S. § 44-1841 of the Arizona Securities Act
5 (“Securities Act”). This statute provides that it is unlawful for an individual to sell or offer for sale within
6 or from this state any securities unless the securities have been duly registered or qualify as a specific
7 subset of federally covered securities. *A.R.S. § 44-1841(A)*. The only other exception to this provision is
8 if the securities at issue qualify for one of the enumerated exemptions to registration as provided under
9 the Securities Act. *See, generally, Securities Act, Article 4; Arizona Administrative Code (“AAC”),*
10 *Article 1.* The evidence produced at hearing established that Patton was in violation of this statute on
11 repeated occasions over a several year period. Indeed, the only true matter at issue respecting this charge
12 relates to the actual number of violations Patton ultimately committed.

A. Calumet Stocks are Securities

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14
15 The fact that the Calumet stock sold by Patton constituted the sale of securities requires little
16 discussion. Most notably, the Securities Act includes the term “stock” under its definition of a
17 “Security.” *A.R.S. § 44-1801(26)*. Courts have also long acknowledged that “stocks” fall within the
18 definition of a security. For instance, in *Landreth Timber Company v. Landreth*, 471 U.S. 681, 105 S.Ct.
19 2297 (1985), the Supreme Court recognized that “instruments that bear both the name and all of the usual
20 characteristics of stock seem to us to be the clearest case for coverage by the plain language of the
21 definition [of a security].”

22 In the matter at issue, the stock that Patton sold to investors had all the hallmarks of “traditional
23 stock” as recognized in a number of prior adjudications.¹ For instance, ownership of Calumet stock 1)

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25 ¹ *See, e.g., United Housing Foundation, Inc. v. Foreman*, 421 U.S. 837 (1975) (characteristics of traditional stocks
26 may include such things as dividend rights, negotiability, proportional voting rights, and the ability to appreciate in value).

1 provided investors with the potential to receive dividends, 2) conferred voting rights to investors in
2 proportion to the number of shares owned, and 3) had a purported capacity to provide a positive
3 investment return. *See Exhibit ("Exhib.") S-1 (Calumet Articles of Incorporation); Exhib. S-34 (Calumet*
4 *Disclosure Document); Hearing Transcript ("H.T."), p. 28-29, lines 22-25 & 1-7, respectively (Hawash*
5 *testimony).* Calumet's issuance of stock certificates was still another indicator that such investments
6 were indeed made for the purchase of "traditional stock." *Exhib. S-10 (Calumet stock certificates).*

7 In sum, Patton sold stock to investors, a well-recognized type of security under both Arizona
8 statutory law and under Arizona and federal common law. As a security, the Calumet stock fell within
9 the purview of the registration and fraud provisions of the Securities Act.

10 **B. Non-registration of the Calumet Securities**

11 There is simply no issue with respect to the registration status of the Calumet securities – they
12 were never registered as prescribed under the Securities Act. Indeed, a Certificate of Non-Registration
13 of the Calumet securities was admitted into evidence during the hearing pursuant to A.R.S. § 44-2034.
14 *Exhib. S-3 (Corporation Commission Cert. of Non-registration).* During his defense, Patton made no
15 attempt to refute or otherwise challenge this non-registration status of the Calumet securities.
16

17 **C. No Registration Exemptions Apply to the Offer and Sale of Calumet Securities**

18 As previously discussed, is it unlawful to offer or sell within or from Arizona any securities that
19 are neither registered nor otherwise exempt from registration. *A.R.S. § 44-1841(A); see also Securities*
20 *Act, Article 4; AAC, Article 1.* Since Patton offered and sold Calumet securities that were not
21 registered under the Securities Act, Patton's only cognizable defense to multiple violations of A.R.S. §
22 44-1841 rested on the applicability of a registration exemption. Notwithstanding this fact, Patton made
23 no attempt to allege any particular registration exemption as a defense. As a consequence, Patton has
24 effectively conceded to Division charges that he violated § 44-1841 of the Securities Act.
25
26

1 In any action, civil or criminal, the burden of proving the existence of an exemption from
2 registration under the Securities Act falls upon the party raising such a defense. *A.R.S. § 44-2033*; *See*
3 *also State v. Barber*, 133 Ariz. 572, 578, 653 P.2d 29, 35 (App.1982), 653 P.2d 6 (1982); *State v.*
4 *Baumann*, 125 Ariz. 404, 610 P.2d 38 (1980). The Court in *Barber* discussed the exemption burden as
5 follows:

6 To begin our analysis of this issue, we first note that the state is not required to
7 prove that the securities and transactions were not exempted by law. *A.R.S. § 44-2033*
8 provides: In any action, civil or criminal, when a defense is based upon any exemption
9 provided for in this chapter, the burden of proving the existence of the exemption shall be
10 upon the party raising the defense, and it shall not be necessary to negative the exemption
11 in any petition, complaint, information or indictment, laid or brought in any proceeding
12 under this chapter. *This statute clearly places the burden upon the [defendant] to prove*
13 *the existence of any exemption he deemed applicable to this case.*

14 (Emphasis added).

15 During the hearing at issue, Patton simply made no reference to the exemption provisions
16 touching upon the registration requirements prescribed under the Securities Act. It is self-evident that
17 through Patton's silence on this issue, the necessary burden of proof to qualify for an exemption was
18 not carried. It is equally evident, based on *A.R.S. § 44-2033* and the cited case law interpreting this
19 provision, that Patton has waived any and all registration defenses predicated on exemptions provided
20 under the Securities Act.

21 The fact that Patton chose to forego any defense to the registration charges brought under
22 *A.R.S. § 44-1841* is not surprising in light of the fact that under the circumstances of this case, there
23 simply were no applicable exemptions. Indeed, even assuming, *arguendo*, that Patton had raised an
24 exemption defense at hearing, none of the prescribed exemptions to registration would have availed
25 Patton in this matter. Ostensibly, only one exemption provision in the Securities Act could have had
26 even a faint chance of applying in this case. *A.R.S. § 44-1844(A)(4)* of the Securities Act includes in
its exempt transactions provision the following:

- 1 (4) The sale in good faith and not for the purpose of avoiding the provision of this
2 chapter of securities by the bona fide owner of such securities, other than the issuer
3 or underwriter, *in an isolated transaction*, in which the securities are sold either
4 directly or through a dealer as an agent for the *owner but where the sales are not*
5 *made in the course of repeated or successive transactions of similar character by*
6 *the owner and are not made directly or indirectly for the benefit of the issuer or an*
7 *underwriter of the securities.*

8 (Emphasis Added). Consequently, this exemption applies only where sales by the owner are isolated,
9 are not successive in nature, and are not made directly or indirectly for the benefit of the company
10 itself. *Compare Strom v. Black*, 22 Ariz.App 102, 523 P.2d 1339 (1972) (individual was not exempt
11 from secondary sale provisions where stock purchase price went to the benefit of the corporation);
12 *Kalav v. Pitt*, 18 Ariz.App. 478, 503 P.2d 833 (1972) (broad sale of stock on behalf of shareholders
13 was not isolated transaction and thus § 44-1844(A)(4) registration exemption was inapplicable).

14 In the present case, Patton would fail to qualify for this exemption on all counts. As he
15 previously testified, Patton conceded that he sold a portion of his 750,000 shares of stock through sales
16 presentations to multiple investors. *H.T., p. 325, lines 10-15 (Patton testimony)*. As the court in *Kalav*
17 noted, such bulk transactions hardly qualify as isolated transactions. Patton also claimed that felt
18 constrained to steadily sell his stock in the course of successive transactions to finance Calumet, again
19 disqualifying Patton from the § 44-1844(A)(4) exemption. *H.T., pp. 319-20, lines 12-19 and 6-12,*
20 *respectively (Patton testimony)*. Finally, Patton submitted documentation and repeatedly alleged
21 during this hearing that he used proceeds from the sale of his Calumet stock to benefit Calumet itself.
22 *Exhib. R-4 (Calumet expenditure sheet); H.T., pp. 316-17, lines 22-25 and 1-3, respectively (Patton*
23 *testimony)*. Because Calumet is the issuer in this matter, this alleged activity again disqualifies Patton
24 from any claims to the § 44-1844(A)(4) exemption. In sum, then, Patton would have been wholly
25 unable to meet the burden for proving even his most conceivable registration exemption. Of course,
26 this analysis is moot in light of the fact that Patton never even attempted such a defense.

D. Patton Offered and Sold Unregistered Securities on Numerous Occasions

1 As outlined above, Patton offered and sold securities to investors that were neither registered
2 nor exempt from registration - clear violations of A.R.S. § 44-1841 of the Securities Act. The ultimate
3 question inevitably becomes: to what extent were these violations committed? The evidence elicited at
4 hearing showed that Patton violated this provision far more frequently than he was willing to concede.
5 Indeed, as will be demonstrated below, Patton conservatively violated this registration provision on at
6 least 90 separate occasions.

7 At hearing, Patton claimed that he had only sold securities to "about 30" investors. *H.T., p.*
8 *325, lines 10-12 & 19-21 (Patton testimony)*. In calculating this sales estimate, Patton admitted to
9 "talking to anybody that was at annual shareholder meetings and then like Hagen at the country club. I
10 remember that one" *H.T., p. 325, lines 13-15 (Patton testimony)*. Beyond the obvious self-interest in
11 underestimating the actual number of sales he made, Patton's testimony displayed a patently unreliable
12 standard for assessing the true number of investors to whom Patton actually offered and sold securities.
13 Indeed, Patton's amorphous and apparently clouded recollection that he sold only to attendees at
14 shareholder meetings plus one other is hardly an accurate basis to ascertain the true number of offers
15 and sales made by Patton.

16 Not surprisingly, Patton's numbers are easily discredited by the wealth of other evidence
17 introduced during this hearing. Although the Division brought only four investors to testify in this
18 matter out of the nearly two hundred investors, three out of these four bought stock from Patton outside
19 of annual shareholder meetings. For instance, as the transcript demonstrates, investor Hawash
20 purchased stock from Patton through far differing circumstances than a shareholder meeting during his
21 initial investment with Calumet:

22 Q. (Division) – if you got involved?

23 A. (Hawash) Yes, they said the return on, if you buy some shares, the return would be really
24 tremendous.

25 Q. And who told you this?

26 A. Garreth [Patton]

1 Q. Were you ever asked if you wanted to invest in Calumet Slag?

2 A. I was asked if I would like to invest in Calumet, yes.

3 Q. And who asked you this?

4 A. Jeff and Garreth both.

5 Q. Okay. And when you say Jeff, you mean Jeff Crawford.

6 A. Jeff Crawford, yes.

7 Q. And when you say Garreth, you mean Garreth Patton?

8 A. And Garreth Patton, yes, both.

9 Q. Did you happen to invest in Calumet after this demonstration?

10 A. After the demonstration I did invest, yes.

11 *H.T., p. 24, lines 13-23 (Hawash testimony).*

12 Patton's claim that each of his Calumet sales occurred at annual shareholder meetings, save
13 one, again falls flat under the testimony of a second investor witness, Mr. Overhamm. Mr. Overhamm
14 testified that his purchase of Calumet stock was again directly from Patton, but during a sales
15 presentation at Mr. Overhamm's own home. *H.T., pp. 176-177 & 180, lines 22-25, 1-7 and 8-11,*
16 *respectively (Overhamm testimony).* These two examples necessarily call into question both Patton's
17 recollection and the sales numbers provided by Mr. Patton at hearing.

18 A third investor witness, Mr. Hagen, also purchased securities directly from Patton outside of
19 an annual shareholder meeting. In fact, Patton's sales presentation to Mr. Hagen took place at a Soup
20 or Salad restaurant. *H.T., pp. 115, 117 lines 4-12 and 13-21 respectively (Hagen testimony).* Although
21 Patton recalled this particular sale as the one sale he remembered making outside of annual shareholder
22 meetings, the genuineness of this recollection is certainly questionable considering Patton had a three
23 week interval to review the transcripts of the investor witnesses before testifying.

24 What is pertinent here is that of the four Calumet investors testifying at this hearing, three out
25 of these four purchased stock directly from Patton in settings unrelated to shareholder meetings. This
26 fact illustrates two salient points. First, this evidence demonstrates that Patton's testimony as to the
number of sales that he directly participated in was, at best, premised on a faulty recollection. The
second salient point is simply that Patton's testimony is unreliable and should only represent the very
baseline for calculating the number of sales of Calumet stock Patton actually made to investors.

1 A far more accurate and systematic approach to ascertaining the actual number of Calumet
2 stock sales made by Patton would be to determine the recollections of the investors themselves.
3 Although it was impractical to call every investor as a witness to address this issue, the investigator at
4 the Division assigned to the Calumet matter had occasion to speak with or correspond to upwards of
5 ninety investors. Through these communications, it is evident that the number of sales made by Patton
6 to investors actually approached at least eighty to ninety in number. Notably, these sales figures do not
7 even take into account the uncounted offers for sale where potential investors declined to invest with
8 Patton.

9 Investigator Pollard spoke directly with approximately 10 to 15 investors. *H.T., p. 278, lines*
10 *11-15 (Pollard testimony)*. Out of these investors, investigator Pollard testified that with the exception
11 of one individual, investors indicated that Patton was involved in the sale of Calumet stock in every
12 instance. As recounted by investigator Pollard, each of these investors stated that Patton participated in
13 conversations with them and/or made representations to them about Calumet prior to each of their
14 investments in Calumet. *H.T., p. 279, lines 2-9 (Pollard testimony)*. The actual number of investors
15 purchasing stock from Patton is further supplemented by information gained from a questionnaire that
16 was sent out to a pool of known Calumet investors.

17 On redirect, investigator Pollard addressed the questionnaire information that she received from
18 Calumet investors, testifying as follows:

19 Q. (Division) Ms. Pollard, you just testified that you spoke with approximately 10 to 15
20 investors, somewhere along that line. Isn't it true that you also reviewed a number of
questionnaires from investors?

21 A. (Pollard) That's correct.

22 Q. So if you take into account the questionnaires, the number of investors that you got
information from is significantly higher than 10 or 15 [investors], isn't it?

23 A. Yes, that would be correct. I did not actually speak with them but they completed
24 questionnaires stating that they invested a certain amount of money on a certain date.
25 And in some instances, we have statements as to who, well, some people remembered
who they paid and who they spoke to, some did not, but I believe Garreth Patton's name
was listed on every single one of those questionnaires to the best of my knowledge.

1 *H.T., pp. 282-283, lines 15-25, lines 1-8, respectively (Pollard testimony).*

2 On recross-examination to this questionnaire issue, Patton sought to quantify the numbers of
3 questionnaires that investigator Pollard reviewed. Investigator Pollard testified that approximately 80
4 to 90 questionnaires were received and reviewed. *H.T., p. 284, lines 12-18 (Pollard testimony).* Of
5 these 80 to 90 questionnaires, investigator Pollard testified that each one of the questionnaires either
6 stated that the checks were made out to Patton or that Patton was present at the meeting at the time in
7 which the Calumet investments were made.² *H.T., p. 284, lines 22-24 (Pollard testimony).*

8 Taking all this information together, certain patterns are discernable. First, Patton was
9 personally involved in the vast majority of sales of Calumet stock. Based on the evidence just
10 discussed, Patton was either a participant and/or a recipient of funds in the sale of approximately 94 out
11 of the 95 Calumet investments from which information was available. Extrapolating this number,
12 Patton could have had a hand in as much as 198 out of the 200 sales of Calumet Slag stock. Second,
13 Patton's admission that he sold Calumet securities to "about 30" investors is an obvious
14 underestimation. His testimony was exposed as faulty by both direct witness testimony and by the
15 investor information gathered by investigator Pollard. Third, the trend elicited in this matter clearly
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18 ² The unlawful sale of unregistered securities within or from Arizona encompasses more than just face-to-face
19 solicitations or sales by the seller. Under the recognized doctrine of "Participant Liability," a person also violates § 44-
20 1841(A) by being directly responsible for the distribution of unregistered securities through conduct that is both *necessary*
21 *to* and a *substantial factor* in the unlawful transaction. See *S.E.C. v. Rogers*, 790 F.2d 1450, 1456 (9th Cir. 1986); See also
22 *In the Matter of the Offering of Securities by Lost Dutchman Investments, et al.*, Arizona Corporation Commission
Decision No. 58259 (April 8, 1993), pp. 13-14; *In the Matter of the Offering of Securities by Terry L Barrett, et al.*,
Arizona Corporation Commission Decision No. 58187 (February 4, 1993), pp. 10-11. Conduct that is necessary to the
unlawful transaction requires participation that is a "but for" cause of the unlawful sale; to be a substantial factor in the
transaction, the participation must be more than "de minimus." *Rogers*, 790 F2d at 1456; *Lost Dutchman Investments*,
pp.13-14.

23 Based on this Participant Liability Doctrine, Patton was in violation of the registration provisions of the
24 Securities Act even in instances in which he did not actually make face-to-face sales of Calumet stock. In those instances
25 in which Patton supplied securities for Calumet agents to sell, he was plainly a "but for" cause of these sales. In those
26 same instances, where Patton ultimately received and deposited the investor proceeds and/or endorsed the resulting stock
certificates, his participation in the scheme clearly exceeded a "de minimus" role. Under such circumstances, where Patton
facilitated, consummated and ultimately reaped the financial benefit from such sales, Patton was equally accountable for
the sale of unregistered securities.

1 places Patton at the center of the Calumet securities selling efforts. As previously alluded to,
2 investigator Pollard spoke directly with 10 to 15 investors and another 4 testified at this hearing. *All*
3 *but one of these bought their Calumet securities through Patton.*

4 Based on these facts, Patton probably sold Calumet securities to most of the investors.
5 Notwithstanding this reasonable assumption, the evidence adduced at trial can only sustain a more
6 modest result. In light of Patton's own testimony, investor witness testimony, investor interviews and
7 investor questionnaires, Patton sold unregistered securities to a minimum of 90 investors. Each
8 separate instance of this conduct was unlawful as prescribed under § 44-1841(A) of the Securities Act.

10 II.

11 TRANSACTIONS BY UNREGISTERED DEALERS OR SALESMEN

12 The Division also alleged that Patton violated A.R.S. § 44-1842 by acting as a securities dealer
13 or salesman within or from Arizona while unregistered as required under the Securities Act.
14 Specifically, A.R.S. § 44-1842 states that it is unlawful for any dealer to sell or purchase or offer to sell
15 or buy any securities, or for any salesman to sell or offer for sale any securities within or from this
16 state, unless the dealer or salesman is registered as such pursuant to the registration provisions of the
17 Securities Act. Based largely on an analysis similar to that propounded in the prior section (Section I),
18 Patton violated this count on multiple occasions.³

19 As discussed earlier, it is clear that the Calumet stock offered and sold by Patton in this matter
20 was an elemental type of security fully recognized as such under the Securities Act. A.R.S. §44-
21 1801(26); *See also Landreth, supra.* In light of this fact, the issues germane on this second count
22 revolve around three familiar issues: whether Patton was registered, whether an exemption to
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25 ³ Because the legal and factual analysis for sections I and II are largely identical, and for the sake of brevity, this
26 section will be condensed with appropriate references to the Section I where necessary.

1 registration applied, and if neither of the prior two were applicable, whether, and to what extent, did
2 Patton make such unregistered sales.

3 Respecting the initial issue of Patton's registration status as a dealer and/or salesman in
4 Arizona, the record is once again clear: Patton was never registered as a dealer or salesman under the
5 Securities Act. This fact was initially established through a Certificate of Non-Registration issued
6 against Patton by the Division and admitted as evidence at hearing pursuant to A.R.S. § 44-2034.
7 *Exhib. S-4c (Corporation Commission Cert. of Non-registration)*. This fact was subsequently
8 reaffirmed when Patton stipulated to the fact that he had never been registered as a securities salesman
9 in the state of Arizona. *H.T., p. 262, lines 9-11. (Pollard testimony)*.

10 The second issue pertaining to the Division's allegations against Patton for securities
11 transactions by an unregistered dealer or salesman relates to the issue of exemptions. Patton made no
12 attempt during the hearing to raise any exemption defenses to the registration requirements prescribed
13 under A.R.S. § 44-1842. As discussed *supra*, the burden is on the respondent to raise and prove any
14 exemption defenses, and a failure to do so prior to the close of hearing acts as a waiver to any and all
15 such defenses. *See, generally, A.R.S. § 44-2033; See also State v. Barber, 133 Ariz. 572, 578, 653*
16 *P.2d 29, 35 (App.1982), approved, 133 Ariz. 549, 653 P.2d 6 (1982); State v. Baumann, 125 Ariz. 404,*
17 *610 P.2d 38 (1980)*. Because Patton neither raised nor proved any defenses premised on an exemption
18 to the registration requirements of A.R.S. § 44-1842(A), no exemption defenses are applicable in this
19 matter. It is also worth noting again that, irrespective of Patton's decision to waive any exemption
20 defenses, none of the available exemptions to the registration requirements under A.R.S. § 44-1842(A)
21 would have even been applicable in this instance.

22 The third and final issue pertaining to the Division's allegations against Patton for violations of
23 A.R.S. § 44-1842 involves the extent to which Patton made offers and sales of Calumet stock while
24 unregistered as a dealer or salesman. Because Patton was unregistered as a dealer or salesman during
25 the same time frame in which the Calumet securities were unregistered (i.e., throughout the entire
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1 Calumet Slag existence), the number of instances in which Patton sold Calumet stock to investors as
2 calculated in Section I above is equally applicable to number of times Patton sold securities while not
3 registered as a dealer or salesman. Consequently, the numbers and methodology used in section I is
4 equally applicable to this section.

5 To briefly reiterate, a profile of Patton's sales record was largely discernable from the evidence
6 elicited at trial. Based on witness testimony, investor interviews and questionnaires, Patton was either
7 a participant and/or a recipient of funds during the sale of approximately 94 out of the 95 Calumet
8 investments from which evidence was available. Largely because of this evidence, Patton's testimony
9 that he sold Calumet securities to only "about 30" investors appears to be a serious underestimation of
10 his actual Calumet sales participation. Indeed, the veracity of this testimony was put in doubt by direct
11 witness testimony that starkly contradicted Patton's sales recollection and placed Patton soliciting
12 investors in such places as investor's homes, restaurants and assay testing sites.

13 Based on these facts, Patton probably sold Calumet securities to most of the investors in
14 Calumet. Notwithstanding this point, the evidence educed at trial can only sustain a lesser result. In
15 light of Patton's own testimony, investor witness testimony, investor interviews and investor
16 questionnaires, Patton sold Calumet securities - while unregistered as a dealer or salesman - to a
17 minimum of 90 investors. Each instance of this conduct was unlawful as prescribed under A.R.S. §44-
18 1842(A) of the Securities Act.

19 III.

20 FRAUD IN CONNECTION WITH THE OFFER OR SALE OF SECURITIES

21 Liability Under A.R.S. § 44-1991

22 The Division also alleged that Patton violated A.R.S. § 44-1991 of the Securities Act, fraud in
23 the purchase or sale of securities. Specifically, the Division contends that Patton violated one or more
24 provisions of this statute on multiple occasions and in multiple fashions. As will be discussed, the
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1 evidence elicited at hearing repeatedly substantiated these contentions.

2 Under A.R.S. § 44-1991, it is a fraudulent practice and unlawful for a person, in connection
3 with a transaction or transactions within or from this state involving an offer to sell or buy securities,
4 or a sale or purchase of securities, to directly or indirectly do either of the following:

5 (2) Make untrue statements of material fact, or omit to state any material fact necessary
6 in order to make the statements made, in the light of the circumstances in which they
7 were made, not misleading; or

8 (3) Engage in any transaction, practice or course of business which operates or would
9 operate as a fraud or deceit

10 *A.R.S §§ 44-1991(A)(2), 44-1991(A)(3). Securities fraud may be proven by any one of these acts.*

11 *Hernandez v. Superior Court, 179 Ariz. 515, 880 P.2d 735 (App.1994) (italics in original).*

12 In the context of these provisions, the term "materiality" requires a showing of substantial
13 likelihood that, under all the circumstances, the misstated or omitted fact would have assumed actual
14 significance in the deliberations of a reasonable buyer. *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz.
15 548, 553, 733 P.2d 1131, 1136 (1986), citing *Rose v. Dobras*, 128 Ariz. 209, 214, 624 P.2d 887, 892
16 (App. 1981), quoting *TSC Industries v. Northway, Inc.*, 426 U.S. 438, 96 S. Ct. 2126, 48 L. Ed. 2d 757
17 (1976). Under this objective test, there is no need to investigate whether an omission or misstatement
18 was actually significant to a particular buyer. *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136.

19 The affirmative duty not to mislead potential investors in any way places a heavy burden on the
20 offeror and removes the burden of investigation from the investor who is not required to act with due
21 diligence. *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136. A misrepresentation or omission of a material
22 fact in the offer and sale of a security is actionable even though it may be unintended or the falsity or
23 misleading character of the statement may be unknown. In other words, scienter or guilty knowledge is
24 not an element of a civil violation of A. R. S. § 44-1991(A)(2). See, e.g., *State v. Gunnison*, 127 Ariz.
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26

1 110, 113, 618 P.2d 604, 607 (1980) (*En Banc*). Moreover, a seller of securities is strictly liable for any of
2 the misrepresentations or omissions he makes. *Rose v. Dobras*, 128 Ariz. at 214, 624 P.2d at 892.

3
4 **A. Patton misrepresented to investors the value of the Calumet Slag Pile**

5 A recurring misrepresentation Patton made to potential investors was that the Calumet Slag pile
6 was of great value and would produce tremendous returns. As illustrated during the hearing and
7 discussed below, Patton repeatedly used this enticement to find willing investors for his company,
8 Calumet. It is axiomatic that a seller's statement to a potential investor that an investment in a
9 company would produce sensational returns would be material to that investor's decision-making
10 process. Because such a statement was patently false even by Patton's own admissions, this statement
11 plainly constitutes a material misrepresentation in the offer or sale of securities.

12 The evidence elicited at trial consistently demonstrated Patton's willingness to misrepresent the
13 value of Calumet's slag. In testimony by investor Hawash, Hawash recounted the exchange with Patton
14 during Patton's initial solicitation for investor funds from Hawash:

15 Q. (Division) Did any one of the individuals at that [slag analysis] demonstration, did anyone
16 tell you anything about the possibility for profits ---

17 A. (Hawash) Yes, they did.

18 Q. --- If you got involved?

19 A. Yes, they said the return on, if you buy some shares, the return would be really tremendous.

20 Q. And who told you this?

21 A. Garreth [Patton]

22 *H.T., p. 23-24, lines 24-25 and 1-7, respectively (Hawash testimony).*

23 A similar promise was made to investor Overhamm. During a sales presentation by Patton at
24 Mr. Overhamm's home in 1996, Patton told Mr. Overhamm that an investment in Calumet's slag pile
25 would again produce tremendous returns. Mr. Overhamm recounted the exchange with Patton during
26 his testimony:

Q. (Division) What were you told about the Calumet investment at this meeting?

1 A. (Overhamm) We were shown some rough graphs or reported assays. It was quite a
2 scribbled mess, very unprofessional, but since Mr. Delmanowski was there, we probably put a
3 little more credence to it than we should have. And we were told that the eventual mining
4 operation would probably result in a return of about 25 to 1, and they were highlighting the
5 potential for gold, silver, and platinum in the recovery process.

6 Q. Who told you this?

7 A. Mr. Patton specifically. He's the one that explained all the graphs and assay reports he had
8 in his possession.

9 *H.T., pp. 177-178, lines 19-25 and 1-8, respectively (Overhamm testimony).*

10 Based on Patton's return representations, the outstanding number of shares in Calumet Slag
11 (1,000,000), and Patton's asking price to Mr. Overhamm of \$2 per Calumet share, *H.T., p. 179, lines*
12 *22-24 (Overhamm testimony)*, Patton's 25 to 1 return prediction would translate into a predicted total
13 profit for Calumet of \$50 million dollars.

14 The Division's third investor-witness, Mr. Hagen, again recounted Patton's claims about the
15 great value of Calumet's slag during a Patton sales representation. Mr. Hagen testified that during a
16 meeting with Mr. Patton at a Soup or Salad restaurant, Patton stated that tests had shown that the slag
17 "had a high, very high concentration of gold, silver and platinum." *H.T., p. 116, lines 3-5 (Hagen*
18 *testimony)*. Patton then showed Hagen "a list or thing with a whole bunch of numbers on it. I really
19 had no idea what these numbers were, but not having, being a geologist or anything like that, I wasn't
20 sure what they meant, but he [Patton] told us that they were very good numbers." *H.T., p. 116, lines 8-*
21 *13 (Hagen testimony).*

22 The predictions of great numbers and great returns did not end with oral representations. In
23 some form of disclosure statement disseminated to investors by the Calumet Slag officers in
24 approximately 1997, wherein Patton was listed as company president, the Calumet officers valued their
25 slag pile at \$13,050,000. *Exhib. S-34*. Whether or not Patton drafted this document, his status as
26 president of Calumet and his listing as the president in this document inexorably binds Patton, at least
indirectly, to this multimillion dollar valuation. Notably, Patton made no effort to modify or otherwise
dissociate himself from these figures.

1 **1. *Evidence suggests the Calumet Slag is worth far less than represented***

2 The actual value of this slag has been determined by independent sources to be worth far less, if
3 anything. A reputable mining company, Cyprus Amax Metals ("Cyprus"), actually examined the
4 Calumet site and surrounding mining dumps in the late fall of 1994 following a submittal by Calumet
5 to examine the site for possible mining involvement. The former Exploration Manager for Cyprus, Mr.
6 Blakestad, testified at hearing regarding Calumet's initial submittal and subsequent results. Mr.
7 Blakestad recalled: "We [Cyprus] were led to believe in the early part of the submittal, the initial
8 submittals, there might be as much as one and a half million tons of material available on the various
9 dumps and slag heaps there. And we had been advised by Mr. Patton and his folks that their analyses
10 of this material indicated quite high values, especially in gold and platinum, as I recall, gold, silver and
11 platinum as I remember, as well as copper. Our own analyses indicated the virtual absence of those
12 metals." *H.T., pp. 157-158, lines 19-25 and 1-4, respectively (Blakestad testimony).*

13 Following the initial submittals, Cyprus sent a geologist to test the Calumet area as a possible
14 mining prospect. Cyprus sent geologist Mr. Kerr to evaluate the area and to generate a report on his
15 findings. As part of his testimony at hearing, Mr. Kerr testified as to the historical backdrop of the
16 Calumet site and surrounding areas:

17
18 Q. (Division) And what type of conclusions did you draw from the historical summary about
the gold values in that immediate [Calumet] area?

19 A. (Kerr) As a whole, there are very few precious metals associated with the property as per
the old reports.

20 Q. What type of metals, if any, would be found at that site based on historical reports?

21 A. It was essentially a copper prospect, and there were minor amounts of gold and silver
reported. It is originally in a major gold district.

22 Q. Okay. But this particular area was not one of those gold, heavily-laden areas or even
moderately gold-laden?

23 A. It was a failed copper prospect.

24 Q. Okay. Now based on your surveying experience, would a slag – have you ever come
across slag piles?

25 A. Yes.

1 Q. Based on your experience, would a slag pile have more or less precious metal
concentrations than the original mining materials taken from the mining site?

2 A. It would have less. The slag is the waste product of the, from the smelting process. The
process separates the metal from the waste rock, which is the slag.

3 *H.T., pp. 246-47, lines 20-25 and 1-23, respectively (Kerr testimony).*

4 Mr. Kerr then continued his testimony on the historical records of the area in the context of slag
5 concentrations:

6
7 Q. (Division) Earlier you testified that this particular [Calumet] site was not known to have
8 much in the way of gold concentrations. It was more of a copper site. You've also testified
9 that the slag pile generally has much less concentrations of valuable ore or minerals than the
actual mining product itself, correct?

10 A. (Kerr) Yes.

11 Q. Based on these two statements, what's the natural assumption of the gold value in the
[Calumet] slag pile?

12 A. That there would be little, if any, gold in the slag.

13 *H.T., p. 248, lines 10-22 (Kerr testimony).*

14 Despite these discouraging historical perspectives, Mr. Kerr did perform assay samples on the
15 Calumet slag pile and surrounding dumps. Mr. Kerr took a sample of the Calumet slag and sent it for
16 analysis at Cone Geochemical laboratories, a reputable testing facility. *H.T., p. 249, lines 13-23 (Kerr
17 testimony).* The results of the slag sample were as follows: the gold concentration of the slag sample
18 was less than .002 ounces per ton, and the silver concentration was less than .005 ounces per ton.
19 *Exhib. S-29; H.T., p. 250, lines 3-5 (Kerr testimony).* Asked whether those concentrations were large
20 amounts, Mr. Kerr responded: "In actuality, those numbers represent values below the limits of
detection for the one ton fire assay that they ran." *H.T., p. 250, lines 7-9 (Kerr testimony).*

21 Mr. Kerr subsequently drafted a letter back to Cyprus relaying the results of his geological
22 survey of the Calumet site. In this letter, Mr. Kerr wrote: "Enclosed is a brief report on the Blue
23 Lead/Calumet submittal along with the materials that were supplied to me by Cyprus Amax. *I do not
24 recommend this property.* The size, value and mineral potential of the dumps, the slag piles or the
25 property are not as was represented." *Exhib. S-30, ¶1.*

1 Another independent sampling of the Calumet slag was conducted by the South Dakota
2 Department of Environment and Natural Resources in August of 1998. As part of this sampling, this
3 Department sent a random sample of Calumet's slag to Midcontinent Laboratories for mineral analysis.
4 Two assay tests on this sample were run, giving roughly the same results. In each test, the silver
5 concentration in the Calumet slag sample registered less than one one-thousandth of a milligram of
6 silver per liter.⁴

7 The independent Calumet slag assays taken by Cyprus and South Dakota Department of
8 Environment and Natural Resources, together with the historical background of the Calumet site,
9 suggest that Calumet's slag pile is limited to some minimal value, if any. Yet even if these tests do not
10 entirely reflect the precise value of this slag pile, they certainly cannot be disregarded in any
11 responsible estimation as to the value of this slag. Patton was fully aware of Cyprus's negative testing
12 and evaluation of both Calumet's slag and the adjacent mining dumps as early as December of 1994.
13 *H.T., pp. 155-156, lines 5-25 and 1-11 (Blakestad testimony)*. Yet despite this fact, Patton proceeded
14 to make grand predictions as to the value of the slag pile for the next several years. As was stated in
15 *Trimble, supra*, the affirmative duty by the seller not to mislead potential investors in any way places a
16 heavy burden on the seller and removes the burden of investigation from the investor who is not
17 required to act with due diligence. By concealing or otherwise ignoring the negative Cyprus
18 information, Patton certainly failed in this burden.

19 **2. *Patton even testified that the slag pile was worth less than previously represented***

20 As seen above, Patton represented to various investors that the slag pile would produce
21 "tremendous" returns, would support a return of "25 to 1," and was laden with "very high"
22 concentrations of gold. Ironically, these statements concerning the slag's value were actually refuted
23
24

25 ⁴ One one-thousandth of a milligram per liter is equivalent to one milligram per liter; converted, this concentration
26 is equivalent to .0292 Troy ounces per ton. (Source: Arizona Department of Minerals and Mines).

1 by Patton himself at hearing. Even more telling, Patton's valuations at hearing were based on the very
2 same sources that spurred Patton to make incredible profit predictions to investors in previous years.

3 During his defense, Patton was asked how much he believed that the Calumet Slag pile was
4 actually worth. Patton's answer was noticeably less what he had being telling investors for years.

5 Patton testified as follows:

6 Q. (Defense Counsel) We brought several assay reports with us today, haven't we?

7 A. (Patton) Yes.

8 Q. Have you reviewed those assay reports?

9 A. Yes.

10 Q. What's the basis of your opinion that it [the slag] could be worth as much as \$2.3
11 million?

12 A. That's based off the three, like M & W milling and refiners, Pilot Mills and report and
13 Fred Finell of Bahamian Refining's reports and Dave Wastchak, independent stuff he
14 did on it. If you take all of those together, it works out to about 1.23 ounces per ton,
15 which comes to \$2.3 million.⁵

16 *H.T., pp. 315-16, lines 21-25 and 1-9, respectively (Patton testimony)*

17 Even if Patton's mathematically suspect (see footnote 5) maximum value for the Calumet slag
18 is accepted at face value, that leaves a sum far less than that figure as actual *profit*. As is obvious from
19 numerous sources in evidence, there is an inevitable cost for processing valuable minerals out of a pile
20 of dirt and rock (e.g.. milling fees, trucking costs, etc.). Calumet actually broke down the potential
21 expenses and overhead for processing the Calumet slag in its 1996 or 1997 disclosure document.
22 *Exhib. S-34, p.5.* In this document, the processing expenses were estimated at \$580,000, and the
23 overhead was estimated at approximately \$980,000. *Id.* Using Patton's valuation testimony and
24 Calumet's own expense/overhead figures, then, the maximum profit from the Calumet operation
25 calculates out to a total of \$740,000. (Using Patton's own slag concentration of 1.23 ounces per ton,
26

⁵ In prior testimony, Patton used drawings (see *Exhib R-5*) to total the amount of slag situated at the Calumet site. According to Patton's calculations, the total amount of slag at this site came to approximately 4000 tons (see *H.T.*, p. 357, lines 1-19). Four thousand tons x 1.23 ounces per ton x \$275 (the approximate market rate for gold) actually equals \$1,353,000, about one million less than the \$2.3 million figure ascertained by Patton.

1 but using more accurate math as included in footnote 5, the actual profit margin for processing
2 Calumet's slag would fall into negative values).

3 This \$740,000 figure arises out of Patton's *maximum* estimation for the value of the slag pile.
4 In view of the fact that there are at least 1,000,000 shares outstanding, this translates into a maximum
5 value of approximately 74¢ per share. For investor Hawash, who bought Calumet stock at prices
6 ranging from 5 dollars to 75 cents (*H.T.*, p. 32, lines 10-13 and 24-25; p. 33, lines 1-2; p. 40, lines 18-
7 25), the potential return on his investments is hardly "tremendous" (indeed, it is invariably a loss). For
8 investor Overhamm, who purchased shares from Patton at 1 dollar per share (*H.T.*, p. 179, lines 22-25),
9 an ultimate recovery of 74 cents per share is quite apart from a promised 25 to 1 return.

10 The obvious point to be gained from Patton's testimony on the value of the slag is that Patton
11 effectively admitted that his huge profit predictions to entice potential Calumet Slag investors were in
12 fact groundless and exaggerated. In conceding as much, Patton unwittingly admitted to making
13 repeated material misrepresentations to investors.

14 **3. Patton's assay results did not justify Patton's valuation representations**

15 At hearing, Patton attempted to introduce a number of dubious assay results to counter the
16 results of two independent tests on the mineral concentrations of Calumet's slag. As discussed earlier,
17 these two independent assays, conducted by a nationally recognized mining company (Cyprus) and the
18 South Dakota Department of the Environment and Natural Resources, each found Calumet's slag to be
19 devoid of precious metals. (see section III(A)(1)). Patton's assay results do little to discredit these
20 independent sampling results that serve to underscore Patton's highly exaggerated valuation of
21 Calumet's slag.

22 Patton introduced a number of assay results purportedly derived from Calumet slag samples.
23 The first assay result introduced (*Exhib. R-6*) was an assay conducted by Mr. Fred Finell, an associate
24 of Patton living in Phoenix. *H.T.*, p. 468, lines 17-18. (*Patton testimony*). According to an engineer at
25 the Arizona Department of Minerals and Mines, Mr. Finell is not registered in Arizona as any type of
26

1 assayer or metallurgical engineer, which would be typical requirements from that agency's board of
2 technical registration to practice analysis of metal bearing ores. *H.T., p. 521, lines 20-24. (Niemuth*
3 *testimony)*. Under these circumstances, any results from Mr. Finell would have to be considered
4 suspect and/or defective.

5 During the hearing, Patton introduced a second assay result from Laboratory Consultants, Ltd.
6 *Exhib. R-7*. This assay result lacks all indicia of reliability; the sample in this test is labeled simply as
7 "slag," and the client for this test is "Nizer." This offers little evidence to suggest it has any bearing on
8 the concentrations contained in the Calumet slag. Moreover, the results of this assay show only about
9 .5 ounces of gold in the sample per ton, a figure that would hardly provide Calumet with an
10 economically feasible mining operation. (As seen previously, even at 1.23 ounces of gold per ton, the
11 Calumet project is probably not economically feasible). More intriguing, however, is language found
12 on page 2 of a Nizer/Calumet agreement attached to this same exhibit. Here, Nizer apparently
13 warranted that the minimum amount of recoverable metals contained in the Calumet slag was \$5 - per
14 pound! Asked by his counsel about this remarkable Calumet Slag valuation, Patton stated "I think it's,
15 in retrospect it's completely fabricated." *H.T., p. 371, lines 8-11. (Patton testimony)*. In sum, this
16 exhibit offers nothing by way of reliability or support for the Calumet mining project.

17 Patton next introduced as assay result from M&W Milling. *Exhib. R-8*. Both the reliability and
18 legibility of this exhibit are sorely lacking, making this exhibit's value to this proceeding hard to
19 understand. Beyond the scribbled out sections and the penciled in "CSI" labels, the bulk of these
20 documents hardly support the contention that Calumet's slag is somehow of great value. In fact, in a
21 letter from M & W to Patton on September 24, 1997 (page 11 of exhibit R-8), the chief metallurgist of
22 M & W actually states that "it appears that this material cannot be economically leached mainly due to
23 the severe locking of the values in the slag to the point where the solution can't reach them." Such
24 words would apparently not favor the hopes of investors as to a tremendous return on their Calumet
25 Slag investments.

1 Two more assay results from Patton were ultimately admitted at trial. These two assays were
2 similarly irrelevant and/or defective in their own way. Exhibit R-9 was an assay result requested by a
3 principal investor Hawash after four years of frustration over his Calumet investments. Hawash did
4 not have Calumet material for testing, so Patton sent him a "ground" sample to test from South Dakota.
5 *H.T., p. 383, lines 4-25. (Patton testimony).* The motive by Patton to tamper with this sample in order
6 to placate Hawash was echoed in Hawash's earlier testimony, where he stated, in connection with this
7 test, "When they [Patton] sent me the samples, it was ready to go. It was all fine mesh. It wasn't raw
8 material, so it could [have been] tampered with." *H.T., p. 77, lines 22-24. (Hawash testimony).* The
9 other assay result admitted at trial, Exhibit R-10, constitutes a series of assays purportedly on the
10 Calumet slag. These assay reports routinely show that the materials being tested have minimal levels
11 of gold concentrations, from .01 ounces per ton to .07 ounces per ton. *Exhib. R-10.* Neither of these
12 figures would support a conclusion that Calumet's slag had the potential for tremendous returns.

13 In short, these assay exhibits substantiate only one thing: that Patton had some type of material
14 tested at various testing facilities that produced largely disappointing results. What these assays do not
15 justify is any resulting conclusions that the Calumet slag is a gold-laden pile of dirt or has the potential
16 to generate tremendous investment returns. Such conclusions were plainly unwarranted and, when
17 made in the context of selling securities, were made in violation of the fraud provisions of the
18 Securities Act.

19 **B. Patton Omitted that a lawsuit and/or lien was Pending against Calumet Slag**

20 One of the serious material facts that Patton failed to disclose to investors was that Calumet
21 Slag was facing a debilitating civil lawsuit including a multimillion dollar mechanic's lien as early as
22 1994. As demonstrated at hearing and discussed below, Patton repeatedly omitted this fact to investors
23 from the initiation of this civil lawsuit in 1994 until near its conclusion approximately two years later.
24 Patton's omission of this potentially fatal company development was plainly an issue that a reasonable
25 investor would have deemed a substantial factor in that investor's decision-making process. *Compare*
26

1 *Trimble v. American Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (1986); *Rose v.*
2 *Dobras*, 128 Ariz. 209, 214, 624 P.2d 887, 892 (App. 1981). As such, this omission plainly constituted
3 a material omission by Patton in the offer or sale of securities.

4 The evidence educed at trial showed that from July of 1994 through July of 1996, Calumet Slag
5 was a defendant in a civil lawsuit that included a multimillion dollar mechanic's lien pending against
6 the Calumet slag pile. *Exhib S-5, S-6a and S-6b*. The evidence also demonstrated that in connection
7 with his offer and sale of Calumet securities, Patton exhibited a clear lack of candor to investors by
8 omitting accurate references to this lawsuit and/or lien. Indeed, during the two year period from July
9 1994 to July 1996, investors who invested with Patton simply had no knowledge as to the actual state
10 of affairs of these litigation matters. Only when the lawsuit reached its final stages, and investments
11 had already been made, did Patton suddenly disclose this legal dispute and the need for still more
12 funds.

13 Testimony on this matter was given by several of the investors who invested prior to 1996. Mr.
14 Hawash, who invested throughout 1994 and 1995 (*Exhib. S-9a, S-9b and S-9c*), recalled this material
15 omission during direct testimony:

16 Q. (Division) At the time of this initial investment [in fall 1994], did Patton, Mr. Patton, or
17 anyone else from Calumet Slag ever mention that a lawsuit was pending against the company?

18 A. (Hawash) No.

19 Q. At the time of this investment, did Patton or anyone else at Calumet Slag ever mention
20 that a multi-million dollar lien was pending against the company?

21 A. No.

22 *H.T., p. 26, lines 6-15 (Hawash testimony)*

23 This line of questioning was again asked about Mr. Hawash's second investment in November of 1994:

24 Q. (Division) Prior to or at the time you made your second investment, did anyone at
25 Calumet, did Mr. Patton or anyone else at Calumet mention that a multi-million dollar lien had
26 been placed on the Calumet Slag pile?

A. No.

H.T., p. 30, lines 11-16 (Hawash testimony)

1 Still later, this question was asked about his third investment, made in March of 1995:

2
3 Q (Division) When you invested this, when you and your wife invested this additional
\$20,000 [with Mr. Patton], had you yet been informed that there was a multi-million dollar lien
4 pending against the slag pile?

5 A. (Hawash) No.

6 *H.T., pp. 35-36, lines 22-25 and 1, respectively (Hawash testimony)*

7 Only after these investments had been made did Hawash testify that he first learned about the
8 lawsuit and lien. Hawash's testimony on Patton's eventual disclosure also illustrates that this omission
9 had been perpetrated with other investors just the same:

10 Q. (Division) Were you ever told by Mr. Patton that a lawsuit and lien was (*sic*) pending
against Calumet?

11 A. (Hawash) Later on we knew about that, yes.

12 Q. Do you recall approximately when?

13 A. Maybe, I can't remember, but it was at a meeting, so everybody knew about it at the
meeting.⁶

14 Q. At what kind of meeting?

15 A. A shareholder meeting.

16 Q. And were you surprised by this information?

17 A. We were surprised.

18 Q. And when you say we, what do you mean?

19 A. The whole shareholders, we were surprised, yes.

20 Q. There were other shareholders at this meeting?

21 A. Yes.

22 Q. And they were surprised by this news as well?

23 A. Yes.⁷

24 *H.T., p. 38, lines 3-21 (Hawash testimony).*

25 ⁶ In later testimony, Hawash determined that the disclosures concerning the lawsuit happened in approximately
26 June of 1996. *H.T., p.102, lines 2-10 (Hawash testimony).*

27 ⁷ During cross-exam, Hawash admitted to investing further even after hearing about the lawsuit. Patton's
28 counsel seemed intent on showing that his later investments indicated that Patton's omission of the Calumet lawsuit and
29 lien was thus inconsequential to Hawash. This contention simply has no merit. Once the lawsuit was disclosed, it was
30 effectively in the settlement stage. As such, the further investments by Hawash (surely in the hope of protecting tens of
31 thousands of dollars already sunk into the project) were not invested under a cloud of litigation but rather in the aftermath
32 of that episode.

1 During the hearing, investor Hagen echoed Patton's lack of candor with respect to the pending
2 Calumet lawsuit and lien. When asked whether he knew about the lawsuit and lien at the time he made
3 his investment with Patton in August of 1995, Hagen stated "what was mentioned was that there was
4 some litigation going on with a couple of people that he had been in business with, and it was over
5 some, a couple of truckloads of something. That's the only thing I knew about. I didn't know about
6 any kind of lien." *H.T., p. 118, lines 6-11 (Hagen testimony)*. Another investor, Mr. Overhamm
7 experienced a similar lack of disclosure from Patton prior to his investment in April of 1996. During
8 his testimony, Mr. Overhamm recounted Patton's description of the lawsuit and lien as follows: "The
9 only company debt that was mentioned was a possible lien of \$160,000 that was going to be applied to
10 satisfy either a legal bill or a lien incurred previously, and other than that, no other mention was made or
11 rent or lease or salaries or anything like that." *H.T., p. 179, lines 13-19 (Overhamm testimony)*.

12 In fact, neither of the disclosures to Mr. Hagen and Mr. Overhamm as to Calumet's legal
13 situation was anything near to the actual legal ramifications facing Calumet Slag. As Patton knew
14 fully well, the lawsuit brought against Calumet sought half of any precious metals recovered by
15 Calumet Slag from their slag pile. *Exhib S-5*. In essence then, Calumet was at risk of losing half of its
16 sole asset. Moreover, the mechanic's lien placed against Calumet's slag pile was for the amount of
17 \$450,000,000. *Exhib S-6*. As Patton surely knew all too well, any disclosure as to the true extent of
18 this lawsuit and lien would have sent investors running for cover. Omitting this information was the
19 only means of preventing that inevitable result.

20 During his defense, however, Patton answered his counsel's question as to whether he ever
21 failed to disclose that mechanic's lien to the investors he dealt with. Patton responded: "Oh, no. They
22 knew, I mean they knew exactly... they knew immediately anything that happened through the course
23 of the whole thing." *H.T., p. 336, lines 4-10 (Patton testimony)*. Based on this allegation and the
24 testimony of the investor witnesses above, someone is obviously misstating the truth on this point.

1 An assessment as to which individuals are telling the truth on the lien/lawsuit omission, like with
2 many of the other omissions discussed *infra*, can often be made based on common sense principles.
3 Would potential investors such as Mr. Hawash or Mr. Overhamm invested tens of thousands of dollars in
4 a South Dakota mining project if they knew, "exactly," that a \$450,000,000 lien was pending against the
5 sole asset of this company? Would investor Hagen, a college professor with over 20 years investment
6 experience, have invested \$10,000 in 1995 if he knew "exactly" that a lawsuit was seeking to obtain half
7 of Calumet's net profits and had placed a multi-million dollar lien on the slag pile? The answer to these
8 questions is quite clearly "no."

9 Based on the evidence educed at hearing, Patton may have told a few potential investors remote
10 details about some distant litigation involving Calumet Slag, but he never disclosed the true extent of the
11 lawsuit and lien to investors. Patton's testimony to the contrary is simply self-serving, unreliable,
12 illogical, at odds with all other witnesses, and ultimately, untrue. This being the case, Patton committed
13 securities fraud under A.R.S. §44-1991 by making material omissions to investors in connection with the
14 offer and sale of Calumet securities.

15
16 **C. Patton Omitted that Proceeds from the Sale of Calumet Stock were being Deposited in
Patton's Own Bank Accounts for Personal Use**

17
18 The Division also alleged that Patton made a material omission to investors by failing to disclose
19 that he was funneling the proceeds of the Calumet stock sales into his personal bank accounts for his own
20 personal use. As discussed below, investors unwittingly contributed to this practice, and suggested that
21 such a fact would have substantially influenced their Calumet investment decisions.

22 The fact that Calumet investment funds were funneled into Patton's personal bank accounts for
23 Patton's personal use was first established by forensic accountant analysis (*H.T.*, pp.288 & 291, lines 7-21
24 and 11-15, respectively (*Accountant testimony*)). Patton's deposit and use of investor funds was
25 subsequently conceded by Patton during his own testimony. *H.T.* p.323, lines 2-8; p. 481-82, lines 24-25

1 and 1-3, respectively (Patton testimony). It is self-evident that when investor funds are being
2 commingled into the personal bank accounts of a corporate officer and being used for the personal
3 expenses of that officer, this information would be material to any reasonable investor's decision-making
4 process. Consequently, the single issue on this count revolves around whether the investors were
5 informed of these activities.

6 Investor Hawash testified that through a series of investments, Patton failed to tell him that his
7 investor funds were ultimately being deposited into Patton's own personal bank accounts for personal
8 use. *H.T., p. 27, lines 4-7; p. 37, lines 11-16 (Hawash testimony)*. Asked whether it would have
9 bothered him if he knew that his investment funds were being used by Patton for uses other than Calumet,
10 Hawash replied "Of course. Of course it would bother me." *H.T., p. 105, lines 20-24 (Hawash*
11 *testimony)*. Investor Hagen also had no idea that investor funds were being funneled directly to Patton.
12 Mr. Hagen testified that he assumed that investor funds were going to be used by Calumet to process and
13 move the ore. *H.T., p. 118, lines 12-17 (Hagen testimony)*. Asked why he believed this, Mr. Hagen
14 stated: "That's basically what I was told." *H.T., p. 118, lines 18-19 (Hagen testimony)*. Mr. Hagen
15 later testified that Patton never indicated that investor money would be used for anything other than the
16 Calumet project. *H.T., p. 119, lines 3-6 (Hagen testimony)*. Subsequently, when asked if Patton ever
17 indicated that his investment funds would be deposited into Patton's personal bank account, Mr. Hagen
18 stated: "No sir. I didn't ask that question, but that was never, I wasn't told that." *H.T., p. 120, lines 1-2*
19 *(Hagen testimony)*.

20 Mr. Overhamm was equally unaware of Patton's intention to retain his investment funds in
21 personal bank accounts for personal use. Overhamm's understanding was illustrated both during oral
22 testimony and through documentation. At hearing, Overhamm testified as follows:

23 Q. (By Division) During the meeting [with Patton et al.], did anyone mention what your
24 investment funds were to be used for?

25 A. (Overhamm) Well, it was obviously being raised to, number one, liquidate the lien, and
26 secondly to be plowed into the mining operation.

1 Q. And who told you this?

2 A. This was Mr. Patton, and again, seconded by Mr. Crawford.

3 *H.T., p. 180, lines 12-19 (Overhamm testimony).*

4 This belief that investor funds were not to be used for personal use was reaffirmed through a letter
5 of understanding completed by Mr. Overhamm shortly following his investment. In this letter, dated June
6 12, 1996, Mr. Overhamm added: "This is NOT to be interpreted as condoning mismanagement of these
7 funds or *personal use thereof*. This investment was based on assay reports and not upon our ability or
8 willingness to lose funds." (Emphasis added) *Exhib S-17*. Mr. Foley, another investor witness in this
9 matter, had a similar understand with regards to the destination of investor funds. Asked on cross where
10 he thought his investment funds would go, Mr. Foley replied "I assumed it would go to the company."⁸

11 In sum, each of the investor that testified believed that his investment funds were being directed
12 to, and were being used for, company purposes. Yet Patton himself admitted that this was not the case;
13 investor funds were actually deposited into Patton's own bank accounts and were subsequently used for
14 "all kinds of stuff ." *H.T., p. 482, lines 1-2 (Patton testimony)*. This discrepancy again constitutes a
15 blatant material omission on Patton's behalf.

16 **D. Patton Failed to Disclose Financial Records to Investors**

17 The Division further alleged that Patton, in connection with his offer and sale of Calumet
18 securities, made a material omission by failing to disclose any company information or other financial
19 data about the company to investors. The failure to provide such historical and or financial information in
20 connection with the sale of securities has been recognized as a type of material omission for the purposes
21 of A.R.S. §44-1991. *See State of Arizona ex rel. Corbin v. Goodrich*, 151 Ariz. 118, 726 P.2d 215
22 (App.1986) (Omission of material facts included the omission of information concerning the financial
23 condition and business history of company).

24 _____
25 ⁸ Also of note, no company disclosures put out by the Calumet Slag management ever mentioned that investor
26 funds were being deposited into personal accounts or that they were subject to expenditures for personal needs. *See, e.g., Exhib. S-11 and S-34.*

1 As demonstrated below, the investor witnesses in this hearing testified that no historical or other
2 financial information about Calumet Slag was ever provided to these investors either before or at the time
3 they made their investments in Calumet Slag. Investor Hawash testified that through 1996, after making
4 at least four investments with the company, he had still not received any financial or related information
5 about Calumet Slag. *H.T., p. 39, lines 12-15 (Hawash testimony)*. Questioned whether he had ever
6 sought out such information, Hawash stated that he had repeatedly asked Patton for financial and other
7 company information, but that he never received such items. According to Hawash, the only response he
8 ever received from Patton to these requests was "we are working on it." *H.T., pp. 39-40, lines 12-25 and*
9 *line 1, respectively (Hawash testimony)*.

10 Investor Overhamm testified to a similar experience. In response to a question as to whether he
11 received any company documents before or at the time he made his \$20,000 investment, Mr. Overhamm
12 responded: "No, I did not. As a matter of fact, I had to request things which were sent to me some time
13 later." *H.T., p. 181, lines 5-7 (Overhamm testimony)*. With respect to financial information, Mr.
14 Overhamm again had difficulties. Asked whether he had ever received financial information from
15 Calumet Slag, Mr. Overhamm recounted "we never received any financial information." *H.T., p. 184,*
16 *lines 9-10 (Overhamm testimony)*. Investor Hagen did not fare much better. Mr. Hagen testified that
17 Patton showed him Calumet slag assay results prior to making his \$10,000 investment, but confessed to
18 not understanding what they meant. Other than those assay reports, Mr. Hagen did not see or receive any
19 other documentation about Calumet from Patton prior to investing. *H.T., p. 116, lines 6-23 (Hagen*
20 *testimony)*.

21 Patton, who admittedly sold Calumet securities to dozens of investors, was asked during cross-
22 exam whether he had ever provided investors with any financial statements. Patton acknowledged that he
23 had never personally provided financial information to investors. *H.T., p. 485, lines 14-17 (Patton*
24 *testimony)*. Patton also conceded that investors were indeed requesting such information at every
25 shareholder meeting, but he was unsure whether the investors ever received anything. *H.T., p. 485, lines*

1 18-23 (*Patton testimony*). In light of this evidence, it is clear that Patton failed to provided material facts
2 to investors in the form of financial and other company information in connection with his offer and sale
3 of Calumet securities.

4
5 **E. Patton Failed to Disclose the Risks Associated with the Calumet Mining Project**

6 The Division further alleged that Patton made material omissions by failing to disclose any
7 information to investors about the potential risks to an investment with Calumet Slag. The degree of risk
8 to an investment is another well-recognized factor that would be viewed by a reasonable investor as
9 important in deciding whether to invest. *See Nutek v. Arizona Corporation Commission*, 194 Ariz. 104,
10 977 P.2d 826 (App.1998) (failure to inform investors of the risks to an investment was a material
11 omission).

12 At hearing, it was repeatedly established that Patton failed to broach the issue of risk with
13 investors in connection with his sales of Calumet Slag securities. Investor Hawash testified that Patton
14 never alluded to any risks associated with an investment with Calumet. *H.T., pp. 26, 30, 35 and 42, lines*
15 *2-5, 8-10, 19-21 and 10-12, respectively (Hawash testimony)*. Investor Overhamm also received no risk
16 assessments from Patton prior to his \$20,000 investment in Calumet. Asked whether such a topic was
17 discussed, Mr. Overhamm answered: "No, because the reference to a 25 to 1 return on your money
18 doesn't exactly infer a risk. They were really playing the assays on the high side." *H.T., p. 182, lines 19-*
19 *25 (Overhamm testimony)*. Investor Hagen agreed that the issue of risk was never brought up by Patton
20 prior to or at the time of his investment. Answering the question as to whether Patton ever discussed any
21 risks involved with investing in Calumet Slag, Mr. Hagen stated: "Not that I recall. He [Patton] was
22 basing everything that we understood was based on these assays that were super good, we were told were
23 super good." *H.T., p. 117, lines 5-12 (Hagen testimony)*.

24 With predictions of "tremendous" returns and representations that the Calumet slag was laden
25 with gold (*see supra*), it is not surprising that Patton failed to address the topic of risk with Calumet

1 investors. Perhaps Patton did not even believe there were any risks associated with this project. Yet after
2 eight years of absolutely no returns and the project now at a standstill, there evidently was a substantial
3 risk to the Calumet investments. Of course, it is irrelevant whether Patton actually knew of any risks
4 when he sold Calumet securities; scienter is not a prerequisite to the commission of securities fraud by
5 way of material omissions. *See, e.g., State v. Gunnison*, 127 Ariz. 110, 113, 618 P.2d 604, 607 (1980) (an
6 omission of a material fact in the offer and sale of a security is actionable even though the misleading
7 character of the omission may be unknown).

8
9 **F. Patton Failed to Disclose Salary and Rent Obligations Accruing Against Calumet Slag**

10 The Division alleged still another material omission against Patton based on Patton's failure to
11 disclose to investors that Calumet was under monetary obligations for deferred salaries and rental
12 payments. As was ultimately brought to the attention of investors in a 1997 or 1998 company document,
13 Calumet had been under financial obligations to present and former officers and directors of the company
14 and presently owed over \$430,000 in deferred salaries. *Exhib S-34*. The Calumet shareholders also
15 subsequently learned that rental payments were due and accruing on the land where the slag pile was
16 situated. *H.T., p. 503, lines 14-21 (Patton testimony)*.

17 Investor witnesses knew nothing of these expenses at the time they invested. In connection with
18 purchase of Calumet securities in 1996, the Division asked Mr Overhamm whether Patton ever
19 mentioned anything about rental payments or back salaries. Mr. Overhamm responded: "No, and that
20 brings to light the second point I was going to make. The only company debt that was mentioned was a
21 possible lien of \$160,000 that was going to be applied to satisfy either a legal bill or a lien incurred
22 previously, and other than that, no other mention was made of rent or lease or salaries or anything of that
23 like." *H.T., p. 179, lines 11-19 (Overhamm testimony)*. Mr. Hagen was not informed of these financial
24 obligations either. Asked whether he was aware of these salary obligations when he invested, Mr. Hagen
25 responded that not only was he unaware of these obligations, but he did not even recognize some of the
26

1 names that had purportedly been drawing these deferred salaries. *H.T.*, p. 133, lines 4-11 (*Hagen*
2 *testimony*). On cross-examination, Hawash testified to a similar lack of knowledge. Hawash stated that
3 he did not even know that Patton, the president, was taking a salary. *H.T.*, p. 85, lines 14-16 (*Hawash*
4 *testimony*).

5 Patton's attempt at rebutting this prior testimony does little to change the character of this material
6 omission. Patton's counsel asked Patton: "Did you tell any of these people that you were not going to be
7 paid a salary? Patton responded: "No." *H.T.*, p. 412, lines 5-7 (*Patton testimony*). Apparently, then, the
8 defense position to this omission (at least with respect to Patton's salary) was that investors should have
9 inferred that Patton was going to draw a salary. This, of course, is an untenable defense; the affirmative
10 duty not to mislead potential investors in any way places a heavy burden on the offeror and removes the
11 burden of investigation or guesswork from the investor who is not required to act with due diligence.
12 *Trimble*, 152 Ariz. at 553, 733 P.2d at 1136. Patton's lack of affirmative disclosures on this issue was
13 another material omission in connection with the offer and sale of securities.

14
15 **G. Patton Failed to Inform Investors of his Prior Bankruptcy**

16 The Division's final fraud allegation against Patton is based on Patton's failure to disclose to
17 investor's his prior bankruptcy filing in United States Bankruptcy Court. In 1993, Patton filed for Chapter
18 13 bankruptcy protection in the U.S. Bankruptcy Court for the District of South Dakota. *Exhib S-7*.
19 Within a year of this filing, Patton was selling Calumet securities to investors including Mr. Hawash.
20 Neither Mr. Hawash nor other investors knew of this material event involving Calumet's acting president.

21 Mr. Hawash testified that at the time of making his many investments with Calumet Slag from
22 1994 through 1997, he never knew that Patton had previously declared bankruptcy. *H.T.*, p. 50, lines 8-
23 12 (*Hawash testimony*). Mr. Overhamm similarly testified that he had no knowledge of such a filing by
24 Patton. *H.T.*, pp. 184-85, lines 24-25 and 1-2, respectively (*Overhamm testimony*). Patton later had an
25 opportunity to comment on the extent to which he disclosed his bankruptcy to investors. Asked whether
26

1 he had in fact disclosed his bankruptcy, Patton responded: " Just Joe and them. I mean I didn't advertise
2 it as like it was something great, but I didn't really know I needed to." *H.T.*, p. 412, lines 11-15 (*Patton*
3 *testimony*).

4 Based on this evidence, it is apparent that the fact of Patton's bankruptcy filing was not made
5 known to investors. As the president and director of Calumet, Patton's bankruptcy filing is a fact that
6 clearly would be material, if not determinative, to the decision-making process of a reasonable investor in
7 that company. The failure by Patton to disclose this fact is consequently another actionable material
8 omission as contemplated under the securities fraud provisions of A.R.S. §44-1991(2).

9 IV.

10 CONCLUSION

11 At hearing, defense counsel attempted to depict Patton as just another unfortunate character in this
12 "mining" story; an investor who struggled in vain to get the project off the ground. As the evidence
13 shows, this characterization is exceedingly disingenuous. Patton was the founder, president, director, and
14 major shareholder of Calumet from its inception in 1992 through most of the next eight years. As seen
15 above, he also orchestrated the Cyprus evaluation, participated in most if not all shareholder meetings,
16 and had clear involvement the vast majority of the Calumet security sales (directly or indirectly).
17 Moreover, Patton turned an unsightly pile of dirt and rock on his property into gains of at least \$450,000,
18 the majority of which was not used for Calumet purposes. *H.T.*, pp. 290-291, lines 22-25 and 1-10,
19 *respectively*. Perhaps most importantly, Patton started out this operation in the early 1990's as an
20 environmental clean-up project to "get the pile off my place" so as to have a nicer landscape. *H.T.*, p.
21 420, lines 16-22. Patton is now precisely in the position to have that goal realized; he can charge rent to
22 Calumet as long as the pile is situated on his property (which he has done), which will ultimately force
23 Calumet to haul the slag pile away or lose it. Eventually, then, Patton will have realized a double
24 windfall: several hundred thousand dollars in profits and the free elimination of an unsightly slag pile on
25 his property. Patton is quite far from a victim in this case.

26 ...

V.

RELIEF REQUESTED

In light of the foregoing, the Division requests that the Commission grant the following relief against Respondent Patton:

A. Cease and Desist Order

Pursuant to A.R.S. § 44-2032, Patton should be ordered to permanently cease and desist from violating A.R.S. §§ 44-1841, 44-1842 and 44-1991 of the Securities Act.

B. Order of Restitution

Pursuant to A.R.S. § 44-2032(1) and A.A.C. R14-4-308(C)(1), Patton should be ordered to pay monetary restitution as follows:

Under the Securities Act, Patton should pay the total amount of \$450,000⁹ in restitution to those Calumet Slag investors who invested in Calumet Slag and whose funds were subsequently deposited into the personal bank accounts of Patton as determined through forensic accountant analysis *H.T., p. 288, lines 18-23 (Accountant testimony)*. Additionally, interest should be assessed on this \$450,000 amount, in accordance with A.A.C. R14-4-308, at the recognized statutory rate of ten percent per annum.¹⁰

⁹ This \$450,000 figure represents the most conservative total of investor funds actually deposited into Patton's personal bank accounts. Investigator Pollard's calculations placed the confirmed deposit figure at approximately \$488,000 and the documented deposit total at roughly \$588,000 (*Exhib. S-33*).

¹⁰ Defense counsel suggested, during his opening statement, that Patton had put as much as \$355,000 back into the Calumet Slag project. In truth, what Patton did with the investor funds after receiving them is irrelevant as to any restitution calculations involving individual investors. Patton may have some recourse against the company for any purported loans made, but he cannot use these loans as a means of defraying his restitution obligations as contemplated under the Securities Act.

Irrespective of this point, there was simply no competent evidence introduced at hearing to even remotely substantiate the \$355,000 figure thrown out by defense counsel during his opening statement. For example, the opening assertion that Patton paid \$80,000 to Nizer is actually refuted by Patton's own testimony that Nizer was a "laboratory consultant test that Joe and Guy and them had done." *H.T., p. 369, lines 12-20*. Nothing else shows a payment by Patton

1 **C. Administrative Penalties**

2 Pursuant to A.R.S. § 44-2036(A), Patton should be assessed administrative penalties in an
 3 amount not to exceed five thousand dollars for *each* Securities Act violation. From the foregoing review
 4 of evidence, it is clear that Patton violated the antifraud and both registration provisions of the Securities
 5 Act with each sale of a security to Calumet investors. Therefore, Patton is subject to cumulative penalties
 6 for multiple violations.

7 As outlined in prior sections above, the Division has alleged and proven 90 separate acts by
 8 Patton that each violated the two registration provisions and the antifraud provision of the Securities Act
 9 in connection with the sale of Calumet securities. Given these figures, Patton has committed at least 270
 10 Securities Act violations and should be assessed administrative penalties accordingly. The Division
 11 believes that an appropriate administrative penalty for this conduct should not be less than \$270,000.

12 ...

13 ...

14 ...

15 ...

16
 17
 18 to Nizer. The second opening assertion that Patton paid M & W \$75,000 is again largely groundless; one receipt for
 19 approximately \$12,000 was introduced at trial to suggest Patton paid this amount to M & W on behalf of Calumet. No
 20 other evidence to justify an amount six times greater was introduced. The third opening assertion that Patton paid
 21 \$130,000 to the lawyer and to "Don and Jerry" on behalf of Calumet is again wholly unsubstantiated, this time with the
 22 added twist of being misleading. The costs for lawyer bills and the settlement amount of the Don and Jerry lawsuit can
 actually be found listed a second time as Patton expenses in a listing submitted as Exhibit R-4. Finally, the opening
 assertion that Patton also paid his associate Fred Finell about \$70,000 for testing on behalf on Calumet is groundless
 bordering on absurd. The Finell tests were done in 1990 and 1991 before Calumet was even formed. Moreover, there is
 again no paperwork, even from Patton's friend and associate (Finell), to substantiate these apparently huge fees for what
 appears to be a few tests from an unregistered assayer.

23 In essence, then, the \$355,000 figure thrown out by the defense during its opening statement was a baseless
 24 assertion that is easily exposed as a gross exaggeration of the Calumet expenses actually paid by Patton. The accuracy of
 25 this number is cast into even further doubt by examining the Division's forensic accountant's analysis of Patton's bank
 26 accounts. Accountant Mengel testified that the Patton expenditures that were even potentially made on behalf of Calumet
 Slag constituted only a small portion of the \$450,000+ of investor funds deposited into his accounts. *H.T., pp. 290-91,*
lines 22-25 and 1-10 respectively; pp. 291-92, lines 22-25 and 1-15 respectively. In truth, there just were no significant
 expenditures made by Patton on behalf of Calumet Slag.

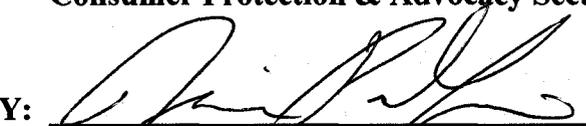
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D. Other Relief

The Division further requests any other relief that the Commission in its discretion deems appropriate and authorized by law.

RESPECTFULLY SUBMITTED this 15th day of December, 2000.

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