IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE SOUTHERN PERU COPPER CORPORATION SHAREHOLDER DERIVATIVE LITIGATION.	Consol. C.A. No. 961-CS

AMC DEFENDANTS' POST-TRIAL OPENING BRIEF

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PRELIMINARY STATEMENT

Not surprisingly, despite Plaintiff's rhetoric and bold claims, the six and one-half year intermittent odyssey that was this case ended in an anti-climactic four-day trial that, far from establishing any director misfeasance, only served to reinforce what has been apparent from Day One: The merger of Minera Mexico ("Minera") and Southern Peru Copper Corporation ("SPCC") (the "Merger") was entirely fair and in fact tremendously beneficial to SPCC and its shareholders.[1] From the Plaintiff's side, this case ended in a complete failure of proof. Specifically, Plaintiff failed to explain why the four concededly independent, intelligent, and successful businessmen who made up the Special Committee would have any motive to short change the public stockholders one cent, much less $6 billion.

The trial established that the Merger was the result of a diligent, robust, and fair process. Immediately after learning about the Merger, SPCC's board established a committee of independent and disinterested directors, comprised of highly qualified and competent professionals. The Special Committee understood its mandate and hired top notch financial, legal, and mining advisors to assist it in fulfilling its duties. The terms of the Merger were negotiated by the Special Committee and its advisors over an eight month period, during which time the Special Committee secured significant concessions for SPCC and its minority stockholders. After careful consideration, the Special Committee recommended the Merger to SPCC's board of directors, which subsequently approved it. The fairness of the Merger was confirmed by the overwhelming approval of the holders of SPCC's outstanding stock and the market's reaction to the Merger.

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[1] The Theriault Trust recognized the benefits the Merger offered, twice buying *additional* SPCC shares after the Merger was announced and before signing on to a complaint in this consolidated action (JX-2 at TT00025, TT00032), and former plaintiff Sousa voted for the Merger after the Proxy Statement was filed (DX-1).

At trial, Plaintiff abandoned almost every argument relating to the Special Committee's process that had been made while this case languished on the Court's docket, instead focusing only on the consideration SPCC paid for Minera. Specifically, Plaintiff focused on the fact that if, in calculating an appropriate exchange ratio, one uses Minera's DCF value using a $0.90/pound long-term copper price and SPCC's observed market capitalization, the resulting implied consideration is lower than the 67.2 million shares paid by SPCC. Plaintiff's talismanic reliance on SPCC's stock price misses the forest for the trees. The "test for fairness is not a bifurcated one as between fair dealing and price"[2] and a strong record of a fair process is indicative of fair price.[3] Here, the Special Committee's thorough process ensured not just that SPCC paid a fair price for Minera, but also that the deal the Special Committee ultimately recommended was beneficial to SPCC and its shareholders. The Special Committee closely examined both companies, focusing on what drove their values (*e.g.*, location, ore reserves, cost structures, and metal prices) and used the results of these analyses as leverage to secure benefits and protections for SPCC and its shareholders. After considering many methodologies and a great deal of company-specific information, the Special Committee reasonably concluded that the economic terms of this specific Merger involving these specific companies were best assessed by comparing SPCC and Minera on a relative basis, using the same methodology and assumptions. As Messrs. Handelsman and Palomino expressed at trial, the Special Committee is proud of the job they did. The Merger was the result of a robust and diligent process that increased SPCC's value and benefitted all shareholders of SPCC.

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2 *Weinberger v. UOP, Inc.*, 457 A.2d 701, 711 (Del. 1983).

3 *S. Muoio & Co. LLC v. Hallmark Entm't Invs. Co.*, 2011 WL 863007, at *16 (Del. Ch. Mar. 9, 2011).

In short, the trial established that there is no record evidence that the AMC Defendants breached any fiduciary duty in approving the Merger; rather, the overwhelming evidence supports the conclusion that the Merger was fair to SPCC and its shareholders.

STATEMENT OF FACTS

For a full statement of the facts, the AMC Defendants respectfully refer the Court to the AMC Defendants' Pretrial Opening Brief and the parties' Joint Pretrial Stipulation and Order.[4] The AMC Defendants believe that all relevant facts have been established and will incorporate relevant citations into the argument below as necessary to refer to the evidence presented at trial.

ARGUMENT

I. THE MERGER WAS ENTIRELY FAIR

A. Legal Standard

Entire fairness examines the process leading to the consummation of a transaction and the price.[5] An analysis of fair dealing considers when the transaction was timed; how it was initiated, structured, negotiated, and disclosed to the directors; and how the approvals of the directors and the stockholders were obtained.[6] Fair price involves questions of "the economic and financial considerations of the proposed merger, including all relevant factors: assets, market value, earnings, future prospects, and any other elements that affect the intrinsic or inherent value of a company's stock."[7] But the overall test is not bifurcated as between fair dealing and

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4 D.I 239, 249. The facts set forth in the AMC Defendants' Pretrial Brief were established through the trial testimony of Messrs. Handelsman, Palomino, and Ortega and through the deposition testimony of the other directors as well as the stipulated facts in the Joint Pretrial Stipulation and Order.

5 *See Weinberger*, 457 A.2d at 711.

6 *See Emerald Partners v. Berlin*, 787 A.2d 85, 97 (Del. 2001).

7 *Weinberger,* 457 A.2d at 711.

price: "All aspects of the issue must be examined as a whole since the question is one of entire fairness."[8] Importantly, the entire fairness analysis does not require perfection on the part of the board of directors.[9]

In transactions subject to entire fairness review, the burden of proof shifts to the plaintiff if the defendants are able to demonstrate that the transaction was approved by "an independent committee of directors or an informed majority of the minority shareholders."[10] Here, there is no question that the Merger was evaluated and recommended by an independent, informed, and fully functioning committee of disinterested directors. Indeed, Plaintiff did not even try to present evidence to the contrary at trial. Accordingly, it is Plaintiff's burden to prove that the Merger was not entirely fair. Plaintiff has not satisfied that burden.

B. **The Process Was Fair**

To determine whether the process surrounding a transaction is fair, Delaware Courts consider (1) the board's composition and independence, (2) the extent to which the board was accurately informed about the transaction, (3) the timing, structure and negotiation of the transaction, and (4) how board approval was obtained.[11] All of these factors weigh in favor of finding that the burden has been shifted to Plaintiff and a determination that the Merger was the product of a fair process.

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8 *Id*.

9 *See Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1156, 1178 (1995) ("A finding of perfection is not a *sine qua non* in an entire fairness analysis.") (emphasis added).

10 *See Kahn v. Lynch Commc'ns Sys., Inc.*, 638 A.2d 1110, 1117 (Del. 1994), *aff'd*, 669 A.2d 79 (Del. 1995); *In re Tele-Commuc'ns, Inc. S'holders Litig*., 2005 WL 3642727, at *8 (Del. Ch. Jan. 10, 2006); *In re Cysive, Inc. S'holders Litig*., 836 A.2d 531, 534 (Del. Ch. 2003); *accord In re Cox Radio, Inc. S'holders Litig*., 2010 WL 1806616, at *13 (Del. Ch. May 6, 2010) ("To shift [the entire fairness] burden to the Appraisal Objectors, Defendants must demonstrate that the Special Committee 'was truly independent, fully informed, and had the freedom to negotiate at arm's length.'").

11 *Kahn v. Lynch Commc'ns Sys., Inc.*, 669 A.2d 79, 84 (Del. 1995).

1. **The Special Committee Was Independent And Qualified**

To establish that a director lacks independence, a plaintiff must "create a reasonable doubt that a director is not so 'beholden' to an interested director ... that his or her 'discretion would be sterilized.'"[12] Similarly, to establish that a director is interested in a transaction, a plaintiff must show that the director "was on both sides of a transaction or received a benefit not received by the shareholders."[13] At trial, Plaintiff not only failed to adduce evidence to suggest any Special Committee member met these standards, he did not even try. None of the Special Committee members had any affiliation with Grupo Mexico or any of its affiliates (other than SPCC) or had any financial interest in the Merger.[14] The members of the Special Committee, moreover, were highly qualified and sophisticated professionals who had extensive transactional experience.[15] The Special Committee was therefore well-positioned to negotiate and evaluate the merits of the proposed Merger.

Any argument by Plaintiff that Mr. Handelsman lacked independence because of his affiliation with Cerro Trading Co. ("Cerro") is legally insufficient. The record is bereft of any evidence that Mr. Handelsman or Cerro received personal benefits that were not equally

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12 *See Hallmark*, 2011 WL 863007, at *9 (internal quotations omitted); *Beam v. Stewart*, 845 A.2d 1040, 1050 (Del. 2004). To create such a reasonable doubt, a plaintiff "must plead facts that would support the inference that because of the nature of a relationship or additional circumstances ... the non-interested director would be more willing to risk his or her reputation than risk the relationship with the interested director." *Hallmark*, 2011 WL 863007, at *9 (internal quotations omitted).

13 *Continuing Creditors' Comm. of Star Telecomms, Inc. v. Edgecomb*, 385 F. Supp. 2d 449, 460 (D. Del. 2004); *see also Cede & Co. v. Technicolor*, 634 A.2d 345, 361 (Del. 1993).

14 Trial Tr., vol. I, 11:3-12:21 (Palomino), 140:6-9, 142:12-24 (Handelsman); Trial Tr., vol. II, 239:24-243:9 (Ortega); JX-129 at 16; Larrea Dep. 43:7-20, 44:2-4, 44:22-45:1, 46:18-21; Perezalonso Dep. 16:2-16:10.

15 Joint Pretrial Stip. & Order ¶¶ 16-19; JX-150; JX-151; JX-152; Trial Tr., vol. I, 4:15-8:20 (Palomino), 135:19-138:10 (Handelsman); Ruiz Dep. 16:5-17. Here again, Plaintiff did not even try to present contrary evidence.

shared by SPCC and its minority shareholders. That is because the interests of Mr. Handelsman, as a member of the Special Committee, and Cerro were aligned in that both parties wanted to ensure that SPCC was getting the best deal it could on Minera. The registration rights that Cerro received were also advantageous to SPCC's minority shareholders because they ensured that Cerro's shares would be sold in an orderly fashion, thereby minimizing any impact on the price of SPCC stock that could have resulted from a sale of a large block of SPCC shares into the market.[16] Moreover, the registration rights agreement between Cerro and Grupo Mexico, which provided that Cerro would vote in accordance with the Special Committee's recommendation, ensured that Grupo Mexico could not use Cerro's vote to force the Merger.[17] Ultimately, any argument that Mr. Handelsman was conflicted defies common sense: If the Merger was as badly mispriced as Plaintiff argues, it would have caused substantial damage to the value of Cerro's SPCC stock.[18] Not only did that not happen, but Plaintiff offered no evidence that would even allow someone to speculate as to why Cerro (or anyone else) would have taken such a risk.

2. **The Special Committee Was Fully Informed**

The Special Committee was thorough and diligent, meeting formally on at least 20 occasions and informally on many other occasions over a period of more than eight months.[19] The Special Committee also retained—after interviewing numerous candidates[20]—independent,

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16 Trial Tr., vol. I, 67:20-69:24 (Palomino), 184:5-185:2 (Handelsman).

17 JX-12; JX-129 at 26; Trial Tr., vol. I, 182:7-183:17 (Handelsman).

18 Trial Tr., vol. I, 71:16-72:15 (Palomino).

19 Joint Pretrial Stip. & Order ¶¶ 23-46; Trial Tr., vol. I, 19:3-21 (Palomino), 149:9-150:10 (Handelsman).

20 Trial Tr., vol. I, 146:9-12 (Handelsman) (Special Committee considered Lehman Brothers, Credit Suisse First Boston, JPMorgan, Goldman Sachs, and Merrill Lynch); *id*. at 145:3-8 (Handelsman) (Special Committee considered Latham & Watkins, Cleary Gottlieb, Paul Weiss, and Sullivan & Cromwell).

highly skilled, and reputable legal, financial, and mining advisors to assist it in fulfilling its duties.[21] Specifically, the Special Committee retained Latham & Watkins as its U.S. legal counsel, Mijares, Angoitia, Cortes y Fuentes SC as its Mexican legal counsel, Goldman Sachs as its financial advisor, and Anderson & Schwab ("A&S") as its mining advisor.[22] At the direction of the Special Committee, the advisors engaged in legal, financial, and operational due diligence of both companies, extensively analyzed the proposed Merger, provided expert opinion for the matters in which they were qualified, and helped the Special Committee negotiate the proposed Merger.[23] The Special Committee relied on the professional advice provided by its advisors throughout the evaluation process.[24] The intensive process engaged in by the Special Committee and its advisors evidences the Special Committee's diligence.[25]

3. The Special Committee Negotiated At Arm's Length For The Benefit Of SPCC's Minority Stockholders

The Special Committee was given a clear mandate from the SPCC Board to negotiate the Merger at arm's length.[26] The resolutions forming the Special Committee provided

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21 *See Gesoff v. IIC Indus. Inc.*, 902 A.2d 1130, 1147 (Del. Ch. 2006) ("[S]pecial committee members should have access to knowledgeable and independent advisors, including legal and financial advisors.").

22 Joint Pretrial Stip. & Order ¶¶ 20-22; JX-63; JX-67; Trial Tr., vol. I, 15:4-18:7 (Palomino), 144:16-148:14 (Handelsman); Trial Tr., vol. II, 247:19-248:17 (Ortega); Ruiz Dep. 26:21-28:23.

23 Joint Pretrial Stip. & Order ¶¶ 23-46; Trial Tr., vol. I, 18:8-19:2, 28:14-30:12 (Palomino), 153:1-10 (Handelsman); Trial Tr., vol. II, 247:19-248:17 (Ortega).

24 Trial Tr., vol. I, 18:8-19:2 (Palomino). A board's reliance on expert advice not only "evidence[s] good faith in the overall fairness of the process" but can protect a board from challenges that it breached its duty of care. 8 Del. C. § 141(e); *see also Cinerama, Inc. v. Technicolor, Inc.*, 663 A.2d 1134, 1142 (Del. Ch. 1994), *aff'd*, 663 A.2d 1156 (Del. 1995).

25 Joint Pretrial Stip. & Order ¶¶ 23-46; JX-129 at 16-39; Ruiz Dep. 168:17-169:2.

26 *Gesoff*, 902 A.2d at 1146 (holding that a special committee "should be given a clear mandate setting out its powers and responsibilities in negotiating the interested

that the Special Committee shall "evaluate the Transaction in such manner as the Special Committee deems to be desirable and in the best interests of the stockholders of the corporation" and should "advis[e] both the Audit Committee and the Board regarding the same."[27] As demonstrated at trial, the Special Committee understood its mandate and understood that it had the power and authority to reject any offer it thought was not fair to SPCC and its minority shareholders.[28] The Special Committee members not only understood that their role was to represent SPCC's minority shareholders and that they should evaluate the proposed Merger from the minority shareholders' perspective,[29] but Mr. Palomino was recommended to be a director and a member of the Special Committee by certain minority shareholders because they believed he could best represent their interests in connection with the proposed Merger.[30]

The Special Committee also had and used the critical power to say "no:" As Mr. Palomino testified at trial, after months of negotiations, the Special Committee informed Mr.

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transaction").

27 JX-16.

28 *See Hallmark*, 2011 WL 863007, at *12 (finding that the special committee interpreted its mandate broadly to include the power to consider the transaction, negotiate its terms, and recommend or reject the transaction); *see also* Trial Tr., vol. I, 12:22-15:5 (Palomino)("While we did not try to make our own proposals to Grupo Mexico, we could negotiate with them in the sense of telling them what it is that we don't agree with; and if we are going to evaluate this in a way that makes this transaction move forward, then you're going to have to change the things that we don't agree with or we won't be able to recommend it."); *id*. at 143:1-144:12 (Handelsman)("'[E]valuate' meant just that. That was that the committee was to educate itself and determine whether they believed that the proposed transaction was a good or a bad one. If good, then the transaction would progress in its normal course. And if the committee found that the transaction was not beneficial to the shareholders other than Grupo Mexico of Southern Peru then the committee would say no. And that if Grupo Mexico determined it wanted to negotiate in the face of a no, it could do so."), *id.* at 193:16-194:18 (Handelsman).

29 Trial Tr., vol. I, 100:23-101:8, 106:3-14 (Palomino); Perezalonso Dep. 21:23-22:14; Ruiz Dep. 38:2-38:19.

30 *See* Trial Tr., vol. I, 9:8-11:17 (Palomino).

Larrea personally that it would not recommend the transaction due to "substantial differences" between the views of the Special Committee and those of Grupo Mexico, thus prompting Grupo Mexico to significantly reduce the proposed consideration.[31]

In embracing its mandate, the Special Committee negotiated key terms of the Merger that directly benefited SPCC stockholders:

- The Special Committee negotiated that Minera's net debt at closing would not exceed $1 billion—a 23% reduction in net debt.[32]
- The Special Committee negotiated a transaction dividend to SPCC stockholders of $100 million to be distributed prior to the closing of the Merger (in addition to SPCC's regular quarterly dividend)[33] and indemnification by AMC for certain pre-closing environmental matters and conditions of Minera.[34]
- The Special Committee negotiated significant corporate governance protections designed to protect minority shareholders post-Merger.[35]
- The Special Committee negotiated away from a proposed floating exchange ratio to a fixed ratio and negotiated down (by roughly 7%) the number of shares to be exchanged for Minera.[36]

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31 Trial Tr., vol. I, 59:2-61:13 (Palomino).

32 Trial Tr., vol. I, 75:23-76:18; 83:16 (Palomino), 172:11-173:4, 175:10-16 (Handelsman); JX-129 at 25.

33 *See* Trial Tr., vol. I, 176:15-177:5 (Handelsman) (explaining that Cerro got $15 or $16 million dollars from the special dividend that it would not have had and the individual shareholders got their pro rata share); Trial Tr., vol. I, 83:14-84:16 (Palomino); Pretrial Stip. & Order ¶ 43.

34 Pretrial Stip. & Order ¶ 43; JX-129 at 24-25.

35 Pretrial Stip. & Order ¶ 51, JX-129 at 24-26; Trial Tr. vol. I, 76:19-77:11 (Palomino); 173:5-23 (Handelsman). These corporate governance provisions included (i) proportional representation of minority stockholders on SPCC's board, (ii) a requirement that independent directors meet the NYSE independence requirements and be nominated by a special nominating committee, (iii) a requirement that the audit committee review certain related-party transactions in advance of their consummation; and (iv) a requirement that SPCC remain listed on the NYSE for a least five years. JX-129 at 21. Any contention that these provisions were meaningless or favored Grupo Mexico is without merit. These protections enhanced SPCC's minority stockholders' position in dealing with Grupo Mexico after the Merger.

36 Pretrial Stip. & Order ¶¶ 13, 50; Trial Tr., vol. I, 62:19-64:9 (Palomino), 117:23-119:8

- The Special Committee negotiated a super-majority voting requirement of 66⅔% and then secured a commitment from Cerro to vote its 14.2% interest only in accordance with the Special Committee's recommendation, guaranteeing that Grupo Mexico could not use Cerro's vote to force the Merger.[37]

Plaintiff offered no evidence to dispute any of these points.

To support his contention that the Special Committee did not negotiate at arm's length, Plaintiff argues that the Merger consideration the Special Committee recommended was the same as Grupo Mexico's initial proposal. But that argument is incorrect. Grupo Mexico's initial proposal would have resulted in the issuance of approximately 72 million shares of SPCC stock based on a floating exchange ratio, whereas the transaction that the Special Committee recommended in October 2004 resulted in the issuance of 67.2 million shares on the basis of a fixed exchange ratio.[38] In addition, as set forth above, the Special Committee secured significant benefits that were not part of Grupo Mexico's initial proposal.[39] That the market value of the SPCC shares under Grupo Mexico's original proposal was roughly equal to the market value of the SPCC shares issued in connection with the Merger is happenstance. To protect against fluctuations in the price of SPCC stock (which could have been detrimental to SPCC in connection with the proposed Merger), the Special Committee negotiated a fixed exchange ratio months before the transaction closed, so the Special Committee (and Grupo Mexico) had no way of knowing that the market value of the shares issued would be $3.1 billion.[40] All this reflects is

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(Palomino); 166:7-10 (Handelsman).

37 Joint Pretrial Stip. & Order ¶ 45; Trial Tr., vol. I, 174:7-19 (Handelsman).

38 JX-129 at 16, 26; JX-108 at AMC0019912.

39 The Special Committee also considered whether to use cash as consideration as opposed to stock but determined that stock was preferable. Trial Tr., vol. I, 232:10-224:15 (Handelsman); *id*. at 127:11-128:2 (Palomino).

40 In addition, there is no dispute that the timing of the Merger was in the Special Committee's hands and proceeded on a schedule set by the Special Committee.

that, looked at in terms of assets in the ground and the costs to extract and sell them, Minera's enterprise value was equal to or greater than SPCC's.[41]

4. The Merger Was Approved By SPCCs Fully-Informed Minority Shareholders

That the overwhelming majority of SPCC's fully informed shareholders voted to approve the Merger, and that those stockholders were fully informed, further confirm that the Special Committee's process was fair. The Merger was approved by the holders of more than 90% of the outstanding stock of SPCC, including by Sousa, one of the three original plaintiffs (and he cast that vote *after* his complaint was filed and *after* the Proxy Statement was filed).[42] Removing the holders of the Class A Common Stock (AMC, Cerro, and Phelps Dodge) from the equation, of the common shares that were voted, approximately 98% were voted *for* the Merger.[43]

C. The Price Was Fair

Given the undisputed evidence that the Merger was approved by an independent and disinterested Special Committee as a result of a fair process, Plaintiff bears the burden of showing that the Merger was unfair.[44] Plaintiff cannot prove that the financial terms of the Merger, which were the result an active and effective process, were unfair to SPCC and its minority shareholders.

Fair price "relates to the economic and financial considerations of the proposed [transaction], including all relevant factors: assets, market value, earnings, future prospects, and

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41 JX-48 ¶¶ 36-43; Trial Tr., vol. IV, 435:8-20 (Schwartz); Def. Demonstrative Ex. 1 (showing that Minera's forecast production for nearly all metals was higher than SPCC's).

42 Joint Pretrial Stip. & Order ¶ 54; JX-130; DX-1.

43 JX-131 at 25.

44 *Hallmark,* 2011 WL 863007, at *10.

any other elements that affect the intrinsic or inherent value of a company's stock."[45] Importantly, fair price does *not* mean "the highest price financeable or the highest price the fiduciary could afford to pay," it means "a price that is one that a reasonable seller, under all the circumstances, would regard as within a range of fair value."[46]

Plaintiff's only support for his contention that the Merger consideration was unfair is his expert's opinion that Minera's DCF value should have been divided by SPCC's stock price instead of compared to SPCC's DCF value. According to Plaintiff, SPCC should have issued 41 million shares for Minera as opposed to 67.2 million shares; Plaintiff thus claims that SPCC overpaid by an astonishing *64%*. Plaintiff's theory ignores the record and the factors that drove SPCC's and Minera's values. The Special Committee and its advisors closely examined SPCC and Minera over a long period and reasonably concluded that the Merger was fair to SPCC because SPCC received as much or more than what it paid for Minera.

1. **Minera Mexico Was Worth What SPCC Paid For It, If Not More**

Under Delaware law, value can be determined "by any techniques or methods which are generally considered acceptable in the financial community."[47] Consistent with this principle, and as demonstrated at trial, the Special Committee and its financial, mining, and legal advisors spent eight months evaluating and analyzing the fairness of the evolving terms of the proposed Merger. Goldman Sachs presented the Special Committee with various valuation analyses based on the information it gathered from the extensive due diligence it conducted in

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45 *Weinberger*, 457 A.2d at 711.

46 *Cinerama,* 663 A.2d at 1143 (Del. Ch. 1994), *Kahn v. Tremont*, 1996 WL 145452, at *1 (Del. Ch. Mar. 21, 1996) ("A fair price is a price that is within a range that reasonable men and women with access to relevant information might accept."), *rev'd on other grounds*, 694 A.2d 422 (Del. 1997).

47 *Weinberger,* 457 A.2d at 712-13.

conjunction with A&S.[48] After months of analysis, Goldman Sachs and the Special Committee decided the best way to analyze the proposed Merger was by comparing the values of Minera Mexico and SPCC using the same methodology and assumptions.

Well before deciding to proceed in that way, however, Goldman Sachs performed a number of preliminary analyses of Minera to estimate its value. These analyses included a DCF analysis, sum-of-the-parts analysis, contribution analysis, comparable companies analysis, and ore reserve analysis.[49] The results of these preliminary analyses suggested that Minera's value was generally lower, and in some cases substantially lower, than Grupo Mexico's initial indication of Minera's equity value of $3.1 billion.[50] As a result, the Special Committee engaged in extensive negotiations with Grupo Mexico concerning the terms of the Merger[51] and the Special Committee's advisors engaged in extensive discussions with Grupo Mexico's advisor (UBS) concerning Minera's value.[52] At the same time, the Special Committee's advisors continued their due diligence and refined their analyses by probing and challenging the management representations regarding both companies' assets[53] and running analyses using

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48 A&S was retained to conduct a detailed operational due diligence of the Minera and SPCC mining assets involved in the proposed Merger. JX-67 at SP COMM 018538. A&S visited the operations of Minera and SPCC, discussed operations and future plans with the management of each company, modified the financial models provided to Goldman Sachs by the respective management based on the diligence performed, and reported their findings to the Special Committee. *See* JX-113 at SP COMM 003326; DX-2; JX-162 (discussing A&S's changes to each company's economic model).

49 JX-101; JX-102; Trial Tr., vol. I, 156:6-22 (Handelsman).

50 Trial Tr., vol. I, 156:23-157:7 (Handelsman); *id*. at 42:6-14 (Palomino).

51 JX-129 at 20-21.

52 *Id*.; Sanchez Dep. 109:6-18; see also Trial Tr., vol. I, 61:17-62:18 (Palomino) (explaining that the Special Committee's and Grupo Mexico's advisors spoke continually); 154:17-155:2 (Handelsman) (same).

53 A&S believed that management's representations relating to Minera's assets should be adjusted and proposed using assumptions Goldman Sachs then incorporated into its

different assumptions and methodologies. The effect of these preliminary analyses of Minera is fully disclosed in the Proxy:

> Following discussion [of Goldman Sachs' June 11, 2004 Presentation], the members of the special committee agreed that representatives of the special committee should meet with Mr. Larrea and inform him that the special committee had received a preliminary report from its advisors and that there were substantial differences between the views of the special committee and Grupo Mexico regarding Grupo Mexico's term sheet. The parties agreed to ask their respective financial advisors to meet and discuss the respective views of the special committee and Grupo Mexico with regard to the appropriate valuation of Minera Mexico. ... Throughout June and July, representatives of Goldman Sachs spoke with representatives of UBS on numerous occasions to discuss the respective views of the special committee and Grupo Mexico with respect to valuation issues ... . Also during this period, from time to time Mr. Ruiz and other members of the special committee spoke with Mr. Larrea about the respective views of the special committee and Grupo Mexico with respect to the valuations of Minera Mexico and [SPCC].[54]

During this time, the Special Committee also asked Goldman Sachs to perform a DCF analysis of SPCC to try to explain why these two very similar companies (with similar earning patterns and reserves) seemingly had such dissimilar values.[55] On June 23, 2004, Goldman Sachs presented the Special Committee with its DCF analysis of SPCC.[56] Goldman Sachs used similar assumptions in its DCF analysis of SPCC that it used for its DCF analysis of Minera and performed similar sensitivity analyses for copper prices, molybdenum prices,

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analyses and presentations to the Special Committee. *See, e.g.*, JX 101 at SP COMM 003369. Critically, Plaintiff does not challenge in any way the assumptions the Special Committee ultimately used and in fact adopted those assumptions. Trial Tr., vol. III, 377:12-16; 375:4-10 (Beaulne) (testifying that he did no analysis of the cash flow projections that the Special Committee and its advisors used for SPCC).

54 JX-129 at 20-21.

55 Trial Tr., vol. I, 158:1-6 (Handelsman).

56 JX-102 at SP COMM 006979-82.

discount rates, and ore milled.[57] That analysis yielded a value that was closer to the DCF value of Minera but (under certain assumptions) significantly lower than SPCC's observed market value.[58] As Mr. Handelsman explained at trial, that analysis of SPCC "gave some clarity" to Goldman Sachs' preliminary analyses of Minera "and showed that [the Special Committee's] initial reaction that these were two very similar companies in very similar businesses with pretty similar earnings patterns ... were far more comparable than they were on the valuation of the stock, the public stock of one, and the discounted cash flow analysis or cash-producing power of the other."[59]

The Special Committee and its advisors then endeavored to determine why Minera's DCF value was lower than SPCC's stock price and whether it was appropriate to compare the DCF values of these companies to determine the appropriate number of shares to pay for Minera. It arrived at two conclusions, neither of which Plaintiff even tries to challenge.

a. **Minera Was Worth More As Part Of A Public Company**

As Messrs. Handelsman and Palomino explained at trial, although Minera had significant ore reserves and tremendous earning potential, Minera was embedded within a large Mexican conglomerate (Grupo Mexico).[60] Unlike SPCC (a U.S. company listed on the New York Stock Exchange), Minera was unlisted, subject to Mexican accounting standards, and had

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57 *Id*. Goldman Sachs also presented its findings based on two different scenarios, one of which incorporated changes to normalize ore grades. JX-102 at SP COMM 006976. Goldman Sachs and the Special Committee did this because they had access to geological data suggesting that SPCC's ore grades were going down and Wall Street analysts were not fully taking into account the reduction in ore grades. Trial Tr., vol. I, 45:1-46:2 (Palomino).

58 JX-102 at SP COMM 006979-82.

59 Trial Tr., vol. I, 159:12-20 (Handelsman).

60 Plaintiff concedes that (i) assets of conglomerates can be worth more separately than together and (ii) different markets can have different listing premia. *See* Trial Tr., vol. III, 386:18-24; 398:19-399:4 (Beaulne).

virtually no regulatory oversight. Moreover, because of Grupo Mexico's troubles with ASARCO, which subsequently filed for bankruptcy, Minera had significant capital constraints.[61] But as part of the Merger, Minera's assets would become part of a U.S. listed company, subject to U.S. accounting standards and SEC and NYSE regulations, and protected by corporate governance provisions. This process would unlock substantial value that was not adequately captured in Goldman Sachs' preliminary valuations of Minera.[62]

b. SPCC Was Trading Based On A Long-Term Copper Price Higher Than $0.90/Pound

In an effort to reconcile the difference between SPCC's DCF value and its market capitalization, the Special Committee's and Grupo Mexico's advisors conducted an analysis that suggested that copper companies were generally trading at a premium, and SPCC was trading at the highest premium. Specifically, in a presentation that was shared with the Special Committee on July 7, 2004, UBS showed that copper companies such as Antofagasta, Phelps Dodge, and SPCC (which Plaintiff's expert contends were sufficiently comparable to Minera to be used as the basis of a multiples analysis to price Minera) were trading at a premium to their DCF values.[63] As Mr. Palomino and Dr. Schwartz explained, the reasonable explanation for that phenomenon is that the market was changing and metal prices were dramatically increasing.[64] In addition, with respect to SPCC specifically, the market was estimating higher ore grades and

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61 Trial Tr., vol. I, 219:3-18 (Handelsman).

62 Trial Tr., vol. I, 38:13-23 (Palomino) (explaining that the proposed Merger was intended to create substantial value and you have to "give proper credit to the creation of value that w[as] expected to take place"); Trial Tr., vol. I, 219:11-14 (Handelsman) (explaining that the main premise of the proposed Merger was to "use the fisc of Southern Peru and its pristine balance sheet to develop the mining assets of Minera").

63 JX-103 at SP COMM 006945. Plaintiff has offered no evidence to contradict this analysis.

64 Trial Tr., vol. I, 48:5-49:16 (Palomino); Trial Tr., vol. IV, 442:19-443:18; 447:13-21 (Schwartz); JX-48 at ¶¶ 47-51; JX-23.

copper reserves for SPCC than SPCC's internal projections and due diligence was showing.[65] Indeed, even market analysts who covered SPCC while the proposed Merger was being negotiated derived values for SPCC that were roughly one-half its observed market price at the time.[66]

* * *

After a thorough analysis and discussion, Goldman Sachs and the Special Committee concluded that the most appropriate way to assess the fairness of the proposed Merger was to compare SPCC and Minera on a relative basis. On July 8, 2004, Goldman Sachs presented its first relative valuation of the two companies.[67] As explained at trial, among the chief reasons the Special Committee used a relative valuation was that it allowed SPCC and Minera to be compared using the same set of assumptions, *i.e.*, an apples-to-apples comparison.[68] Therefore, even if copper prices fluctuated, the value of each company relative to each other (and as part of the merged entity) could be reasonably estimated.

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65 Trial Tr., vol. I, 48:5-49:16 (Palomino).

66 *See* JX-103 at SP COMM 006946.

67 JX-103 at SP COMM 006896-98.

68 Trial Tr., vol. I, 49:6-16 (Palomino). Mr. Palomino also explained that he routinely used relative discounted cash flow valuations while at Merrill Lynch to compare similar companies or companies within the same sector for purposes of determining which stock to recommend. *Id*. at 58:14-24; *see also* Sanchez Dep. 39:18-24 ("If you merge companies, obviously what is most relevant is not to look at absolute values of each company, but what the exchange ratio in those two companies look like. So at the end of the day, what you need to do is basically put apples to apples comparisons and look at basically what is the implied exchange ratio."). Nor is this methodology unusual in current transactions. *See* Northeast Utilities, Registration/Proxy Statement (Form S-4), at 75 (Nov. 22, 2010); UAL Corporation, Registration/Proxy Statement (Form S-4), at 70-71 (June 25, 2010). The Court can take judicial notice of the public filings for those transactions. *See In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 170 (Del. 2006) (recognizing that a court may take judicial notice of the contents of SEC filings).

Moreover, the Special Committee understood that using a conservative long-term copper price of $0.90/pound in comparing Minera and SPCC would be beneficial to SPCC.[69] Because Minera had larger reserves and a higher cost structure, increases in the long-term copper price would increase the value of both companies, but Minera's value would increase at a higher rate.[70]

As set forth in Goldman Sachs' October 21, 2004 presentation to the Special Committee, a relative valuation of these two companies confirmed that the negotiated price of 67.2 million shares for Minera was fair.[71]

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69 The Special Committee decided to negotiate based on a long-term copper price of $0.90/lb despite the fact that SPCC's and Minera's internal projections used a long-term copper price of $1.00/lb. JX 106 at SP COMM 004917; SP COMM 004919. Plaintiff's contention that SPCC used a $0.90/lb long-term copper price for internal planning is wrong. As Mr. Jacob explained at trial, SPCC used a $0.90/lb long-term copper price for purposes of preparing ore reserve estimates for use in its business plans (*i.e.*, production plans or life-of-mine plans). SPCC did not use that price for purposes of conducting financial forecasts or estimates because the long-term copper price used for ore reserve calculations is a conservative price that does not necessarily reflect the market price or current market estimates relating to copper. Trial Tr., vol. III, 303:21-305:15; 307:2-19 (Jacob). Plaintiff's fundamental misunderstanding of this issue is underscored by the fact that his expert did not even consider the long-term price of copper that either SPCC or Minera was using in the projections they provided to the Special Committee. Trial Tr., vol. IV, 423:20-425:12 (Beaulne).

70 Trial Tr., vol. I, 40:10-41:13 (Palomino) (explaining the Special Committee made the strategic decision to use a conservative long-term copper price because it would be more beneficial to SPCC and its minority stockholders); *see also* Trial Tr., vol. IV, 445:13-24 (Schwartz) (confirming that negotiating based on a lower long-term copper price was advantageous to SPCC); JX-48 at ¶¶ 44-45.

71 JX-106 at SP COMM 004923-25; *see also* Trial Tr., vol. I, 92:11-23 (Palomino) (explaining that the middle value of Goldman Sachs' relative valuation was 69.2 million shares, higher than what the Special Committee negotiated and SPCC ultimately paid); Trial Tr., vol. I, 220:13-221:11 (Handelsman) (explaining that he knew the value of what SPCC was getting and it was worth what SPCC paid for it).

2. A Relative Valuation Of Minera And SPCC Did Not Hide SPCC's Value

Plaintiff's argument that a relative valuation of SPCC and Minera hid SPCC's market value from the Special Committee was conclusively refuted at trial. Messrs. Handelsman and Palomino explained in detail that the Special Committee was well aware of SPCC's stock price during its evaluation of the Merger and the fact that Goldman Sachs' DCF value of SPCC was lower than its observed market capitalization.[72] Indeed, Mr. Handelsman explained that it was the Special Committee's idea in the first instance to perform a DCF analysis of SPCC so that the committee could better understand what was driving the valuations of the two companies.[73] The Special Committee also understood that SPCC's market price was not key to evaluating Minera and SPCC on a relative basis.[74]

3. Independent Evidence Confirms That The Merger Price Was Fair

The economic fairness of the Merger was confirmed by SPCC's minority shareholders (including named plaintiffs in this case) and the market.

SPCC's Minority Stockholders Thought The Merger Was Fair. Over 90% of the outstanding capital stock of the Company voted on a fully informed basis to approve the Merger, including the shares voted by former plaintiff Sousa.[75]

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72 Trial Tr., vol. I, 47:9-48:4 (Palomino) ("Well, it came up in the discussion [with Goldman Sachs], of course, because we knew what the market value was and the discounted cash flow numbers tended to be, again, depending on the assumptions, but they tended to be somewhat lower."); Trial Tr., vol. I, 158:19-159:2 (Handelsman); *see also* JX-101 SP COMM 00341; JX-102 SP COMM 006922; JX-103 at SP COMM 006865; JX-105 at SP COMM 006787.

73 *See* Trial Tr., vol. I, 157:21-158:6 (Handelsman).

74 *See* Trial Tr., vol. I, 54:21-55:13 (Palomino) ("What the market value of one of [the company's] is not relevant to this analysis").

75 JX-161; DX-1. Plaintiff purportedly objects to JX-161, which is a record from Broadridge Financial Solutions, Inc. ("Broadridge") showing that Plaintiff Sousa voted

The Theriault Trust Thought the Merger Was Fair. The first thing the Theriault Trust did after the Merger was announced was to buy more shares of SPCC stock. And then it purchased several hundred *more* shares on December 13, 2004, shortly before the Lemon Bay complaint was filed (and made a sizable profit doing so).[76] And the Theriault Trust bought more shares again on May 17, 2005, shortly after the Merger was overwhelmingly approved by SPCC's shareholders and closed.[77] The Theriault Trust even continued to purchase shares of SPCC stock well into discovery in this action.[78] That is not the behavior of someone who thought the Merger was unfair.

The Market Thought The Merger Was Fair. The market reactions at various relevant times confirmed that (i) the market initially treated the proposed Merger like most stock-for-stock mergers when information about it began to enter the market but (ii) reacted positively when additional information became available. As this Court has noted, the stock price of an acquiring company generally drops when it announces that it intends to merge with another company.[79] Here, SPCC's stock price declined around the time the proposed Merger was first

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for the Merger on the bases of (i) relevance, (ii) authenticity, and (iii) hearsay. Relevant evidence, as defined under Rule 401, is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The fact that Plaintiff Sousa voted in favor of the Merger he previously claimed was unfair is unquestionably relevant. With respect to Plaintiff's authenticity and hearsay objections, the AMC Defendants obtained an affidavit from Broadridge conclusively authenticating the document and certifying that it is a business record. *See* DX-1. The AMC Defendants provided this affidavit to Plaintiff's counsel prior to the trial and requested that Plaintiff withdraw his objection. Plaintiff declined. Given that the document is relevant and a certified business record there is no reason to exclude it from evidence.

76 JX-2 at TT00025 & TT00032.

77 JX-3 at TT00048.

78 JX-6 at TT00096.

79 *See Global GT LP v. Golden Telecom, Inc*., C.A. No. 3698-VCS, slip op. at 22 (Del. Ch. Apr. 23, 2010); *see also* Matthew Tagliani, THE PRACTICAL GUIDE TO WALL STREET,

announced and when the Merger Agreement was announced just over eight months later.[80] But for the two days after the Proxy was released on February 25, 2005 — the first time SPCC and Minera's financials were presented together — SPCC's stock price increased.[81] The market thus thought that the Merger was fair.

And if the Merger had been unfair to SPCC, then SPCC would have underperformed other copper companies after the Merger. In particular, one would have expected SPCC to underperform the companies Plaintiff's expert used as comparables to try to value Minera, but instead, exactly the opposite happened. As Mr. Handelsman testified[82] and the chart below shows, SPCC far outperformed Antofagasta, Phelps Dodge, and Freeport McMoran after the Merger.

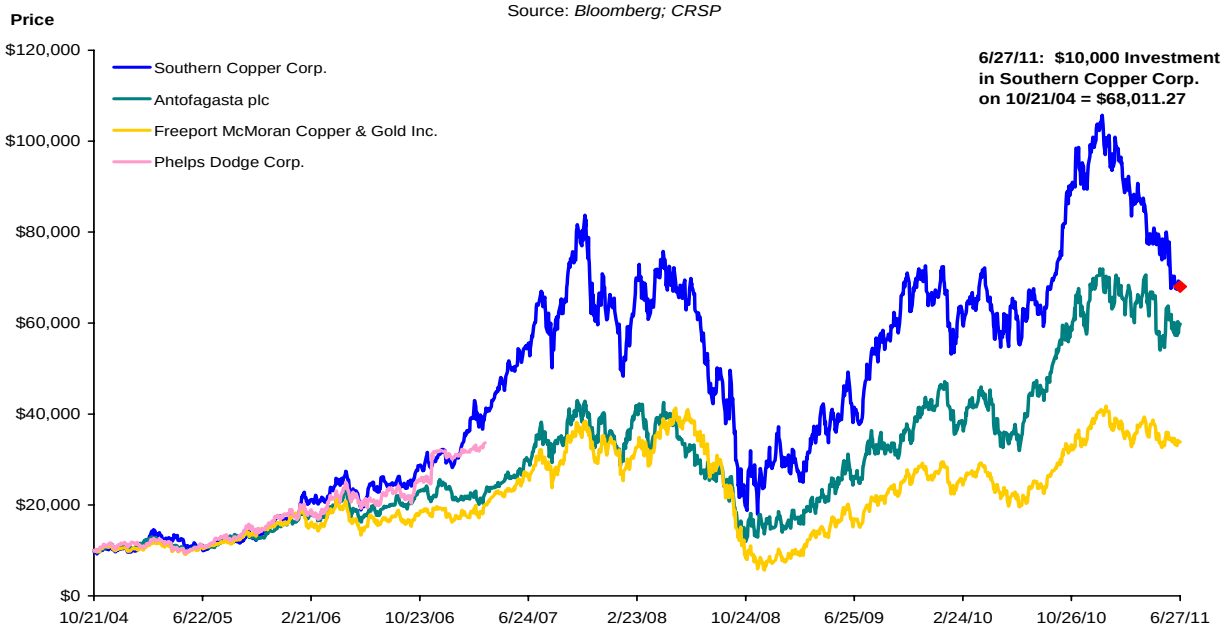
EQUITIES AND DERIVATIVES, 62, (John Wiley & Sons 2009) ("The most common reaction to news of an acquisition is that the shares of the acquiring company drop in price as investors factor in the costs of the transaction into the valuation of the company … .").

80 *See* JX-18.

81 *See id*.

82 Trial Tr., vol. I, 180:6-181:7 (Handelsman).

Investment Return in Southern Copper Corp. and Selected Comparable Companies
10/21/04 – 6/27/11
Source: *Bloomberg; CRSP*



Note: All stock prices have been adjusted for splits and dividends as of 10/21/04. Each company's stock returns are applied to a hypothetical investment of $10,000 on 10/21/04. Phelps Dodge Corp. was acquired by Freeport McMoran Copper & Gold Inc. on 3/20/07.

4. Professor Schwartz Confirmed The Merger Price Was Fair

Professor Schwartz's analysis and testimony at trial also confirmed that the Merger price was fair. Professor Schwartz, an internationally recognized expert on commodity pricing and valuation,[83] explained that the methodology the Special Committee used to assess the fairness of the Merger and to determine the number of shares to be exchanged in the Merger was precisely the methodology he would have used if given the same task.[84] Because SPCC and Minera were very similar companies (both were mining companies with similar revenues and

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83 JX-49; Trial Tr., vol. IV, 427:14-432:6 (Schwartz) (describing experience).

84 Trial Tr., vol. IV, 438:9-14 (Schwartz) ("Q. If you had been asked by the special committee in 2005 to advise them what methodology to use in evaluating this transaction, what would you have advised? A. I would have recommended a very similar methodology as the one I used."). Moreover, a relative valuation is a well-accepted valuation technique. Attached hereto is a compendium of authorities confirming that a relative valuation is recognized and accepted methodology.

reserves and their values are driven by the same external source — the price of copper),[85] Professor Schwartz determined that the most reliable way to compare the value of these companies was to conduct a relative valuation of their assets using the same assumptions and methodologies for both companies.[86] A relative valuation based on the DCF values of SPCC and Minera using the same assumptions uniformly shows that the Merger was fair to SPCC and its stockholders. Specifically, a relative valuation confirms that at $0.90/lb, the long-term price of copper used by the Special Committee and Beaulne, the Merger was entirely fair.[87] In fact, as with Goldman Sachs' analysis, Professor Schwartz's relative valuation using a long-term copper price of $0.90/pound shows that *more* than 67.2 million shares could have been exchanged for Minera, thus confirming that the Merger was fair.[88]

Professor Schwartz also explained that as part of his analysis, he analyzed why the DCF value of SPCC was lower than its observed market price by conducting a sensitivity analysis that focused on the two main inputs into a DCF analysis — cash flows and discount rates. Professor Schwartz determined that given the primary variables that impact the value of copper companies (*e.g.*, copper price), it was likely that the market was using a long-term copper price higher than $0.90/lb to price SPCC toward the end of 2004.[89] That is precisely what the

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85 *See* Defendants' Demonstrative Ex. 1.

86 Trial Tr., vol. IV, 433:18-22 (Schwartz).

87 Trial Tr., vol. IV, 438:1-8 (Schwartz); JX-48 at Ex. 1; *see also* Trial Tr., vol. I, 91:12-92:23 (Palomino) (explaining that the middle value of Goldman Sachs' relative valuation was 69.2 million shares, higher than what SPCC ultimately paid for Minera). Like Beaulne, Professor Schwartz used the data and projections used by Goldman Sachs, as modified by A&S. Trial Tr., vol. IV, 483:8-11 (Schwartz); Trial Tr., vol. III, 377:8-11; 387:13-17 (Beaulne).

88 JX-48, Ex. 1; *see also* Trial Tr., vol. I, 92:11-23 (Palomino).

89 Trial Tr., vol. IV, 440:10-442:6 (Schwartz); *see also* JX-47 at 12-13 (conceding that copper prices are significantly responsible for the value of a copper company). This, of course, makes sense given that copper prices rose steadily and significantly throughout

Special Committee addressed in July 2004.[90] In fact, Professor Schwartz's analysis suggested that the market was implying a long-term copper price as high as $1.30.[91] Notably, if a long-term copper price of $1.30 is also used as an input in Minera's DCF analysis, the number of SPCC shares to be exchanged increases to 80.6 million shares.[92]

Plaintiff's argument that it is inappropriate to raise the long-term price of copper in a DCF model to $1.30 without modifying the reserves and changing each company's production profile misses the point and is based on speculation. Professor Schwartz did not opine that any particular long-term copper price was definitively responsible for the price at which SPCC traded at any time. Rather, Professor Schwartz conducted sensitivity analyses (unlike Beaulne) which suggested that the market was using a long-term price of copper higher than $0.90 per pound. And that is entirely consistent with the other evidence the Special Committee had access to when it did its work.[93]

5. **Beaulne's Opinions Are Flawed And Unreliable**

Beaulne failed to conduct any analysis of what was driving the values of either Minera or SPCC. Rather, Beaulne relied blindly on the SPCC's stock price — he did not care why it was what it was. The flaws in Beaulne's methodology are underscored by the fact that he

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2004. *See* JX-23.

90 *See* JX-103.

91 Trial Tr., vol. IV, 442:7-443:18 (Schwartz); JX-48 at ¶¶ 47-51.

92 JX-48 at ¶ 43 & Ex. 2.

93 *See* JX-103. Indeed, Plaintiff offers no suggestion that the market, in valuing other copper companies above their DCF valuations, did anything like what Plaintiff suggests here with respect to changing reserve estimates. And that makes sense given the uncontested evidence that increases in reserves resulting from increasing copper prices do not translate dollar for dollar into increases in the value of copper companies, because such increases must be incorporated into the production schedule and often require significant capital expenditures to exploit. See Trial Tr., vol. IV. 466:17-470:23(Schwartz).

assigns an astonishingly low value to the assets that made up more than half of the reserves of the merged company.

a. Beaulne Ignores The Correlation Between The Value Of SPCC And Minera

Beaulne took Minera's value derived from a DCF analysis, multiplied that number by Grupo Mexico's share ownership in Minera and then divided by SPCC's share price, net of the $100 million special dividend that the Special Committee negotiated.[94] Beaulne concluded that pursuant to that mechanical analysis, SPCC should have issued 41 million shares for Minera.[95] Beaulne's opinion lacks any meaningful consideration of the factors that drove the values of these companies (and in the case of SPCC, its stock price) or an understanding of the rationale behind the proposed Merger.

Beaulne was clear that the only thing he cared about was what SPCC's stock price was, not what was driving it.[96] And although he knew that Goldman Sachs' DCF value of SPCC was below its observed market capitalization, he did nothing to try to determine the reasons for the disparity despite conceding that fair market value may not always match a company's publicly traded stock price.[97] Similarly, although Beaulne acknowledged that higher copper

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94 Trial Tr., vol. III, 352:12-353:1 (Beaulne).

95 *Id*.

96 Trial Tr., vol. III, 384:17-20 (Beaulne) ("Q. Okay. In connection with the analysis that you did in your report, when you were using SPCC prices, you only cared what the stock price was, not why it was what it was, correct? A. That's correct."). Beaulne also admitted that he did not conduct any analysis as to whether the rising copper price in 2004 was implicitly incorporated into SPCC's stock price. *Id*. at 375:11-15.

97 Trial Tr., vol. III, 384:22-385:386:24 (Beaulne). Beaulne also conceded that he could have prepared a DCF analysis of SPCC on his own and that a DCF model is a reasonable way to value a company. *Id.* at 388:5-12; 387:5-10; *see also id*. at 373:5-8 (admitting that he is not offering any opinions about a DCF value of SPCC at any time).

Although Beaulne criticizes Professor Schwartz for failing to reconcile the difference between SPCC's DCF value and SPCC's market price, Beaulne made no attempt to

prices would increase the value of Minera, he did not consider what values might arise for Minera from using different assumptions for the long-term price of copper.[98] Beaulne's failure to conduct any analysis of what drove each company's value is particularly notable given that he thought SPCC was sufficiently comparable to Minera to use it to value Minera.[99]

b. Beaulne's "Market Approach" Is Based On Inadequate Comparables

Beaulne's "market approach" or multiples analysis is unreliable because, among other things, three of his four comparable companies are interrelated. The list of comparable companies that Beaulne included were: Antofagasta, Grupo Mexico, Phelps Dodge, and SPCC.[100] As Beaulne conceded, Phelps Dodge was a shareholder of SPCC at the time of the Merger and Grupo Mexico was a shareholder of SPCC and Minera.[101] Despite these

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reconcile these values. Trial Tr., vol. III, 355:3-16 (Beaulne). And his criticism of Professor Schwartz is wrong. Professor Schwartz did consider the differences in value and concluded, as did the Special Committee, that it was likely that the market was using a higher implied long-term price for copper than $0.90/lb. JX-48 ¶¶ 47-51.

98 Trial Tr., vol. III, 380:5-12 (Beaulne).

99 JX 47 at 39; Trial Tr., vol. III, 397:22-398:2 (Beaulne) ("Q. I just want to make sure I understand your comparable companies exercise. The whole point of it was to find companies to use to value Minera – right? – or to assist you in valuing Minera? A. Yes. Q. And one of the companies that you selected as a comparable was in fact SPCC; correct? A. Yes."). In the end, the flaws in Beaulne's opinion are not surprising given his lack of relevant experience. He is not an expert in geology, engineering, securities market operations, market structure, commodity pricing, or evaluating life of mine plans. Trial Tr., vol. III, 370:10-21; 379:20-23 (Beaulne). Beaulne also admitted that he has never given a fairness opinion in connection with the valuation of a copper company in the context of a live M&A transaction or tried to value a copper company in the context of a litigation before. Trial Tr., vol. III, 371:5-19 (Beaulne).

100 Trial Tr., vol. III, 342:8-9; JX-47 at 39 (Beaulne).

101 Trial Tr., vol. III, 391:15-21; 392:6-9 (Beaulne); JX-48 at ¶¶ 65-66.

relationships, Beaulne did not test whether the fact that these companies were interrelated would impact the betas for the comparable companies.[102]

Nor did Beaulne properly do his multiples analysis. As Delaware law makes clear, when doing an analysis of the type Beaulne attempted, an expert should add a premium in the range of 30% to the result for the company being valued.[103] On cross-examination, Beaulne admitted that he did not do that.[104] Adding the required premium here would increase Beaulne's multiples-derived value for Minera to at least $3.6 billion, further showing that the Merger price was in fact fair and further demonstrating that Plaintiff cannot show that it was unfair.

II. PLAINTIFF IS AN INADEQUATE FIDUCIARY REPRESENTATIVE

Plaintiff's claims also fail because they cannot be squared with his utter lack of familiarity with the case or his lack of interest in pursuing this case:

- As the Court knows, Plaintiff was entirely absent from the trial.
- Plaintiff played what can best be called games during discovery, and to this day has not produced full and complete purchase and sale records for the Theriault Trust.[105]

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102 Trial Tr., vol. III, 391:22-392:5; 392:10-23 (Beaulne); *see also* JX-48 ¶¶ 60-68.

103 *See generally Lane v. Cancer Treatment Centers of Am., Inc*., 2004 WL 1752847, at *35 (Del. Ch. July 30, 2004) (explaining that a comparable companies analysis "suffers from an inherent minority discount" and to "determine 'the intrinsic worth of a corporation on a going concern basis,' a premium must be added to adjust for the minority discount;" also noting that "this Court has tended to apply a control premium on the order of 30%"); *Doft & Co. v. Travelocity.com Inc*., 2004 WL 1152338, at *11 (Del. Ch. May 21, 2004) (Delaware courts "consistently use a 30% adjustment").

104 Trial Tr., vol. III, 402:4-18 (Beaulne); *compare Borruso v. Commc'ns Telesystems Int'l*, 753 A.2d 451, 459 n.11 (Del. Ch. 1999) ("[I]t is more appropriate to apply the 30% control premium . . . in order to eliminate the inherent minority discount than to make no adjustment at all.").

105 JX 7 (TT00119) through JX 9 are all redacted copies of account statements that show only month-end positions. Plaintiff produced no evidence regarding actual purchases and sales after December 2008, and thus the Court would be justified in concluding that Plaintiff has not presented sufficient evidence that the Theriault Trust maintained the necessary continuous ownership of SPCC stock. In addition, Plaintiff produced account

- During the trial, Beaulne could not even name the Plaintiff.[106]

Plaintiff's inaction and lack of participation is inconsistent with the obligations of an adequate fiduciary representative.

CONCLUSION

For the reasons set forth herein, the AMC Defendants respectfully request that the Court enter judgment in favor of the AMC Defendants and dismiss Plaintiff's claim with prejudice.

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statements for late 2010 through 2011 during the course of the trial. The only reason this happened was because Plaintiff proposed including an account statement from May 2011 on the Joint Exhibit List that had never been produced.

Given the way this case has been litigated, the current record is as consistent with continuous ownership as it is with the Theriault Trust having sold down its position in SPCC at some point. Because Plaintiff has the burden of proof with respect to continuous ownership, he loses in equipoise.

106 Trial Tr., vol. III, 371:20-372:4 (Beaulne) ("Q. Have you ever met, spoken with, or otherwise communicated with any plaintiffs in this case? A. No. Q. And who is currently lead plaintiff? A. Is it – I'm not sure the legal structure. As a derivative action, I'm not sure who the lead plaintiff is. Q. Whoever the lead plaintiff is, do you know if he or she or it has read the report that submitted in this case? A. I don't know.").