

IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex rel. Irving L. Faught,)
Administrator,)
)
Plaintiff,)
)
v.)
)
Precious Oro Resources, LLC,)
an Oklahoma limited liability company;)
Thomas R. Ezell, an individual; and)
Nolan V. Harris, an individual;)
)
Defendants,)
)
and)
)
TMP Metals, LLC,)
a Texas limited liability company;)
Don Lynn Nunnally, an individual;)
Donna F. Elliott, an individual; and)
Eduwiges Baeza, an individual;)
)
Defendants Solely For)
Purposes of Equitable Relief.)

Case No. CJ-2008-5138
Judge Bryan C. Dixon

FILED IN THE DISTRICT COURT
OKLAHOMA COUNTY, OKLA.

DEC - 2 2008

PATRICIA PRESLEY, COURT CLERK
by _____
DEPUTY

**OBJECTION TO DEFENDANTS' MOTIONS TO AMEND
AGREED TEMPORARY RESTRAINING ORDER
TO ALLOW FOR THE PAYMENT OF ATTORNEY FEES,
ACCOUNTING FEES, AND STORAGE FEES**

Plaintiff, Oklahoma Department of Securities ("Department"), respectfully objects to Defendants' Motion to Amend Agreed Temporary Restraining Order to Allow for the Payment of Attorney Fees (Motion for Attorney Fees); Defendants' Motion to Amend Agreed Temporary Restraining Order to Allow for the Payment of Accounting Fees (Motion for Accounting Fees); and Defendants' Motion to Amend Agreed Temporary Restraining Order to Allow for the Payment of Storage Fees and Defendants' Amended Motion to Amend Agreed Temporary

Restraining Order to Allow for the Payment of Storage Fees (collectively, Motion for Storage Fees), for the following reasons:

1. On June 5, 2008, this Court entered a Temporary Restraining Order, Order Freezing Assets, and Order for Accounting (TRO).

2. On June 20, 2008, the Court entered an Agreed Amended Temporary Restraining Order that (a) allowed the individual Defendants to access their personal bank accounts for purposes of payment of ordinary living expenses, and (b) allowed Defendant POR to withdraw Five Thousand Dollars (\$5,000.00) from its business checking account to pay for the initial costs of defense in this action (First Amended TRO).

3. On July 25, 2008, the Court entered an Agreed Second Amended Temporary Restraining Order that allowed Defendant POR to make further withdrawals from its business checking accounts to, among other things, pay an additional Five Thousand Dollars (\$5,000.00) toward its defense in this action (Second Amended TRO).

4. The assets of Defendant Precious Oro Resources, LLC (POR) consist almost exclusively of funds frozen by the Court in the amount of approximately One Million Dollars (\$1,000,000.00). POR investors invested approximately Two Million Three Hundred Thousand Dollars (\$2,300,000.00).

5. On November 14, 2008 and on November 17, 2008, Defendants filed the Motion for Attorney Fees, Motion for Accounting Fees, and Motion for Storage Fees.

Attorney Fees

6. In the Motion for Attorney Fees, Defendants claim that “up through and including October 31, 2008”, they have incurred attorney fees of Thirty-One Thousand One Hundred Forty-Six Dollars and Thirty-Six Cents (\$31,146.36), in addition to the Ten Thousand Dollars

(\$10,000.00) paid pursuant to the First and Second Amended TRO. The attorney billing records provided to the Department reflect the amount due for services rendered during the period of June 1, 2008 through October 31, 2008, to be Nine Thousand One Hundred Forty-Eight Dollars (\$9,148.00). The remaining balance is unsubstantiated and appears to have been incurred prior to the Department's filing of this case. The Department objects to the payment of attorney fees in this matter as the frozen funds are derived exclusively from POR investor funds and any payment from these frozen assets will reduce the funds available for payment to investors as restitution or to fund a rescission offer.

Accounting Fees

7. In the Motion for Accounting Fees, Defendants claim they have incurred accounting fees of Eighteen Thousand Five Hundred Seventy-Two Dollars and Fifty Cents (\$18,572.50), during the period of June 2, 2008 through June 15, 2008. The TRO stated:

“IT IS FURTHER ORDERED that Defendants file with this Court and serve on the Plaintiff an accounting, under oath, detailing all of their assets and detailing all funds received from investors and/or clients and the disposition and/or use of those funds received pursuant to the scheme described in the Plaintiff's Petition. This accounting shall include, but not be limited to, the total amount received from investors and/or clients, the name and address of each investor and/or client, the amount invested, the date each such investment was made and a listing of all expenditures made showing the amount and to whom paid and the date of payment. This accounting shall be submitted to this Court and served upon Plaintiff within fifteen (15) days from the date of entry of this Order.”

8. In February, 2008, prior to the initiation of this case, the Defendants executed an engagement letter with William T. Zumwalt CPA, PLLC (Zumwalt), to perform the following services: a) quarterly preparation of income statement and balance sheet, b) payroll services, c) QuickBooks consulting, d) tax planning and consulting, e) management consulting, and f) preparation of income tax returns.

9. On June 5, 2008, Defendants executed a second engagement letter with Zumwalt to add the following language:

“Special Project for litigation. This project to include compiling all costs associated with the start up of this business. To collect all cash paid out or charge receipts, categorize and record. Prepare financial statements for the months of March, April, and May, 2008. This to include the preparation of files and proper documentation related to those months. Review monthly bank reconcilements, assets purchased and interest paid or accrued to investors.”

10. According to the billing records of Zumwalt, no actual accounting services were provided until June 6, 2008, when Defendants knew their assets had been frozen. See Exhibit “A.” Further, there was no need for the engagement of a professional as Defendants could easily have prepared the accounting required by this Court themselves. Instead, Defendants chose to incur substantial expense, knowing the only funds available to them would be investors’ funds, and they did so without Court approval. The Department objects to the payment of the requested accounting fees in this matter as the frozen funds are derived exclusively from POR investor funds and any payment from these frozen assets will reduce the funds available for payment to investors as restitution or to fund a rescission offer.

Storage Fees

11. In the Motion for Storage Fees, Defendants claim they have contracted with Jorge Gutierrez and Jay Lee d/b/a J&J Enterprises (J&J Enterprises) in Zapata, Texas, for the storage of seventy-nine (79) bags of ore concentrate from April 1, 2008 through October 2, 2008. Defendants allegedly agreed to pay Two Dollars and Sixty-Five Cents (\$2.65) per bag per day, to J&J Enterprises for the storage of the ore concentrate. A letter from the attorney for J&J

Enterprises dated October 16, 2008, states a balance owing by Defendants of Forty Thousand Eight Hundred Twenty-Three Dollars and Twenty-Five Cents (\$40,823.25). See Exhibit "A" to Defendants' Motion for Storage Fees. The Defendants have provided no evidence that the ore concentrate exists, that Defendants own the ore concentrate, or that the ore concentrate is actually maintained by Defendants or stored in Zapata, Texas. Defendants previously provided information to the Department that an entity known as La Mina, LLC, had custody of the ore concentrate but according to local sources in Zapata, Texas, the address of La Mina, LLC is a welding shop. See Exhibit "B". The Department is unaware of any relationship between J&J Enterprises and La Mina, LLC.

12. Defendants have not and cannot justify the payment of any storage expense in this case. The exorbitant expense has accrued while Defendants have been subject to an asset freeze and without Court approval. The Department objects to the payment of storage fees in this matter as the frozen funds are derived exclusively from POR investor funds and any payment from these frozen assets will reduce the funds available for payment to investors as restitution or to fund a rescission offer.

For the reasons stated, the Department requests this Court reject the payment from the frozen investor funds of the additional attorney fees, the accounting fees, and the storage fees requested by Defendants.

Respectfully submitted,



Patricia A. Labarthe, OBA #10391

Jennifer Shaw, OBA #20839

Oklahoma Department of Securities

120 North Robinson, Suite 860

Oklahoma City, Oklahoma 73102

(405) 280-7735

(405) 280-7742 (facsimile)

Attorney for Oklahoma Department of Securities

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of the foregoing was mailed by first class mail, with postage prepaid thereon, this 2nd day of December, 2008, to the following:

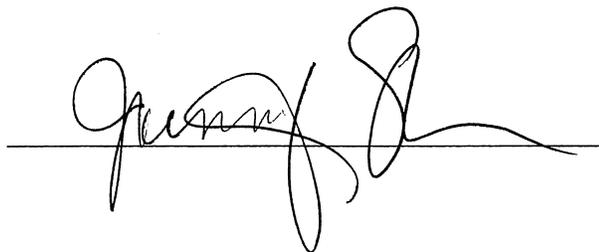
P. David Newsome, Jr.
Andrea Stailey
Cooper Newsome & Woosley, PLLP
401 South. Boston Ave., Suite 3300
Tulsa, OK 74103-4070

TMP Metals, LLC
6910 Windhaven Parkway, #201
The Colony, TX 75056

Donald Lynn Nunnally
2030 Shenandoah Dr.
Carrollton, TX 75007

Donna F. Elliott
2030 Shenandoah Dr.
Carrollton, TX 75007

Eduwiges Baeza
925 N. Zaragoz Rd., Apt 245N
El Paso, TX 79907



William T Zumwalt CPA, PLLC
 5416 S. Yale Ave.
 Suite 120
 Tulsa, OK 74135

Invoice

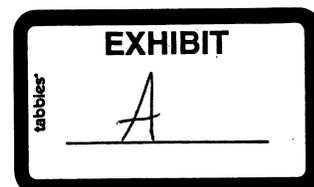
Date	Invoice #
6/16/2008	2481

Bill To
Precious Oro Resources, LLC Nolan Harris 413 N. Forest Ridge Blvd. Broken Arrow, OK 74014

Terms
Due on receipt

Description	Amount
For professional level services with relation to preparing financial statements, bookkeeping and consulting for Precious Oro Resources, LLC	475.00
Start up fee per engagement letter	450.00
Staff - Administrative time - Debbie Talley 6.00 Hours	17,647.50
CPA - Professional services 90.50 Hours	
See Schedule	
Invoice Total	\$18,572.50
Balance Due	\$18,572.50

Phone #	Fax #	E-mail
(918) 583-1040	(918) 583-7000	wtzcpa@aol.com



6/2/2008	Meeting with Nolan, Tom & Jim Slack	1.00
	Meeting with Joan Bills	2.00
	Conference call Joan & Nolan	0.50
6/3/2008	Phone conferences	0.50
6/6/2008	Phone conferences.	0.50
	Meeting with Joan. Received flash drive of Precious Oro Resources, LLC QuickBooks file. Review QuickBooks transactions to access scope of project. Discussions with Nolan & Joan. Prepared internal document for our files and began work on Precious Oro Resources, LLC accounting.	6.00
6/7/2008 (Saturday)	Compile all receipts, cash & credit cards from start of concept through March 2008. Sort by individual and assign accounting codes. Prepare schedules & annotate notes for journal entries of start up costs. Review accounting entries & corrections through February. Discussions & training Joan Bills on bookkeeping & proper documentation. Includes weekend rate - rush project	15.75
6/8/2008 (Sunday)	Continued work on Precious Oro Resources, LLC accounting & directed Joan Bills on projects she could do to reduce costs. Includes weekend rate - rush project.	10.75
6/9/2008	Worked with Joan Bills most of the day helping her with questions and training with regards to bookkeeping & documentation. Review work to date and prepare questions for Nolan about Mexico operations and background. Met with Nolan.	9.50
6/10/2008	Worked on Mexico transactions and corrected items from discussion with Nolan. Ran Excel spreadsheets and began reconciliation of notes payable.	9.50
6/11/2008	Worked on schedule for interest paid examining which lot numbers were due an interest check and reconcile bank interest paid and reinvested to eligible loans and reconciled note balances. Compare to Excel spreadsheet. Review new bank statements from Mexico. Faxed Joan questions.	8.00
6/12/2008	Worked on April & May. Joan came down to office to help with cash receipts and credit card transactions. Spoke with Nolan about Mexico operations	5.50

6/13/2008 Input April & May Mexico transactions. Converted peso amounts to dollars at 10 to 1. Printed various reports for review and work on May bank reconciliation for BOK. Started work on interest paid and accrued worksheet. Worked with Joan for sometime in the afternoon. 9.75

6/14/2008 (Saturday) Finish note & interest reconcilements. Noted where Excel spreadsheets needed to be updated. Print out and review March, April and May for draft copy for Monday morning meeting 6.75

6/15/2008 (Sunday) Prepare for meeting and met with Joan, Nolan & Tim to review draft statements. 4.50

90.50

La Mina LLC
Zapata, Texas
milling site (ranch)

Date 03-17-08

Chain of Custody document

Witnessed by [Signature] Mill op. La mina LLC

Ore delivered to: shop ranch _____ other _____

Ore shipped by Golden Arrow Inc.

Type of shipment: Truck _____ Dump _____ Bags Bins _____

Number of tons/yds 22 Tons Per load Number of bags 79

Note condition of bags/bins such as damaged sacks etc. None Damaged Good Condition

Shipping document type Paper work Cert of ownership / Certificate of origin

Ore shipped from mine or processor Don Annally

List Id tag information Complete Bags Lot #

Color and type of Ore shipped Black ore Concentrate

Copy of "Chain of Custody" to (Person) [Signature]

By mail: _____
By fax: _____
By Fed ex: _____
By Email: _____

Mill to provide the following service or services: Refine Dore

Yes or no: refining concentrate milling _____ dore'

Assay's Assay's by firm Pinoles

