



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

JAMES SOUSA,

Plaintiff,

v.

SOUTHERN PERU COPPER CORPORATION,  
SPCC MERGER SUB., INC., AMERICAS MINING  
CORPORATION, AMERICAS SALES COMPANY,  
INC., GERMAN LARREA MOTA-VELASCO, OSCAR  
GONZALEZ ROCHA, ARMANDO ORTEGA GOMEZ,  
JAIME FERNANDO COLLAZO GONZALEZ,  
GENARO LARREA MOTA-VELASCO, XAVIER  
GARCIA DE QUEVEDO TOPETE, JUAN REBOLLEDO  
GOUT, EMILIO CARRILLO GAMBOA, HAROLD S.  
HANDELSMAN, CARLOS RUIZ SACRISTAN,  
LUIS MIGUEL PALOMINO BONILLA, AND  
GILBERTO PEREZALONSO CIFUENTES,

Defendants.

Civil Action No. \_\_\_\_\_

**COMPLAINT**

1. Plaintiff is a stockholder of Southern Peru Copper Corporation (“Southern Peru Copper” or the “Company”). Plaintiff brings this action individually and derivatively on behalf of Southern Peru Copper and as a class action on behalf of all holders of Southern Peru Copper stock other than the defendants and their affiliates and associates, to enjoin a proposed merger between Southern Peru Copper and Minera Mexico, S.A. (“Minera Mexico”) pursuant to which Grupo Mexico, S.A. de C.V (“Grupo Mexico”), the controlling shareholder of both Southern Peru Copper and Minera Mexico, seeks to benefit itself at the expense of Southern Peru Copper’s minority shareholders. Grupo Mexico possesses material information concerning, among other things, the

current and expected future value of Minera Mexico and the consideration being paid for it by Southern Peru Copper, which has not been disclosed to Southern Peru Copper's public shareholders. Moreover, the proxy statement which will be disseminated to the Company's shareholders in connection with the Merger contains material omissions and is materially misleading in a number of respects, constituting a breach of the defendants' duty of disclosure. Accordingly, injunctive relief is necessary to prevent the transaction from going forward without a full, fair, accurate and adequate disclosure to permit the Southern Peru Copper shareholders to decide whether to approve the proposed transaction.

### **The Parties**

2. Plaintiff ("plaintiff") is the owner of common stock of Southern Peru Copper and has been the owner of such shares continuously since prior to the wrongs complained of herein.

3. Southern Peru Copper is a corporation duly existing and organized under the laws of the State of Delaware, with its principal executive offices located in Phoenix, Arizona. The Company is an integrated producer of copper that operates mining, smelting and refining facilities in the southern part of Peru. Southern Peru Copper common stock trade on the New York Stock Exchange under the symbol "PCU."

4. Defendant Americas Sales Company, Inc. ("ASC") is a Delaware corporation and a wholly-owned subsidiary of Americas Mining Corporation. Although currently inactive, ASC's historic business was copper sales. ASC owns, through a guaranty trust and directly, approximately 99.1463% of the outstanding shares of Minera Mexico.

5. Defendant Americas Mining Corporation ("AMC") is a Delaware corporation and a wholly owned subsidiary of Grupo Mexico. Through ASC, AMC owns and/or controls Minera

Mexico. AMC carries out its operations in Mexico through Minera Mexico, in Peru and in Chile through Southern Peru Copper, and in the United States and Canada through ASARCO Incorporated (“Asarco”). AMC and its affiliates, including Grupo Mexico and ASC, are hereinafter collectively referred to as “Grupo Mexico.” Grupo Mexico owns and/or controls approximately 54.5% of the outstanding capital stock, and 65.8% of the Class A Common Stock, of Southern Peru Copper. In addition, Grupo Mexico has the right, through the Company’s certificate of incorporation and a stockholders agreement, to nominate a majority of the members of the Company’s board of directors. As the controlling shareholder of Southern Peru Copper, Grupo Mexico owes fiduciary duties of good faith, fair dealing, loyalty, candor, and due care to plaintiff and the other members of the Class (defined below).

6. Defendant SPCC Merger Sub., Inc. (“SPCC Merger Sub”) is a wholly-owned subsidiary of Southern Peru Copper and was incorporated on October 19, 2004 in the State of Delaware. SPCC Merger Sub is a party to the Merger and exists solely to facilitate the merger.

7. Defendant German Larrea Mota-Velasco (“German Larrea”) is and at all times relevant hereto has been Chief Executive Officer and Chairman of the Board of directors of the Company. German Larrea has also served as the President, Chief Executive Officer and Chairman of the Board of Directors of Grupo Mexico since 1994. German Larrea was previously Executive Vice Chairman of Grupo Mexico and has been a member of the Board of Directors of Grupo Mexico since 1981. He is also Chairman of the Board of Directors and Chief Executive Officer of Empresarios Industriales de Mexico; Perforadora Mexico, Mexico Compania Constructora, Fondo Inmobiliario, since 1992. He founded Grupo Impresa, a printing and publishing company in 1978, remaining as the Chairman and Chief Executive Officer until 1989 when the company was sold. He

has been Chairman and Chief Executive Officer of Asarco from November 1999 to the present, and its President from November 1999 to January 2000. He is also a director of Grupo Comercial America, S.A., Grupo Bursatil Mexicano S.A., Bolsa Mexicana de Valores, Grupo Televisa, S.A. de C.V. and Banco Nacional de Mexico, S.A. He and defendant Genaro Larrea Mota-Velasco are brothers.

8. Defendant Oscar Gonzalez Rocha (“Gonzalez”) is and at all times relevant hereto has been President, General Director, Chief Operating Officer and a director of the Company since 1999. He was Managing Director of Mexicana de Cobre, S.A. de C.V. from 1986 to 1999 and of Mexicana de Cananea, S.A. de C.V. from 1990 to 1999. He has been an alternate director of Grupo Mexico from 1988 to April 2002 and a director of Grupo Mexico since April 2002. He has been a director of Asarco since November 1999.

9. Defendant Armando Ortega Gómez (“Ortega”) is and at all times relevant hereto has been a director of the Company. Mr. Ortega has also served as the Company’s General Counsel since October 23, 2003 and Vice President-Legal and Secretary of the Company since April 25, 2002. Previously, he was Assistant Secretary of the Company from July 25, 2001 to April 25, 2002. He has been General Counsel of Grupo Mexico since May 2001. He is also an Assistant Secretary of Grupo Mexico and Asarco.

10. Defendant Jaime Fernando Collazo Gonzalez (“Collazo”) has served as Chief Financial Officer and a director of the Company since 2004.

11. Defendant Genaro Larrea Mota-Velasco (“Genaro Larrea”) is and at all times relevant hereto has been a director of the Company. Genaro Larrea previously served as Vice President, Commercial of the Company from December 1999 until April 25, 2002. He was Managing

Commercial Director of Grupo Mexico from 1994 to August 30, 2001, and has been a director of Grupo Mexico since 1994. He has been a director of Asarco since November 1999. Genaro Larrea was President of Asarco from September 1, 2001 to October 2003 and Vice President, Chief Commercial Officer from November 1999 to August 30, 2001. He and defendant German Larrea are brothers.

12. Defendant Xavier García de Quevedo Topete (“Garcia”) has been a director of the Company since November 1999. He has also served as the President of Minera Mexico since October 2001. He was Managing Director of Grupo Ferroviario Mexicano, S.A. de C.V. and of Ferrocarril Mexicano, S.A. de C.V. from June 1997 to November 1999, and Director General of Exploration and Development of Grupo Mexico from 1994 to 1997. He was an alternate director of Grupo Mexico from 1998 to April 2002. He has been a director of Grupo Mexico since April 2002, a director of Asarco since November 1999, and its President from January 2000 to September 2001.

13. Defendant Juan Rebolledo Gout (“Rebolledo”) has been a director of the Company since May 30, 2003. Rebolledo has also served as International Vice President of Grupo Mexico since 2001.

14. Defendant Emilio Carrillo Gamboa (“Carrillo”) is and at all times relevant hereto has been a director of Southern Peru Copper. He has been a partner of the law firm Bufete Carrillo Gamboa, S. C., a law firm specializing in corporate, financial, commercial, and public utility issues, since 1989. Mr. Carrillo has served or currently serves on the boards of many prestigious Mexican businesses and charitable organizations, including Grupo Mexico. Mr. Carrillo has also served as a member of the Audit Committee of Grupo Mexico since 2003.

15. Defendant Harold S. Handelsman is and at all times relevant hereto has been a director of the Company. Handelsman is Executive Vice President and General Counsel of The Pritzker Organization, LLC, a private investment firm, since 1998. Handelsman sits on the board as a designee of Cerro Trading Company, Inc. ("Cerro"), one of the Company's largest shareholders with approximately 14.4% of the Company's outstanding Class A Common Stock and approximately 12.6% of the outstanding common shares.

16. Defendants Carlos Ruiz Sacristan ("Ruiz"), Luis Miguel Palomino Bonilla ("Palomino"), and Gilberto Perezalonso Cifuentes ("Perezalonso") are and at all times relevant hereto have been directors of the Company.

17. The Individual Defendants' are in a fiduciary relationship with plaintiff and the other public stockholders of Southern Peru Copper, and owe them the highest obligations of good faith, fair dealing, due care, loyalty and full and candid disclosure.

**Grupo Mexico's Control of the Company and Minera Mexico**

18. Southern Peru Copper has two classes of common stock: Common Stock and Class A Common Stock. The Company's Common Stock is publicly traded on the New York Stock Exchange. The Class A Common Stock is not publicly traded. The Company's charter provides that, except with respect to the election of directors or as required by law, the Common Stock and the Class A Common Stock vote together as a single class, with each share of Common Stock entitled to one vote and each share of Class A Common Stock entitled to five votes. Southern Peru Copper has performed extremely well in 2004, registering third quarter 2004 earnings that were 265% higher than third quarter 2003. Moreover, the Company's stock rose 106% over the course of 2004.

19. AMC, through its wholly-owned subsidiary SPHC II Incorporated, indirectly owns approximately 54.5% of the Company's capital stock and approximately 65.8% of the Company's Class A Common Stock, representing approximately 63% of the voting power of the Company. In connection with the proposed merger, the Company is obligated to issue 67,207,640 shares of Common Stock to AMC, thus increasing AMC's ownership interest from 54.5% to 75.22%.

20. Two other companies own the remainder of the Company's Class A Common Stock, Cerro and Phelps Dodge Corp. ("Phelps Dodge"). Cerro owns approximately 14.4% of the Company's outstanding Class A Common Stock, representing approximately 12.6% of the total outstanding capital stock of the Company and 16.55% voting power. Phelps Dodge owns approximately 17% of the Company's outstanding Class A Common Stock, representing approximately 14% of the total outstanding capital stock of the Company and 16% voting power.

21. ASC, a wholly-owned subsidiary of AMC, through a guaranty trust and directly, owns approximately 99.1463% of the outstanding shares of Minera Mexico.

### **Background of the Merger**

22. On February 3, 2004, Grupo Mexico presented a proposal to the Company's board of directors regarding the possible sale of all of Grupo Mexico's shares in its indirect subsidiary, Minera Mexico, representing approximately 99.1463% of Minera Mexico's outstanding shares, in return for the issuance of additional shares of Company Common Stock.

23. In response, the Company formed a special committee comprised of members of the Company's board of directors to evaluate whether the proposed transaction was in the best interest of the minority stockholders. The special committee was comprised of defendants Handelsman, Ruiz, Palomino and Perezalonso, with Ruiz serving as the Chairman of the committee.

24. Between February and October, 2004, the parties negotiated the terms of a potential transaction. On or before October 21, 2004, the parties agreed to the terms of a merger pursuant to which Grupo Mexico will, through AMC, sell to Southern Peru Copper all of its shares of Minera Mexico in return for the issuance to AMC of 67.2 million shares of Southern Peru Copper (the “Merger”). In addition, in connection with the Merger, the Company will pay a special dividend of \$1.25 per share (\$100 million) to existing shareholders, including Grupo Mexico, prior to closing.

25. On October 21, 2004, the special committee concluded unanimously to recommend that the board of directors approve the Agreement and Plan of Merger and related transaction documents (the “Merger Agreement”) and determine that the transaction was advisable, fair and in the best interests of the Company’s stockholders (other than AMC and its affiliates). On that same date, the full board voted to approve the Merger and the Merger Agreement. The Merger and the Merger Agreement were thereafter publicly announced.

26. In connection with the Merger, both Cerro and Phelps Dodge, collectively representing nearly 30% of the publicly-held shares unaffiliated with Grupo Mexico, entered into written letter agreements pursuant to which they both agreed, among other things, to vote in favor of the Merger in exchange for the receipt of certain registration rights from AMC.

#### **The Preliminary Proxy**

27. On November 22, 2004, Southern Peru Copper filed a preliminary proxy statement with the Securities and Exchange Commission (“SEC”) on Form PREM14A relating to the Merger (the “Proxy” or the “Proxy Statement”). Once final, the Proxy will be mailed to the Company’s shareholders seeking their approval of the Merger.

28. The Proxy does not provide the public shareholders with any information concerning



the most recent financial results or projections for either the Company or Minera Mexico. This information is obviously available to all of the parties to the Merger, including Grupo Mexico. Moreover, Goldman Sachs, the special committee's financial advisor, relied heavily upon this financial information, including the internal financial analyses and forecasts and the adjusted management forecasts for both Southern Peru Copper and Minera Mexico (the "Management Forecasts"). Obviously, this information is also critical to a shareholder's evaluation of the terms of the Merger and the ultimate decision whether to approve the Merger.

29. Moreover, the Proxy indicates that "Goldman Sachs has provided certain investment banking services to affiliates of Cerro... ." In addition, the Proxy states that "Goldman Sachs may also provide investment banking services to us, Minera Mexico, Grupo Mexico, Cerro and Phelps Dodge [] ... in the future. In connection with the above-described services, Goldman Sachs has received, and may receive, compensation." Evidence of the rendering or potential rendering of services by Goldman Sachs to the parties to the Merger, whose interests are in conflict with the interests of the Company's public shareholders in connection with the Merger, raises a potential conflict of interest which could affect the reliability of the opinion rendered to the special committee by Goldman Sachs in connection with the Merger. Additional disclosure concerning the actual and/or expected relationships between Goldman Sachs and any of the parties to the Merger is needed for the Company's shareholders to evaluate any potential conflicts suffered by Goldman Sachs as well as the reliability of its fairness opinion concerning the Merger.

## COUNT I

### **Against Defendants for Breach of Fiduciary Duties**

30. Plaintiff repeats and realleges the allegations above as if fully set forth herein.

31. In approving and proposing the Merger and the Merger Agreement, the individual defendants as directors of Southern Peru Copper have violated their fiduciary duties of care, loyalty and entire fairness.

32. Grupo Mexico has access to internal financial information about Southern Peru Copper, its true value, expected increase in true value and the benefits of 100% ownership of Southern Peru Copper to which plaintiff and the Class members are not privy. Grupo Mexico is using such inside information to benefit itself in this transaction, to the detriment of the Southern Peru Copper public stockholders.

33. Grupo Mexico, by reason of its control of the voting power of the Company, has clear and material conflicts of interest and is acting to better its own interests at the expense of Southern Peru Copper's public shareholders.

34. Grupo Mexico, with the acquiescence of the directors of Southern Peru Copper, is engaging in self-dealing and not acting in good faith toward plaintiff and the other members of the Class. By reason of the foregoing, Defendants have breached and are breaching their fiduciary duties to the members of the Class.

### **Lack of Director Disinterest and Independence**

35. As shown by the allegations above, the Southern Peru Copper directors are not disinterested and independent. Nine of the twelve Southern Peru Copper directors are affiliated with Grupo Mexico or will otherwise have a direct financial interest in the Merger that is not shared

equally by all of the Company's public shareholders. Therefore, the Southern Peru Copper board has a conflict of interest with respect to the Merger. Accordingly, the transaction implicates the duty of loyalty, the business judgment rule does not apply and defendants' conduct must be subjected to the entire fairness standard.

### **The Lack of Any Independent Decision Maker**

36. The Merger and the Merger Agreement have not been approved by any truly independent decision maker. Nine of the Company's board members have some interest in the Merger that is not shared by the public shareholders. Moreover, two of the Company's largest shareholders who have agreed to support the Merger will receive benefits from the Merger not shared equally by all shareholders. One of the members of the purportedly independent special committee is in fact affiliated with one of those large shareholders. Moreover, the special committee was not properly empowered to consider the proposal from Grupo Mexico. For example, the special committee does not appear to have been empowered to consider any other alternatives to the Merger or, more importantly, to "just say no" to Grupo Mexico. Thus, the board members are not disinterested and independent with respect to the proposed transaction. As indicated above, the disclosures in the Proxy Statement do not fully and fairly state all material facts germane to the transaction, so the stockholder vote cannot validate defendants' conduct. Accordingly, defendants have the burden of showing that the minority shareholders will be treated with entire fairness, a burden defendants cannot sustain.

### **Breach of Fiduciary Duty of Disclosure**

37. Plaintiff repeats and realleges each and every paragraph above as if fully set forth herein.

38. The fiduciary duty of candor requires disclosure of all information in defendants' possession germane to the transaction at issue. Fiduciaries are under a duty to disclose fully and fairly all material information within their control when they seek shareholder action.

39. As set forth above, the Proxy Statement fails to disclose material information concerning the financial results and financial projections for Southern Peru Copper and Minera Mexico as well as information concerning potential conflicts of interest suffered by the special committee's financial advisor.

40. Without material and accurate information, the Company's public shareholders cannot possibly make an informed judgment concerning the desirability of the Merger.

41. Defendants, in breach of their fiduciary duty of candor, have stranded Southern Peru Copper shareholders without information necessary to make an informed decision concerning the fairness and adequacy of the terms of the Merger.

### **Irreparable Harm and Lack of Legal Remedy**

42. The Company and the class will suffer irreparable harm if the Merger is not enjoined. Any monetary or other relief will not provide full and complete relief for the wrongs suffered. Moreover, the preferred remedy for defendants' breaches of the fiduciary duty of loyalty and entire fairness is an injunction preventing the invalid transaction, not some uncertain monetary or other relief. Plaintiff and the class have no adequate remedy at law.

### **Derivative and Class Action Allegations**

43. Plaintiff brings this action individually and as a class action, pursuant to Court of Chancery Rule 23, on behalf of himself and the public shareholders of Southern Peru Copper (the "Class"). Excluded from the Class are defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with any of the defendants.

44. This action is properly maintainable as a class action.

45. The Class is so numerous that joinder of all members is impracticable. As of January 2005, there were millions of publicly held shares of Southern Peru Copper outstanding.

46. There are questions of law and fact which are common to the Class including, *inter alia*, the following:

- (a) whether the proposed transaction is unfair to the Class;
- (b) whether plaintiff and the other members of the Class would be irreparably damaged were the transaction complained of herein consummated; and
- (c) whether defendants have breached their fiduciary and other common law duties owed by them to plaintiff and the other members of the Class.

47. Plaintiff is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Plaintiff's claims are typical of the claims of the other members of the Class and plaintiff has the same interests as the other members of the Class. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

48. The prosecution of separate actions by individual members of the Class would create the risk of inconsistent or varying adjudications with respect to individual members of the Class

which would establish incompatible standards of conduct for defendants, or adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

49. Defendants have acted, or refused to act, on grounds generally applicable to, and causing injury to, the Class and, therefore, preliminary and final injunctive relief on behalf of the Class as a whole is appropriate.

50. No demand pursuant to Chancery Court Rule 23.1 is required in this case. Plaintiff's claims are properly brought as individual and class claims and are therefore not subject to the demand requirement. Moreover, to the extent any of plaintiff's claims is deemed derivative, demand is excused. As alleged above, nine of the twelve members of the Southern Peru Copper board have substantial conflicts of interest, including material financial interests. Moreover, the allegations above establish that the directors are not independent and there is far more than a reasonable doubt as to whether they exercised reasonable business judgment in approving the proposed Merger.

WHEREFORE, plaintiff prays for judgment and relief as follows:

- A. Ordering that this action may be maintained as a class action and certifying plaintiff as the Class representative;
- B. Preliminarily and permanently enjoining defendants and all persons acting in concert with them, from proceeding with, consummating or closing the proposed transaction;
- C. In the event the proposed transaction is consummated, rescinding it and setting it aside or awarding rescissory damages to the Company and the Class;
- D. Directing defendants to account to the Company and the Class for their damages

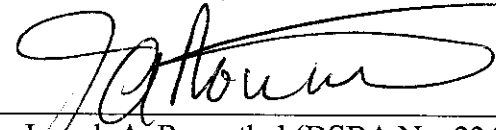
sustained as a result of the wrongs complained of herein;

E. Awarding plaintiff the costs of this action, including a reasonable allowance for plaintiff's attorneys' and experts' fees;

F. Granting such other and further relief as this Court may deem just and proper.

ROSENTHAL, MONHAIT, GROSS  
& GODDESS, P.A.

By: \_\_\_\_\_



Joseph A. Rosenthal (DSBA No. 234)  
919 Market Street, Suite 1401  
P.O. Box 1070  
Wilmington, DE 19899-1070  
Telephone: (302) 656-4433

**Of Counsel:**

Patricia C. Weiser  
Robert B. Weiser  
The Weiser Law Firm, Ltd.  
121 N. Wayne Avenue, Suite 100  
Wayne, PA 19087  
Telephone: (610) 225-2677