

Afton struggle revolved on equity bonus

By R. M. SHAW

The battle for the ultimate contract to put the Afton Mines Ltd. copper property into production revolved to an important degree around the equity bonus that would be granted to a major mining company for its services. Mr. Justice Thomas Berger, in his judgment delivered last Friday, notes this with some emphasis.

All the skating, weaving and stick-handling, the feints, deceptions and chases that swirled around the Afton property at Kamloops are narrated with fascinating clarity by Mr. Justice Berger in his reasons for rejecting Teck's suit and sustaining the Afton directors.

Teck's aim

He observes that Teck Corp. Ltd., in spite of and on top of its purchase of 50.7 per cent of the presently outstanding shares of Afton, not only hoped to gain the ultimate contract but was looking for an additional equity bonus and had named 40 per cent as a possible level.

The judge ranged this possibility alongside the actual contract arranged by the original Afton directors with Canex Placer Ltd., which Teck Corp. unsuccessfully sought to upset.

The contract between Afton and Canex provides that, if Canex elects to place the property in production, it will receive sufficient shares to give it 30 per cent of the shares that will then be outstanding. This will reduce Teck's position from 50.7 per cent to 35 per cent but will still leave it as the largest individual shareholder.

Teck's argument was that directors Chester F. Miller, Douglas L. Price and John Haramboure had acted to frustrate Teck, as major shareholder, rather than to advance the interests of their company.

Mr. Justice Berger recounts the history of the Afton property and the part played by Miller and his group in its development. Miller, a geological engineer and formerly a drilling contractor, in 1964 advised Colonial Mines to take an option on the claims now held by Afton. Drilling results were not encouraging to Colonial but Miller felt further drilling was justified.

So he, Price and four others formed a syndicate called Tamarack, each put up \$2,500 and bought Colonial's option. Miller continued the drilling and also staked additional claims, lying to the west, on behalf of the syndicate. The group incorporated Afton in 1965 and transferred the claims to it.

Needed money

At that stage Miller sought to interest major mining companies in the property because Afton did not have the financial resources to carry on a drilling program as extensive as Miller felt was required.

The judge outlined the function of a major in a junior situation, supplying capital, personnel, technical assistance, managerial and marketing experience. In the event that a major finds a mine to be feasible and undertakes to develop, finance and manage it, the major requires a bonus by way of equity.

In 1969 Afton entered a contract with Duval, a major, which dropped it. In 1970 Afton made a contract with Quintana, which could have earned a 70-per-cent interest, but dropped it on Aug. 31, 1971.

Afton carried on, raised

some money by an underwriting which enabled drilling to be continued in September and October, 1971.

"The results were, apparently for the first time, encouraging to others besides Miller," wrote Mr. Justice Berger. "A further underwriting was arranged and drilling continued into the late fall and winter. The assays aroused great interest and Miller was besieged by major mining companies, each seeking to obtain the ultimate deal. The price of the shares began to go up. The position had changed. Earlier Miller had been courting the majors. Now they were courting him."

Miller had confidence that further drilling would strengthen his position even more. He needed money and decided to try to sell a block of shares to one of the majors of his choice. He approached Bethlehem Copper Corp. first, Placer Development Ltd. second. Bethlehem declined.

Placer representatives met with Miller on March 17, 1972. They wanted the ultimate deal and wanted 60 per cent as a bonus. Miller was not interested. He offered to sell Placer 100,000 shares and to grant a right of first refusal on future financing.

"Now Teck had in the meantime entered the picture," the judge wrote. "I find that Teck was anxious from the beginning to obtain the ultimate deal with Afton (but) discussions were not confined to the ultimate deal."

Teck offered to buy the shares of Miller and his group (about 400,000) and also offered to buy a block of 100,000 shares at \$4 if it was given first refusal on future financing.

"But Miller preferred to sell the block of shares to Placer. Now Placer was only prepared to pay \$3 a share. Teck was willing to pay \$4. Yet Miller nevertheless dealt with Placer. Why? Because Miller, Price and Haramboure knew Placer had an excellent reputation in the mining industry."

"Placer had brought the Craigmont copper property into production in the early 1960s. Placer had brought the Endako molybdenum property into production in the middle 1960s. Marcopper (Philippines) was brought into production in the late 1960s. All these, except Marcopper, were B.C. properties."

"Teck did not have the experience or personnel to match Placer's. Dr. Keevil Jr. (of Teck) himself went so far as to concede that Placer was 10 years ahead of Teck."

On March 22 Miller and Placer reached an agreement. Canex actually paid \$3.50 a share at the insistence of the Vancouver Stock Exchange. Miller rejected Teck's \$4 offer.

"I regard this evidence as of great importance because it shows that, long before Teck began acquiring any shares of Afton, Miller's conception of what would best serve the interests of the company led him to prefer Placer to Teck."

In the meantime, the judge recorded, discussions between Teck and the Afton directors continued. Teck offered to buy half the Miller group's shares and was turned down. Eventually on May 31 Teck bought half of the 200,000 shares held by Axel Berglund, the original staker.

In April B.O. Brynelsen, a director of Teck, advised Mil-



MR. JUSTICE BERGER

lar that Teck might be willing to develop the property for a bonus of as little as 33.3 per cent, but Miller did not feel this was a firm offer.

The testimony of Joe Adie, Placer's exploration manager, indicated that gaining the ultimate deal on the Afton property was of the highest importance to Placer. The judge noted that Placer did not take as sanguine a view of the size of the ore body or grade of copper as Teck but felt there was likely a minable reserve.

There were a number of meetings. On April 20 Placer improved its offer, dropping from a 60 to a 40-per-cent bonus. Price and Haramboure thought the offer should be accepted, but Miller did not and they did not press him.

After more negotiations Placer on May 19 put two proposals in writing, 60-40 (with financing) and 75-25 (without financing). The Afton directors were not prepared to accept either.

Teck, having failed to make a deal with Afton and having failed to purchase the Miller group's shares, began buying shares on the market on May 8. It completed its purchases, as noted earlier, on May 31, achieving a majority control.

The judge noted an argument by Teck counsel that Teck, when it became a large shareholder, would no longer require a bonus of the same magnitude as another major. "It would, so to speak, be on the same side of the table as Afton."

Controlling mind

"The controlling mind, so far as Teck is concerned, was Dr. Keevil, Jr. In an internal memo dated April 13, 1972, he said that he felt that Teck, if it bought one million shares in Afton, would then finance the mine for a 40-per-cent bonus. But what is of significance is that Dr. Keevil Jr. indicated that, even through Teck was buying up shares, Teck would still require a 40-per-cent bonus.

"The point is that, according to Dr. Keevil Jr.'s memorandum, the grade of the copper would determine the extent of the equity that Teck would require. Dr. Keevil Jr. contemplated that Teck might go so far as to buy up the controlling interest in the company... The bonus for financing would be higher or lower depending on the grade and extent of the ore body and would not fluctuate according to Teck's shareholdings..."

"So, in my view, the argu-

ment that the acquisition of shares by Teck meant that Teck thereafter was on Afton's side of the bargaining table, falls to the ground."

The judge relates the events of the final, frantic week of May.

On Wednesday, May 24, Dr. Keevil Jr. advised Miller that Teck had 500,000 shares. On Thursday May 25 Miller went to Teck's office, where he met Dr. Keevil Sr. and Teck's staff.

On Friday, May 26, Dr. Keevil Jr. phoned Miller and said that Teck had one million shares.

Dr. Keevil Sr., president of Teck, visited McClelland, president of Placer, on May 26 and told him Teck and Teck subsidiary Iso Mines Ltd. had acquired one million shares of Afton. Keevil said Teck intended to acquire absolute control. He asked McClelland if Placer would sell its 100,000 shares. McClelland stalled. Later in the day he phoned Keevil and said he did not want to sell because Placer still had two proposals before Afton.

Miller was also talking to other majors, including Cominco. On May 26 Price phoned John Bruk, Afton's solicitor, advising him to stand by because Afton might well be making a deal with Cominco.

Meanwhile Miller met the Keevils at Kamloops on Saturday, May 27. On Sunday night, May 28, Miller phoned Price and told him that Teck had one million shares. He also asked Price if he wanted to sell any of his shares. Price said no.

On Monday, May 29, Miller and Price, with Bruk, met with Cominco and that company's corporate solicitor Irvine made them an offer. It was not put in writing. This deal was complicated by the fact that Afton had an option on a group of claims held by Cominco. It called for 600,000 Afton shares, if exercised, but was taken when Afton shares were worth \$4 and they were now selling for \$15. Cominco made a new offer on these claims but Miller figured that Cominco's whole offer came to 66-34. He was not content.

Miller, Price and Bruk went from there to the building where Teck had its office and held a council of war before going up. Bruk was to phone Placer and ask it to improve its 60-40 offer. Milton Zink, counsel for Placer, said Placer would not go higher. Miller and Price again discussed selling their shares and decided against it. They then met Dr. Keevil Jr. and Michael Butler, a Teck director. They discussed an ultimate deal. Miller and Price said it would be premature. They wanted more drilling. Teck did not make a concrete offer, saying only it would be "twice as good" as any other.

On Tuesday May 30, another meeting was held at Teck's offices. Miller, Price and Bruk had lunch together. They canvassed all possibilities. They realized Miller, Price and Haramboure would not be in control much longer. At the same time they were aware that Placer was on the spot. So Bruk was instructed to phone Placer and offer a 70-30 deal. Later that afternoon, Placer agreed.

"Now Teck, in the meantime, had become concerned that Miller and Price might conclude an ultimate deal with another major. They suspected it might be Cominco or Canex. They went so far as to post a lookout at Cominco's Vancouver office to see if Miller and Price went there," the judge noted.

On May 30 Teck requisitioned a shareholders' meeting. On May 31, Teck wrote a letter to Miller, Price and Haramboure and sent copies to Afton, Cominco and Canex. It requested that no ultimate deal be made without consultation and indicated that legal action would be taken if any deal were made.

The directors were not deterred but did seek Bruk's advice. He advised them, on May 31 and again on June 1, that they had the right as directors, on behalf of Afton, to enter into a deal with Canex, provided it was their genuine belief that such was in the best interests of the company.

Kept secret

On Thursday, June 1, Miller and Dr. Keevil Jr., accompanied by Bruk, Miller and Bruk did not disclose that a formal contract with Placer was being drafted. Bruk took the position that the agreement was a material change in the affairs of the company and should not be disclosed to one shareholder, Teck, ahead of other shareholders.

On the following day, June 2, they were authorized by the Vancouver Stock Exchange to make the agreement public. This was the climax of all the dealings. From that point on, Teck's legal actions rolled forward.

Mr. Justice Berger agreed with the defendants that directors have the power to run a company. They are not the agents of the shareholders. A majority of shareholders do not, by reason of the fact that they have a majority, acquire thereby any legal right. They can change the board but they have no proprietary rights.

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improvident one, rather if anything it is a good contract from Afton's point of view"

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The judge commented on the agreement: "If the division of equity found in this agreement is thrown into the scales, as Teck urges, the only conclusion I can draw is that the contract of June 1 has not been shown to be an

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FINANCE Terry Hammond Editor

BOOM! Afton triggers high excitement

KAMLOOPS — It is 7:30 a.m. and in the normally deserted brokerage office of Doherty McCuaig Limited about 50 people are intensely watching the ticker tape of the Vancouver Stock Exchange.

The telephones are ringing incessantly and office clerks are passing pieces of paper back and forth.

"Give me the wire room," shouts one broker into the telephone, "Jim I want to buy 10,000 shares of Afton at market for account 652-523."

The transaction completed, the broker picks up another one of his ringing telephones, this time to sell 20,000 shares of a mining company with a number of claims in the Kamloops area.

Meanwhile, 10 miles away, the cause of all the excitement is a scene of peace and quiet; in direct contrast to the hustle and bustle of the brokerage office. Cattle are grazing peacefully and the only thing that dominates the landscape is a huge, tower-like, piece of machinery.

But it is that piece of machinery, a rotary drill, that has Canada's mining industry excited and agog.

The word is out: Afton Mines Ltd. of Vancouver, a small mining company, has discovered an orebody showing unusually high grades of copper.

For the past week or so mining companies from across Canada and the United States have sent their geologists and exploration man-



George Froehlich takes a look at what's really going on there

gists and exploration managers to the Kamloops area in the hope they can stake more claims. Claims, the hope is, that will ultimately result in new mines being brought into production.

The consensus among most mining men is that Afton not only has an orebody but a mine. A mine whose size has still to be determined by further exploration work.

Says one mining engineer: "There is no doubt about it that on the basis of the available information released by Afton at this stage they have a mine. All that remains is to determine its size and scope."

And the discovery of the Afton orebody has quite a few residents of Kamloops excited. Excited to the point where they feel that a mining boom is now under way which will result in several new mines being discovered and brought into production.

Economically the Afton discovery has had an important impact on a number of the town's industries.

Ab Ablett, the president of Amex Exploration Services Ltd., a firm that does magnetometer and chemical surveys, claim staking, line cutting and surveying for mining companies is optimistic that several new mines will be discovered in the Kamloops area.

Says Ablett: "The whole thing started quietly last November when the Afton people began to do some work on their property. Today it has reached the stage where quite a few major mining companies and small ones are actively interested in the area."

"A great deal of employment is being created with the mining companies dispatching their geologists in the field examining the various properties in the Afton area."

Ablett believes that Afton "no longer is a promotional activity but it is now a bona fide mining operation. In the last month my business has increased 200 per cent and by summer I expect to have 24 people working for me instead of the present 12."

A major key in the Afton situation is the fact that Placer Development Limited of Vancouver, through one of its subsidiaries, Canadian Exploration Ltd., agreed to purchase 100,000 Afton treasury shares at \$3.50 each.

Comments one broker: "When the Placer people, who in the mining industry are regarded as being a group of shrewd operators, got into the picture the Afton stock achieved respectability. You can bet your boots that they would not have shelled out \$350,000 if they didn't think Afton had a mine."

H. A. Quin, a consulting mining geologist from Vancouver and Kamloops, says mining claims now sell from between \$100 to \$1,000 each, depending on how close they are to the Afton property.

Ordinarily a mining claim, which consists of 51.65 acres, would sell for around \$30, he says.

"I have had enquiries from mining companies in Toronto, Montreal and the U.S. who are interested in what is taking place in Kamloops."

An indication of how extensive the interest in the Kamloops area has been is the number of claims that have been staked since last November.

From October 1 of last year to March 8 of this year a total of 6,631 claims has been staked. This compares with 5,919 claims for the nine-month period beginning Jan. 1, 1971.

Quips one official in the mining recorder's office in Kamloops: "Our work load has doubled, there is no doubt about that. Our busiest period has been in the last two months."

In fact things got so hectic that at one stage the recorder's office ran out of the forms needed to record staked claims.

For miles and miles around the Afton property the signs of newly-staked claims, fresh stakes driven into the ground with bright red plastic tapes

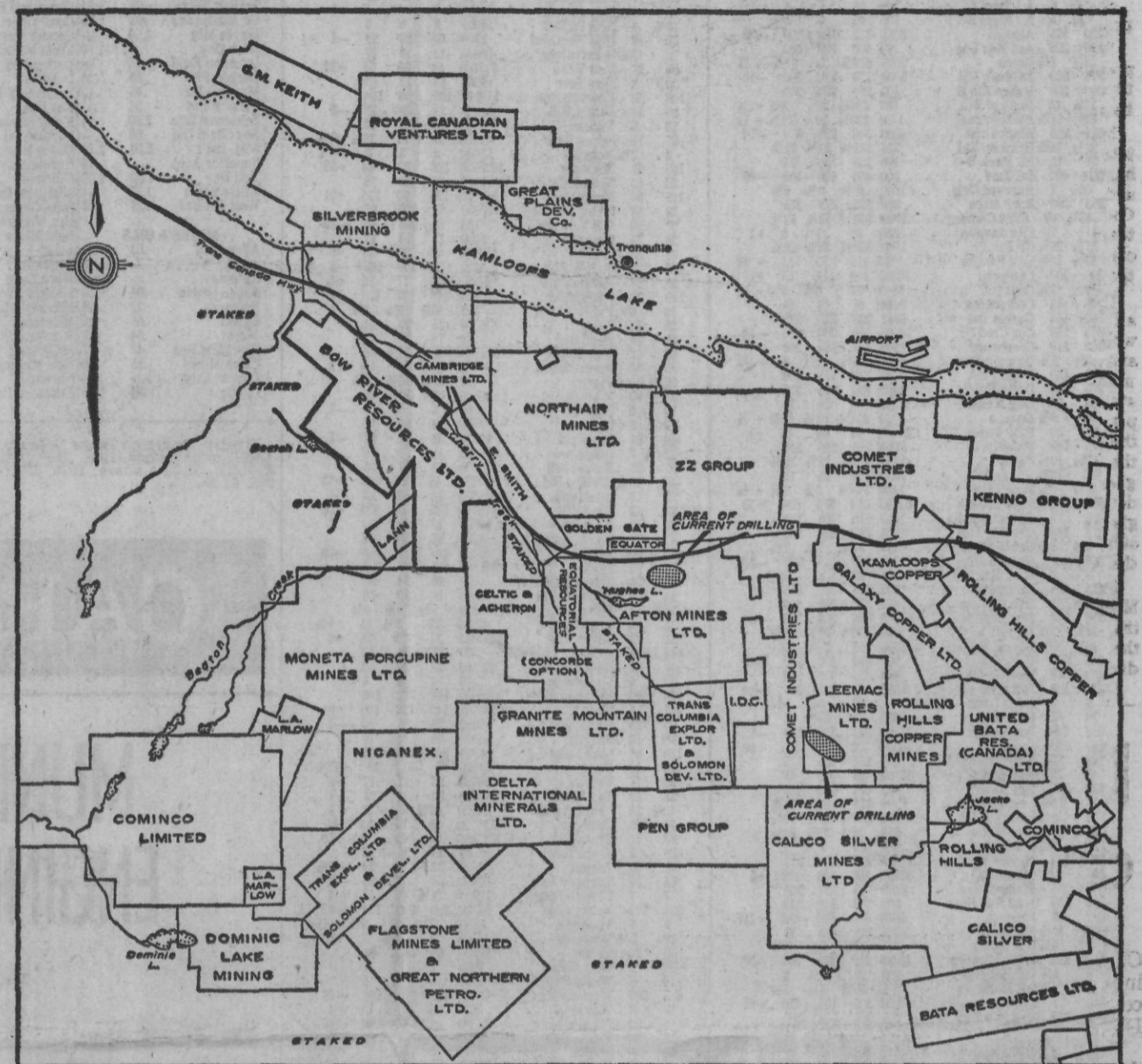
attached to them, are evident.

"One thing I am certain of is when a lot of these claims will be surveyed you will find that some areas will have been staked several times," says one geologist.

Says another: "People in Vancouver are so eager to buy claims out here that they don't even bother to actually examine the claims they have bought. So you can be sure that eventually a lot of them will discover that they aren't the only owners of these claims. Why, the situation has gotten to the stage where some people in Kamloops think all you have to do is sell staked claims, which is much more profitable than trying to find an orebody. I hear that some prospectors are selling a number of claims for as high as \$50,000."

Afton president Chester Millar says "I am absolutely convinced that we have a mine . . . there simply is no doubt about it. As well, the whole thing will stimulate a lot of exploration efforts which ultimately will mean that more new mines will be discovered."

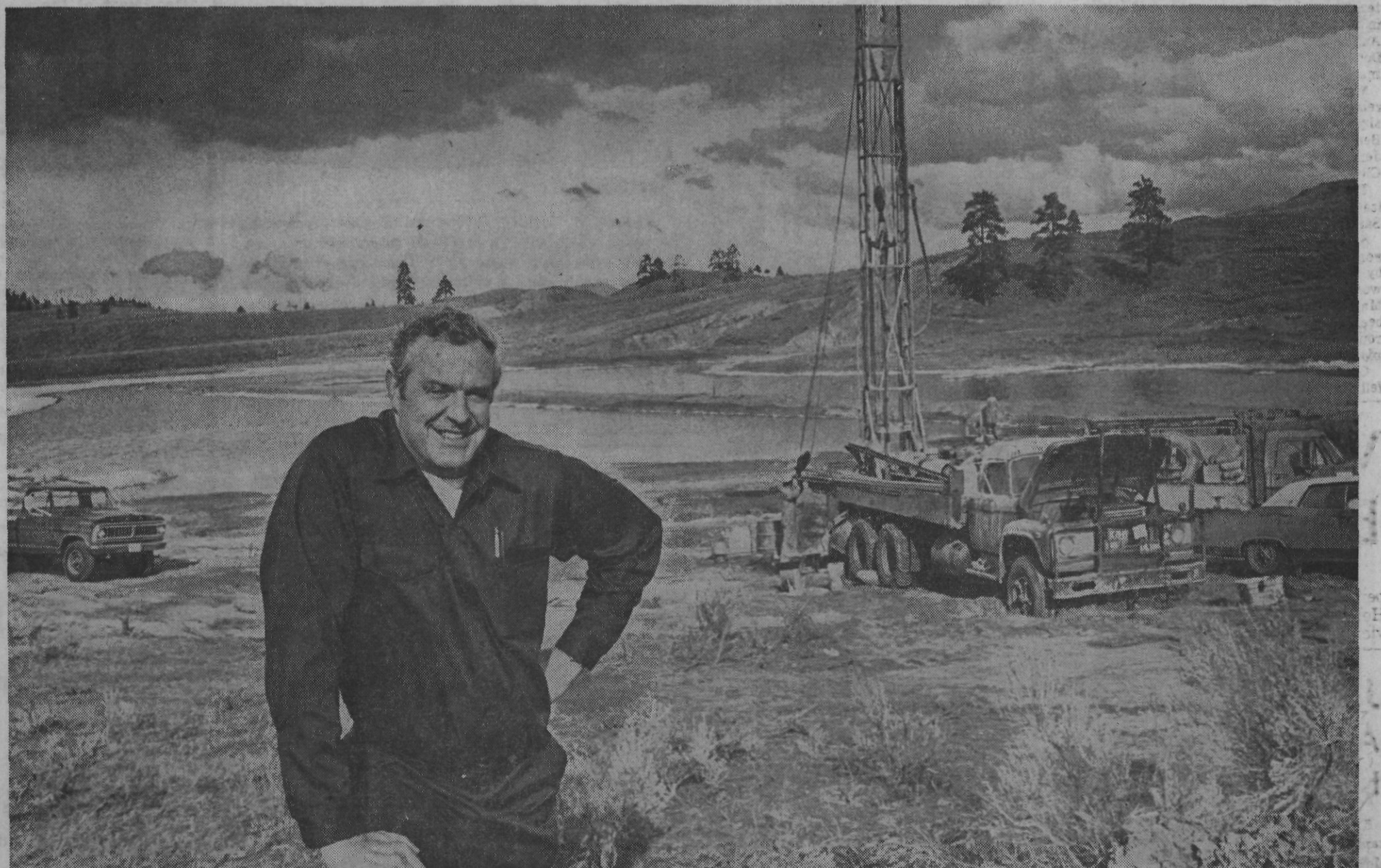
The existence of copper deposits in the Kamloops area



AFTON AND ITS SUDDEN NEW-FOUND FRIENDS . . . map is only approximate



AB ABLETT
... work up 200 per cent



THIS IS WHERE IT'S ALL HAPPENING . . . Chester Millar, Afton president, with exploratory drill on the orebody, 10 miles from Kamloops —Neil MacDonald Photos

Continued from page 21

has been known for years and years. David Smith, provincial mining inspector says that during the period 1885 to 1900 Kamloops was known as the copper city. He says that as many as 20 to 25 small mines were being worked in the area then.

"Quite often they did not amount to much more than gopher holes but they indicated that copper exists in the area," says another geologist.

The first real indication that economical copper deposits might exist in the area was contained in the 1965 annual report of the provincial minister of mines. It said:

"The Iron Mask batholith (this is the area where Afton's and other mining companies' claims are) is three miles southwest of Kamloops and extends for a distance of 18 miles in a northwesterly direction. Associated with the batholith are numerous copper deposits, some of which carry appreciable values in gold and silver."

The report then continued to go into the history of the area:

"In 1896, the first year in which activity is recorded, over 200 claims were located. By 1900 underground work had been done at the Python, Noonday, Lucky Strike, Iron Mask, Wheel Tamar, Iron Cap, and Kimberley properties. Most of these properties have produced a few selected tons of ore. Exclusive of that from the Iron Mask and associated orebodies, the total production recorded from the area up to 1940 is 419 tons of copper-bearing material, mostly with low gold and silver contents."

Says one eastern-based geologist:

"In view of the Afton play you can bet that a lot of mining companies are now wishing that they had read that provincial mines report a little more closely. What in effect that report said was that copper deposits exist in the



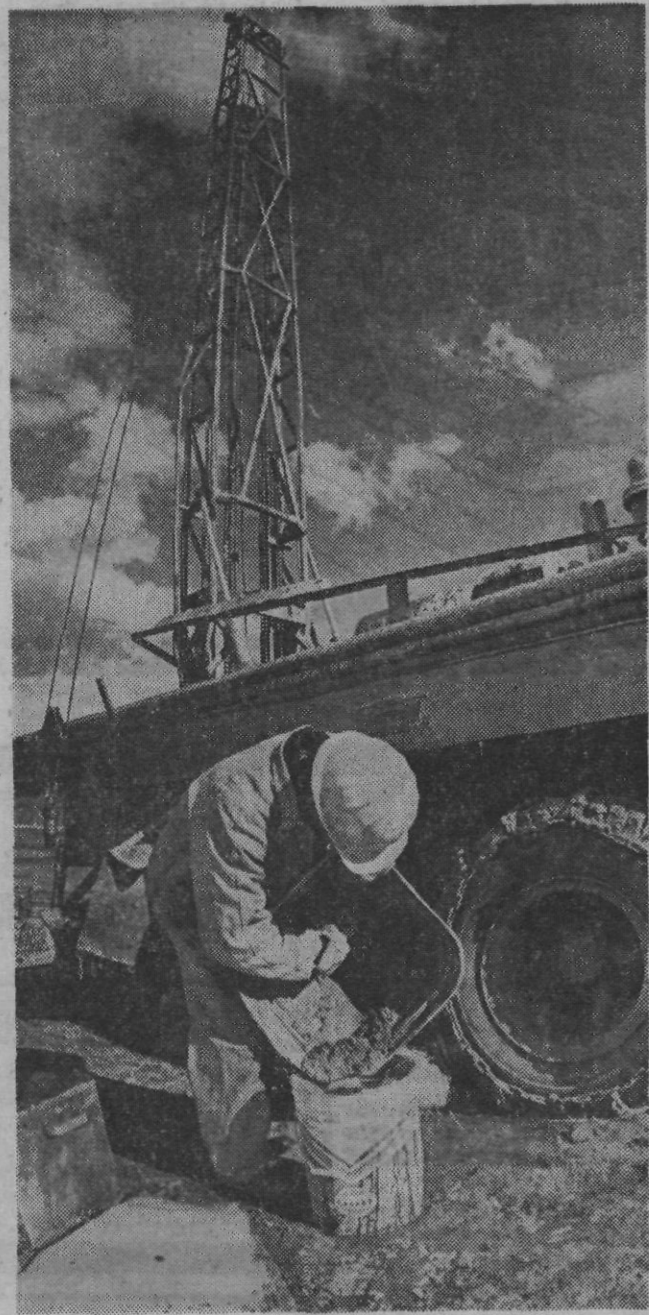
GEORGE MILTON
... here from Edmonton

area. Unfortunately not too many companies bothered by allowing it up with exploration work."

George Milton, a partner in the Edmonton office of Doherty McCuaig Limited, says, "by all indications this mining boom will be more significant than the Pyramid and Dynasty situation."

Milton, who has been in

Public goes wild about Afton



—Neil MacDonald Photos

DRILL SEEKS ORE ... copper almost pure

Kamloops for several weeks in order to assess the situation for his firm, feels that "more new mines will be found."

Maurice A. Floyd, who is also a partner in Doherty and who has been in Kamloops for six years, says "clients are getting into the market that have not been trading for the past two years. As well I find that a lot of people are getting in who normally don't buy stocks."

Floyd says as a result of the Afton discovery he has had to hire two extra clerks to handle the vast amount of paper work. "And even with the two extra staff members we cannot really keep up. I'll just have to hire a few more people."

A list of the "major" mining companies interested in the Kamloops area reads like a who's who of North American mining. According to several brokers and geologists they include: Noranda, Cominco, Placer, Teck Corporation, Rio Tinto, Hudson's Bay Mining and Smelting, Falconbridge, McIntyre Porcupine Mines, Phelps Dodge, the exploration arm of Imperial Oil, Kennecott, Quintana, Asarco and Conwest.

One broker claims that "several big Japanese trading companies have also been putting out feelers in the hope of getting a piece of the action."

Notes one broker: "In Vancouver mining circles the feeling is that Afton put the lights back on. For about 18 months the industry has been in the doldrums, living in darkness and now Afton came along to lighten up the scene. The response by the public has been overwhelming. It goes beyond the wildest expectations."

Ablett of Amex Explora-

tion is also pleased by the co-operation existing between the mining and ranching fraternity. Quite often the two groups are at odds with one another but this time "everyone understands, especially the three Bowers brothers on whose property a lot of the Afton claims are located."

The smaller mining companies active in the area include: White River Mines Ltd., Calico Silver Mines Ltd., Cambridge Mines Ltd., China Commercial Corp., Trans-Columbia Explorations Ltd., Flagstone Mines Ltd., Comet Industries Ltd., Delta International Minerals Ltd., Demsey Mines Ltd., Acheron Mines Ltd., Concorde Explorations Ltd., Celtic Minerals Ltd., Grandeur Mines Ltd., Granite Mountain Mines Ltd., Gibbex Mines Ltd., Nor-West Kim Resources Ltd., Minex Development Ltd., Rollings Hills Copper Mines Ltd., Northair Mines Ltd., Equatorial Resources Ltd., Great Northern Petroleum & Mines Ltd., Exeter Mines Ltd., Initial Developers Corp.

One of the attractive features of the Afton discovery is that the copper found is of the "native" variety. In its simplest form this means that the copper is almost pure and unlike other types when smelted it does not produce sulphur, a pollutant.

However, an unknown factor has always been what kind of recovery you get in the milling process.

Millar says this no longer is the case. "We have done several tests which indicate that the over-all recovery would be comparable to the usual type of copper deposits."

Needless to say the brokerage fraternity in Kamloops is doing a great business. Thursday one broker said he made \$9,000 in commissions alone. "I would estimate that clients of mine have netted a profit of close to \$1 million by dealing in the shares of the mining companies with the most interest near the Afton area."

Local
"Then there is the whole issue of economics. Now you take my work for example. I find that my expenses are down by 50 per cent. There is a heck of a difference when you work for mining companies atop some mountain or just a few miles outside of Kamloops. The net result being that mining companies can explore at greatly reduced costs and the risks of spending exploration funds aren't as great here as they would be for some remote area."

At present only Afton, Leemac Mines Ltd. and Northair Mines Ltd. have drills on their properties.

"But you can be sure that all the other mining companies aren't far behind and are trying their damndest to get drills on their properties," says one mining engineer.

made their chunks of money. Says one of them: "I would guess that my capital gains have been around \$65,000. I bought the Afton shares when they were selling at \$3 and got out when they hit \$8."

Another resident claims he made about \$20,000 by dealing in shares of Afton and other mining companies having an interest near the Afton claims.

The spill-over effect on the Kamloops hotel and restaurant business from the heavy trading has been quite noticeable. Sam Kurisu, owner of the Highlander Restaurant and the New Oriental Gardens simply says:

"God am I busy."

Ken Snook, general manager of Edalca Hotels, which operate the Stockmen's Motor Inn and the Canadian Motor Inn claims:

"The impact of the mining activity on our business has been tremendous. Our business has doubled this year when compared to last year. Now all of it naturally isn't attributable to the mining situation but it has had a lot to do with it."

To many a mining man the Afton discovery combines all the elements needed before a new mine is discovered. They are: patience, perseverance and above all luck.

After all four major mining companies worked some of the claims now owned by Afton Mines Ltd. They were Kennecott Copper Corporation of New York, Noranda Mines Ltd. of Toronto, Quintana

Minerals Exploration of Texas and Duval Copper Corporation of Houston, Tex.

The last one to have worked on the Afton claims was Quintana. The company is a diversified resource firm, with its main interests in the oils business.

Kennecott is one of the largest copper mining companies in the world. It has copper mines throughout Canada and the world. Recently it has run into a number of problems, financial and otherwise. The Chilean government nationalized one of its copper mines.

Noranda is a major Canadian mining company with holdings throughout Canada and the world.

Duval mines sulphur, potash, copper and molybdenum in many areas of the U.S. In Canada it mines potash in Saskatchewan.

Afton entered the picture last year when through an underwriting of 200,000 treasury shares at 30 cents per share it netted \$60,000 for the treasury in order to do further exploratory work on the claims in the Kamloops area.

The first indication that copper was found on the property came on November 23 when Afton in a press release said:

"Highly favorable results from recent drilling of the new discovery zone of the Afton Mines Ltd.'s property near Kamloops, has caused the company to initiate an immediate program of both percussion and diamond drilling."



MAURICE FLOYD ... broker benefits, too

After that, further work proved one thing: the situation looked better and better with each drill result.

Sums up one geologist: "One of the Afton drilling holes with good copper grades

was a mere 300 feet away from where one of the major mining companies had done some drilling. I guess that just proves that in mining you have to be lucky and Afton certainly has been lucky."

Teck loses in court fight over Afton

By R. M. SHAW

Mr. Justice Thomas Berger of the Supreme Court of B.C. has dismissed an action brought by Teck Corp. Ltd. to set aside a contract allowing Placer Development Ltd. to develop and manage the Afton Mines Ltd. copper property at Kamloops.

The judgment found that Afton directors acted in the interests of the company — not for any improper purpose — and awarded costs against the plaintiff Teck.

Following the issuance of the judgment Friday, Thomas J. McClelland, president of Placer Development Ltd., said exploration and development work will be resumed immediately on the property, which lies alongside the Trans-Canada highway 10 miles southeast of Kamloops.

"The injunction is ended now so we'll begin immediately," said McClelland. Work was halted June 23 by a court injunction pending determination of the issues.

Norman B. Keevil, president of Teck Corp., said, "The judgment appears to have rejected certain precedents on which our counsel relied. We are considering an appeal."

A company statement was



T. H. McCLELLAND

issued by Robert Hallbauer, a Teck nominee on the Afton board, and concurred in by Chester F. Millar, president of Afton. It said, "Afton Mines Ltd. announces that, by judgment of the Supreme Court of B.C., the agreement entered into by it with Canadian Exploration Ltd. (Placer subsidiary) on June 1, 1972 has been confirmed.

"The effect of this agreement was to grant Canex sole possession of the Afton Kamloops property, the right to

THE PROVINCE BUSINESS

BOB McMURRAY, Business Editor

Saturday, December 9, 1972

★★★★23

work the same and to conduct such studies as Canex may decide to determine the feasibility of commencing production from the property.

"A meeting of the directors of Afton will be held immediately to consider the effect of this judgment on the company and its shareholders. Any further announcement in this connection will be made after that meeting. The meeting is expected to be held early next week.

The judgment was issued after the closing of the Vancouver Stock Exchange at 2 p.m. Friday. Afton shares closed at \$9.10, having risen 60 cents during the trading session.

The suit was launched June 2 by Teck, immediately on learning that Afton directors Millar, Douglas L. Price and John Haramboure had signed the development agreement with Canex.

Teck had advised the directors on May 31 that it had acquired in the market 1,312,011 shares of Afton, giving it a majority of the 2.6 million issued shares.

Teck sued the directors and Canex (synonymous with Placer) alleging that the directors had entered the contract to defeat the interests of Teck as a shareholder — rather than in the company's interests — and that Afton knew of this, resulting in a conspiracy.

The contract provides that if Placer elects to put the Afton property into production, it will receive 1,167,437 shares of Afton, giving it a 30 per cent interest and thereby reducing Teck's position to 35 per cent.

The trial took 29 days spread over two months from Aug. 24 to Oct. 23.

Mr. Justice Berger said in

the judgment that the directors Millar, Price and Haramboure had the absolute right to manage the affairs of the company and were not bound to accept direction from a majority shareholder or any shareholders.

They were aware, however, that Teck, having a majority of shares, was in a position to replace them on the board and, for this reason, they moved to conclude a contract with Canex while they still held the power. They believed that Teck wanted the ultimate contract for itself and they believed that Canex would be the better developer.

"I find their object was to obtain the best agreement they could while they were still in control," said Mr. Justice Berger. "Their purpose in that sense was to defeat Teck, but not to defeat Teck's attempt to obtain control; rather it was to foreclose Teck's opportunity of obtaining for itself the ultimate deal. That was, as I view the law, no improper purpose. In seeking to prevent Teck obtaining the contract, the defendant directors were honestly pursuing what they thought was the best policy for the company.

"They wanted to make a contract with Placer while they still had the power to do so. But not at any price. Millar stood firm in his rejection of Placer's 60-40 offer of May 19, even when he knew that Teck's share position was eroding his control of the company. He was not prepared to concede 40 per cent equity simply in order to sign a contract providing for the issuance of shares to Placer. He held out for a better contract and he got it"

Mr. Justice Berger continued that Millar also was in haste, that time was short. Also that Placer knew it also had to get a contract while the directors held office. "Teck was the catalyst. Millar, Price and Haramboure were, in my view, acting in the best interests of the company. And the evidence shows they had reasonable grounds for that belief.

"In trying to make the best deal he could for Afton, Millar

was acting in the best interests of the general body of shareholders, including Teck, because once Teck's interest in acquiring control is put to one side, its interest, like that of the other shareholders, was in seeing Afton make the best deal available. I find Millar's purpose was to serve that interest."

The judge emphasized, "The defendant directors were elected to exercise their best judgment . . . Their mandate continued so long as they remained in office. They were in no sense a lame duck board."

In assessing the directors' reasons and motivations for making a contract with Canex rather than waiting for a possible deal to be imposed upon them by Teck, Mr. Justice Berger said, "I find that the directors had a sufficient knowledge of Teck's reputation, its technical and managerial capacity, and its previous experience, to consider the consequences of a takeover.

"They decided to make a deal with Placer while they still had the power to do so. They wanted to see the company's principal asset, its copper property, developed efficiently and profitably. They believed, and they had reasonable grounds for such belief, that the property would not be developed efficiently and profitably for the benefit of the shareholders, if Teck got control of it."

The judge ruled that there was no conspiracy between Canex and the Afton directors because there was no agreement to commit an unlawful act.

The judgment in places read like a thriller as Mr. Justice Berger reviewed the movements and negotiations which took place in May and early June between Afton, Canex, Teck and other companies including Cominco.

He noted that on June 1, when the Afton directors were making their deal with Canex, Teck had posted a lookout outside the Cominco office to see if they showed up there.

Teck loses its case

Afton directors and Canex vindicated

By GEORGE FROELICH
Sun Business Writer

A six-month legal battle over the right to put a multi-million-dollar Kamloops copper property into production was decided in B.C. Supreme Court Friday when Mr. Justice Thomas R. Berger dismissed a suit brought by Teck Corporation Ltd.

Exonerated of having acted improperly in entering into a deal for exploration and development of Afton Mines Ltd.'s property nine miles west of Kamloops were three Afton directors and Canadian Exploration Ltd.

The judgment had the effect of leaving Teck Corporation in control of Afton Mines Ltd., but subject to the terms of the contract which it sought to set aside, and liable for costs of the court action.

Upheld by the judgment is a contract which gives Canadian Exploration (Canex), a wholly-owned subsidiary of Vancouver-based Placer Development, the right to put the Afton property into production and to acquire a 30-per-cent interest in Afton for doing so.

Teck, after failing to win a contract on its own behalf to finance Afton to production, proceeded to gain control of the company on the open market early this year.

In the process it drove Afton shares to an all-time high of \$15.50 and ended up paying approximately \$16 million for slightly over half of the outstanding stock.

The judgment leaves Teck's control of Afton largely illusory because if Canex proceeds to development of the Kamloops orebody and earns its 30-per-cent interest, the issuance of Afton shares to represent that interest will deprive Teck of its majority holdings through dilution.

Even if Teck were somehow to increase its shareholding in the interim to the extent that it still controlled Afton after the share issue to Canex, it would be required by the contract to permit Canex to perform all exploratory work, prepare a feasibility study, finance a mine to production, sell the mine's output and manage the mine.

Legal action over the Kamloops orebody came last June when Afton president Chester F. Millar announced the company had signed the contract

with Canex in spite of Teck's having announced by that time it had secured majority control of Afton.

The Berger judgment upholding Millar's action is signing the deal with Canex came down at 2:15 p.m. Friday.

More than a dozen lawyers, mining company executives and other interested people, were lined up outside the court registry eagerly awaiting the release of the judgment.

Most elated of all was Afton president Millar who had personally negotiated the disputed Canex contract.

Not elated at all was Norman B. Keevil Jr., executive vice-president of Teck, who a few days earlier had discussed tentative plans for a victory party.

Asked a short time after the court's ruling came down if the party was still on Keevil Jr. replied: "No, it's a wake."

Those on hand when copies of the judgment were released quickly flipped through the bulk of the 54-page document to the final section which contained the judge's ruling.

"We've won! We've won!" was the jubilant cry of one lawyer as an Afton director at his elbow kept repeating "What does it say? What does it say?"

Millar, beaming with a broad grin, said:

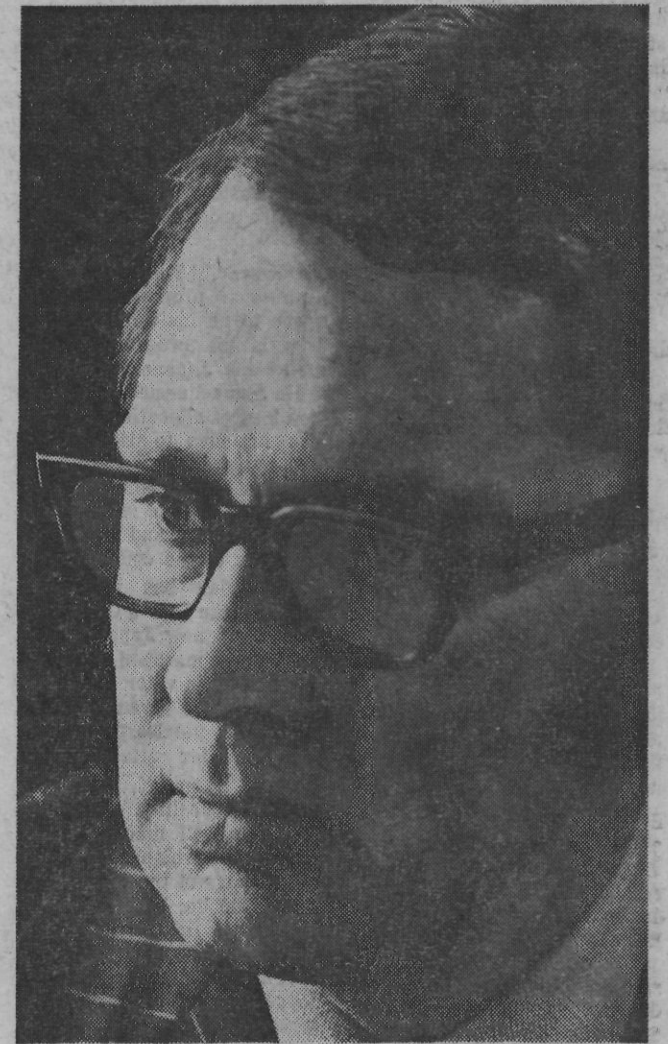
"I am happy that it's over and that we can get back to work right away. I also hope that this judgment will bring all the parties in the trial closer together rather than further apart.

"I am also confident that Teck will see a good return on their investment in spite of the fact that they have lost."

Millar said drilling on the Afton orebody halted by an injunction in the early rounds of the legal hassle last July 5, should resume in January.

A short time after the judgment was handed down Afton Mines Ltd., on whose 11-man board there are six Teck nominees, issued a statement which said in part:

"A meeting of the directors of Afton will be held immediately to consider the effect of this judgement on the company and on its shareholders. Any further announcement in this connection will be made after that meeting."



JUDGE BERGER . . . motivation the key

Keevil Jr. told The Sun: "The judgment does not appear to our counsel to follow the legal precedents which they relied upon. Naturally consideration will be given to an appeal but this will depend upon the further advice of our counsel."

Placer's secretary John M. McConville said:

"The company (Canex) will now commence complying with the terms of the contract with Afton Mines Ltd. and work on the property will proceed as soon as is practical."

Teck, formerly Toronto-based but with its head office in Vancouver since earlier this year, filed suit against Canex and Afton directors Millar, Douglas L. Price and John Haramboure.

The suit sought to have the Afton-Canex development contract set aside and to have the court award monthly damages of \$200,000 to Afton from June

1 till handing down of the judgment to compensate for lost exploration time.

Teck alleged during the trial that the Afton directors, in signing the development contract with Canex, were actuated by the improper motive of trying to deprive Teck of its majority control.

The Canex-Afton contract that was signed was a poor one, Teck contended, and one that was of no benefit to Afton's shareholders.

Teck also claimed that Canex knew that the Afton directors acted improperly and therefore the development contract should have been declared null and void.

Mr. Justice Berger said that the court's jurisdiction "to intervene is founded on the theory that if the directors' purpose is not to serve the interest of the company, but to

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—Ralph Bower Photo

MOST ELATED OF ALL . . . Chester Millar, president of Afton Mines, with copy of judgment

It took 7 years for Afton's dreams to start to come true

Afton Mines Ltd., the small Vancouver-based mining exploration company which earlier this year sparked the Kamloops mining boom that has since cooled somewhat, had its beginning seven years ago.

The company was incorporated Dec. 14, 1965.

Earlier in 1964, as a private company, Afton began to acquire mining prospects in British Columbia and one of them was located nine miles west of Kamloops. It was the company's Kamloops copper claims that in the spring of this year touched off some of the wildest trading

days the Vancouver Stock Exchange ever enjoyed.

Mining speculators who had been out of the market for years started to buy shares in Afton and in companies with mining claims in the immediate and not-so-immediate Afton area.

Afton president Chester F. Millar and his associates, who had worked on the Kamloops property since 1964, finally began to realize their dreams late in 1972.

First public indication of an economic copper orebody on the Afton property came on Nov. 23 of last year when

the company in a press release said:

"Highly favorable results from recent drilling of the new discovery zone of the Afton Mines Ltd.'s property near Kamloops, has caused the company to initiate an immediate program of both percussion and diamond drilling."

When news of this reached the mining community and Howe Street, the price of Afton shares began to climb. The price rise of the shares was spectacular — in a matter of weeks the shares climbed from 30 cents to a high of \$15.50.

Further drilling by Afton Mines sustained the promising results. The impact this had on other small mining companies with properties in the Kamloops area was tremendous. Shares of those companies also showed large price increases although on many of them not a drill was to be seen.

Although Afton shares were heavily traded and most people believed the company had found a potential mine, it wasn't until Vancouver-based Placer Development Ltd., a widely-respected mining conglomerate got into the Afton picture that the area gained

widespread investment interest outside of B.C.

Placer announced at the end of March that it had agreed to buy 100,000 Afton treasury shares at \$3.50 each, along with the right of first refusal to place the Afton property into production.

The effect of the Afton play on the mining industry was good. Small exploration companies found it very easy to go the marketplace and raise exploration funds.

Thomas A. Dohm, the former president of the Vancouver Stock Exchange, went so far as to say that \$10 million had been raised through the

facilities of the exchange as a result of the Afton boom. The funds for the most part were earmarked for exploration expenditures by mining companies.

The next development in the Afton story came on May 31, when Norman B. Keevil Jr., executive vice-president of Teck Corporation Ltd., then of Toronto but now of Vancouver, announced that his company had gained effective control of Afton.

Keevil Jr. said that Teck and an affiliate, Iso Explorations Ltd., had "a little over 50 per cent" of the 2,624,000 outstanding Afton shares.

Two days later, on the morning of June 2, Afton Mines Ltd. announced that it had signed a development contract with Canadian Exploration Ltd., a wholly-owned subsidiary of Placer.

Late that afternoon Teck legal counsel Jack Giles went before the courts in an attempt to get an injunction which would have had the effect of preventing Afton Mines from issuing any of its treasury shares to the Placer unit as outlined in the terms of the contract with Canex.

Under the exploration agreement the Placer unit was to receive 30 per cent of the

then-issued and outstanding shares of Afton when the decision was made to put the Afton orebody into production.

Although Giles was denied his request by the court he was given "short leave" which meant that arguments on the case would be heard on Monday June 5.

Starting that Monday, and for the next 11 days, B.C. Supreme Court Judge Mr. Justice R. P. Anderson heard lengthy argument on why Teck should be granted an injunction pending the out-

Continued on page 29

Teck loses legal fight over Afton

Continued from page 27

serve their own interest or that of their friends or of a particular group of shareholders, they can be said to have abused their power."

"The impropriety lies in the directors' purpose. If their purpose is not to serve the company's interest, then it is an improper purpose," he said.

The judge said as far as he was concerned the Afton directors acted in the best interests of the company and its shareholders.

"My own view is that the directors ought to be allowed to consider who is seeking control and why. If they believe that there will be substantial damage to the company's interests if the company is taken over, then the exercise of their powers to defeat those seeking a majority will not necessarily be categorized as improper."

But, he added, how is the court to believe the directors' claims that they acted in the best interests of the company and its shareholders?

"I think the courts should apply the general rule in this way: The directors must act in good faith. Then there must be reasonable grounds for

their belief. If they say that they believe there will be substantial damage to the company's interests, then there must be reasonable grounds for that belief. If there are not, that will justify a finding that the directors were actuated by an improper purpose."

Directors also have the right to consider the reputation, experience and policies of anyone seeking to take over their company, the judge ruled.

"If they decide, on reasonable grounds, a takeover will cause substantial damage to the company's interests, they are entitled to use their powers to protect the company. That is the test that ought to be applied in this case."

Mr. Justice Berger said that the whole case in his view rested on Millar's motivation.

"His was the dominant mind on the board, his purpose was the board's purpose."

Mr. Justice Berger also said that as far as he was concerned the purpose of the Afton directors in attempting to sign a development contract with Canex was a legitimate one.

"The purpose was to make a favorable deal for Afton. That purpose continued throughout. Did it become an improper purpose because

Teck acquired large shareholdings? Did it become an improper purpose because the directors made a deal with Canex knowing that they had to before Teck acquired the power to stop them? I think that on the evidence the answer must be no."

The judge also rejected Teck's contention that the development contract was a poor one.

(Under the contract Canex receives a 30-per-cent equity position in Afton for placing the Kamloops orebody into production, while Afton retains the remaining 70 per cent).

Mr. Justice Berger said that a 70-30 deal such as the Canex-Afton one was a good one from Afton's viewpoint.

The judge said that the Afton directors' attempts to "foreclose Teck's opportunity of obtaining for itself the ultimate deal" was not improper.

("The ultimate deal" referred to a major mining company helping a smaller company arrange financing, marketing and production in return for an equity position).

"In seeking to prevent Teck obtaining the (ultimate) contract, the defendant directors were honestly pursuing what they thought was the best policy for the company."

By stating it this way, the judge said, the Afton directors' purpose was being placed in a negative way. "But in a larger sense their purpose was a positive one. They wanted to make a contract with Placer while they still had the power to do so. But not at any price."

Mr. Justice Berger also conceded the Afton directors' defence on the effects of a takeover by Teck.

Teck, he said in his judg-

ment, "has failed to show that the directors had no reasonable grounds for believing that a takeover by Teck would not cause substantial damage to the interests of Afton and its shareholders. Indeed, I am satisfied that it has been affirmatively shown that the directors did have reasonable grounds for such belief."

He continued:

"I find here that the (Afton) directors had a sufficient knowledge of Teck's reputation, its technical and managerial capacity, and its previous experience, to consider the consequences of a takeover. They decided to make a deal with Placer while they still had the power to do so.

"They wanted to see the company's principal asset, its copper property, developed efficiently and profitably. They believed, and they had reasonable grounds for such belief, that the property would not be developed efficiently and profitably for the benefit of shareholders, if Teck got control of it."

Mr. Justice Berger also rejected the Teck claim that the Afton directors were motivated by the desire to keep themselves in office when signing with Canex.

He also rejected the allegation that Canex was party to an improper purpose by the Afton directors. Since the Afton directors could not be charged with an improper purpose it "would be entirely hypothetical" to determine whether Canex was part of such a purpose.

Mr. Justice Berger said that Teck "was anxious from the beginning to obtain the ultimate deal with Afton. N. B. Keevil Jr., and Michael But-

ler, Teck's principal adviser and a director of Teck, virtually conceded this when gave evidence."

The judge said he considered it a piece of important evidence that Millar rejected an early Teck offer to buy 100,000 Afton treasury shares at \$4 each. Instead Millar sold the 100,000 shares to Canex at the lower price of \$3.50 each.

"... it shows that, long before Teck began acquiring any shares in Afton, Millar's conception of what would best serve the interests of the company led him to prefer Placer to Teck. He was not prepared to do business with Teck then, even on better terms than he could get from Placer."

Afton shares Friday closed at \$9.10 on the Vancouver Stock Exchange, up 60 cents from the previous day's close. Placer closed at \$40 on the Toronto Stock Exchange, down 25 cents from the previous day.

Teck A shares closed at \$4.45 on the TSE, unchanged from the previous day. The B Teck shares gained 25 cents to close at \$4.10.

Acting for Teck were lawyers Jack Giles, D. G. S. Rae and T. D. Devitt.

Acting for Afton directors Millar and Price were Brian McLoughlin and D. W. Tokarek; for Afton director Haramboure, William Craig; for Canex, John Bouck and Stephen Gill; for Afton Mines, W. R. D. Underhill; and for certain Afton shareholders, K. B. Farris.

Afton's history

Continued from page 27

come of a future trial that was to decide Afton's fate.

The injunction application by Teck sought to prevent the issuing of treasury shares by Afton to the Placer unit.

On June 23, Mr. Justice Anderson granted Teck the injunction pending the outcome of the trial set for late August.

On July 5, the Afton Mines case entered a new stage when various lawyers sought to set aside or vary the injunction granted by Mr. Justice Anderson.

All of these attempts failed, but the judge ruled that pen-

ding the outcome of the trial all work on the Afton orebody had to stop.

The Afton trial opened on Aug. 24 with 13 lawyers appearing before B.C. Supreme Court Judge Mr. Thomas R. Berger. It ended on Oct. 23.

Expert testimony at the trial indicated that the Afton orebody had a net profit value ranging from a high of \$49 million to a low of \$14 million.

Lawyers acting for Placer even went so far as to assert that the Afton orebody might never be developed into a mine because not enough information was available to decide one way or the other.

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