IN THE WARDENS COURT)
OF WESTERN AUSTRALIA)
HELD AT KUNUNURRA)

IN THE MATTER OF AN APPLICATION FOR THE RESTORATION OF EXPLORATION LICENCE 80/1302 PURSUANT TO SECTION 97A OF THE MINING 1978 AS AMENDED ("the Act") AND OBJECTION 2/901 THERETO

BETWEEN

HANSEN STAR PTY LTD AND GEMEX HOLDINGS PTY LTD Applicant

and

DESMOND ROY HIGGINS Objector

Mr Crabb instructed by Robinson Cox appeared for the Applicant.

Mr. Goodlet instructed by Unmack & Unmack appeared for the Objector.

REASONS FOR DECISION

By notice dated the 24th of May 1991 the Applicants in these proceedings lodged an Application to Restore Exploration Licence 80/1302. By objection dated the 7th of June 1991 the objection by the objector was also filed. The hearing of the matter commenced and was completed on the 6th of November 1991. The facts in relation to and leading up to the making of the application by the applicants are not seriously in dispute. I set these out hereunder.

Facts

By application dated the 22nd of February 1990 Hansen Star Pty Ltd applied for an exploration licence in relation to the land which subsequently became the land the subject of exploration licence 80/1302. Subsequent to a recommendation by the Warden on the 6th of April 1990 exploration licence 80/1302 ("the licence") was granted to Hansen Star Pty Ltd ("Hansen Star") for a term of 5 years as from the 26th of August 1990. The exploration licence has set out thereon a schedule of conditions relating to the licence. These were 9 in number.

By a document dated the 10th of May 1990, Hansen Star entered into a joint venture in respect of the licence and other ground in respect of which Hansen Star was said to be the applicant for an exploration licence over. The agreement set out that Hansen Star was the registered owner of exploration licence 80/1302. That of course was incorrect. In any event the agreement provided for Gemex Holdings Pty Ltd ('Gemex') to undertake an exploration programme in relation to the land comprised in the licence and for so doing to earn a 30% interest therein. By a cheque drawn on the account of Underwater

Systems Australia Ltd ("Underwater Systems") on the 11th of May 1990 Hansen Star was paid the sum of $96,060.00 in, the words of Mr. Rankine-Wilson a director of both Underwater Systems and Gemex at the time, for work that Hansen Star had done in respect of the licence. A cheque requisition slip in relation to the cheque paid to Hansen Star records the details thereon as a loan to Gemex "re joint venture 10.05.90".

For some reason, it being unexplained in evidence, further agreements were entered into between Hansen Star and Gemex. By documents dated 29th of June 1990 Hansen Star purported to sell to Gemex 90% of the beneficial interest that Hansen Star held in five mining tenements, including the ground contained in the licence. The document, headed Agreement for Sale of Mining Tenements, sets out in schedule 1 thereof the description of the mining tenements ('the agreement for sale') and makes clear that in respect of each of those mining tenements an application had been lodged however had not at that point been granted. I will return to the consideration of this agreement, and the joint venture agreement subsequently referred to, later in these reasons. On the same day the parties entered into a further joint venture agreement ("the joint venture agreement") in relation to the ground contained in 15 exploration licences, including the ground the subject of the licence. The joint venture agreement set out that it would commence on a date defined as 'the Commencement Date' which was further defined as the date of fulfillment of the condition set out in clause 2 of the agreement for sale. Again I will refer to this later in these reasons. In any event by cheque drawn on Underwater Systems on the 30th of July 1990 the sum of $91,635.40 was paid to Hansen Star. The details set out on the cheque requisition in relation to this cheque are "Gemex Holdings application costs $15,345.40 and reimbursment of expenditure

$76,290.00 on 80/1302, 1314, 1325, 1335 and 1337".

By letter dated the 13th of July 1990 Tenement Administration Services who in evidence were described as the agent for Hansen Star, wrote to the Director General Department of Mines, enclosing copies of the agreement for sale and the joint venture agreement. Pursuant to the provisions of Section 64 (1)(b) of the Act consent of the Minister was sought in relation to the agreement for sale. On the 8th of November 1990 the Honourable the Minister for Mines approved a transfer of an interest in the licence. The consent so given was made only in relation to the ground contained in the licence and not any other tenements referred to in the agreement for sale. By document dated the 14th of December 1990 Gemex lodged a caveat in respect of 90/100th shares in the licence.

As the result of information given to the Mines Department an aeriel view of the land the subject of the licence was undertaken on the 11th of December 1990. As a result it was alleged that conditions 3, 4 & 5 of the licence had been breached. It was alleged that costeans had not been backfilled and other disturbances of the land had not been rehabilitated, that a camp that had been constructed had been abandoned but rubbish, disused equipment and other materials remained at that campsite and that mechanised earthmoving equipment had been used for various purposes without the written approval of the district mining engineer. It is clear from the evidence before me, particularly of Mr. McGaffin, that between shortly after Easter 1990 and sometime in mid June 1990 the campsite had been established on the land the subject of the then application for the licence, and that various road work and other work had been carried out on that ground on behalf of Hansen Star. It is to be noted that the exploration licence was not granted until the 26th of August 1990. It is

clear on the evidence that this work was all carried out prior to the granting of the licence. In any event as a result of these observations by an officer of the mines department it was recommended, among other things, that the licence should be forfeited. This recommendation was made on the 17th of December 1990.

By letter dated the 26th of February 1991 the Director, Mining Registration Division of the Mines Department gave notice to Hansen Star, pursuant to regulation 50, that it was the intention of the Honourable the Minister for Mines, under Section 96A, to forfeit the licence for breach of covenant, namely failure to comply with the conditions thereof. The letter containing the notice sought any submission that Hansen Star wished to make to the Minister within 30 days of the date of that letter. By letter dated the 13th of March 1991 Gemex wrote to the Department of Mines advising that they had become aware of the letter of 26th of February 1991 however had been unable to contact Hansen Star. By letter dated the 26th of March 1991 signed by Peter Howells of a firm trading as Howells Kidner an extension of time on behalf of Hansen Star was sought in order to make any submission necessary. That apparently was granted. On the same date, the 26th of March 1991, Tenement Administration Services wrote to the Director, Mining Registration Division, Mines Department on behalf of Gemex. In that letter the Director was advised that Gemex had not been involved with any alleged illegal mining on the ground contained in the licence, referred to various sections of the agreements entered into between Gemex and Hansen Star and advised that Tenement Administration Services and Gemex had written to Hansen Star at its last known address however had received no response. The letter then proceeded -

"Accordingly pursuant to Clause 12 of the agreement dated the 29th

of June 1990 Gemex Holdings Pty Ltd has terminated its agreement with Hansen Star Pty Ltd for breach of warranty (self explanatory correspondence attached)".

Included with that letter was a copy of a letter from Gemex to the Directors of Hansen Star advising of their intention to terminate the joint venture agreement pursuant to what was said to be a clause of the agreement for sale. No further submissions were made by anyone in relation to the intended forfeiture. Notice of forfeiture of the licence appeared in the Government Gazette on the 17th of May 1991 at page 2531. The notice provided that in accordance with the provisions of Section 96A (1) of the Act that the licence was forfeited for non compliance with the terms and conditions of grant.

By a letter which has typed upon it at its head "Hansen Star Pty Ltd," dated the 21st of May 1991, addressed to the Directors Gemex Holdings Pty Ltd, Gemex has purportedly given authority to make application on behalf of Hansen Star for restoration of the licence. The letter reads

"Hansen Star Pty Ltd hereby authorises Gemex Holdings Pty Ltd and its directors to make and pursue an application as agent and attorney for, on behalf of and in the name of Hansen Star Pty Ltd, pursuant to Section 97A of the Mining Act 1978 for restoration of Exploration Licence 80/1302 provided that Gemex Holdings Pty Ltd bears all the legal and other costs of and relating to the application. Yours faithfully, Peter Howells, Secretary".

It is to be noted that the letter is signed by a a person as the Secretary of Hansen Star and does not refer in any way to the basis on which the Secretary is given authority to grant such authority to Gemex.

The only other matter of note is that by letter dated the 3rd of October 1991 the Director, Mining Registration Division, Mines Department wrote to the solicitors for Gemex advising that on the 20th of September 1991 the Honourable the Minister for Mines gave consent pursuant to Section 64 (1)(b) of the Act to the acquisition by Gemex of interests from Hansen Star in relation to exploration licences 80/1314 and 80/1325. It is to be noted that these licences were two of the tenements referred to in schedule 1 of the agreement for sale.

THE AGREEMENTS

As referred to Hansen Star and Gemex entered into two agreements on the 29th of June 1990 relating to, inter alia, the licence. The agreement for sale provides by clause 3 thereof as follows

"3 SALE AND PURCHASE.

3.1 Subject to clause 2 the Vendor shall sell and purchaser shall purchase all the Vendors right, title and interest in and to the Mining Interest, free of encumburances, in consideration of:-

(a) the grant by the Purchaser of the Free Carried Interest

(b) payment of the Application Costs

(c) reimbursement of past expenditure as set out as in clause 3.3; and

(d) funding of Joint Venture Expenditure (as defined in the Joint Venture Agreement).

3.2 Upon execution of this agreement:-

(a) the parties shall execute the Joint Venture Agreement

(b) the Vendor shall tender transfers and security forms in respect of the Mining Interest of all documents of title evidencing the Vendor's Interests in the Mining Interest; and

(c) the Parties shall execute transfers and security forms in respect of the Mining Interest.

3.3 Upon the approval in principle of the Minister in respect of the matters set out in clause 2.1 or the expiry of 21 days from execution of this Agreement (whichever is sooner), the Purchaser shall pay the Vendor:-

(a) the sum of $76,290.00 being reimbursement of exploration expenditure and infrastructure costs incurred by the Vendor in respect of the Mining Information and the Mining Tenements; and

(b) the Application Costs.

In Clause 1.1 of that agreement the following definitions appear.

"Mining interest means 90% of :

(a) the beneficial interest the vendor holds in the Mining Tenements; and

(b) the Mining Information.

"Mining tenements" means:

(a) the mining tenements specified in Schedule 1;

(b) any other mining tenement or mining tenements which may be granted in lieu of, or relate to the same ground as, the Mining Tenements; and

(c) includes all rights to mine and other privileges appurtenant to the Mining Tenements and all ore and other mineral bearing material, sand, slimes, tailings, and residues of whatsoever nature located on and under the mining tenements."

Schedule 1 of the Agreement defines the mining tenements as being EL80/1302, 80/1314, 80/1325, 80/1335 and 80/1337. As already indicated at the time of the entry into this agreement none of these exploration licences had been granted.

Clause 2 of the agreement for sale provides as follows:

2. CONDITON PRECEDENT

2.1 The transfer, assignment and parting with possession of the Mining Interest pursuant to the terms of this agreement shall be conditional upon and subject to the approvals of the Minister pursuant to the Mining Act and in particular, the prior written consent of the Minister pursuant to section 64(1)(b) of the Mining Act, being granted.

2.2 The parties shall forthwith do all things and sign all documents necessary for applying for and obtaining the approval as referred to in clause 2.1

2.3 If the condition is not duly satisfied then this agreement shall be at an end and neither party shall have any claim against the other either at law in the equity.

By clause 4 of the agreement for sale it is provided as follows:

4. PERFECTION OF TILE

If any of the rights of the Vendor as beneficial owner of the Mining Interests are not legally capable of being transferred to, conferred upon or exercised by the Purchaser in the Purchasers' name, (which the Vendor warrants not to be the case) the Vendor hereby transfers such rights to be exercised by the purchaser in the name of the Vendor and the Vendor shall hold such rights in trust for the Purchaser".

The joint venture agreement provided, inter alia, as follows:-

" 2 JOINT VENTURE

2.1. The Venturers hereby associate in an unincorporated venture for the purpose of exploring, developing and mining the Tenements upon the terms and conditions set out in this Agreement.

2.2 The joint venture shall commence on the Commencement Date as of which date the Joint Venture interests of the Venturers shall be as follows:-

Gemmex - 90%

Hansen Star - 10%...."

As previously indicated the tenements are defined in the joint venture agreement, inter alia, to include the exploration licences set out in the agreement for sale, including the licence, together with several other exploration licences.

In clause 1.1 of the joint venture agreement the Commencement Date is defined as:

> "means the date of fulfillment of the condition set out in clause 2 of the Sale Agreement...".

In relation to the agreement for sale it is to be noted that the agreement is conditional upon the prior written consent of the Minister pursuant to section 64(1)(b) of the Act being granted in relation to the transfer of the mining interest and the mining tenements comprised within the definition of that mining interest. As indicated the mining tenements set out in the schedule are five exploration licences, or perhaps more appropriately described as at the time of the entering into the agreement, applications for exploration licences. It is clear on the evidence before me that as at the date of forfeiture of the licence, and as at the date that the application by Hansen Star and Gemex for restoration of the licence was made that of those five mining tenements the written consent of the Minister to the transfer had been received only to one; the licence. The written consent of the Minister to the transfer of two of the other exploration licences was not given until the 20th September 1991, some four months after the filing of the application for restoration. There is no evidence before me that in relation to exploration licences 80/1335 and 80/1337 that any such written consent has been given by the Minister as required. It therefore would seem that the condition precedent set out in the agreement has not, even at the date of the hearing, been complied with. Notwithstanding the payment by Gemex to Hansen Star pursuant to clause 3.3 of the Agreement for Sale it is clear that the condition precedent having not been satisfied that the agreement for sale had not come into effect as at the date of the hearing. There is no evidence before me that there had been any waiver of the condition

precedent.

Pursuant to Clause 2.2 of the Joint Venture Agreement the commencement date of that agreement was the date of fulfillment of the condition precedent of the sale agreement. For the reasons outlined above that condition has not been fulfilled and again as at the date of the hearing the joint venture agreement had not commenced.

THE ACT

In relation to the matter in hand the following relevant sections appear on the Act:-

82(1) Every mining lease shall contain and be subject to the prescribed covenants by the lessee and in particular shall be deemed to be granted subject to the conditions that the lessee shall -

.....

(d) not assign, underlet or part with possession of such land or any part thereof without the prior written consent of the Minister, or an officer of the Department acting with the authority of the Minister

(g) be liable to have the lease forfeited if he is in breach of any of the covenants or conditions thereof.

.....

64(1) During the first year of the term for which an exploration licence is granted, a legal or equitable interest in or

effecting an exploration licence shall not be transferred or otherwise dealt with, whether directly or indirectly, unless -

(a) the dealing arises in the due administration of the estate or affairs of a holder -

(i) who is dead

(ii) who is an person who is an insolvent under administration within the meaning of the Companies (Western Australia) Code

(iii) who is otherwise incapacitated at law; or

(iv) which is the course of being wound up (not being a voluntary winding up); or

(b) prior written consent to the dealing is given by the Minister or an officer of the Department acting with the authority of the Minister.

(2) Nothing in subsection (1) prevents, or affects the validity of, any agreement made in contemplation of a dealing to which that subsection applies where the agreement expressly provides that the consent required by that subsection is to be obtained as a condition of the dealing.

96A(1) When an exploration licence is liable to forfeiture by virtue of section 63A, the Minister may cause the exploration licence to be forfeited by declaring by notice under his hand published in the Government Gazette that the exploration licence is

forfeited....."

63A An exploration licence is liable to forfeiture if:-

(a) the prescribed rent or royalty in respect thereof is not paid in accordance with this Act;

(b) the terms and conditions, including the prescribed expenditure conditions referred to in section 62, and any conditions to which the licence is deemed to be subject pursuant to section 63, are not complied with; or

(c) the holder of the exploration licence is convicted of an offence against this Act.

97A(1) Subject to subsection (2), where a mining tenement is forfeited under or by virtue of section 96, 96A or 97 a person who was, immediately prior to the forfeiture, the holder of the tenement concerned may apply to the warden for the mining tenement to be restored to him and the forfeiture cancelled.

(2) Where the forfeiture was occasioned by noncompliance by the holder with an expenditure condition applicable to the tenement and results from an application made by a person, not being a person acting on behalf of the Department, subsection (1) does not apply.

Section 97A goes on to provide that on the hearing of an application under sub section (1) the Warden, in a case to which section 96 does not apply, shall as

soon as practicable thereafter transmit to the Minister a number of documents including the Warden's report recommending the granting or refusal of the application together with the reasons for that recommendation. In this instance the application is one to which Section 96 does not apply.

SUBMISSIONS

Several submissions are made on behalf of either the applicant or the objector in relation to the success or failure of the application. It would appear to me that those submissions can be isolated into two general submissions. These are:

1. That the application to restore is invalid in that it does not comply with section 97A (1) of the Act.

This section provides that a person who was immediately prior to the forfeiture the holder of the tenement concerned may apply for restoration. In this instance the holder of the tenement prior to forfeiture was Hansen Star. It is conceded by the applicant that the only party that can make this application is Hansen Star. The applicant says that the application is made by Hansen Star.

This is said to be for two reasons. It is firstly said that pursuant to Clause 4 of the Agreement for Sale, Gemex, being the purchaser therein, is able to exercise the rights of the vendor, Hansen Star, in the name of the vendor. It is further said that Hansen Star holds those rights upon trust for Gemex and as a result thereof Gemex is able to proceed in its own right. Without expressing any final view in relation to this submission it is my present view that even

if Gemex is the beneficial holder of the rights of Hansen Star then simply by reason of that fact Gemex would not be entitled to make application in its own name, or on behalf of Hansen Star, to restore the licence. Again without expressing any final view it is my opinion that Gemex would not have the right pursuant to Clause 4 of the Agreement for Sale to take action for restoration in the name of Hansen Star unless Hansen Star was not legally capable of exercising those rights, whatever they may be in the context of the agreement.

It is my view however that Clause 4 of the agreement for sale is not a clause that has come into effect between Gemex and Hansen Star. As previously indicated it is a condition precedent to the agreement that the transfer, assignment and parting with possession of the mining interest defined in the agreement was conditional upon and subject to the prior written consent of the Minister pursuant to section 64 (1) (b) of the Act. As already indicated the mining interest referred to therein includes the mining tenements referred to in Schedule 1; the mining interest is not simply confined to exploration licence 80/1302, or any application in relation thereto, but includes all of the mining tenements referred to in Schedule 1. As at the date of the making of the application that condition precedent had not been satisfied. As at the date of the making of the application the only consent then given by the Honourable the Minister was in relation to one only of the five tenements therein set out. The condition precedent not having been satisfied, and the agreement not having come into effect, clause 4 of the agreement, as at the date of the making of the application for restoration, was of no effect. Likewise if any reliance is placed upon the joint venture agreement to give to Gemex the right to make the application on behalf of Hansen Star then that joint venture agreement pursuant to Clause 2.2 thereof had not commenced, even

at the date of the hearing of this matter. The evidence from Mr. Rankine-Wilson is clear as to how and who makes the application. Mr. Rankine- Wilson in evidence said that Gemex is making the application for restoration on behalf of Hansen Star.

My view in relation the agreement is fortified to some extent by the submission made on behalf of Gemex to the Honourable the Minister for Mines under cover of a letter from the solicitors for Gemex dated the 14th of June 1991. At page 2 of that submission the following appears:-

> "Gemex appreciates as it, relying upon the authority given by Mr. Howells on behalf of Hansen has made an application for restoration of the 80/1302, ...".

If there was any other ground upon which Gemex was making a submission on behalf of Hansen Star it would seem to me that that would have been set out in that particular submission.

In any event it would appear from the contents of the letter from Tenant Administration Services to the Director, Mining Registration Department, Mines Deparrment, dated 26th March 1991, that even if the agreements had come into effect that Gemex had "terminated" its agreement with Hansen Star by giving notice in relation thereto.

2. Notwithstanding the above it is further said on behalf of the applicant that pursuant to the letter of the 21st of May 1991 to the Directors of Gemex signed by Peter Howells, purportedly the secretary of Hansen Star, that Gemex has authority to make the application on behalf of and in the name of Hansen Star.

Other than the letter and some indication by Rankine-Wilson in evidence that Peter Howells was the secretary of Hansen Star there is no evidence before me that that is the case. Simply because someone describes themselves as secretary of a company does not necessarily make it so. In any event the question arises as to whether or not the secretary of a Proprietary Limited company can grant to another party or person the right to act on behalf of and in the name of the company that person purports to be secretary of. As I understand it a company acts by a resolution of its board of directors. There is no question that a Board of Directors may authorise other people or other parties to act in the name of the Company. It may authorise other people including company officers, to act as its agent or attorney in relation to property dealings and a whole range of other matters. Where however it is alleged that an individual has the right to authorise other parties to act on behalf of a company he purports to be an officer of it is my view that there must be evidence of the grant to that person of that particular authority. That would require evidence of a resolution of the Directors of the company in that regard. Simply for a person to sign a letter as secretary of a company, in this instance Hansen Star, purporting to authorise another company to act in relation to property of Hansen Star in the name of Hansen Star, without anything else, is in my view totally insufficient to enable the conclusion to be reached that any such purported authority on behalf of Hansen Star has been given properly and appropriately. For this reason it is my view there is insufficient evidence before me to show that Gemex has the ability or had the ability at any time to make application on behalf of Hansen Star on the basis of this purported authority.

For the reasons that I have outlined it is my view that there is no application before me properly made by Hansen Star. Hansen Star being the only party that is entitled to make an application pursuant to Section 97A of the Act the matter is at an end. It is my view that even if Gemex was entitled to become the registered proprietor of the licence, which for the reasons already expressed as to the agreement for sale is not the case, Gemex does not have the ability to make the application on behalf on Hansen Star as it has. For these reasons it is not necessary to go further however for completeness I should perhaps, and will, address the question of whether or not if the application before me is a proper application by Hansen Star, it ought to succeed.

In relation to the matters to be considered in respect of an application of this nature I would respectfully adopt the reasoning of Warden Reynolds in the matter of B.R.G.M. Nominees Pty Ltd and Hake, Saggers and Grabham delivered 26th October 1988. At page three thereof he says

> "Without wishing to be exhaustive it seems to me that consideration should be given to the explanation for the non payment of the rent, the degree of the lack of care, if any, on the part of the holder in attending to the payment of the rent and the existence of any special circumstances."

In relation to what is expressed as the explanation for the non payment of the rent by Warden Reynolds I am of the view that that can be properly expressed in a wider form, namely the explanation given "for the reason for forfeiture of the tenement." In regard to the degree of lack of care in attending to payment of rent this can also be expressed in a wider form namely the lack of care in compliance with the conditions of the tenement.

At p. 4 of those reasons His Worship says:

> "When determining whether any special circumstances exist, the Court should give consideration to the length of time that the holder had held the tenement, the expenditure incurred in any years prior to the date upon which the rent became payable, whether the holder had delineated an ore body, whether the holder had caused the necessary arrangements to be made for a mining operation to commence, whether the holder was actually carrying out a mining operation on the tenement, the size of any planned mining operation or existing mining operation and generally the prejudice that would be suffered by the holder if the tenement was not restored."

Again without wishing to appear to be exhaustive, to these considerations I would add the general behaviour of the applicant in relation to the tenement both prior to and after notice of intention to forfeiture had been given.

It is submitted on behalf of the applicant in these proceedings that another matter that ought to be taken into account, and given considerable weight, is the allegation that the forfeiture by the Honourable the Minister was invalid. It is said that in this instance the forfeiture was invalid as the holder, Hansen Star, had not breached the conditions or covenants of the licence subsequent to its granting. It is said that any mining that took place beforehand, or any preparation for mining involving disturbance of the ground, was irrelevant to the Ministers considerations. Whilst it is clear on the evidence before me that the matters complained of and apparently forming the basis of the Ministers decision to forfeit the lease did take place prior to the granting of the lease it is my view that it is not for me to determine whether or not the Ministers actions were valid or invalid. This is a matter

for a superior Court to determine if it is to be pursued. It would seem to me that if this was a matter that I was to take into account I would necessarily have to come to some conclusion as to whether or not the Ministers actions were valid or invalid. This, in my view, would be improper as if I came to the conclusion that such action was invalid amd for that reason decided that the licence ought to be restored the effect would be to usurp the power of the superior court which is vested with the responsibility and power to make such a determination. For that reason it is my view that the validity or otherwise of the forfeiture is not a matter which can properly come within my consideration as to restoration.

In relation then to the matters I ought to consider:

Firstly the explanation given for the breach of any condition or covenant of the licence. Other than to say that in fact the work said to be in breach of the licence occurred prior to the granting of the licence there is no explanation offered. It is not in dispute that Hansen Star carried out that work, or had carried out that work on its behalf, prior to the granting of the licence.

Secondly the lack of care on the part of the holder in relation to the conditions and covenants of the licence. It is clear that the work carried out by Hansen Star, under the direction of Mr. McGaffin, then a director of Hansen Star, was carried out on the basis of something that was told to Mr. McGaffin by another director of Hansen Star, a Mr. De Vincentis. Mr. McGaffin gave evidence that he had been involved in prospecting and mining for some considerable period of time. Notwithstanding this having made no enquiries himself as to whether or not an exploration licence had been granted, whether or not terms and conditions had been complied with, whether or not approval

from the district mining engineer for mechanical equipment had been obtained, McGaffin simply proceeded to carry out work on the ground the subject of the then application. It seems to me that there was a substantial lack of care exhibited by the directors of Hansen Star in relation to almost everything to do with the exploration licence. In this regard it is also my view that the directors of Gemex at that time exhibited an almost a total abrogation of any responsibility they may have had as either joint venturers, proposed joint venturers or proposed transferees of a majority interest in the licence. In addition the directors of Hansen Star took no steps whatsoever to attend to any problems that had arisen in relation to the licence, or to make any submissions in relation thereto after having been invited to do so, and after apparently the secretary of the company at least was aware of these matters. Likewise the directors and office holders of Gemex took no real steps to do anything in relation to the proposed forfeiture of the licence. I do not consider the writing of a letter or even several letters in that regard to be an adequate response if the directors of Gemex were really concerned with preventing the forfeiture of this particular licence.

Thirdly, in relation to any special circumstances that may have existed. In the context of the matters it is necessary to consider, there is nothing in my view which could be said to be in favour of Hansen Star, or indeed Gemex. The only special circumstances that in my view exist are circumstances which would lead one to the conclusion that the application for restoration ought not to succeed in any event. My impression of the evidence given on behalf of the applicants by Rankine-Wilson and Mr. Novak was that the directors and office bearers of both Gemex and Sabminco Ltd, Sambminco Ltd being the ultimate holder of the issued shares in Gemex at the time of the forfeiture, were satisfied to have the licence forfeited with the intention that when that occurred either Gemex

or (minco would immediately make application for the granting of a fresh licence. They in fact did this however because of a short time delay were not first in time to make that application. Hansen Star of course did absolutely nothing in respect of the prevention or attempted prevention of any proposed forfeiture. In my view the behaviour of Hansen Star and of Gemex, coupled with the matters already referred to, was such that it would not be proper or reasonable to recommed to the Honourable Minister that the licence be restored.

CONCLUSION

I recommend, pursuant to Section 97A (7)(b), that restoration of Exploration Licence 80/1302 be refused.

R.K. BLACK

WARDEN

15

Facsimile Transmission

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ENQUIRIES TO: Paul	DATE: 19/1/93
TO: Peter Lapthorne	PLEASE DELIVER ☐
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NO. OF PAGES TO FOLLOW:

MESSAGE: Peter,

Re, Compiled Wardens Court decisions

I refer to decision 17 Vol 9 recently received which refers to a previous decision (p. 3) involving E 80/1302 (Application for restoration). If a copy of this decision is available could you have it included in compiled decisions.

R/O file on E80/1302 & reply.

Regards
Paul.

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