

Amended pursuant to Rule 24(1)(a) of the Rules of Court.
Original filed April 21, 2010

No. VLC-S-S-102292
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA



BETWEEN:

**MINERA ANDES S.A., MINERA ANDES INC.,
LOS AZULES MINING INC. and
ANDES CORPORACION MINERA S.A.**

PLAINTIFFS

AND:

**TNR GOLD CORPORATION and
SOLITARIO ARGENTINA S.A.**

DEFENDANTS

AND:

MIM ARGENTINA EXPLORACIONES S.A.

**DEFENDANT
BY COUNTERCLAIM**

**AMENDED STATEMENT OF DEFENCE OF TNR GOLD CORPORATION
and SOLITARIO ARGENTINA S.A.**

1. The Defendants deny each and every allegation in the Statement of Claim, except where expressly admitted below.
2. TNR Gold Corporation ("TNR") is a company duly incorporated pursuant to the laws of British Columbia and has its head office located at 620 – 650 West Georgia Street, Vancouver, British Columbia.
3. Solitario Argentina S.A. ("Solitario") is a company duly incorporated pursuant to the laws of Argentina and has its head office located at Santiago del Estero 61 norte (5400), San Juan, Republic of Argentina. Solitario is a wholly owned subsidiary of TNR.

4. In 1996, Solitario registered a mineral claim over a mineral property in the San Juan province of Argentina originally identified as Cateo Valle Hermosa (file number 545054/P/94 of the Mineral Titles Registry in San Juan, Argentina). The mineral titles within the Cateo were subsequently particularized as Escorpio I (File 153-F18-96), Escorpio II (File 154-F18-96), Escorpio III (File 155-F28-96), Totorá I (File 0483-C-99), Totorá II (File 0496-C-99), which, together with the now expired Cateo Valle Hermosa are referred to hereafter as the "Property".
5. On May 15, 2003, Solitario signed a Letter of Understanding (the "Letter of Understanding") with MIM Argentina Exploraciones S.A. ("MIM"), a subsidiary within the Xstrata Group of Companies, which is a large multinational enterprise with head offices in Switzerland. The Letter of Understanding provided that MIM would have rights to explore the Property and have an option to purchase the Property, subject to Solitario's right to buy back an interest in the Property. This "back-in right" was a fundamental component of the Letter of Understanding because it allowed Solitario to enjoy benefits flowing from its discovery and its efforts to advance the exploration of the Property to determine whether it contained a commercially significant copper deposit.
6. In the Letter of Understanding, Solitario's back-in right was expressed as follows:

Back-In Right: [Solitario] will have the right to buy back equity up to the level of 25% of the Property at any time within 120 days of the completion of a feasibility study on any part of the Property...
7. The term "feasibility study" was not defined in the Letter of Understanding, but it is a term customarily used in the mining industry to mean a comprehensive study of a mineral deposit in which geological, engineering, legal, operating, economic, social, environmental and other relevant factors are considered in sufficient detail that it could reasonably serve as the basis for a final decision by a financial institution to finance the development of the deposit for mineral production. Commercial practice is such that a feasibility study is produced in every case before a mine is constructed.
8. The opportunity in the Letter of Understanding for Solitario to link the timing of its back-in right with the 120 day period following the production and delivery of a feasibility

study reflected the commercial reality that a small company like Solitario would normally be unable to buy back into a project without a feasibility study having been completed. This is because in the absence of a feasibility study, a small company would normally be unable to obtain the financing required to exercise the back-in right and then keep pace with the expenditures on the project to maintain its interest.

9. The opportunity in the Letter of Understanding for Solitario to link the timing of its back-in right with the 120 day period following the production and delivery of a feasibility study conferred no benefit on MIM and was entirely for Solitario's benefit. If Solitario backed-in before a feasibility study was completed, then Solitario would be responsible for its proportional share of the costs of exploring the Property, and would thereby take a portion of the significant risks with which MIM was otherwise burdened: expending funds to explore the Property without knowing whether it would ever be feasible to build a mine.
10. In April and May 2004, lawyers for MIM and Solitario exchanged drafts of a longer agreement which was to reflect the terms of the Letter of Understanding. In the final draft of that document, MIM's lawyers, who were internal counsel for the Xstrata Group of Companies, inserted a change to Solitario's back-in right which was overlooked by Solitario's lawyers, and ultimately became part of the Cordon de Los Azules Exploration and Option Agreement dated May 15, 2004 (the "MIM - Solitario Option Agreement"). The changed back-in clause read as follows:

7. Back In Right

- 7.1 If, within 36 months of exercising the Option, Xstrata completes a feasibility study on any part of the Property, Xstrata must notify Solitario, and Solitario will have the right to elect to "buy back in" up to a maximum 25% equity in the Property at any time within the 120 days of receiving the said notification (the "Back-In Right") by giving written notice to Xstrata of the exercise of the Back-In Right.

11. As was the case in the Letter of Understanding, the term "feasibility study" was not defined in the MIM - Solitario Option Agreement.

12. The insertion of the 36 month restriction is the subject of action S-084670, Vancouver Registry, whereby Solitario seeks, among other relief, rectification of the MIM – Solitario Option Agreement to have the wording of the back-in right restored so that it reflects the intentions of the parties as captured in the language of the back-in right in the Letter of Understanding.
13. If, however, the rectification of the MIM – Solitario Option Agreement is unsuccessful, Solitario says that in any event, the 36 month restriction does not change the fact that Solitario has a valid right to back-in to the Property, it simply reduces the extent of the benefit provided to Solitario in the original language of the Letter of Understanding. In other words, the 36 month restriction, if part of the agreement, reduced the benefit to Solitario of the opportunity to link the production of a feasibility study and Solitario's exercise of its back-in right, but it did not eliminate Solitario's back-in right, nor did it change the fact that the opportunity to link the exercise of the back-in right to the production of a feasibility study, whether produced within 36 months or some other time, was a condition solely for the benefit of Solitario, and as such, could be waived.
14. In 2005, MIM and Minera Andes S.A. ("MASA") began discussing a plan whereby MASA would take over the exploration efforts on the Property and MIM would retain a contractual right to back-in to the project.
15. In April 2006, MASA, having reviewed the MIM–Solitario Option Agreement, decided together with MIM, to attempt to extinguish Solitario's interest in the Property. The plan which MASA and MIM developed was based on the 36 month restriction which MIM had inserted into the MIM–Solitario Option Agreement, such that MIM would quickly exercise its option to commence the tolling of the 36 month period, yet neither MIM nor MASA would complete a feasibility study within that period so that Solitario would be unable to finance a back-in. In this way, MASA and MIM hoped to prevent Solitario from being able to back-in to the project, and hoped to thereby extinguish Solitario's interest in the Property.

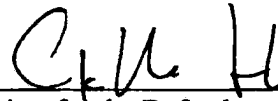
16. To that end, MIM exercised its option under the MIM–Solitario Option Agreement on April 23, 2007. That meant that if the 36 month restriction applied, Solitario’s back-in right had to be exercised by the close of business on April 23, 2010.
17. On November 2, 2007, MIM entered into an agreement with MASA (the MIM-MASA Option Agreement”) whereby MIM transferred its interest in the Property to MASA, while retaining a right to back-in to 51% of the development of the project, and alternatively a right of first refusal over any future disposition by MASA of the Property. Solitario, ignorant of the plan that MIM and MASA had developed to extinguish its interest in the Property, consented to MIM entering into an agreement with MASA, although it was not advised of the specific terms thereof.
18. According to MASA’s Statement of Claim in this proceeding, on May 15, 2009, MASA assigned all of its interest in the Property and under the MIM-Solitario Option Agreement to two of its wholly owned subsidiaries, Los Azules Mining Inc. (“LAMI”) and Andes Corporacion Minera S.A. (“Andes”). The assignments were not made on notice to or with the consent of Solitario.
19. On May 29, 2009, MASA completed certain obligations under the MIM-MASA Option Agreement and acquired 100% of the Property (subject to Solitario’s right to back-in), and thereby triggered a 90 day period by the end of which MIM had to elect to exercise its right to back-in to the project, or elect to take a right of first refusal over any disposition of the project.
20. By the expiry of the 90 day period, MIM had chosen not to deliver either a back-in notice or a notice establishing a right of first refusal. As a result, MASA held 100% of the Property subject only to Solitario’s right to back-in. On October 26, 2009, according to the Statement of Claim, MASA’s assignee, Andes, registered the Property in its name and the underlying agreements, including the MIM-Solitario Option Agreement containing Solitario’s right to back-in to the Property, were assigned to Andes.
21. In March 2010, Solitario informed MASA that it was contemplating waiving the production of a feasibility study and exercising its right to back-in before April 23, 2010.

22. In response, before any back-in notice was issued by Solitario, MASA and the other plaintiffs commenced this action on April 1, 2010 in an effort to prevent Solitario from being able to finance any back-in even on the harsh terms of credit that would be required in the absence of a feasibility study.
23. Nevertheless, on April 23, 2010, Solitario issued a back-in notice to MIM, MASA and the other plaintiffs herein, waiving the production of a feasibility study as a promissory condition for the sole benefit of Solitario, and elected to back-in to the Property for a 25% interest. In this regard, Solitario pleads and relies upon section 54 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. Having already received the plaintiffs' anticipatory rejection of the back-in notice, Solitario arranged for the back-in funds to be placed in a trust account such that Solitario remains ready, willing and able to complete the back-in.
24. In a letter dated April 26, 2010, the Plaintiffs purported to formally reject Solitario's back-in notice.

WHEREFORE, the Defendants say the back-in notice Solitario issued on April 23, 2010 was valid and this action should be dismissed, with costs payable to the Defendants.

May 11, 2010

Dated



Solicitor for the Defendants

THIS AMENDED STATEMENT OF DEFENCE is filed and delivered by **George K. Macintosh Q.C.** of the firm Farris, Vaughan, Wills & Murphy LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Facsimile: (604) 661-9349.

No.
Vancouver Registry

VLC-S-S-102292

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**MINERA ANDES S.A., MINERA ANDES INC.,
LOS AZULES MINING INC. and
ANDES CORPORACION MINERA S.A.**

PLAINTIFFS

AND:

**TNR GOLD CORPORATION and
SOLITARIO ARGENTINA S.A.**

DEFENDANTS

AND:

MIM ARGENTINA EXPLORACIONES S.A.

DEFENDANT
BY COUNTERCLAIM

COUNTERCLAIM

1. The Defendant by Counterclaim, MIM Argentina Exploraciones S.A., is a corporate body established under the laws of Argentina with offices at Emilio Civil 375 (5500), Mendoza, Argentina.
2. The Defendants repeat the facts set out in their Statement of Defence.

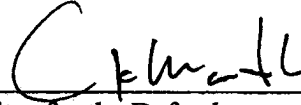
WHEREFORE, the Defendants seek the following relief as against the Plaintiffs and against the Defendant by Counterclaim:

- (a) a declaration that Solitario was entitled to waive the completion of a feasibility study and that its back-in notice of April 23, 2010 was valid and is enforceable;
- (b) costs; and

(c) such further relief which to this Court appears just.

May 11, 2010

Dated



Solicitor for the Defendants

THIS COUNTERCLAIM is filed and delivered by **George K. Macintosh Q.C.** of the firm Farris, Vaughan, Wills & Murphy LLP, Barristers & Solicitors, whose place of business and address for service is 2500 – 700 West Georgia Street, Vancouver, British Columbia, V7Y 1B3. Telephone: (604) 684-9151. Facsimile: (604) 661-9349.

No. VLC-S-S-102292
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

**MINERA ANDES S.A., MINERA ANDES INC.,
LOS AZULES MINING INC. and
ANDES CORPORACION MINERA S.A.**

PLAINTIFFS

AND:

**TNR GOLD CORPORATION and
SOLITARIO ARGENTINA S.A.**

DEFENDANTS

AMENDED STATEMENT OF DEFENCE AND COUNTERCLAIM

FARRIS, VAUGHAN, WILLS & MURPHY LLP

Barristers & Solicitors
2500 – 700 West Georgia Street
Vancouver, BC V7Y 1B3

Telephone: (604) 684-9151