

COURT OF CHANCERY  
OF THE  
STATE OF DELAWARE

August 28, 2000

JACK B. JACOBS  
VICE-CHANCELLOR

COURT HOUSE  
WILMINGTON, DELAWARE 19801

Norman M. Monhait, Esquire  
Rosenthal, Monhait, Gross &  
Goddess  
Mel Ion Bank Center, Suite 140 1  
P.O. Box 1070  
Wilmington, DE 19899

David C. McBride, Esquire  
James P. Hughes, Jr., Esquire  
Young, Conaway, Stargatt & Taylor  
Suite 1100, Rodney Square North  
P. O. Box 391  
Wilmington, DE 19899

Kenneth J. Nachbar, Esquire  
Morris, Nichols, Arshat & Tunnell  
1201 N. Market Street  
P.O. Box 1347  
Wilmington, DE 19899-1347

Joel E. Friedlander, Esquire  
Bouchard, Margules & Friedlander  
222 Delaware Avenue  
Suite 1102  
Wilmington, DE 19801

Thomas P. Preston, Esquire  
Reed, Smith, Shaw & McClay, LLP  
1201 Market Street, Suite 1500  
Wilmington, DE 19899

RE: Harry Lewis v. Milton H. Ward, et al.  
Civil Action No. 15255  
Date Submitted: April 25, 2000

Gentlemen:

Pending are motions to dismiss the derivative complaint and to stay  
discovery. This is the Court's decision on those motions. My apologies to  
counsel for the delay in issuing this Letter Opinion.

Norman M. Morthait, Esquire  
David C. McBride, Esquire  
Kenneth J. Nachbar, Esquire  
Joel E. Friedlander, Esquire  
Thomas P. Preston, Esquire  
August 28, 2000  
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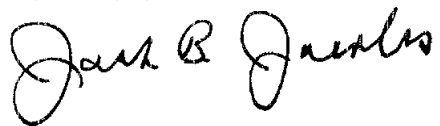
‘The basis for the motion to dismiss is that Amax Gold, Inc., the company that is the beneficial plaintiff in this action, was acquired in a merger in which Kinross Gold Corporation, through a subsidiary, became the sole shareholder of Amax Gold, Inc., and the shareholders of Amax Gold, Inc. became shareholders of the acquiring corporation. Under Delaware law the effect of such a merger is normally to deprive a shareholder of the merged corporation of standing to maintain the derivative action. Lewis v. Anderson, Del. Supr., 477 A.2d 1040 (1984). The defendants contend that the Kinross Merger had that effect here and as a result, dismissal of this action is required.

Unless this case falls within one of two exceptions articulated in Lewis v. Anderson ~~supra~~, the defendants are correct and that they have pled facts that bring this case within the exception “where the merger itself is the subject of a claim of fraud, being perpetuated merely to deprive the plaintiff of derivative standing.” Id., 477 A.2d at 1046, n. 10. On that basis, the plaintiffs contend, the motion to dismiss must be denied, as also should be the defendants’ pending motion to stay the plaintiffs’ discovery.

Norman M. Monhait, Esquire  
David C. McBride, Esquire  
Kenneth J. Wachbar, Esquire  
Joel E. Friedlander, Esquire  
Thomas P. Preston, Esquire  
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The difficulty with the plaintiffs' position is that the complaint does not plead facts from which it could be reasonably inferred that the defendants perpetrated the merger merely to deprive the plaintiff of derivative standing. Because the plaintiffs' brief suggests that the plaintiffs may be able to plead such a claim, however, the defendants' motion to dismiss will be granted with leave to amend. Because the case will be dismissed subject to the filing of an amended pleading, there is at present no procedural basis for the plaintiffs to go forward with discovery. Accordingly, the defendants' motion to stay discovery is granted pending the filing of an amended complaint. IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jack B. Jacobs". The signature is written in a cursive, flowing style with large, connected letters.

cc: Register in Chancery