



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
199 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A9 Canada
Tel: 416-863-2400 Fax: 416-863-2653

R. Seumas M. Woods
Certified by the Law Society as a
Specialist in Civil Litigation
Dir: 416-863-3876
seumas.woods@blakes.com

February 9, 2009

DELIVERED AND BY E-MAIL

Reference: 96791/00002

Ontario Securities Commission
20 Queen Street West, Suite 1903
Toronto, Ontario M5H 3S8

Attention: John Stevenson
Secretary of the Commission

Dear Mr. Stevenson:

Re: Rusoro Mining Ltd. (“Rusoro”) offer (the “Rusoro Offer” or the “Offer”) to purchase all of the issued and outstanding Class A common shares and equity units of Gold Reserve Inc. (“Gold Reserve”)
re: Application for relief under section 127 of the *Securities Act* (Ontario) (the “Act”)

1. By letters dated February 6 and 8, 2009 from its counsel Fasken Martineau DuMoulin LLP, to the Commission, Gold Reserve asks the Commission to deny Rusoro the relief requested in its application to cease trade the Gold Reserve Rights Plan, and requests an order under section 127 of the Act cease trading the Rusoro Offer until Rusoro satisfies certain conditions. Rusoro submits that the Commission should dismiss Gold Reserve’s application and grant Rusoro’s application to cease trade the Gold Reserve Rights Plan.

2. The evidence before the Commission shows that Gold Reserve’s directors have decided not to attempt to maximize shareholder value by conducting an auction. Instead, they tell shareholders to reject the Rusoro Offer and entrust their company to current management and its plans for the future.

3. There is no legitimate reason Gold Reserve’s shareholders should not be able to decide today whether to accept the Rusoro Offer and go forward as shareholders of a combined Rusoro/Gold Reserve, or to continue with Gold Reserve’s current managements plans for the company. Gold Reserve argues that the decision must be postponed because of four holes that Rusoro drilled last May on a minor property which Gold Reserve itself has largely ignored, and Rusoro’s retainer of Endeavour as its financial advisor. Endeavour had worked for Gold Reserve. Gold Reserve argues that those two circumstances have created a significant imbalance in the information available to Rusoro compared to that available to Gold Reserve and its shareholders. Gold Reserve argues this alleged imbalance can

only be redressed by suspending the Rusoro Offer until Gold Reserve is satisfied that the imbalance has been corrected. At that point shareholders could decide whether or not to accept the Rusoro Offer.

4. Gold Reserve's argument is simply untenable. Before any holes were drilled, Rusoro told Gold Reserve that it intended to drill a few holes on Gold Reserve's property as part of a much larger, 1,000 hole, drilling program on the contiguous Rusoro properties. After Gold Reserve discovered in June of last year that four holes had been drilled, it raised little objection, although it did request the results of the drilling. Rusoro has provided the results to Gold Reserve. The results do not show any material amounts of ore, and even if they did it would not really matter because, fundamentally, they are results from only four drill holes. As Gold Reserve's President Douglas Belanger himself stated under oath when cross-examined about Gold Reserve's own drilling on the property in question, "one or two or 10 or 11 drill holes doesn't make a mine".¹

5. Insofar as Endeavour is concerned, Gold Reserve has failed to provide the Commission with any evidential foundation to support the serious allegations of improper conduct it has advanced at the very last minute in its supplemental submissions. Ignoring Gold Reserve's innuendo, the evidence before the Commission indicates that Rusoro has acted properly at all times. Endeavour specializes in the mining industry. It has been involved with Rusoro for many years. Gold Reserve was well aware of this at the time. Endeavour's work for Gold Reserve effectively ended long before the launch of the Rusoro Offer which was based on the likely synergies of combining two companies operating in Venezuela, one with good relations with the government and the ability to get projects done, one with rights to a valuable mineral deposit but no development permit. Rusoro did not receive any Gold Reserve information from Endeavour. Any information Endeavour might have received from Gold Reserve in the past is now either stale or in the public record. The late addition of this ground is merely an attempt to re-litigate before the Commission arguments already made in Gold Reserve's action in the Ontario Superior Court of Justice.

FACTUAL OVERVIEW

6. The majority of the facts which underlie the applications of both Rusoro and Gold Reserve were set out in Rusoro's original submissions which have already been filed with the Commission. Given the importance Gold Reserve now attaches to Rusoro's activities on the Choco 5 property, and relationship with Endeavour, some additional factual background on that property and the ones owned by Rusoro which adjoin it, and Rusoro's relationship with Endeavour, might be helpful.

Gold Reserve's Only Significant Asset: The Brisas Project

7. To put the events in context, as noted in Rusoro's original submissions, Gold Reserve's only significant asset is the Brisas gold and copper deposit. Gold Reserve's public disclosures indicate that it

¹ Rusoro Supplementary Application Record, Tab 4, p. 168, Cross-Examination of A. Douglas Belanger on January 26, 2009 ("Belanger Cross-Examination"), Q. 792.

has spent almost all of its time and energy on that project.² When cross-examined in the injunction proceedings, Gold Reserve's President Mr. Belanger agreed that Gold Reserve has spent essentially 100% of its personnel and financial resources on the development of the Brisas project.³

Gold Reserve's Choco 5 Property

8. In addition to the Brisas project, however, Gold Reserve also owns a second property, the Choco 5 property which is located near the town of El Callao in Bolivar State, Venezuela. Gold Reserve has done some drilling on the property, but to date has never released the results of that drilling. Its public disclosures tend to describe Choco 5 as an exploration property. It does not produce any ore.⁴

Rusoro's Choco Properties

9. Choco 5 is surrounded on three sides by properties owned by Rusoro, properties known as the Choco 4, 6, 9, and 10 properties.⁵ This geographic reality has meant that the two companies have had to co-operate with each other. On occasion they have shared information about their properties and have co-operated in allowing one another access to each other's properties. For example, to access its property to carry out its drilling program on Choco 5, Gold Reserve, with Rusoro's permission, used access roads which cross Rusoro's properties. Some of the water needed to carry out the Choco 5 drilling program also came from the Rusoro properties.⁶ Until recently, the companies have enjoyed a co-operative, amicable, relationship in Venezuela.⁷

The Rusoro Drilling Program

10. In the spring of 2008, Rusoro was drilling test holes on its Choco 4, 6, 9, and 10 mining properties. This was part of a significant five-year drilling program.⁸ In total, in 2007 and 2008, Rusoro drilled some 7,090 holes on Choco 4 and 10 with a total aggregate depth of 184,928 metres.⁹ As part of that program, Rusoro wanted to complete limited condemnation/geotechnical drilling on Gold Reserve's Choco 5 property in order to test the backslope area for a potential open pit mine on Rusoro's property and to confirm that the ore body on Rusoro's property did not extend to that of Gold Reserve. The backslope area for an open pit mine often extends to adjacent properties. When designing an open

² Rusoro Supplementary Application Record, Tab 6, p. 2, Management's Discussion and Analysis dated September 30, 2008.

³ Rusoro Supplementary Application Record, Tab 4, p. 120-121, Belanger Cross-Examination, Qs. 537-543.

⁴ Gold Reserve Application Record, Tab 3H, p. 91 & 94, Exhibit H to the Affidavit of A. Douglas Belanger sworn February 6, 2009 ("Belanger Affidavit") - Affidavit of Greg Smith sworn January 12, 2009 ("Smith Affidavit"), paras. 4 & 16.

⁵ Gold Reserve Application Record, Tab 3H, p. 91, Smith Affidavit, para. 4.

⁶ Gold Reserve Application Record, Tab 3H, p. 91-2, Smith Affidavit, para. 7; Rusoro Supplementary Application Record, Tab 4, p. 140-2, Belanger Cross-Examination, Qs. 632-634 & 639.

⁷ Gold Reserve Application Record, Tab 3H, p. 91, Smith Affidavit, para. 6.

⁸ Gold Reserve Application Record, Tab 3H, p. 92, Smith Affidavit, para. 8.

⁹ Rusoro Supplementary Application Record, Tab 2, p. 4, Supplementary Affidavit of George Salamis sworn February 9, 2009 ("Supplementary Salamis Affidavit"), para. 12.

pit mine a mine operator needs to confirm that there is no economically viable mineral or zones of instability in the potential backslope area.¹⁰

Rusoro Requests Permission to Drill on Choco 5

11. In April 2008, employees of Gold Reserve and Rusoro's Venezuelan subsidiaries discussed Rusoro's plans to drill some test holes on the Choco 5 property. None of the individuals directly involved in these discussions have sworn affidavits in this proceeding. All of the affidavit evidence before the Commission is therefore based on information and belief. In the case of some of the evidence offered by Gold Reserve this is not even always first-hand hearsay evidence, it is second-hand hearsay evidence. As such, at the very best, the Commission should consider it with some scepticism.¹¹

12. According to these secondary sources, on April 28, 2008, Jesus Guzman, a property land manager for a subsidiary of Rusoro, notified Andres Garcia of Gold Reserve's subsidiary that Rusoro planned to drill in an area inside Gold Reserve's Choco 5 property. Gold Reserve indicated that it was agreeable to the drilling, but wanted a formal agreement with Rusoro. It also wanted Rusoro to advise it of the results and to restore the property once the drilling had been completed.¹² Mr. Guzman never formalized the arrangement as he was under the impression that Rusoro's drilling program had been suspended.¹³

Rusoro Drills Four Holes on Choco 5 in May 2008

13. Contrary to Mr. Guzman's impression, the drilling program had not been suspended. In early May, employees of Rusoro's subsidiary drilled four drill holes on Choco 5. Maps of the overall drilling program demonstrate how the holes fit into the larger program of drilling on Choco 4.¹⁴

14. As noted, the drilling was designed to confirm Rusoro's belief that the ore body on its land did not extend to the Choco 5 property and to assess the geology of the adjoining property to test its "backslope" capacity.¹⁵ As a result, the holes were all located near to the Choco5/Choco 4 border. One of the holes was essentially on the border while none of the other three were further than 50 metres from the border. In total, the four holes reached an aggregate depth of 359 metres.¹⁶ In the scheme of the

¹⁰ Gold Reserve Application Record, Tab 3H, p. 93, Smith Affidavit, para. 10; Rusoro Supplementary Application Record, Tab 2, p. 5, Supplementary Salamis Affidavit, para. 24.

¹¹ Rusoro Supplementary Application Record, Tab 4, p. 143 & 147, Belanger Cross-Examination, Qs. 644-645, 663-666.

¹² Gold Reserve Application Record, Tab 3, p. 4-5, Belanger Affidavit, para. 16(b-c); Rusoro Supplementary Application Record Tab 4, p. 155-156, Belanger Cross-Examination, Qs. 711-713.

¹³ Gold Reserve Application Record, Tab 3H, p. 93, Smith Affidavit, para. 11.

¹⁴ Gold Reserve Application Record, Tab 3H, p. 93, Smith Affidavit, para. 12. Maps showing the exact location of the holes and how they fit into Rusoro's overall drilling program can be found at Tab 3F, p. 135-137 of the Gold Reserve Application Record.

¹⁵ Gold Reserve Application Record, Tab 3H, p. 92-93, Smith Affidavit, paras. 9-10 / Tab 3F, p. 119, Exhibit F to the Belanger Affidavit - Reply Affidavit of Greg Smith sworn January 20, 2009 ("Smith Reply Affidavit"), para. 12.

¹⁶ Gold Reserve Application Record, Tab 3H, p. 93, Smith Affidavit, para. 10 / Tab 3F, p. 135-137, Exhibit C to the Smith Reply Affidavit - Condemnation Drilling Results; Rusoro Supplementary Application Record, Tab 2, p. 6, Supplementary Salamis Affidavit, para. 12.

overall drilling program, the total drilling on Choco 5 was insignificant. The drilling was conducted with a reverse circulation rig which was the type of rig operating in the area at the time.¹⁷

Gold Reserve Discovers the Four Holes in June 2008

15. Staff from Gold Reserve's local subsidiary discovered the four drill holes on June 4, 2008.¹⁸ On June 12, 2008, without permission from Rusoro, Gold Reserve staff went onto the neighbouring Rusoro property to photograph the drill holes on Choco 5.¹⁹

Results from the Four Holes: Nothing Material

16. Rusoro tested the drill samples in accordance with its normal procedures. As expected, the samples confirmed that there were no significant mineralized intercepts. In layman's terms, the rock was barren. Any small amount of gold present in it was below the economic recoverability levels. The results are largely immaterial for both Rusoro and Gold Reserve, other than for the purposes of confirming for Rusoro that there were no areas of economically viable mineral or instability in the proposed backslope.²⁰

17. The lack of any significant amounts of gold in the four holes is consistent with the fact that although Gold Reserve has also done drilling on Choco 5 it has never stated publicly that it has found economically viable quantities of ore on the property. Had Gold Reserve ever discovered economically viable levels of ore on its property it would have had to issue a press release announcing the discovery. The fact it has not issued such a press release tends to confirm that to date it has not found material quantities of ore on the Choco 5 property.²¹

18. Gold Reserve alleges that Rusoro's drilling program on its Choco 4 property resulted in a "gold rush" of illegal miners on both the Rusoro properties and Gold Reserve's Choco 5 property. Rusoro agrees that around this time there was an influx of illegal miners, who are a problem in Bolivar State. Because illegal miners can mine very small, very discrete veins of ore which are often not detected by drilling, they can sometimes operate in areas which mining companies have passed over for development. Why they came onto the Choco properties is a matter of speculation. Their presence or absence is not an indication of a material amount of economically minable gold. Most of the illegal miners have now left the area.²²

¹⁷ Gold Reserve Application Record, Tab 3F, p. 199, Smith Reply Affidavit, para. 12; Rusoro Supplementary Application Record, Tab 2, p. 5, Supplementary Salamis Affidavit, para. 23.

¹⁸ Gold Reserve Application Record, Tab 3, p. 5, Belanger Affidavit, para. 17(a).

¹⁹ Gold Reserve Application Record, Tab 3, p. 5, Belanger Affidavit, para. 17(b); Rusoro Supplementary Application Record, Tab 4, p. 172-175, Belanger Cross-Examination, Qs. 813-825.

²⁰ Gold Reserve Application Record, Tab 3H, p. 94, Smith Affidavit, paras. 16-17.

²¹ Gold Reserve Application Record, Tab 3H, p. 94, Smith Affidavit, paras. 16; Rusoro Supplementary Application Record, Tab 4, p. 168-169, Belanger Cross-Examination, Qs. 791-795.

²² Rusoro Supplementary Application Record, Tab 2, p. 4, Supplementary Salamis Affidavit, paras. 20-21.

19. Rusoro did not immediately communicate the results of the drilling to Gold Reserve. Gold Reserve did request the results in meetings between representatives of the two companies in Venezuela, but Rusoro did not provide the results at that time. Notwithstanding this, Gold Reserve took no further action at the time to obtain the results or to replicate the drilling.²³

Rusoro Launches the Rusoro Offer

20. As set out in Rusoro's original submissions Rusoro's board of directors approved the launch of the Rusoro Offer on December 12, 2008. The results of the four drill holes on Choco 5 were not discussed by the directors. The evidence of Rusoro's President, Mr. Salamis, is that he was not aware that the holes had been drilled at the time Rusoro's directors approved the take-over bid, and that to the best of his knowledge this was also true of the company's other directors.²⁴

21. A presentation made to the Board of Directors by Rusoro's financial advisor Endeavour was produced in the court proceedings. It contains a reference to the "Additional exploration upside at Vinyl's [Gold Reserve's] Choco 5 project adjacent to Choco 10". The Rusoro Circular also states that Rusoro intends to "identify opportunities to optimize the development of Gold Reserve's Choco 5 project which is adjacent to Rusoro's Choco 10 mine".²⁵ Mr. Salamis' evidence is that these references merely refer to the possible synergies inherent in Rusoro taking over a contiguous property.²⁶

Endeavour

22. Given the importance attached to the role of Endeavour in the supplemental submissions Gold Reserve served yesterday evening, some background information on Endeavour and its relationship with both Gold Reserve and Rusoro is necessary.

23. Gold Reserve did at some point in the past retain Endeavour as its financial advisor. The exact terms on which it did so are not currently before the Commission. Gold Reserve did provide some information about itself to Endeavour, but again exactly what was provided is not before the Commission. The Commission does have some evidence from the transcript of Mr. Belanger's cross-examination in the court action indicating that whatever information was provided it was provided prior to early 2007 at the latest.²⁷

24. Rusoro's evidence is that it retained Endeavour to assist it in 2007, not because of any prior relationship Endeavour might have had with Gold Reserve, but rather because it had had a relationship with the company from the outset of its existence. Endeavour worked with it on a number of

²³ Gold Reserve Application Record, Tab 3H, p. 93-94, Smith Affidavit, paras. 13-14.

²⁴ Rusoro Supplementary Application Record, Tab 2, p. 1-2, Supplementary Salamis Affidavit, paras. 3 & 6.

²⁵ Gold Reserve Application Record, Tab 3A, p. 9, Exhibit A to the Belanger Affidavit, Rusoro Offer & Circular dated December 15, 2008.

²⁶ Rusoro Supplementary Application Record, Tab 2, p. 2, Supplementary Salamis Affidavit, para. 6.

²⁷ Rusoro Supplementary Application Record, Tab 4, p. 31 & 108-113, Belanger Cross-Examination, Qs. 128-129 & 476-502.

transactions over 2007 and 2008. The fact that Endeavour was doing this work was known to Gold Reserve at the time. Gold Reserve raised no objection to Endeavour's work for Rusoro on these transactions.²⁸

25. By early 2007, Endeavour's work for Gold Reserve was in any case minimal. Gold Reserve had retained other companies, in particular, J.P. Morgan Securities Inc. ("JP Morgan") and RBC Dominion Securities Inc. ("RBC") to act as its financial advisors. The retainer of both companies included advising Gold Reserve on unsolicited offers for the company.²⁹

26. When Rusoro first raised the prospect of some type of combination with Gold Reserve it specifically identified Endeavour as its financial advisor. Gold Reserve did not object to Endeavour's involvement either then or at any time prior to the launch of the Rusoro Offer.³⁰ By September 2008 there is evidence that Gold Reserve was concerned that the Rusoro would make an unsolicited offer. In fact, a JP Morgan employee specifically told Rusoro that his firm had been retained to act on what he described as Rusoro's hostile takeover bid.³¹

27. Notwithstanding the innuendo in Gold Reserve's submissions, the evidence before the Commission is that in planning and launching the Rusoro Offer, Rusoro did not use any information originating from Gold Reserve other than information in the public record. As a public company in the resource sector Gold Reserve is required to make extensive public disclosure about its operations. That material was available to Rusoro which had no need to rely on anything else.³²

The Gold Reserve Court Action

28. As noted in Rusoro's original submissions, the day after Rusoro commenced the Rusoro Offer, Gold Reserve commenced an action against it and its financial advisor Endeavour seeking \$550 million in damages as well as an injunction to restrain the Rusoro Offer from proceeding. In its statement of claim Gold Reserve claims that as a result of the four drill holes Rusoro has information confidential to Gold Reserve. Gold Reserve further claims that Rusoro used confidential information belonging to Gold Reserve which was provided to it by Endeavour. That is the basis upon which Gold Reserve has claimed damages and injunctive relief against both Rusoro and Endeavour.³³

²⁸ Rusoro Supplementary Application Record, Tab 4, p. 58-66, Belanger Cross-Examination, Qs. 238-273 / Tab 7, p. 6-8, Affidavit of George Salamis sworn January 12, 2009 ("Salamis Injunction Affidavit"), paras. 21, 23, 28-29.

²⁹ Rusoro Supplementary Application Record, Tabs 4A-4D.

³⁰ Rusoro Supplementary Application Record, Tab 4, p. 66-69, Belanger Cross-Examination, Qs. 274-288.

³¹ Rusoro Supplementary Application Record, Tab 7, p. 12, Salamis Injunction Affidavit, para. 48.

³² Rusoro Supplementary Application Record, Tab 7, p. 14, Salamis Injunction Affidavit, para. 60.

³³ Gold Reserve Supplementary Application Record, Tab 3B, p. 7, Exhibit B to the Belanger Affidavit – Statement of Claim dated December 16, 2008, paras. 12-14.

Gold Reserve Complains About Rusoro in its Directors' Circular

29. Gold Reserve complained about Rusoro's drilling on Choco 5 in its Directors' Circular. After setting out a very brief summary of its version of events in Venezuela, Gold Reserve states "Since Rusoro has stated that one of the four reasons for the Rusoro Offer is to "identify opportunities to optimize the development of Gold Reserve's Choco 5 Project", we believe that Rusoro must have, or must think that it has, material information regarding the value of the Choco 5 Project."³⁴ In a presentation on its website Gold Reserve has repeated the allegation that Rusoro accessed Choco 5 without its permission and conducted unauthorized exploration sample drilling. Gold Reserve goes on to disparage Rusoro's ability to finance its plans to develop Choco 5, but does not specifically repeat the allegation that Rusoro has material information about the project which it has not disclosed.³⁵

30. In the Directors' Circular Gold Reserve also alleged that Endeavour provided Rusoro with access to comprehensive information regarding Gold Reserve that would not have otherwise been available to an unsolicited bidder. Gold Reserve noted that this was the basis for its claim for significant monetary damages and an injunction against Rusoro and Endeavour.³⁶

Rusoro Gives the Drilling Results to Gold Reserve

31. On January 9, 2009, Rusoro provided Gold Reserve with a letter setting out the results of the four drill holes.³⁷ Gold Reserve responded by demanding further documentation.³⁸ To the extent it existed, that documentation was provided to Gold Reserve as part of an affidavit from Rusoro's Vice-President Exploration, Greg Smith.³⁹ Gold Reserve did not demand any further documentation until after the commencement of Rusoro's application to cease trade the Gold Reserve Rights Plan. At that point it demanded assay certificates and drill samples. Rusoro had previously offered to provide Gold Reserve with the drilling samples in the material provided by Mr. Smith. It continues to be prepared to do so today. To avoid chain of custody issues, Rusoro does require Gold Reserve to take delivery of the samples at the lab in Venezuela where they were tested.⁴⁰

³⁴ Rusoro Application Record, Tab 2L, p. 252-253, Exhibit L to the Salamis Affidavit - Directors' Circular dated December 30, 2008.

³⁵ Rusoro Application Record, Tab 2M, p. 327 & 336, Exhibit M to the Salamis Affidavit - Gold Reserve Investor Presentation, "Reject the Rusoro Offer".

³⁶ Rusoro Application Record, Tab 2L, p. 244, Exhibit L to the Salamis Affidavit - Directors' Circular dated December 30, 2008.

³⁷ Gold Reserve Application Record, Tab 3H, p. 94, Smith Affidavit, para. 15 / Tab 3H, p. 99-112, Exhibit C to the Smith Affidavit – Condemnation Drilling Results.

³⁸ Gold Reserve Application Record, Tab 3E, Exhibit E to the Belanger Affidavit – Letter from R. Timm to G. Salamis dated January 13, 2009.

³⁹ Gold Reserve Application Record, Tab 3F, p. 119, Smith Reply Affidavit, para. 13 / Tab 3F, p. 129-259, Exhibit C to the Smith Reply Affidavit.

⁴⁰ Rusoro Supplementary Application Record, Tab 2, p. 4, Supplementary Salamis Affidavit, para. 18.

32. Insofar as assay certificates are concerned, Rusoro obtained certificates on February 7, 2009 and is providing them to Gold Reserve as part of these reply submissions.⁴¹

No Auction

33. There is no independent evidence that the four holes drilled on Choco 5 or Endeavour's involvement in the offer have had any affect on Gold Reserve's ability to conduct an auction of the company to maximize shareholder value. No prospective purchaser has raised the issue because Gold Reserve has not contacted any prospective purchasers. As set out in Rusoro's original submissions, the directors of Gold Reserve simply have decided not to conduct an auction of the company, notwithstanding the retainer of both JP Morgan and RBC, as well as the significant amount of time the company has had to organize and conduct a search for alternatives.⁴²

34. Mr. Belanger confirmed that Gold Reserve was not conducting an auction on his cross-examination in the court action:

Q. Fair enough. Fair enough. All right. So you're saying that in this particular case there is not an attempt being made to find an alternative transaction?

A. Not at this time.

Q. So your people haven't actually gone out to potential purchasers and asked them whether they'd be interested in a transaction?

A. No.

Q. So essentially your defense at this stage is based on the premise that shareholders should reject the offer and instead stick with the current management and its plans for the property. Fair?

A. No, we are saying that first and foremost that the bid by Rusoro is tainted because of the actions of Endeavour and Rusoro; secondly, it undervalues the company's assets on a market value basis; thirdly, when we examine Rusoro we can't really determine much value there.

Q. You're saying to shareholders don't accept the bid, stick with current management?

A. Yes.

⁴¹ Rusoro Supplementary Application Record, Tab 2, p. 3, Supplementary Salamis Affidavit, para. 15-17 / Tab 2A, Exhibit A to the Supplementary Salamis Affidavit – Assay Certificates.

⁴² Rusoro Supplementary Application Record, Tabs 2A-2D, Exhibits 2-3 & 7-8 to the Belanger Cross-Examination.

Q. You're not trying to look for another buyer, period?

A. Not at this time.⁴³

35. As disclosed in the Gold Reserve Directors' Circular, Gold Reserve's management is not contemplating any business combination with a third party. Instead, it recommends that shareholders continue with current management's plans for the company, which includes attempting to negotiate a resolution of the permit for the Brisas project with the government of Venezuela, failing which management is proposing to initiate some form of litigation or arbitration against the Venezuelan government.⁴⁴

ANALYSIS

General Principles

36. Section 127 of the Act gives the Commission the power to cease trade a take-over bid if it concludes that it is in the public interest to do so. In determining what is in the public interest, the Commission should consider the purposes of the Act as set out in Section 1.1 as being to:

- (a) provide protection to investors from unfair, improper or fraudulent practices; and
- (b) foster fair and efficient capital markets and confidence in capital markets.⁴⁵

37. Both the Commission and Ontario's courts have considered the Commission's jurisdiction under section 127. In *Re Canadian Tire*, the Divisional Court held that abuse is more than simple unfairness, it requires some broader impact on the capital markets and their operation:

To invoke the public interest test of section 123 [now section 127], particularly in the absence of a demonstrated breach of the Act, the regulations or a policy statement, the conduct or transaction must clearly be demonstrated to be abusive of shareholders in particular, and of the capital markets in general. A showing of abuse is something different from, and goes beyond, a complaint of unfairness. A complaint of unfairness may well be involved in a transaction that is said to be abusive, but they are different tests. Moreover, the abuse must be such that it can be shown to the Commission's satisfaction that a question of the public interest is

⁴³ Rusoro Supplementary Application Record, Tab 5, p. 215-216, Continued Cross-Examination of A. Douglas Belanger ("Continued Belanger Cross-Examination"), Qs. 987-991.

⁴⁴ Rusoro Application Record, Tab 2L, Exhibit L to the Affidavit of George Salamis sworn January 28, 2009 ("Salamis Affidavit"), Directors' Circular, p. 247-248 & 265.

⁴⁵ *Securities Act*, R.S.O. 1990, c. S.5., s. 1.1.

involved. That almost invariably will mean some showing of a broader impact on the capital markets and their operation.⁴⁶

38. In *H.E.R.O.*, the Commission further indicated that it "will intervene to protect the public interest in cases in which the rules in Part XIX are complied with, but the spirit underlying those rules is not." The Commission went on to quote from its decision in *Re Mithra Management Ltd.*:

It should be clear to all that the underlying purpose of Part XIX of the Act is the protection of the integrity of the capital markets in which take-over bids are made, and in particular the protection of investors who are solicited in the course of a take-over bid. Those purposes are carried out through provisions which, among other things, attempt to ensure that equal treatment is accorded to all offerees in a bid, that offerees have a reasonable time within which to consider the terms of a bid, and that adequate information is available to offerees to allow them to make a reasoned decision as to whether to accept or reject a bid. These provisions exist to protect investors, of course, but their over-arching purpose is the protection of the integrity of the capital markets in which those investors have placed their money -- and their trust.⁴⁷

39. It follows from the above that the Commission has the jurisdiction to cease trade the Rusoro Offer, the issue is whether, on the evidence before it, it should do so. Rusoro submits that it should not, first because the issues raised in Gold Reserve's application are all issues which it has already raised in its court action, and as a result the court is the appropriate forum in which to resolve them, and second, because cease trading the bid is not in the public interest. As a result, Rusoro submits that the Commission should dismiss Gold Reserve's application.

The Commission is Not the Proper Forum

40. Dealing with the first basis upon which Rusoro asks the Commission to dismiss the Gold Reserve application, the essence of the original complaint was that as a result of what is alleged to have been an illegal trespass on Gold Reserve's Venezuelan property, Rusoro has obtained confidential information about Gold Reserve. In its further submissions of last night, Gold Reserve has broadened the complaint to include the claim that Rusoro acted improperly in first retaining Endeavour and then obtaining Gold Reserve information from it.

41. These are the exact same allegations that Gold Reserve has advanced in its action against Rusoro and Endeavour in the Ontario Superior Court of Justice. In that action it is seeking largely the same

⁴⁶ *Re Canadian Tire*, (1987), 10 O.S.C.B. 857 (OSC) at p. 110-111 (aff'd) (1987) 37 D.L.R. (4th) 94 (Div. Ct)

⁴⁷ *Re H.E.R.O. Industries Ltd.*, (1990), 13 O.S.C.B. 3775 (OSC) at p. 12.

relief as it is seeking from the Commission. The court action seeks an injunction to restrain the Rusoro Offer from proceeding; this application seeks a cease trade order to the same effect.⁴⁸

42. In essence, Gold Reserve is seeking two chances to make the same argument, two chances to obtain the same relief. Should its injunction action fail, it wants the Commission to give it what the court has denied it.

43. The Commission has in the past rejected attempts to obtain relief from it where the matter was more appropriately dealt with by the courts. An example is *Re CW Shareholdings Inc.*⁴⁹ The applicant in that case had applied to the Commission (as well as the Alberta and British Columbia Securities Commissions) for a cease trade order in respect of a take-over bid for a radio and television company. At the same time it had also moved for orders under the oppression remedy provisions of the *Canada Business Corporations Act* which would have had the effect of stopping the take-over bid. The Commission stayed the application on the basis that the matter was more appropriately dealt with by the courts. The courts have dealt with litigation before them in a similar fashion, dismissing or staying proceedings as an abuse of process where the litigant has already commenced proceedings seeking similar relief elsewhere.⁵⁰

44. The Commission should either stay or dismiss the Gold Reserve application. The application is based on the same facts alleged in Gold Reserve's court action and seeks substantially the same relief. It is no more than an attempt to litigate the same issue twice. Gold Reserve's submissions of yesterday linking in Endeavour only reinforce this conclusion. By way of illustration of the close links between what was argued before the court on the injunction motion and what Gold Reserve is now arguing before the Commission, one of Gold Reserve's main submissions on the injunction was that Endeavour was in a fiduciary relationship with Gold Reserve and therefore under similar obligations to a lawyer. The same solicitor case Gold Reserve now cites in support of some notion that "firewalls" are needed, *MacDonald Estate v Martin*, loomed large in Gold Reserve's submissions to the court.

45. Gold Reserve's application to the Commission is no more than a twin of the court proceedings. Having chosen to initiate the court action as its first measure to defeat the Rusoro Offer Gold Reserve should not be allowed to use the Commission as its back-up plan.

No Informational Advantage

46. The Commission is inclined to consider the application, Rusoro submits that it should dismiss it as unfounded. The primary basis of Gold Reserve's complaint is that Rusoro has purposefully obtained some type of informational advantage by covertly drilling on Gold Reserve's property and then using

⁴⁸ Gold Reserve Application Record, Tab 3B, Exhibit B to the Belanger Affidavit, Statement of Claim dated December 16, 2008

⁴⁹ *Re CW Shareholdings Inc.*, (1998), 21 O.S.C.B. 2910 (OSC) at p. 2916 & 2919-2920.

⁵⁰ *Eilpro Holdings Inc. v. Shenkman*, (1975), 8 O.R. (2d) 433 (C.A.) at p. 435; *Urquhart v. Technovision Systems Inc.*, [2003] O.J. No. 444 (S.C.J.) at paras. 3-4 & 9; *PWA Corp. v. Gemini Group Automated Distribution Systems Inc.*, [1993] D.L.R. (4th) 526 (Gen. Div.) at p. 537.

that information to conduct its take-over bid. In its additional submissions of yesterday, it elevates the information to the “materiality” level, claiming that it is information which might have a significant effect on the market price or value of Gold Reserve’s share, information that a reasonable Gold Reserve shareholder would want to consider in deciding whether or not to tender to the Rusoro Offer, or information which would significantly alter the “total mix” of information available to a reasonable investor.

47. The evidence before the Commission is overwhelmingly to the contrary. It supports Rusoro’s contention that the minimal drilling on Gold Reserve’s small property was part of a larger program on Rusoro’s own property, was conducted with notice to Gold Reserve if not its actual permission, yielded results which confirmed the absence of any economically material amounts of ore, and played no part in Rusoro’s decision to launch and conduct the Rusoro Offer.⁵¹

48. Rusoro has not gained any informational advantage as a result of the drilling. The results, all of which have now been provided to Gold Reserve, confirm Rusoro’s contention that there is no economically material amounts of ore on the small corner of Choco 5 upon which it drilled.⁵² Gold Reserve may not accept the test results provided to it, maintaining that there are some other set of figures which have been kept hidden from it, but the results were obtained using Rusoro’s standard testing procedures and at this point are corroborated by assay certificates. Gold Reserve has no reasonable basis for the doubts it has expressed. One might also question the sincerity of the doubts. Gold Reserve took no steps to deal with the drilling for months. Had it been truly concerned one might have expected it to behave differently.

49. The reality is that the four drill holes are simply not a large enough sample to provide any concrete assessment of the Choco 5 property and as such are not material under any definition of that term. Mr. Belanger himself recognized this when cross-examined, stating that “one or two or 10 or 11 drill holes doesn’t make a mine”.⁵³

50. The Commission should note that Gold Reserve has conducted more comprehensive drilling on its property. One might wonder why it has not released the results of that drilling to put in context the four holes Rusoro drilled. Presumably those results would either confirm or dispute the results of the Rusoro holes. Either way the market could then judge the situation for itself. Certainly the evidence would have been helpful to the Commission in assessing the validity of Gold Reserve’s current complaint. Gold Reserve can hardly contend that the Commission should not accept Rusoro’s test

⁵¹ Gold Reserve Application Record, Tab 3H, p. 92-94, Smith Affidavit, paras. 8, 11-12 & 16-17; Rusoro Supplementary Application Record, Tab 2, p. 1-2, Supplementary Salamis Affidavit, para. 3.

⁵² Gold Reserve Application Record, Tab 3H, p. 99-112, Exhibit C to the Smith Affidavit – Condemnation Drilling Results / Tab 3F, p. 129-259, Exhibit C to the Smith Reply Affidavit – Additional Drilling Information re: Choco 5; Rusoro Supplementary Application Record, Tab 2A, Exhibit A to the Salamis Affidavit – Assay Certificates.

⁵³ Rusoro Supplementary Application Record, Tab 4, p. 168, Cross-Examination of A. Douglas Belanger on January 26, 2009 (“Belanger Cross-Examination”), Q. 792.

results, results which have always confirmed the lack of any economically viable quantities of ore and which now include assay certificates, when it has not indicated what its own drilling has found.

No Special Relationship Between Rusoro and Gold Reserve

51. Gold Reserve argues that applying section 76 of the Act, Rusoro is somehow in some type of special relationship with Gold Reserve as a result of its retainer of Endeavour as its financial advisor. Section 76 does not apply to this situation. It might make Endeavour a person in a special relationship with Rusoro, but it does not create or define any similar relationship between Rusoro and Gold Reserve absent proof that Rusoro has information which qualifies as a material fact or a material change in relation to Gold Reserve. There is no evidence that Rusoro possesses such information.

No Improper Disclosure of Information

52. Gold Reserve invites the Commission to conclude that Endeavour must have improperly shared with Rusoro information confidential to Gold Reserve. It provides no evidential basis for that argument. The evidence the Commission does have is all to the contrary. Rusoro has explained why it selected Endeavour and confirmed that it was not provided with confidential information. The large volume of public information about public resource companies, the realities facing companies carrying on business in Venezuela, the price at which Gold Reserve was trading prior to the launch of the Rusoro Offer as well as the lack of any complaint to Endeavour's work for Rusoro, all support the conclusion that Endeavour did not have any information confidential to Gold Reserve and that whatever information it did have likely played no part in Rusoro's decision to launch the Rusoro Offer. The Commission should decline Gold Reserve's invitation to speculate.⁵⁴

No Coercive or Abusive Behaviour

53. Overall, there is no evidence of the type of conduct which the Commission has in the past found warranted cease trading a take-over bid. The best illustration of the conduct necessary before the Commission will cease trade a take-over bid is the conduct in *Re Sears Canada Inc.*⁵⁵ The bidder in that case, Sears Holdings, had, amongst other things, issued a press release stating that in the event its bid did not succeed it would stop the established policy of paying quarterly dividends, launched a comprehensive attack on the integrity of, and dealt badly with, the members of the special committee of the target company, and entered into support agreements with some significant shareholders on terms not offered to all shareholders. The latter in itself justified a cease trade order in the public interest, but the Commission went on to state that elements of the conduct of Sears Holdings in pursuing its offer were coercive and abusive of the minority shareholders and the capital markets generally.

⁵⁴ Rusoro Supplementary Application Record, Tab 7, p. 14-15, Salamis Injunction Affidavit, paras. 60 & 62.

⁵⁵ *Re Sears Canada Inc.* (2006) 22 B.L.R. (4th) 267 (OSC)

54. Rusoro has not done any of the types of things that the Commission found abusive in *Sears*. The drilling of the test holes gave Rusoro no informational advantage and have had no affect on the ability of Gold Reserve to conduct an auction or the capital markets in general. Its retainer of Endeavour was entirely legitimate and known to Gold Reserve at all times.

No "Auction Chill"

55. As a final point, Gold Reserve's submissions and supporting evidence confirms that the company is making no attempt to maximize shareholder value by conducting an auction. Gold Reserve may have two financial advisors on retainer, but neither of them is doing anything to explore alternative transactions to the one offered by Rusoro. Some 55 days after the launch of the Rusoro Offer, Gold Reserve has not even contacted any potential purchaser, let alone held serious discussions with one.⁵⁶

56. Gold Reserve's claim that it needs additional time to conduct an auction has no basis in fact or law. There is no "auction chill" because there is no auction. The reality is that Gold Reserve's management has chosen not to conduct an auction because it does not want to conduct an auction. Existing management wants shareholders to allow it to remain in control of the company in the hope that it can either persuade the government of Venezuela to renew the Brisas permit or triumph in some as of yet commenced litigation or arbitration. The shareholders should be allowed to decide for themselves whether or not to follow that course or to instead join Rusoro and its plans for their company.

CONCLUSION

57. The Commission should allow Gold Reserve's shareholders to accept or reject the Rusoro Offer and should therefore make an order to cease trade the Gold Reserve Rights Plan immediately. The Commission should dismiss Gold Reserve's section 127 application. The public interest is best served in allowing shareholders to decide for themselves whether they want to continue with Gold Reserve's current management. There is no public interest in cease trading the Rusoro Offer based on the evidence provided by Gold Reserve. The application is merely another attempt by Gold Reserve's management to delay a decision by their shareholders on the Rusoro Offer.

Yours very truly,



R. Seumas M. Woods

⁵⁶ Rusoro Supplementary Application Record, Tabs 2A-2D, Exhibits 2-3 & 7-8 to the Belanger Cross-Examination / Tab 5, p. 215-216, Continued Belanger Cross-Examination, Qs. 987-991.



c: S. O'Hearn, OSC Staff Counsel
R. Harrison/D. Hausman, *Fasken Martineau DuMoulin LLP*
B. Gray, *Blake, Cassels & Graydon LLP*