

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

In re: Gold King Mine Release in San Juan  
County, Colorado on August 5, 2015

No. 1:18-md-02824-WJ

*This Document Relates to:*

*No. 16-cv-465-WJ/LF*

*No. 16-cv-931-WJ/LF*

*No. 18-cv-319-WJ*

**KINROSS GOLD U.S.A. INC. AND KINROSS GOLD CORPORATION'S  
MOTION FOR SUMMARY JUDGMENT ON THE CLAIMS OF NEW MEXICO,  
THE NAVAJO NATION, UTAH AND THE ALLEN PLAINTIFFS:  
PERSONAL JURISDICTION**

Defendants Kinross Gold U.S.A. Inc. ("KGUSA") and Kinross Gold Corporation ("KGC") (collectively "the Kinross Defendants") respectfully submit that they are not subject to personal jurisdiction in either the State of New Mexico or the State of Utah, and accordingly, that the claims that have been brought against them in those states must be dismissed. On that basis, the Kinross Defendants hereby move for summary judgment on all claims asserted in this litigation by the State of New Mexico, the Navajo Nation, the State of Utah, and the *Allen* plaintiffs. In support of this motion, the Kinross Defendants state the following.

**I. INTRODUCTION:**

The EPA's excavation at the Gold King Mine on August 5, 2015 triggered the Blowout that sparked this litigation. It released water from the Gold King Mine, which cascaded over nearby tailings and mine debris, creating a three-million-gallon concoction, which flowed into Cement Creek and eventually into the Animas River.

It is undisputed that the Blowout was caused by the EPA and its contractors—in fact, the EPA admitted it was responsible within hours after the Blowout began. It is also undisputed that neither KGUSA nor KGC played any role, directly or indirectly, in any of the events leading up to the Blowout. KGUSA and KGC find themselves in this litigation simply because of their affiliation with Sunnyside Gold Corporation (“SGC”), one of their indirect subsidiaries.

SGC acquired the Sunnyside Mine in 1986 and operated it until 1991. The Sunnyside Mine is located on the east side of Bonita Peak, whereas the Gold King Mine is on the west side of Bonita Peak. The two mines’ interworkings are not connected. Between 1991, when SGC closed the mine, and 2002, SGC engaged in reclamation and remediation activities, under the supervision of the State of Colorado. SGC’s work was designed, intended and implemented to capture and retain the water *in Colorado*. Moreover, SGC’s work was, for all intents and purposes, complete by the end of 2002, before SGC became affiliated with the Kinross Defendants.<sup>1</sup>

Plaintiffs the State of Utah, the State of New Mexico and the Navajo Nation as well as the *Allen* plaintiffs (collectively “the Plaintiffs”) all claim that SGC’s closure and reclamation activities at the Sunnyside Mine proximately caused the Blowout at the Gold King Mine. They defeated the Kinross Defendants’ motion to dismiss with *allegations* “that KGUSA, acting as KGC’s agent or alter ego, ‘directed or controlled the conduct of Sunnyside Gold and operations at the Sunnyside Mine.’” *Memorandum Opinion and Order*, Doc. 168, p. 2. But the *evidence* supporting

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<sup>1</sup> In 2003, after SGC had completed its reclamation at the Sunnyside Mine, KGUSA acquired the outstanding shares of Echo Bay, Inc., which in turn owns the outstanding shares of SGC. KGC, which is a Canadian corporation, owns the outstanding shares of Bema Gold (U.S.A) Inc., which owns KGUSA. Neither KGUSA nor KGC owned any interest in SGC, nor in any entity that owned an interest in SGC, before 2003. Neither Kinross entity was ever involved in the operation, or the closure, of the Sunnyside Mine.

the allegation that KGUSA and KGC actually *directed* or *controlled* SGC's alleged "conduct" does not exist, because neither KGUSA nor KGC was affiliated with SGC when the alleged "conduct" occurred.

KGUSA and KGC do not do business in Utah or New Mexico, and they have not engaged in any activity that was "purposefully directed" toward Utah or New Mexico. Moreover, the Plaintiffs' injuries did not arise from any conduct by either Kinross Defendant, directed toward either Utah or New Mexico. As set forth below, this Court lacks jurisdiction over either Kinross defendant.

## **II. D.N.M.LR-CIV 7.1(a) CERTIFICATION:**

Counsel for KGUSA and KGC hereby certify that they have conferred in good faith with counsel for the State of New Mexico, the Navajo Nation, the State of Utah, and the *Allen* Plaintiffs, and determined that this motion is opposed.

## **III. UNDISPUTED MATERIAL FACTS:**

1. KGUSA is a Nevada corporation, with its principal place of business in Colorado. *Utah Amended Compl.* ¶ 14; *New Mexico Amended Compl.* ¶ 19; *Navajo Amended Compl.* ¶ 20; *see also*, Ex. 1, *Decl. of Martin Litt* (dated 7/23/18), ¶4.

2. KGUSA does not do business in Utah or New Mexico and is not licensed to do business in Utah or New Mexico. Ex. 1, *Decl. of Martin Litt*, ¶¶ 5-9.

3. KGUSA does not do business in Utah or New Mexico and is not licensed to do business in Utah or New Mexico. *Id.*

4. KGUSA is registered as a foreign corporation in Utah because, between 2012 and 2014, KGUSA was the lessee under four mineral leases in Beaver County, Utah. KGUSA

conducted limited exploration but no development work on those leases, and all of them were expressly terminated in 2014. *Id.*

5. Other than these four leases, KGUSA does not own, lease, or maintain, and has not owned, leased or maintained any property in Utah. *Id.*

6. KGUSA has never conducted any business in New Mexico and has no employees in New Mexico. *Id.*; *see also*, Ex. 2, *Decl. of Martin Litt* (dated 10/31/16), ¶4.

7. All of SGC's shares are owned by Echo Bay, Inc., which is a Delaware Corporation. Echo Bay, Inc. is a wholly owned subsidiary of KGUSA. Ex. 1, *Decl. of Martin Litt*, ¶ 10; Ex. 3, *Decl. of Kathleen Grandy* (dated 10/18/2016), ¶8.

8. KGUSA is a wholly owned subsidiary of Bema Gold (U.S.) Inc, a Nevada Corporation, which in turn is a wholly owned subsidiary of KGC. Ex. 3, *Decl. of Kathleen Grandy*, ¶8.

9. KGUSA acquired the Echo Bay, Inc. shares on January 31, 2003. KGUSA did not own any direct or indirect interest in Echo Bay, Inc. or SGC, before that date. Ex. 1, *Decl. of Martin Litt*, ¶ 11.

10. KGC is a Canadian corporation, and its principal place of business is in Toronto. *Utah Amended Compl.* ¶ 13; *New Mexico Amended Compl.* ¶ 18; *Navajo Amended Compl.* ¶ 19.

11. KGC does not do business in the United States, and it does not do business in either Utah or New Mexico, is not licensed to do business in Utah or New Mexico, does not have a registered agent in Utah or New Mexico, and does not own, lease, or maintain any property in Utah or New Mexico. Ex. 3, *Decl. of Kathleen Grandy*, ¶¶ 5-6; Ex. 4, *Decl. of Kathleen Grandy* (dated 12/14/2017), ¶¶ 5-6.

12. KGC has no employees in Utah or New Mexico and has had no employees in Utah or New Mexico at any time relevant to the claims in these cases. *Id.*

13. KGC has never availed itself of the privilege of doing business in either Utah or New Mexico. This suit does not arise out of or relate to KGC activities in Utah or New Mexico because there have been none. *Id.*

14. SGC closed the Sunnyside Mine on August 1, 1991. *New Mexico Amended Compl.* ¶ 29; *Navajo Amended Compl.* ¶ 39; *Utah Amended Compl.* ¶ 20. SGC installed the first bulkhead in the American Tunnel in July of 1995 (Ex. 4, ex. A thereto, *Depo. of Perino*, p. 68:16-68:21); the second bulkhead was installed in the American Tunnel in August of 2001 (*Id.*; *see also, Depo. of Perino*, p. 135:11-135:22); the third bulkhead was installed in the American Tunnel in December of 2002. (*See id.*; *see also, Depo. of Perino*, pp. 144:18-145:7).

15. On January 14, 2003, the State of Colorado issued notice that Permit No. CO-0027529, which permitted water discharged from the American Tunnel, had been transferred from SGC to Gold King Mines Corporation. *See*, Ex. 5, ex. D thereto.

16. On February 26, 2003, Colorado's Department of Public Health and Environment determined that SGC had fulfilled and met its obligations under the Colorado state court's Consent Decree. On July 3, 2003, the Consent Decree was terminated. *See*, Ex. 5, ex. A thereto, *Depo. of Perino*, pp. 153:19-155:3 and ex. 81.

17. Neither KGC nor KGUSA owned or operated the Sunnyside Mine; rather it was owned and operated by SGC. (*See, e.g.*, Ex. 5, ex. B thereto, *Depo. of Goodhard*, p. 341:3-341:20; Ex. 5, ex. C thereto, *Depo. of Hayduk*, pp. 139:18-140:7); *see also*, Ex. 2, *Decl. of Martin Litt*, ¶5.

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