UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

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US BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:

ALLIED NEVADA

GOLD CORP,et al.,[1]

DEBTORS

CHAPTER 11

CASE No. 15-10503(MFW)

Jointly Administered

NOTICE OF FILING-APPELLANT'S BRIEF

PLEASE TAKE NOTICE, Brian Tuttle pro se, Jordan Darga pro se, and Stoyan Tachev filed the attached Appellant's brief with the THE UNITED STATES DISTRICT COURTFOR THE DISTRICT OF DELAWARE on this the 5th day of February 2015. .

[1] The Debtors("Debtors") in these cases, along with the last 4 digits of each Debtor's federal tax identification number, are: Allied Nevada Gold Corp.(7115); Allied Nevada Gold Corp Holdings LLC (7115); Allied VGH Inc. (3601); Allied VNC Inc. (3291): ANG Central LLC (7115); ANG Cortez LLC (7115); ANG Eureka LLC(7115); ANG North LLC (7115); ANG Northeast LLC (7115); ANG Pony LLC (7115); Hasbrouck Production Company LLC (3601); Hycroft Resources and Development, Inc. (1989); Victory Exploration Inc.(8144); and Victory Gold Inc.(8139). The corporate headquarters for each of the following are located at, and the mailing address for each of the following of each of the above debtors, except Hycroft Resources & Development, Inc., is 9790 Gateway Drive, Suite 200, Reno, Nevada 89521. The mailing address for Hycroft Resources & Development, Inc. is P.O. Box 3030, Winnemucca, NV 89446.

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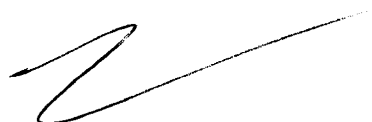

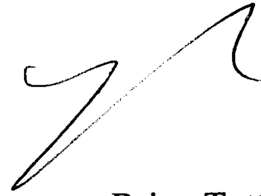

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NATURE AND STAGE OF THE PROCEEDINGS

On March 10th 2015, Allied Nevada Gold Corp ("appellee", "reorganized debtors") voluntarily filed for Chapter 11 protection with The United States Bankruptcy Court District of Delaware ("Bankruptcy Court"). Shortly thereafter, a group of concerned shareholder including: Richard Perel, Michael Richey, Brian Tuttle ("appellant Tuttle") and Michael Willingham, formed an Ad Hoc Committee of Equity Security Holders of Allied Nevada. The Committee's mission was to have the Bankruptcy Court recognize an Official Equity Committee to represent the interests of shareholders of the appellee. The United States Trustee ultimately appointed an Official Committee of Equity Security Holders of Allied Nevada ("Equity Committee") and the original Ad Hoc Committee disbanded.

On 3/31/2015, just weeks after they voluntarily filed for Chapter 11 protection, the appellee filed a Motion for Sale of Property Free and Clear of Liens (see docket 133). In response to the Motion, appellant Tuttle filed a Motion to Stop the Sale of Debtors' Exploration Properties and Related Assets arguing "the sale of assets should be avoided until the debtors can show the alleged appearance of impropriety does not entail conduct that would forbid the sale" (see docket 423). Subsequent appellant Tuttle's Motion to Stop the Sale, the officially recognized Equity Committee filed an Objection to Debtors Motion for Orders Selling on Motion for Sale of Property on 6/11/2015 (see docket 554) only to withdraw the pleading on the evening prior to the hearing (see docket 597). The Bankruptcy Court overruled appellant Tuttle's objection.

Prior to confirmation, and throughout the proceedings, a group of concerned shareholders, took it upon themselves to investigate the affairs of the appellee including: fraud, dishonesty, incompetence, misconduct, mismanagement, irregularity in the management of the affairs of the appellee, fraudulent conveyance, Sarbanes Oxley violations, leaks of material private information to the press, and insider trading. After the piece mail investigation was stymied by SEC disclosure requirements, limited resources, the disinterest of the Equity Committee, and actions taken by the appellee, shareholders investigating the affairs of the appellee determined the appointment of an examiner was appropriate and would be in the best interests of equity security holders and certain creditors.

On 8/11/2015, appellant Tuttle filed a Motion to Appoint an Examiner with Access to and Authority to Disclose Privileged Materials ("Examiner Motion", see docket 819). At the 2/20/2015 hearing, turned status conference, on the Examiner Motion, counsel for the Official Equity Committee informed the Bankruptcy Court, the Equity Committee supported the appellee's request to move the process forward without an examination (see page 29 August 20th 2015 Hearing transcript; exhibited in docket 1232). In response to the Official Equity Committee's poristion, a group of 35 concerned shareholders came together to reinstate the Ad Hoc Committee (see docket 968) with 6 members filing pro se briefs supporting the Examiner Motion. Prior to the Hearing on the Examiner Motion the Ad Hoc Committee solicited counsel but were unsuccessful. The Bankruptcy Court denied appellant Tuttle's Motion to Appoint an Examiner.

On August 27th the Bankruptcy Court held a hearing on the appellee's Disclosure Statement, amended just one day earlier on the 26th (see docket 921). At the hearing appellant Tuttle's objections to deficiencies in the noticing and exhibiting of the Amended Disclosure Statement were overruled. Shortly thereafter the Official Committee of Equity Security Holders sent out solicitation materials advising their constituents to vote for the plan of reorganization.

Prior to confirmation members of the Ad Hoc Committee members: Jordan Darga ("appellant Darga"), Stoyan Tachev (appellant Tachev"), appellant Tuttle, and James H. Robenson filed objections to the appellee's plan of reorganization (dockets 1048,1049,1051,1063,1114). In addition to the objections appellant Tuttle also filed: Motion for Standing to Prosecute Claims of Equitable Disallowance (docket 1049), Motion for Leave of Court to Take Depositions upon Written Questions (docket 1050) and a 2nd Motion to Appoint an Examiner With Access to and Authority to Disclose Privileged Materials (docket 1110).

On Saturday 10/3/2015, James Daloia filed a Supplemental Declaration indicating equity security holders in class 6 and class 8 voted by majority to reject the appellee's plan of reorganization (docket 1107). This Court should take notice Equity Committee chairman John Connor voted no against the plan he solicited his constituents to vote in favor of, and did so subsequent to filing a 1.5 million dollar claim against the estate as a creditor (see docket 1102 exhibit 1, see also docket 1346).

On October 6th a confirmation hearing was held on the appellee's plan of reorganization. Ad Hoc Committee members appellant Darga and appellant Tuttle appeared via telephone to reiterate the objections previously filed. Following the Bankruptcy Court advising the appellant Motion for Standing to Prosecute would not be heard appellant, appellant Tuttle moved the Bankruptcy Court for a stay of the Debtors' confirmation Hearing until the Bankruptcy Court took into consideration the party of interest's Motion For Standing To Prosecute and 2nd Motion To Appoint An Examiner With Access To and Authority to Disclose Privileged Materials. The Bankruptcy Court denied appellant Tuttle's motion to stay was denied, overruled all objections and confirmed the plan.

In the weeks following appellant Tachev and Jordan Darga, filed Motions to Allow Jury Trial or in the Alternative Motion for Rehearing (dockets 1205,1206); and Brian Tuttle filed with the Bankruptcy Court: Motion to Reconsider Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Amended Joint Chapter 11 Plan of Reorganization (docket 1173) and a Motion to Reconsider Oral Motion to Stay the Proceedings(docket 1174). On January 20th 2016 a hearing was held and all 12 shareholder motions before the Bankruptcy Court were denied.

On 10/20/2015, in anticipation the Ad Hoc Committee would ultimately be successful in retaining counsel, Jordan Darga, Stoyan Tachev and Brian Tuttle filed a Notice of Appeal (see docket 1163) on behalf of their collective interests as an Ad Hoc Committee. This brief is being filed in propria persona on behalf of the collective interests of the undersigned in anticipation that forward the undersigned will be indeed be successful in retaining counsel.

RELIEF REQUESTED

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Pleadings in this case are being filed in propria persona, wherein pleadings are to be considered without regards to technicalities. Propria, pleadings are not to be held to the same high standards of perfection as practicing lawyers.

The appellants respectfully requests a reversal of the Bankruptcy Court's order entitled: "Findings of Fact, Conclusions of Law, and Order Confirming Debtors' Amended Joint Chapter 11 Plan of Reorganization" ("confirmation") filed 10/8/2015 (see docket 1136), with instructions:

1) Any plan of reorganization may not be confirmed until the appellee's plan of reorganization complies with the applicable rules of law, including but not limited to: U.S.C. 1129 (a)(5)(A) ;U.S.C. 1129 (a)(5)(B); U.S.C. 1129 (a) (3); U.S.C. 1129 (A) (11); U.S.C 1129 (b)(2); US CODE 1104 (c); and only after:

(A) Any and all Hearings noticed and motions filed comply with the applicable rules of law, including but not limited to: Del. Bankr. L.R. 9006-1 (c) (i); Rule 3017 (a) of the Federal Rules of Bankruptcy Procedure;

(B) An Examiner is appointed to investigate the allegations proffered including but not limited to: fraud, dishonesty, incompetence, misconduct, mismanagement, irregularity in the management of the affairs of the debtors,

fraudulent conveyance, Sarbanes Oxley violations, leaks of material private information to the press, and insider trading;

(C) A Hearing is held on any and all motions filed prior to the confirmation hearing, including but not limited to the appellant's: Motion For Standing To Prosecute, 2nd Motion To Appoint An Examiner With Access To and Authority to Disclose Privileged Materials and interest's Motion to Reconsider the Overruling of Objection to the sale of Debtors' Exploration Properties and Related Assets;

(D) The appellant is afforded the opportunity to discover and investigate issues related to the appellee's plan of reorganization within a reasonable time period and;

(2) Any other This Court instructions This Court sees fitting.

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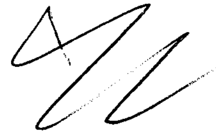
this the 9 day of February , 2016:



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APPELLANT'S BRIEF

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I. Whether the Bankruptcy Court committed an error of law or abuse of discretion in finding Debtors' Amended Joint Chapter 11 Plan of Reorganization satisfied the requirements of Section 1129 (b) of the Bankruptcy Code

1. In the Disclosure Statement, the appellee asserted that "as of December 31st 2014, there were estimated proven and probable mineral reserves at the Hycroft Mine of 10.6 million ounces of Gold and 465.3 million ounces of silver, which are contained in oxide (heap leach) and sulfide (mill) ores." (See Disclosure statement for the Debtors' Joint Plan of Reorganization docket 933). As of June 30, 2015, inventory on the heap leach pads totaled 256,206 ounces of gold (see docket 1310 exhibit 3).

2. From July 2007 to December 2014, the appellee raised $1,008,235,000 of capital from Equity and Debt offerings. The capital raised purportedly was solicited for the expansion of the Hycroft mine, with the advertised goal of expanding Debtors' mining operations and transforming them from a "run of the mill heap leach operation" into a "World Class Mine" that included a mill capable of refining the appellee's vast sulfide ore reserves. From July 2007 to November 2014 the appellee never reported a quarterly loss.

3. According to SEC filings Debtors total cashed used in investing activities from 2012 to 2014 totaled $558.9 million dollars; below is a breakdown as reported by Debtors'(in millions):

Mill project =	$103.7 + $59.5 + $35.7	$198.9
Crushing facility =	$ 59.4 + $99.3 + $23.2	$181.9
Mine development =	$ 35.3 + $22.9 + $8.1	$66.3
Leach pad expansions =	$ 30.1 + $32.4	$62.5
Mine equipment =	$ 8.7 + $40.6	$49.3

4. To try to ascertain the value of appellee's sulfide ores, the appellee's hired M3 Engineering and Technology to perform a "feasibility" study on the appellee's mill expansion project. On November 3, 2014, M3 Engineering and Technology in association with Debtors, filed a 253 page technical report with the Canadian regulatory authorities in accordance with National Instrument 43-101 Standards of Disclosure for Mineral Properties ("Feasibility Study" see: 1052 Hycroft Project NI 43-101 Technical Report Feasibility Study, exhibited in docket and entered in evidence at the confirmation hearing).

5. The 43-101 Report indicates an economic analysis of a proposed mining project at Hycroft mine. The base case economic analysis in the 43-101 Report assumes a gold price of $1300.00 per ounce and a silver price of 21.67 per ounce. Based on the assumptions in the base case analysis, the 43-101 report

concludes that the mining project at the Hycroft mine has "an after-tax Net Present Value...of $1.81 billion at a 5% discount rate." (See 43-101 Report, Section 1.20).

6. On March 27th 2015 the appellee filed with the SEC a 10 K annual report for the fiscal year that ended in December 31 2014 (docket 1310 exhibit 4). On page 35 of appellee's 10 K annual report, under the section entitled "Write-down of long-lived assets and stockpiles" the appellee reported that:

"During 2014, write-down of long-lived assets and stockpiles totaled $429.9 million. We were unable to secure the financing required to begin construction of the mill expansion project which significantly decreased the overall near-term probability of completing the mill expansion project and resulted in an impairment write-down of long-lived assets of $387.9 million and a write-down of stockpiles of $42.1 million. Despite our 2014 mill-related write-downs, our long term goal remains the construction of a mill at Hycroft to enable us to recover metals contained in mill ores and extend the operating life of the mine."

7. On July 31st 2015 the appellee filed an Amended Disclosure Statement. Exhibited in the Amended Disclosure Statement were financial projections prepared by the appellee's CFO Stephen Jones. These projections used the same assumptions of a gold price of $1300.00 per ounce and a silver price of 21.67 per ounce as the Feasibility Study. According to the financial projections exhibited, the sum of the undiscounted cash flows from for the life of the Hycroft mine was estimated to be $2,935,000,000 (see docket 933 exhibit 3 page 8).

8. On 8/7/2015 the appellee filed and exhibited a "revised" evaluation done by Barak Klein (" 2nd Moelis Evaluation", see docket 808 exhibit F). The 2nd Moelis Valuation stated that the "estimated enterprise value…does not purport to constitute an appraisal or necessarily reflect the actual market value that might be realized through a sale or liquidation of the Reorganized Debtors, its securities or its assets, which may be significantly higher or lower than the estimated enterprise value range herein." Moelis further admitted "[t]he actual value of an operating business such as the Reorganized Debtors' business is subject to uncertainties and contingencies that are difficult to predict and will fluctuate with changes in various factors affecting the financial condition and prospects of such a business." The evaluation explains that it relied on the debtor's publicly disclosed financial statements and other information provided by the debtor, and "did not assume any responsibility for independent verification of any of the information supplied to, discussed with, or reviewed by Moelis and, with the consent of the Debtors, relied on such information being complete and accurate in all material respects….[A]t the direction of the Debtors, Moelis did not make any independent evaluation or appraisal of any of the assets or liabilities…of the Reorganized Debtors."

9. Neither the 2nd Moelis evaluation or the appellee's financial projections take into account the future value of the debtor's net operating loss ("NOL") carryovers, most of which would be were generated by the debtor's 2014 asset write-downs. Earlier in the case, the appellee estimated its federal income tax NOLs to be approximately $177 million, which could be even higher when the debtor emerges from Chapter 11 (see docket 252 page 59). Pursuant to the U.S. Tax Code, NOLs can be used to offset future taxable income and tax liability in

order to improve liquidity in the future. These NOLs have significant value that should have added to the appellee's reported worth.

10. In his Brief in Support of Objection to the Amended Plan of Reorganization (see docket 1115), appellant Tachev alleged that the true value of the appellee's assets could not be determined, due to impairments of long lived assets taken not in compliance with the Generally Accepted Accounting Principles (hereinafter referred to as " US GAAP"), Public Law 107-204- July 30, 2002 (hereinafter referred to as "Sarbanes Oxley Act") and the lack of adequate disclosure of, amongst other things, the value of the NOL carryovers. In his brief appellant Tachev argued:

"Asset impairment of long lived assets is stipulated in Codification Topic 360 of the US GAAP. The assets impairment concerns the mill expansion project, which as per the definition of paragraph 360-10-35-34 of US GAAP, is a long-lived asset under development. Under the provisions of paragraph 360-10- 35-17, an impairment is recognized when the carrying amount of a long-lived asset is not recoverable and exceeds the fair value of the said long-lived asset. The carrying amount of an asset minus the undiscounted cash flows generated by the asset for its remaining life in use, represents the impairment loss. Under the provisions of the paragraph 360-10-35-34, the estimates for future cash flows shall be based on the expected service potential of the asset when development is substantially complete. However, the 10-K report of the Debtors, does not include any projections of future cash flows of the mill expansion project when it is complete. They just impaired the assets based on the fact that they have not secured financing for the

completion of the project. This write down does not comply with the provisions of the US GAAP."

11. At the confirmation Hearing appellee's CFO Stephen Jones testified GAAP accounting standards were used to prepare all SEC disclosures (see page 19 lines 15-16). Mr. Jones then testified he did not anticipate the carrying amount of the impaired long-lived assets to exceed the sum of the undiscounted cash flows expected from the use and eventual disposition of the impaired assets (see page 22). When Mr. Jones was asked if this would still be the case if financing was obtained, Mr. Jones reiterated the impairments were "in accordance with generally accepted accounting principles. <u>And what you're trying to quote me is the language in a somewhat obscure</u>, you know, <u>piece of the – generally accepted accounting principles</u>." (see page 22)

12. Although Mr. Jones testified he did not anticipate the carrying amount of the impaired long-lived assets to exceed the sum of the undiscounted cash flows expected from the use and eventual disposition of the impaired assets, the appellee's financial projections Mr. Jones prepared, and signed, indicated otherwise. <u>The financial projections</u> the appellee exhibited in their Amended Disclosure Statement <u>indicated the sum of the undiscounted cash flows from for the life of the Hycroft mine to be $2,935,000,000</u> (docket 933 Exhibit C page 8).

13. The appellee's own financial projections are evidence the undiscounted cash flows from the appaired assets were in excess of the carrying

amount and therefore recoverable. Accordingly, the reported impairments to long lived assets were not in accordance with codification topic 360 of GAAP, as any long lived asset can only be impaired if it is not recoverable. Furthermore, in disclosing the impairments of long lived assets in relation to both the mining suspension plan and mill expansion project the appellee failed to disclose the "method used to determine fair value" as required by GAAP. Moreover at confirmation, when appellant Darga examined the issue of impairments to stockpiles of "ore that has been extracted from the mine and requires further processing through a mill", Mr. Jones admitted if the appellee secures financing for the mill expansion the undisclosed amount of precious metal in the impaired stockpiles of already processed ore will be milled and sold (page 57).

14. As outlined in James Robenson's objection to the POR, the appellee never disclosed how much capital the appellee needed to finish the mill expansion project versus what had been already invested (see docket 1063). Moreover as demonstrated in appellant Tuttle's Motion Appoint an Examiner the appellee's10-K report erroneously listed the crusher was listed in the process equipment impairments related to "Mill Expansion Project" when, according to all other accounts, the crusher was part of heap leach operations (docket 819 paragraphs 50-55). When appellant Darga cross examined Mr. Jones, about the impaired crusher, Mr. Jones testified the retired crusher was used as part of heap leach operations (page 55).

15. As indicated by the numerous disclosures within the 2nd Moelis Evaluation was only as accurate as the inputs it relied on. The Evaluation relied

entirely on the appelle's financial reports and disclosures, which, as stated repeatedly, failed to comply with Sarbanes Oxley Act, or US GAAP accounting guidlines. If the over 600 million in fraudulent impairments were never written off, the 2nd Moelis evaluation presumably would have been substantially higher, as the analysis used metrics that included book value as an input. Moreover, the appellee never adequately represented any NOL carryovers in the financial projections that would have also have NPV of the appellee's assets.

16. Pursuant to Section 1129 (b)(2) of the Bankruptcy Code a cram down plan must provide for the fair and equitable treatment of any impaired and dissenting classes. Section 1129 (b)(2) defines a plan that treats a class of Equity interests fair and equitable only when that plan provides that each interest holder will receive or retain property of a value, as of the effective date of the plan equal to the greatest of (1) The allowed amount of any fixed liquidation preference that the interest holder is entitled to or (2) Any fixed redemption price to which the interest holder is entitled.

17. The appellee failed to satisfy these essential requirements. The only evidence provided were the Moelis reports, which as indicated in their disclaimers, were not independent evaluations or appraisals. The Moelis evaluations only contained a limited liquidation analysis derived from financial projections, based on over 600 million dollars of fraudulent impairments not in accordance with GAAP accounting standards. Moreover the evaluation made no mention of the value of any NOLs carryovers.

18. To counter the 2nd Moelis evaluation, appellant Tuttle entered into evidence the 20 million dollar M3 Engineering and Technology feasibility study which indicated the Hycroft mine had an after-tax Net Present Value of $1.81 billion at a 5% discount, using the same assumptions the appellee made in their financial projections of $1300.00 per ounce gold and $21.67 per ounce silver. Appellant Tuttle argued, the 2nd Moelis evaluation used flawed metrics that relied upon fraudulent impairments that rendered the evaluation unfit to be entered into evidence and the 20 million dollar M3 Engineering and Technology Feasibility Study was a much better representation that the 2nd Moelis evaluation.

19. The Bankruptcy Court abused its discretion and departed from the essential requirements of 1129 (b) in finding the appellee's POR treated fair and equitable, the impaired and dissenting shareholders. The burden of proof was on the appellee and they failed to satisfy the requirements outlined in the Bankruptcy Code governing crammed down Chapter 11 filings. There was no credible evidence, or independent evaluation, to support the appellee's extraordinary claim that the value of a permitted gold mine, that raised 1 billion dollars of capital for expansion, sitting on 10.6 million ounces of Gold (256,206 ounces of it held on the leach pads) and 465.3 million ounces of silver, only had a net present value of 200-300 million dollars.

20. The Bankruptcy Court overlooked evidence the appellee's long lived assets were recoverable and the impairments the 2nd Moelis evaluation relied upon were not in accordance with GAAP accounting standards.The Bankruptcy Court

abused its discretion by relying upon highly speculative financial suggestions, not in compliance with GAAP accounting standards, from a company whom repeatedly violated public law, to confirm a voluntarily filed POR, that extinguished 600 million dollars of reported equity. Such a departure prejudiced impaired and dissenting shareholders by extinguishing their legal rights and claims to property owned.

II. Whether the Bankruptcy Court committed an error of law or abuse of discretion in finding Debtors' Amended Joint Chapter 11 Plan of Reorganization satisfied the requirements of Section 1129 (a) (11) of the Bankruptcy Code

21. Under the provisions of 1129 (a)(11) of the US Bankruptcy Code, Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan. Pursuant to 1129 (a) (11) the proponent of a Chapter 11 plan bears the burden of showing the proposed plan has a reasonable probability of success and is more than a visionary scheme, and must do so by preponderance of evidence.(see in re TCI 2 Holdings, LLC 428 B.R. 117).

22. The capital expenditures needed to complete the mill expansion project are to be funded by a high-interest loan, at a significantly higher interest rate than the current debt obligations, which the allegedly appellee could not serve prior to the voluntarily filing. At the confirmation hearing, CFO Stephen Jones

testified financing for the appellee's mill expansion project was still in doubt (see page 21 line 15). Mr. Jones testimony that financing for the appellee's mill expansion project was in doubt was evidence the POR proposed was a visionary scheme.

23. Pursuant to Section 1129 (a) (11) any further restructuring, or sale of assets, must be disclosed in a debtors' POR. The appellee voluntarily filed for chapter 11 protection, allegedly as a direct result of their inability to secure financing for the mill expansion. In the POR the appellee briefly references a sale of assets, if financing is not obtained through a "strategic transaction" but offers no details about the sale of assets. Mr. Jones testimony such a "strategic transaction" was doubtful is evidence in support of appellant Tuttle's allegations that the appellee's plan was not to reoarganize but rather to liquidate of assets subsequent the extinguishing of equity.

24. The Bankruptcy Court abused its discretion and departed from the requirements of Section 1129 (a) (11) by overlooking evidence and arguments demonstrating that the appellee's POR was nothing more than a visionary scheme. At the January 20th Hearing on appellant Darga's reconsideration motion, the Bankruptcy Court admitted the Chapter 11 restructuring should have been a Chapter 7 liquidation (the transcript it forthcoming). This candid admission is further evidence of the Court's departure from 1129 (a)(11). Chapter 11 protection is not a catch 22, all evidence provided suggested the POR was not feasible and the appellee will sell the company through a process never disclosed to the Court.

III. Whether the Bankruptcy Court committed an error of law or abuse of discretion in departing from the essential requirements of U.S.C. 1129 (a) (5)(A) in Findings of Fact, Conclusions of Law, And Order Confirming Debtors' Amended Joint Chapter 11 Plan of Reorganization

25. U.S.C. 1129 (a) (5) (A) explicably states a Bankruptcy Court can only confirm a Chapter 11 plan of reorganization if the proponent of the plan has disclosed the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor and; the appointment to, or continuance in, such office of such individual, is consistent with the interests of creditors, equity security holders, and public policy.

26. On 9/18/2015 the appellee filed a plan supplement. Exhibited in the plan supplement was a "List of Reorganized Debtors' Directors and Officers" indicating: "As of the Effective Date.... 'the remaining member of the board of directors has not yet been identified'..." (see docket 1024 exhibit G)

27. At the confirmation hearing appellant Tuttle argued, the proposed plan could not be confirmed until the appellee properly disclosed the identity of any individual proposed to serve as a director, or officer, after confirmation of the plan (see page 127 lines 4-10 exhibit 5 docket 1232). The Bankruptcy Court overruled the appellant's objection to the appellee's Chapter 11 plan of reorganization confirming the proposed plan while finding: "there was an allegation regarding the

identity of any individual proposed to serve post-petition, but I think that has been properly disclosed…" (see page 150 lines 2-5).

28. On October 22nd 2015, the appellant filed Notice of Effective Date (see docket 1190). On this same day the appellee filed with the Security and Exchange Commission a Form D (see docket 1361 exhibit 2) indicating the reorganized debtors' board of directors included Mike Freehan. The Form D the appellee filed with the SEC on the effective date was evidence that as of the effective date the appellee did indeed know the identity of the undisclosed director: and the appellee's "List of Reorganized Debtors' Directors and Officers" the Bankruptcy Court relied on to confirm the appellee's plan of reorganization was a fraud on the Court.

29. The Bankruptcy Court's findings the identity of any individual proposed to serve post-petition, was properly disclosed prior to confirmation was an abuse of discretion departing from the essential requirements of U.S.C. 1129 (a)(5)(A)(i). Moreover, since the identity and affiliations of all of the appellee's directors were never disclosed, it would have been impossible for the Bankruptcy Court to determine whether or not the appellee's proposed plan met the requirements of U.S.C. 1129 (a)(5)(A)(ii).

30. The Bankruptcy Court abused its discretion by never taking into consideration the interests of creditors, equity security holders or public policy prior to confirming the appellee's plan of reorganization. Due to the fact Mike

Feehan's identity and affiliation were not properly disclosed, it was impossible for the Bankruptcy Court to make a determination that the undisclosed director's appointment, was consistent with the interests of creditors, equity security holders, or public policy as required by U.S.C. 1129 (A)(5)(ii). Such a departure prejudiced the appellants due process rights.

IV. Whether the Bankruptcy Court committed an error of law or abuse of discretion in departing from the essential requirements of U.S.C. 1129 (a) (3) by finding Debtors' Amended Joint Chapter 11 Plan of Reorganization was proposed in "good faith"

31. The concept of good faith was first stiputalated in Magna Carta Libertatum, signed by John the Landless of England in 1215. The essence of this concept was fair and open dealing in human interactions. In bankruptcy "good faith" is the debtors' honest intention of using the bankruptcy process to get a fresh start from oppressive debts. Over the years the Courts developed a criteria to determine whether a debtor has good faith such as: was the debtor honest? were their disclosures complete and accurate? Did the debtor file bankruptcy for other reasons other than insolvency? Or did the debtor abuse the bankruptcy process by trying to hide assets or transfer assets for the benefits of an insider?

32. Throughout the proceedings the appellants and other member of the Ad Hoc Committee put the Bankruptcy Court on Notice of several Sarbanes Oxley violations related to the appellee's publicly filed financial disclosures along with

the above referenced fraudulent impairments. Pursuant to the Sarbanes Oxley Act the SEC requires Companies file an 8-K report within four business days in the event any of the including occur: Material impairments (see Item 2.06), Triggering events that accelerate or increase a Direct Financial Obligation or an Obligation under an Off- Balance Sheet Arrangement (see Item 2.04),Results of Operations and Financial Conditions (see Item 2.02) and Financial Statements and Exhibits (see Item 9.01).

33. On January 21st 2015, appellee filed with the SEC a 8-K form in conjunction with a press release titled: "Allied Nevada Announces Preliminary Full Year 2014 Gold and Silver Sales Increase 19% and 115%, Respectively Year-Over-Year" (see docket 1310 exhibits 5) indicating the appellee "Anticipate 2015 operating results to be very similar to 2014 in terms of production and sales….".

34. Although the appellee did file an 8-K on January 21st 2015 the report and press release, failed to disclose any material impairments, their deteriorating financial conditions or the fact they were currently not in compliance debt covenants that contained cross-default and cross-acceleration clauses.

35. The appellee violated Section 409 of the Sarbanes Oxley Act by failing to timely file the required 8-K to report the $387.9 million dollar impairment within 4 business days. Although it was never reported in Debtors' Q4 2014 Preliminary Balance Sheet, the appellee claimed a net non-cash adjustment of

$505,956,000 for the year 2014 after they filed for Chapter 11 protection nearly 3 months after the impairments were "triggered".

36. The appellee also violated Section 409 of the Sarbanes Oxley Act by failing to file the required 8-K to report they were not in compliance with all debt covenants and faced an accelerated obligation under the Off- Balance Sheet Arrangement. Instead of timely filing the required 8-K in accordance within the required 4 business day provision of the Sarbanes Oxley Act. The appellee waited until March 27th 2014, to file with the Security and Exchange Commission a form 10K annual report for the fiscal year that ended December 31st 2014, to disclose that they:

> "were not in compliance with all debt covenants as of December 31, 2014, which are discussed below in additional detail. Our debt agreements contain cross-default and cross-acceleration clauses, which means that an event of default or covenant violation under any of our debt agreements may result in the acceleration of substantially all of our outstanding debt. As of December 31, 2014, we were not in compliance with the Tangible Net Worth covenant contained in the Revolver and certain capital lease obligations." (see docket 1310 Exhibit 4 page 41)

37. Moreover, the appellee also failed to timely notify shareholders that:"the Company received a Notice Designating Early Termination Date from the Bank of Nova Scotia dated March 10th 2015, in respect to the ISDA Master Agreement, dated May 15th, 2012... The close-out amount relating to the

Scotiabank Master Agreement (and related cross currency and diesel swaps) is 86.3 million...The Company received a Notice to Terminate all Outstanding Transactions Following Event of Default from National Bank of Canada...NBC has claimed that the Company owes approximately $371,000 after realization of the collateral. The Company received a Notice Designating an Early Termination Event Following an Event of Default from Societe Generale, dated March 10th, 2015...the related cross currency swap as of such early termination date is 10.37 million.."

38. Section 302 of the Sarbanes Oxley listed under Title III of the act pertains to 'Corporate Responsibility for Financial Report. Section 302 requires periodic statutory financial reports are to include certifications that, amongst other things: The signing officers have reviewed the report; The report does not contain any material untrue statements or material omission or be considered misleading; The financial statements and related information fairly present the financial condition and the results in all material respects;

39. As detailed in the original Examiner Motion, on November 18th 2014, just 15 days after the appellee stated they had: "sufficient resources and access to sources of liquidity to fund our operations, remaining expansion product obligations, and other contractual obligations for at least the next 12 months"(see docket 1310 exhibit 2 page 28 10k for 3rd quarter Earnings), the appellee registered shares of the company, with the United States Securities and Exchange Commission, to be sold in a December 2014 Public Offering.

40. Under the provisions of the Sarbanes Oxley Act, Section 302, paragraph (a) (2) and (a) (3) of the Sarbanes Oxley Act, Debtors were obligated to provide true information about the financial condition of the company and disclose all facts of material significance. Obviously the appellee did not have "sufficient resources and access to sources of liquidity to fund our operations, remaining expansion product obligations, and other contractual obligations for at least the next 12 months" or the company would of not A) had to issue shares via a public offering within 15 days; or B) file for Bankruptcy protection 3 months later. Still the appellee failed to disclose or update information pertaining to the true financial condition of the company.

41. The appellants provided a preponderance of evidence that in the months just prior to filing for Chapter 11 protection, and throughout the proceedings, the appellee displayed a blatant disregard for the disclosure requirements of 1) the Bankruptcy code, 2) GAAP accounting standards and 3) public law. Moreover the concealment of financial evidence brings into question the appellee's claims they were "hopelessly" insolvent, leaving questions unanswered in relative to just where the 1 billion dollars in capital went.

42. Due to its dependence on a debtor to accurately disclose information the bankruptcy process can only work if a debtor is honest. The Bankruptcy Court abused its discretion by overlooking evidence the appellee abused the bankruptcy process by submitting disclosers that were either incomplete or inaccurate. The appellee fraudulently impaired assets to conceal their worth, while ommitting the

name and/or affiliations of Mike Feehan. In confirming the POR the Bankruptcy Court overlooked evidence the appellee's plan was not proposed in "good faith". The Bankruptcy Court overlooked evidence the appellee hid assets and concealed valuable NOL carryovers. The Bankruptcy Court abused its discretion and departed from the essential requirements of U.S.C. 1129 (a) (3) thereby prejudicing the appellants.

V. Whether the Bankruptcy Court committed an error of law or abuse of discretion in denying Appellant Tuttle's Motion to Appoint an Examiner with Access to and Authority to Disclose Privileged Materials

43. In addition to the above chronicled malfeasance, appellant Tuttle and other members of the Ad Hoc Committee proffered evidence in support of the need for an Examiner to investigate allegations of the trading of the appellee's assets by insiders in several motions and pleadings (see dockets 423,773,819,970, 972,975,978,981).

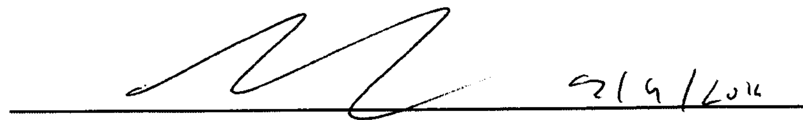
44. Members of the Ad Hoc Committee proffered un-refuted evidence certain note holders, and DIP and Exit Facility Financers, were exponentially increasing their positions in the appellee's debt while holding un-hedged options bets against the company's stock (see docket 959, entered into evidence at the Examiner Motion Hearing). Also exhibited was evidence showing the open interest in options trading increased exponentially in the weeks just prior to Debtors voluntarily filing for Chapter 11 protection (see docket 819 Exhibit B see also

docket 970 Exhibit 1). These abnormalities in the trading of Debtors' Equity Securities and options strongly suggest trades were made with the advantage of certain investors on the short side benefitting from the possession of material nonpublic information.

45. At the September 11th Hearing, the Bankruptcy Court abused its discretion by entering into evidence the Declarations of Jason Hempel, Jacob Mercer, and Mr. Techar who were not present at September 11th Hearing and therefore unavailable for cross examination. Due to their absence from the September 11th Hearing, the above referenced gentleman were un-available to offer testimony regarding specifics in the trading of debtors' equity options, leaving the record of evidence incomplete. Had the Declarations been omitted from the record, the party of interest's allegations that Whitebox, Highbridge and Wolverine traded on private information would have been un-refuted.

46. The Bankruptcy Court abused its discretion, and overlooked or improperly ommitted evidence in support of appellant Tuttle's arguments, an Examiner was appropriate. Such evidence included the above referenced Sarbanes Oxley violations, impairments not in accordance with GAAP financing standards, evidence of insider trading, and the sale of Exploration Properties to Creditors

Respectfully submitted,



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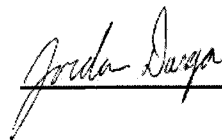

02 / 08 / 2016

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