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Attorneys for Trustee

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO

In Re:) Case No. 03-21652
)
GERALD and ONA LINDSEY, et al.,) TRUSTEE'S MOTION TO DISMISS
) OR VACATE NEVAK MINING,
Debtors.) LTD.'S MOTION TO SET ASIDE
) ORDER APPROVING COMPROMISE
)

COMES NOW Ford Elsaesser, Chapter 7 Trustee in the above-entitled action, by and through his attorney of record, Barry McHugh of Elsaesser Jarzabek Anderson Marks Elliott & McHugh, Chtd., and hereby moves the Court for an order dismissing the motion filed by Nevak Mining, Ltd. (hereinafter referred to as "Nevak"), to set aside the Court's previous order approving a compromise entered into between the Trustee and Nevak. *See* Doc. No. 123. This motion is based upon Local Rule 7.1, the Trustee's Response to Motion to Set Aside Order Approving Compromise (*see* Doc. No. 126), and the Memorandum filed herewith in support of this motion.

The Trustee urges the Court to dismiss Nevak's motion based upon its failure to comply with Local Rule 7.1 in that no accompanying brief or memorandum was filed with the motion, and, therefore, the Court and the Trustee have no way to know the basis

TRUSTEE'S MOTION TO DISMISS OR VACATE NEVAK MINING, LTD.'S
MOTION TO SET ASIDE ORDER APPROVING COMPROMISE - 1

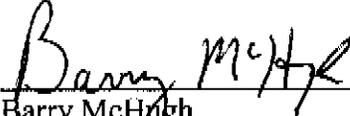
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for the motion, and the Trustee is unable to prepare to defend against the motion. Further, the Trustee requests a dismissal of the motion based upon the agreement in question, which requires alternative dispute resolution regarding any dispute involving the agreement entered into between the parties.

Lastly, because Nevak has failed to file a brief or memorandum, and has failed to identify witnesses which it might call to testify at the hearing, the Trustee is unable to adequately prepare to defend against the motion. Should the Court be unwilling to dismiss the motion, the Trustee requests the Court vacate the hearing date and set it on a different date and require that Nevak comply with the Local Rule so that the Trustee can adequately respond and prepare.

DATED this 15th day of October, 2004.

ELSAESSER JARZABEK ANDERSON
MARKS ELLIOTT & McHUGH, CHTD.



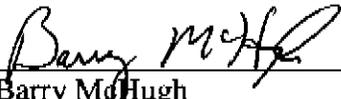
Barry McHugh
Attorney for Trustee

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October, 2004, a true and correct copy of the foregoing TRUSTEE'S MOTION TO DISMISS OR VACATE NEVAK MINING, LTD.'S MOTION TO SET ASIDE ORDER APPROVING COMPROMISE was served upon the following via first class U.S. Mail, postage prepaid:

Ford Elsaesser Chapter 7 Trustee P.O. Box 2220 Sandpoint, ID 83864	U.S. Trustee MK Central Plaza 720 Park Blvd., Suite 220 Boise, ID 83712
Michael Ioane C/O 801 Woodside Road, Ste. 14-404 Redwood City, CA 94061	Brit D. Groom Attorney at Law P.O. Box 227 Cottonwood, ID 83522
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