

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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VICTORIA A. SHAEV, *et al.*, :
 :
 : Plaintiffs, :
 : Index No. 650425/2008E
 :
 - against - :
 : Commercial Division
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 RICHARD C. ADKERSON, *et al.*, :
 :
 : Defendants, :
 : The Hon. Barbara R. Kapnick
 :
 - and - :
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 : PHELPS DODGE CORPORATION and :
 : FREEPORT-McMoRAN COPPER & GOLD INC., :
 :
 : Nominal Defendants. :
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STIPULATION OF SETTLEMENT

This Stipulation of Settlement (the “Stipulation”), dated June 15, 2010, is made and entered into by and among the following Settling Parties (as defined further in ¶ V.1.bb herein), each by and through their respective counsel: (i) the Plaintiffs (as defined in ¶ V.1.v), on behalf of themselves and derivatively on behalf of Freeport-McMoRan Copper & Gold Inc. (“Freeport”) and Phelps Dodge Corporation (“Phelps”); (ii) the Individual Defendants (as defined in ¶ V.1.l); and (iii) nominal defendants Freeport and Phelps (collectively the “Nominal Defendants”).¹ Subject to the approval of the Court (as defined in ¶ V.1.b), the Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined in ¶ V.1.z) upon and subject to the terms and conditions set forth herein.

I. THE LITIGATION

On November 5, 2008, *Shaev v. Adkerson, et al.*, No. 08-650425, was filed in New York State Supreme Court, New York County (the “*Shaev* Action”). The *Shaev* Action alleges, on behalf of Freeport and Phelps, that the Individual Defendants breached their fiduciary duties in connection with the issuance of the February 12, 2007 joint proxy statement describing the proposed merger transaction in which Freeport ultimately acquired Phelps, a company with significantly greater cash flow than Freeport. With respect to the merger, the Complaint alleges that the proxy statement omitted to disclose that, because the maximum annual incentive award pool under Freeport’s 2005 Annual Incentive Plan was based on cash flow, the merger would significantly increase this incentive award limit. The Complaint also alleges that the

¹ Freeport acquired Phelps in a merger transaction in 2007 and became the sole shareholder of the subsidiary entity that resulted from the merger, which is now known as Freeport-McMoRan Corporation.

stockholders of Freeport and Phelps should have been given a separate vote on whether Freeport could maintain its 2005 Annual Incentive Plan after the merger.

The Complaint further alleges that the Individual Freeport Defendants (as defined in ¶ V.1.m) breached their fiduciary duties with respect to certain executive compensation awards made in 2007 and 2008. Specifically, the Complaint alleges that, on May 11, 2007, the Board granted stock options to defendant James R. Moffett, Chairman of the Board of Freeport, and defendant Richard C. Adkerson, President and Chief Executive Officer of Freeport, when the options should not have been granted until February 1, 2008. The Complaint also alleges that on January 28, 2008 the Board paid annual incentives to defendants Adkerson and Moffett that were inflated because of the Phelps acquisition, and improperly increased Adkerson's compensation by allowing him to receive a premium for the portion of his incentives he accepted in restricted stock.

On December 9, 2008, pursuant to CPLR 3120, Plaintiff Victoria A. Shaev served all Defendants with a First Notice of Discovery and Inspection (the "First NDI"). On December 30, 2008, the Nominal Defendants served their responses and objections to these requests.

On January 5, 2009, the Nominal Defendants filed a motion pursuant to New York Business Corporation Law § 627 to require Ms. Shaev to provide security for the reasonable expenses that the Nominal Defendants would incur in connection with the defense of this lawsuit. That same day, the Nominal Defendants filed a request for the case to be assigned to a judge in the Commercial Division of New York State Supreme Court, New York County. Ms. Shaev filed her opposition to this motion on January 26, 2009, and simultaneously filed a motion to compel compliance with the First NDI.

On June 11, 2009, Justice Barbara R. Kapnick granted the Nominal Defendants' motion for security for expenses, and denied Ms. Shaev's motion to compel. In addition, Justice Kapnick so ordered a stipulation agreed upon by Ms. Shaev, Freeport and Phelps requiring Freeport to furnish Ms. Shaev with a list of Freeport's then-current shareholders, as well as a list of Freeport shareholders as of February 12, 2007.

On July 29, 2009, Plaintiffs' Counsel (as defined in ¶ V.1.w) filed an amended complaint styled *Shaev, et al. v. Adkerson, et al.*, which, among other things, added a number of new plaintiffs to the lawsuit. Pursuant to a stipulation entered into by and among the parties, which was so ordered by Justice Kapnick on October 19, 2009, Plaintiffs' Counsel filed a second amended complaint, styled *Shaev, et al. v. Adkerson, et al.*, which, among other things, added a number of new plaintiffs to the amended complaint.

In accordance with a series of scheduling stipulations entered into by and among the parties, on December 11, 2009, Defendants (as defined in ¶ V.1.d) filed three motions to dismiss the *Shaev* Action.

The defendants' motion to dismiss for failure to make a demand argued that plaintiffs' substantive claims were without merit, and that dismissal was warranted due to the plaintiffs' failure to make a demand on Freeport's Board of Directors. In particular, the demand motion pointed out that the proxy statement had explicitly stated that the maximum annual incentive award pool could increase due to the merger, and that the proxy adequately informed shareholders of the purpose for which the shareholder meetings were being held: to approve the merger transaction and the steps necessary to execute it. With respect to plaintiffs' claim that the Board accelerated stock option grants to Mr. Moffett and Mr. Adkerson into 2007, the demand motion noted that plaintiffs had not alleged that directors possessed any non-public information

leading them to accelerate the grant, and further observed that, given the volatility in Freeport's stock price, options granted in 2008 instead of 2007 could have easily been more valuable, rather than less valuable. The demand motion also argued that, when making annual incentive awards based on 2007 performance, the Corporate Personnel Committee used its discretion to award substantially less than the maximum permitted under the Annual Incentive Plan, and that in any event, these awards were well within the directors' business judgment under the law. The demand motion further explained that the premium that Mr. Adkerson received as part of his annual incentive award was a feature of the Annual Incentive Plan designed to encourage executives to receive such awards in the form of Freeport stock instead of cash. The premium compensated executives who made this election for the risk of forfeiture prior to vesting and the inherent risk in any equity instrument.

In addition, the directors of Freeport filed a motion to dismiss based on this court's lack of personal jurisdiction over them and on the grounds of forum non conveniens. Finally, the former directors of Phelps moved to dismiss based on a court-ordered release of all fiduciary duty and similar claims entered as part of a settlement of a prior 2007 shareholder class action.

II. SETTLEMENT NEGOTIATIONS

Beginning in October 2009, Plaintiffs' Counsel and Freeport's Counsel (as defined in ¶ V.1.k) engaged in negotiations concerning a potential settlement of the *Shaev* Action. After numerous discussions, the Settling Parties reached an agreement in principle to settle the *Shaev* Action, which agreement is embodied in this Stipulation.

III. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT

Plaintiffs and Plaintiffs' Counsel believe that the claims asserted in the *Shaev* Action on behalf of Freeport and Phelps have merit. However, Plaintiffs and Plaintiffs' Counsel recognize

and acknowledge the expense and length of continued proceedings necessary to prosecute the *Shaev* Action against Defendants through trial and through possible appeals. Plaintiffs and Plaintiffs' Counsel also have taken into account the uncertain outcome and the risk of any litigation, especially in a complex action such as the *Shaev* Action, as well as the difficulties and delays inherent in such litigation. Plaintiffs and Plaintiffs' Counsel are also mindful of the inherent problems of proof concerning, and possible defenses to, the claims asserted in the *Shaev* Action or which may be asserted. Accordingly, in light of these risks, and based on a thorough investigation of the facts and analysis of applicable law, Plaintiffs and Plaintiffs' Counsel have determined that the settlement set forth in the Stipulation is in the best interests of Plaintiffs, Freeport, Freeport's other shareholders, and Phelps. Plaintiffs and Plaintiffs' Counsel believe that the settlement set forth in the Stipulation confers substantial benefits upon Freeport, Freeport's shareholders, and Phelps.

IV. DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY

The Individual Defendants and the Nominal Defendants have denied and continue to deny each and all of the claims and contentions alleged by Plaintiffs in the *Shaev* Action. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of any of the conduct, statements, acts or omissions alleged, or that could have been alleged, in the *Shaev* Action. Defendants also have denied and continue to deny, *inter alia*, the allegations that Plaintiffs, Freeport, Phelps, or other Freeport shareholders have suffered damage, or that Plaintiffs, Freeport, Phelps, or other Freeport shareholders were harmed by the conduct alleged in the *Shaev* Action. Further, the Individual Defendants have asserted and continue to assert that at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of Freeport or Phelps and the shareholders

they represented. Neither this Stipulation, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with it shall be construed as an admission or concession by any of the Defendants of the merit or truth of any of the allegations, of wrongdoing of any kind on the part of any of the Defendants, or of any infirmity in the defenses that the Defendants have or could have asserted in the *Shae*v Action.

Nonetheless, Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like the *Shae*v Action. Defendants, therefore, have determined that it is desirable and beneficial that the *Shae*v Action, and all of the Settling Parties' disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Defendants believe that the settlement set forth in this Stipulation confers substantial benefits upon Freeport, its shareholders, and Phelps, and is in the best interests of Freeport, its shareholders, and Phelps.

V. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Settling Parties, by and through their respective counsel of record, that, subject to the approval of the Court, the *Shae*v Action and the Released Claims shall be finally and fully compromised, settled and released, and the *Shae*v Action shall be dismissed with prejudice, upon and subject to the terms and conditions of the Stipulation, as follows:

1. Definitions

As used in the Stipulation, the following terms have the meanings specified below:

a. "Corporate Personnel Committee" means the Corporate Personnel Committee of the Freeport Board of Directors.

b. “Court” means the Commercial Division of the Supreme Court of the State of New York, New York County.

c. “Current Freeport Stockholders” means all record and beneficial owners of Freeport common stock as of the Stipulation Date.

d. “Defendants” means the Individual Defendants and the Nominal Defendants.

e. “Effective Date” means the first date by which all of the events and conditions specified in Section V.7.a of the Stipulation have been met and have occurred.

f. “Fee Award” means the total attorneys’ fees and expenses awarded to Plaintiffs’ Counsel by the Court at the Final Hearing.

g. “Final” means the time when a judgment that has not been reversed, vacated, or modified in any way is no longer subject to appellate review, either because of disposition on appeal and conclusion of the appellate process or because of passage, without action, of time for seeking appellate review. More specifically, it is that situation when: (1) either no appeal has been filed and the time has passed for any notice of appeal to be timely filed in the *Shaev* Action; or (2) an appeal has been filed and the appellate court has either affirmed the judgment or dismissed that appeal and the time for any reconsideration or further appellate review has passed; or (3) a higher court has granted further appellate review and that court either has affirmed the underlying judgment or affirmed the appellate court’s decision affirming the judgment or dismissing the appeal.

h. “Final Hearing” means the hearing, after Notice and preliminary approval, held by the Court to determine whether to approve (a) the settlement of the *Shaev* Action on the terms as set forth in the Stipulation; and (b) the Fee Award.

i. “Form 8-K” means the February 5, 2009 Form 8-K filed with the United States Securities and Exchange Commission pursuant to the requirements of the Securities Exchange Act of 1934.

j. “Freeport” means Freeport-McMoRan Copper & Gold Inc., a Delaware company with corporate headquarters located at 333 North Central Avenue, Phoenix, Arizona, 85004, including, but not limited to, its predecessors, successors, controlling shareholders, partners, joint venturers, subsidiaries, affiliates, divisions and assigns.

k. “Freeport’s Counsel” means the law firm of Davis Polk & Wardwell LLP, which also represents Phelps and the Individual Freeport Defendants.

l. “Individual Defendants” means the Individual Freeport Defendants and the Individual Phelps Defendants.

m. “Individual Freeport Defendants” means Richard C. Adkerson, Robert J. Allison, Jr., Robert A. Day, Gerald J. Ford, H. Devon Graham, Jr., J. Bennett Johnston, Charles C. Krulak, Bobby Lee Lackey, Jon C. Madonna, Dustan E. McCoy, Gabrielle K. McDonald, James Moffett, B.M. Rankin, Jr., J. Stapleton Roy, Stephen H. Siegele, and J. Taylor Wharton.

n. “Individual Phelps Defendants” means Archie W. Dunham, William A. Franke, Robert D. Johnson, Marie L. Knowles, Gordon R. Parker, William J. Post, Martin H. Richenhagen, Jack E. Thompson, and J. Steven Whisler.

o. “Individual Phelps Defendants’ Counsel” means the law firm of Debevoise & Plimpton LLP.

p. “Judgment” means the order and judgment to be rendered by the Court, substantially in the form attached hereto as Exhibit 3.

q. “Judgment Date” means the date the Judgment is entered by the Court.

- r. “Nominal Defendants” means Freeport and Phelps.
- s. “Notice” means the Notice of Settlement of Derivative Litigation, substantially in the form attached hereto as Exhibit 2.
- t. “Person” means an individual, corporation, limited liability corporation, professional corporation, limited liability partnership, partnership, limited partnership, association, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any business or legal entity and their spouses, heirs, predecessors, successors, representatives, or assignees.
- u. “Phelps” means the company formerly known as Phelps Dodge Corporation, and currently known as Freeport-McMoRan Corporation, a wholly-owned subsidiary of Freeport, including, but not limited to, its predecessors, successors, controlling shareholders, partners, joint venturers, subsidiaries, affiliates, divisions and assigns.
- v. “Plaintiffs” means Victoria A. Shaev, Robert Alexander, Helen Farhat, S.E. Roberts, Rebecca V. Roberts, Earl. E. Carrick, Clarence W. Daniels, Michael Pierdinock, Catherine Pierdinock, Anthony P. LaTorre, Donald Wilk, Harry E. Carnighan, Kathleen Rabbit, Melvin J. Nice, Willa Bess Bowden, Arthur J. Bryant, Shirley H. Bryant, John R. Cramer, Jr., Lorraine Root, Walter Leo Jaworski, Miriam Mincieli, Jonell Sims, Pauline Weinstein, Darryl Kourdouvelis, J.A. Eddy, John H. Sizer, John F. Reber, Theodore K. Byers, and Julia Huiskamp.
- w. “Plaintiffs’ Counsel” means the law firm of Barrack, Rodos & Bacine, which represents all Plaintiffs in the *Shaev* Action.
- x. “Preliminary Order” means the proposed Order Preliminarily Approving Settlement of Derivative Litigation and Providing for Notice, substantially in the form attached

hereto as Exhibit 1, preliminarily approving the settlement of the *Shaev* Action and providing for dissemination of Notice.

y. “Related Persons” means each of a Person’s spouses, heirs, executors, estates, or administrators, any entity in which a Person and/or member(s) of his or her family has an interest, each of a Person’s present and former attorneys, legal representatives, and assigns in connection with the *Shaev* Action, and all of a Person’s past and present directors, officers, agents, advisors, employees, affiliates, predecessors, successors, parents, subsidiaries, divisions, and related or affiliated entities.

z. “Released Claims” means all claims (including Unknown Claims), debts, actions, allegations, obligations, fees, expenses, costs, matters, demands, rights, liabilities and causes of action of every nature and description whatsoever, whether known or unknown, concealed or hidden, that have been or could have been asserted in the *Shaev* Action by Plaintiffs, Phelps, Freeport, or any Freeport shareholder derivatively on behalf of Freeport or Phelps (including, without limitation, claims for damages, interest, equitable relief, attorneys’ fees, expert or consulting fees and any other costs, expenses or liability, negligence, negligent supervision, gross negligence, recklessness, intentional conduct, indemnification, breach of duty of care and/or breach of duty of loyalty, good faith or fairness, fraud or constructive fraud, misrepresentation, restitution, unjust enrichment, rescission, constructive trust, breach of fiduciary duty, negligent misrepresentation, unfair competition, insider trading, professional negligence, mismanagement or gross mismanagement, abuse of control, corporate waste, breach of contract, an accounting, excessive compensation, breach of New York B.C.L. § 605, breach of Delaware G.C.L. § 222(a), breach of Freeport’s or Phelps’s bylaws or rules, or violations of any local, state, federal, or foreign statutes, rules, regulations, or common law provisions), arising out of

the 2007 merger between Freeport and Phelps, communications or representations made in connection with that merger, Freeport's or Phelps's compensation practices at any time prior to the Stipulation Date, or communications or representations made in connection with such practices. Released Claims do not include any claims to enforce the Stipulation.

aa. "Released Persons" means each and all of the Defendants and their Related Persons.

bb. "Settling Parties" means, collectively, the Plaintiffs on behalf of themselves, each of the Individual Defendants, Phelps, and Freeport and its shareholders.

cc. "*Shaev* Action" means the lawsuit styled *Shaev, et al. v. Adkerson, et al.*, No. 08-650425, currently pending in New York State Supreme Court, Commercial Division, New York County.

dd. "Stipulation" means this Stipulation of Settlement, dated as of the Stipulation Date.

ee. "Stipulation Date" means June 15, 2010.

ff. "Unknown Claims" means any and all claims arising out of the 2007 merger between Freeport and Phelps, communications or representations made in connection with that merger, Freeport's or Phelps's compensation practices at any time prior to the Stipulation Date, or communications or representations made in connection with such practices that were alleged or could have been alleged in the *Shaev* Action by Plaintiffs, Phelps, Freeport, or any Freeport shareholder derivatively on behalf of Freeport or Phelps which any Plaintiff, Phelps, Freeport, or Freeport shareholders do not know or suspect to exist in his, her or its favor at the time of the release of the Released Persons, including claims which, if known by him, her or it, might have affected his, her or its settlement with and release of the Released Persons, or might have

affected his, her or its decision not to object to this settlement. With respect to any and all Released Claims, the Settling Parties stipulate and agree that, upon the Effective Date, Plaintiffs, Individual Defendants, Phelps, and Freeport shall expressly waive, and each of Freeport's stockholders shall be deemed to have, and by operation of the Judgment shall have, expressly waived the provisions, rights and benefits of California Civil Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Upon the Effective Date, Plaintiffs, Individual Defendants, Phelps, and Freeport shall expressly waive, and each of Freeport's stockholders shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any jurisdiction or any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542. Plaintiffs, Individual Defendants, Phelps, Freeport, and Freeport's stockholders may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but, upon the Effective Date, Plaintiffs, Individual Defendants, Phelps, and Freeport shall expressly settle and release, and each Freeport stockholder shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released, any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent

discovery or existence of such different or additional facts. The Settling Parties acknowledge, and the Freeport shareholders shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and is a key element of the settlement of which this release is a part.

2. Recent Executive Compensation Decisions and Corporate Governance Changes at Freeport

a. Under Freeport's Elective Restricted Stock Unit Program, recipients of annual incentive awards could elect to receive portions of their awards that would otherwise be paid in cash in the form of restricted stock units that would be granted at a 50 percent premium to a cash award based on the closing price of Freeport's stock on the grant date. The Complaint alleges that this program had never been approved by the stockholders and that the 50 percent increase was unwarranted and not tax-deductible by Freeport. In Freeport's December 4, 2008 Form 8-K, it announced that its Board of Directors amended the 2005 Annual Incentive Plan to eliminate the ability of participants to elect to receive a portion of their cash bonus in a form other than cash. This amendment was effective December 2, 2008 and was adopted in connection with the discontinuation of the Elective Restricted Stock Unit Program.

b. In Freeport's February 5, 2009 Form 8-K (the "Form 8-K"), it announced that defendants Moffett and Adkerson would not accept annual cash incentive awards for 2008 performance under Freeport's 2005 Annual Incentive Plan.

c. Under the 2005 Annual Incentive Plan, the maximum annual incentive award pool was equal to 2.5% of operating cash flow (or up to 2.75% if certain safety performance metrics were reached). For 2008, Freeport's operating cash flow was \$3.370 billion. Thus, the maximum annual incentive award pool (assuming no upward adjustment for safety performance) for Freeport's highest executives would have been \$84.25 million. Had the Corporate Personnel

Committee elected to award the maximum, and had the committee awarded Moffett and Adkerson the same portions of the maximum that they did the previous year and required them to take a similar portion of their awards in restricted stock units instead of cash, each would have received awards made up of a \$23.1 million component available in cash and a restricted stock unit component worth \$14.8 million based on the stock's closing price on the grant date. If Moffett and Adkerson could have proceeded under the Elective Restricted Stock Unit Program and elected to receive their cash portion in restricted stock at a 50% premium, they each could have received total restricted stock units worth \$49.4 million based on the stock's closing price on the date of the grant, or \$98.9 million in aggregate. When Messrs. Moffett and Adkerson elected to waive their bonuses based on 2008 performance, they received no awards, either in cash or restricted stock units, under the annual incentive plan.

d. On April 24, 2009, after the original complaint in the *Shaev* Action was filed, the Freeport Board proposed and Freeport stockholders adopted an assortment of long-term changes to Freeport's executive compensation plans, as described below.

e. The Freeport Board proposed, and the stockholders approved, the 2009 Annual Incentive Plan. Under this plan, the maximum annual incentive award pool is equal to 0.625% of operating cash flow.² Thus, the multiplier used to establish the maximum amount is one-fourth of the multiplier used under the 2005 Annual Incentive Plan.

f. Under the new 2009 Annual Incentive Plan, bonuses up to four times the annual salary may be paid in cash, but bonuses more than four times the annual salary must be paid in restricted stock units. The restricted stock units vest annually in equal installments over a three-

² The definition of operating cash flow is revised slightly in the 2009 Annual Plan. In particular, the revised definition excludes working capital changes.

year period provided the 6% return on threshold requirement continues to be met on each vesting date. As a result, one-third of the stock can be sold one year from the grant date, two-thirds of the stock can be sold two years from the grant date, and all of the stock can be sold three years from the grant date.

g. Under the new 2009 Annual Incentive Plan, no bonus can be more than eight times the annual salary. For compensation based on performance in 2006 and 2007, by contrast, defendants Moffett and Adkerson each received bonuses of 8 to 20 times their annual salaries (when restricted stock units are valued based on the stock's closing price on the grant date).

h. From 2001-2008, the Freeport Board granted stock options to the named executive officers only once every three years. The Complaint alleges the Board violated a long-standing commitment to Freeport stockholders that it would make large grants of stock options only once every three years by granting options to defendants Moffett and Adkerson on May 11, 2007, after previously granting options to those executives on February 1, 2005. Freeport's April 24, 2009 proxy states that going forward the Corporate Personnel Committee will grant annual, smaller equity-based awards of stock options.

i. Plaintiffs assert that the value to Freeport from these changes for 2009 and over the next five years is several hundred million dollars.

j. In 2009, Freeport's operating cash flow was \$4.397 billion. Under the 2005 Annual Incentive Plan, the maximum annual incentive award pool (assuming no upward adjustment for safety performance) would have been \$109.9 million. Based on this maximum,

Freeport's high level executives could have received total cash and restricted stock units worth \$143.4 million in aggregate based on the stock's closing price on the date of the grant.³

k. Although the incentive plan enacted in 2005 was still in effect for awards based on 2009 performance, the Corporate Personnel Committee elected to use its discretion to make awards that were lower than the maximum permitted, and that were consistent with the levels that would be achieved under the 2009 Annual Incentive Plan. The committee set the annual incentive award pool at \$32.3 million, awarding Mr. Moffett and Mr. Adkerson each \$10 million in cash and restricted stock units worth \$2.9 million based on the stock's closing price on the grant date. There was no premium awarded for any portion of the awards that are made in restricted stock units. Thus, Plaintiffs assert that Freeport saved approximately \$110 million. Depending on how well Freeport does between 2010 and 2013, Plaintiffs assert that the benefit to Freeport could be another \$500 million or more.

l. The *Shaev* Action sought to recover some portion of the \$87 million of 2007 bonuses for defendants Moffett and Adkerson and \$57 million of their alleged benefits from the accelerated grant of stock options. On October 16, 2009 Freeport's Counsel met with Plaintiffs' Counsel, who advised Freeport's Counsel that his clients were complaining about substantial reductions of Freeport's dividend on common stock, which had been suspended throughout 2009. On October 21, 2009, Freeport announced that it had reinstated an annual cash dividend on its common stock of \$0.60 per share, or \$0.15 per share on a quarterly basis, with the first

³ This calculation assumes that (1) the Corporate Personnel Committee would have elected to award high-level executives the full amount of the award pool, (2) the committee would have required executives to take the same portion of their awards in restricted stock units instead of cash that the committee required for awards based on 2007 performance, (3) the committee would have made the Elective Restricted Stock Unit Program available to executives, and (4) all executives receiving awards would have chosen to receive the cash component of their compensation in restricted stock awards at a 50% premium,

such quarterly dividend expected to be paid on February 1, 2010.⁴ On April 21, 2009, Freeport announced a further increase in its annual dividends to \$1.20 per share, or \$0.30 per share on a quarterly basis, with the initial increased dividend expected to be paid in August 2010. Freeport has approximately 430 million shares of common stock outstanding. Assuming that the per share quarterly dividend remains at \$0.15 per share or more through approximately February 2011, this is an aggregate annual payout to the stockholders of at least \$258 million, substantially more than the maximum recovery of \$144 million sought in the *Shaev* Action for the 2007 bonuses and stock options for defendants Moffett and Adkerson.

m. The new 2009 Annual Incentive Plan became effective for awards based on performance during Freeport's 2010 fiscal year, which began on January 1, 2010.

n. Plaintiffs expressly assert that the commencement and prosecution of the *Shaev* Action was a material factor in causing the decision of certain Freeport executives to forego cash incentive awards for 2008, as memorialized in the Form 8-K, and in Freeport's decision to propose changes to its executive compensation plans in 2009, and that these decisions conferred a substantial benefit upon Freeport, Freeport's stockholders, and Phelps.

o. For purposes of settlement only, and reserving all rights to take any and all contrary positions in the event that the Effective Date of the Stipulation does not occur, Defendants do not contest Plaintiffs' claim that the *Shaev* Action caused the executive compensation decisions and corporate governance changes described in Paragraphs (a) through (m) of this section.

⁴ Freeport's last dividend before October 2009, in November 2008, had been \$0.50 per share, or \$2.00 per share on an annualized basis. The October 2009 announcement thus constituted a reinstatement of 30 percent.

3. Discovery

a. On March 3, 2010, Plaintiffs' Counsel served a Second Notice of Discovery and Inspection. The parties have engaged and shall engage in appropriate confirmatory discovery, as agreed upon by the parties.

4. Procedure for Implementing the Settlement

a. Within seven (7) days following the execution of the Stipulation, Plaintiffs shall submit the Stipulation together with its exhibits to the Court and shall apply for entry of the Preliminary Order. The application shall ask the Court to: (i) preliminarily approve the settlement of the *Shae*v Action on the terms set forth in this Stipulation; (ii) approve as adequate the form and proposed method of Notice, which shall include the general terms of the Settlement set forth in the Stipulation, including, but not limited to, the general terms of the fees and expenses to be paid to Plaintiffs' Counsel and the time, date, and location of the Final Hearing; and (iii) establish the time, date, and location of the Final Hearing.

b. Within ten (10) business days of the issuance of the Preliminary Order, Freeport shall publish the Notice in *Investor's Business Daily* and Freeport and Plaintiffs' Counsel shall post the Stipulation and the Notice on their websites. All costs of filing the Stipulation and publishing the Notice in *Investor's Business Daily* will be paid by Freeport.

c. Plaintiffs will request that after the Notice is given, the Court hold the Final Hearing to consider and determine whether to approve the terms of the settlement as fair, reasonable and adequate, including the payment of attorneys' fees and expenses in the amount negotiated by Plaintiffs and Freeport after the principal terms of the settlement were agreed upon.

5. Releases

a. Upon the Effective Date, Freeport, Plaintiffs (acting on their own behalf and derivatively on behalf of Freeport and Phelps), and Current Freeport Stockholders (in their capacity as stockholders only, asserting derivative claims on behalf of, and belonging to, Freeport or Phelps) shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Persons and any and all claims (including Unknown Claims) arising out of, relating to, or in connection with, the defense, settlement or resolution of the *Shaev* Action against the Released Persons, provided that nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

b. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have fully, finally and forever released, relinquished, and discharged each and all of the Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the *Shaev* Action or the Released Claims. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

6. Plaintiffs' Counsel's Attorneys' Fees and Expenses

a. At the Final Hearing, Plaintiffs' Counsel will request that the Court approve the payment in the amount of up to \$1,950,000.00 to Plaintiffs' Counsel in fees and expenses in connection with the filing, prosecution, and settlement of the *Shaev* Action. Defendants agree not to oppose any such request.

b. Within eight (8) business days of the Effective Date, Freeport shall pay the attorneys' fees and expenses approved by the Court to Plaintiffs' Counsel. Payment shall be by wire or other EFT in accordance with instructions from Plaintiffs' Counsel to Freeport's Counsel.

c. Upon payment of the Fee Award, the Individual Defendants, Phelps, and Freeport shall be discharged from any further liability for payment of Plaintiffs' Counsel's attorneys' fees, costs, or expenses in the *Shae*v Action.

d. Defendants and each of their Related Persons shall have no responsibility for, and no liability whatsoever with respect to, the allocation or distribution of any portion of the Fee Award with respect to any person, entity, or law firm who may assert some claim thereto.

7. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

a. The Effective Date of the Stipulation shall be conditioned on the occurrence of all of the following events:

- i. the entry by the Court of the Judgment, substantially in the form of Exhibit 3 hereto;
- ii. the dissemination of the Notice, or such other notice substantially in the form of Exhibit 2 hereto, in accordance with the terms of this Stipulation; and
- iii. the Judgment becoming Final and, for the avoidance of doubt, the condition that the Judgment become Final shall fail upon the Judgment not being entered or being reversed by any court of competent jurisdiction.

b. If any of the conditions specified in the preceding paragraph is not met, then the Stipulation shall be cancelled and terminated and the Settling Parties shall be restored to their respective positions in the *Shae*v Action as of the last date on which a Settling Party has executed

this Stipulation, unless Plaintiffs' Counsel, Freeport's Counsel, and the Individual Phelps Defendants' Counsel mutually agree in writing to proceed with the Stipulation.

c. In the event that the Stipulation and settlement is not approved by the Court, or the settlement is terminated for any reason, all negotiations, proceedings, documents prepared, and statements made in connection with the Stipulation shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission by any Settling Party of any act, matter, or proposition, and shall not be used in any manner for any purpose in any subsequent proceeding in the *Shaev* Action or in any other action or proceeding. In such event, the terms and provisions of the Stipulation, with the exception of actions or proceedings to enforce this Stipulation and Sections V.1.a – V.1.ff, V.7.b – V.7.c, V.8.e, g, i, j, n, o, and p, shall not be used in the *Shaev* Action or in any other proceeding for any purpose, any Judgment or order entered by the Court in accordance with the terms of the Stipulation shall be treated as vacated *nunc pro tunc*; and Plaintiffs shall not assert that the Defendants' having entered into this Stipulation or sought its approval by the Court constitutes waiver of any defense, including any personal jurisdiction defense.

8. Miscellaneous Provisions

a. The Settling Parties: (i) acknowledge that it is their intent to consummate this Stipulation; and (ii) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their best efforts to accomplish the foregoing terms and conditions of the Stipulation.

b. Pending final determination of whether the settlement should be approved, all proceedings and all further activity between the Settling Parties regarding or directed towards the

Shaev Action, save for those activities and proceedings relating to the Stipulation and the settlement, shall be stayed.

c. Pending the Effective Date of this Stipulation or the termination of the Stipulation according to its terms, Plaintiffs and their Related Persons are barred and enjoined from commencing, prosecuting, instigating, or in any way participating in the commencement or prosecution of any action asserting any Released Claims against any Released Person.

d. The Settling Parties intend this settlement to be a final and complete resolution of all disputes between Plaintiffs, Freeport, Phelps, and the Individual Defendants with respect to the *Shaev* Action, that the Judgment have a *res judicata* effect as to all claims and issues that have been raised by or on behalf of Freeport or Phelps in the *Shaev* Action, and that the Final Judgment have preclusive effect in any pending lawsuits asserting Released Claims. The settlement comprises claims which are contested and shall not be deemed an admission by any Settling Party as to the merits of any claim, allegation or defense. The Settling Parties further agree that the claims are being settled voluntarily after consultation with competent legal counsel.

e. Neither the Stipulation (including any exhibits attached hereto), nor the settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the settlement: (i) is or may be deemed to be or may be offered, attempted to be offered, or used in any way by the Settling Parties as a presumption, a concession, or an admission of, or evidence of, any fault, wrongdoing or liability of the Settling Parties or of the validity of any of the Released Claims or of waiver of any defenses, including waiver of any personal jurisdiction defenses; or (ii) is intended by the Settling Parties to be offered or received as evidence or used by any other person in any other actions or proceedings, whether civil,

criminal or administrative. The Released Persons may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

f. All of the exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by reference.

g. This Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

h. This Stipulation and the Exhibits attached hereto constitute the entire agreement among the Settling Parties, and no representations, warranties or inducements have been made to any Settling Party concerning the Stipulation or any of its exhibits other than the representations, warranties and covenants contained and memorialized in such documents. Except as otherwise provided herein, each Settling Party shall bear its own costs.

i. Plaintiffs expressly authorize Plaintiffs' Counsel to take all appropriate action required or permitted to be taken pursuant to the Stipulation to effectuate its terms, and also to enter into any modifications or amendments to the Stipulation which they deem appropriate on behalf of the Plaintiffs.

j. Each counsel or other person executing this Stipulation or any of its exhibits on behalf of any Settling Party hereby warrants that such person has the full authority to do so.

k. The Stipulation may be executed in one or more counterparts. A faxed or PDF signature shall be deemed an original signature for purposes of this Stipulation. All executed

counterparts and each of them shall be deemed to be one and the same instrument. A complete set of counterparts, either originally executed or copies thereof, shall be filed with the Court.

l. This Stipulation shall be binding upon, and inure to the benefit of, the successors and assigns of the Settling Parties and the Released Persons.

m. The Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, and the Settling Parties submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Stipulation.

n. This Stipulation and the exhibits attached hereto shall be considered to have been negotiated, executed and delivered, and to be wholly performed, in the State of New York, and the rights and obligations of the parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal, substantive laws of the State of New York without giving effect to that State's choice-of-law principles.

o. All agreements made and orders entered during the course of the *Shaev* Action relating to the confidentiality of information shall survive this Stipulation.

p. Without further order of the Court, the Settling Parties may agree to reasonable extensions of time to carry out any of the provision of this Stipulation.

IN WITNESS WHEREOF, the Settling Parties have caused the Stipulation to be executed by their duly authorized attorneys and dated June 15, 2010.

BARRACK, RODOS & BACINE

By:

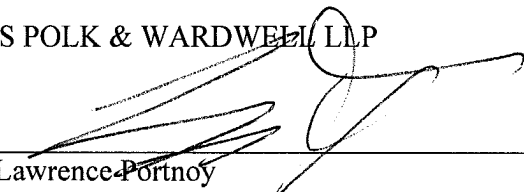

Alexander Arnold Gershon

1350 Broadway, Suite 1001
New York, New York 10018
(215) 963-0600

Attorneys for Plaintiffs

DAVIS POLK & WARDWELL LLP

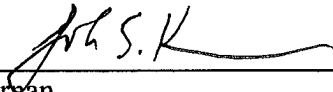
By:


Lawrence Portnoy

450 Lexington Avenue
New York, NY 10017
(212) 450-4000

*Attorneys for Nominal Defendants Freeport-McMoRan
Copper & Gold Inc. and Phelps Dodge Corporation;
and Defendants Richard C. Adkerson; Robert J.
Allison, Jr.; Robert A. Day; Gerald J. Ford; H. Devon
Graham, Jr.; J. Bennett Johnston; Charles C. Krulak;
Bobby Lee Lackey; Jon C. Madonna; Dustan E.
McCoy; Gabrielle K. McDonald; James R. Moffett; B.
M. Rankin, Jr.; J. Stapleton Roy; Stephen H. Siegele;
and J. Taylor Wharton*

DEBEVOISE & PLIMPTON LLP

By: 
John S. Kiernan

919 Third Avenue
New York, NY 10022
(212) 909-6000

*Attorneys for Defendants Archie W. Dunham; William
A. Franke; Robert D. Johnson; Marie L. Knowles;
Gordon R. Parker; William J. Post; Martin H.
Richenhagen; Jack E. Thompson; and J. Steven Whisler*

WHEREAS, the Settling Parties have made application for an order (i) preliminarily approving the proposed settlement (the "Settlement") of the above-captioned shareholder derivative action (the "*Shaev* Action"), in accordance with a Stipulation of Settlement dated June 15, 2010 and the exhibits thereto (the "Stipulation"), and (ii) approving for distribution the Notice of Settlement of Derivative Litigation annexed to the Stipulation as Exhibit 2 (the "Notice");

WHEREAS, the Stipulation sets forth the terms and conditions for the Settlement, including, but not limited to: (i) a proposed Settlement and dismissal of the *Shaev* Action with prejudice as to the Released Persons; and (ii) an award of attorneys' fees and expenses to Plaintiffs' Counsel, upon the terms and conditions set forth in the Stipulation;

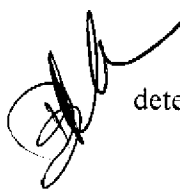
WHEREAS, the Settlement appears to be the product of serious, informed, non-collusive negotiations and falls within the range of possible approval;

WHEREAS, all capitalized terms contained herein shall have the same meanings as set forth in the Stipulation (in addition to those capitalized terms defined herein); and

WHEREAS, this Court, having considered the Stipulation and the exhibits annexed thereto, and having heard the arguments of the Settling Parties at the preliminary approval hearing:

NOW THEREFORE, IT IS HEREBY ORDERED:

I. This Court does hereby preliminarily approve, subject to further consideration at the Final Hearing described below, the Stipulation and the Settlement set forth therein, including the terms and conditions for: (a) a proposed Settlement and the dismissal of the *Shaev* Action with prejudice as to the Released Persons; and (b) an award of attorneys' fees and expenses to Plaintiffs' Counsel, upon the terms and conditions set forth in the Stipulation.

 2. The Final Hearing shall be held before this Court on Aug 5, 2010 at 2:30 pm. to determine whether:

- a. the terms and conditions of the Settlement are fair, reasonable, adequate, and in the best interests of Freeport, Phelps, and current Freeport shareholders;
- b. an order and judgment as provided for in ¶ V.1.p and V.7.a.i of the Stipulation should be entered;
- c. to approve the payment of attorneys' fees and expenses to Plaintiffs' Counsel; and
- d. to rule upon such other matters as the Court may deem appropriate.

2. The Court approves the form, substance, and requirements of the Notice. The form and method set forth herein of notifying current Freeport shareholders of the Settlement and its terms and conditions meet all applicable substantive and procedural requirements, are appropriate under the circumstances, and shall constitute due and sufficient notice to all Persons and entities entitled thereto.

3. Not later than ten (10) business days following entry of this Order, both Freeport and Plaintiffs' Counsel shall cause the Notice and the Stipulation to be published on their respective websites, such that visitors to the websites' home pages will readily find a hyperlink to the Notice and Stipulation.

4. Not later than ten (10) business days following entry of this Order, Freeport shall cause a copy of the Notice to be published once in *Investor's Business Daily*.

5. All costs incurred in the filing of the Stipulation and the publication of the Notice in *Investor's Business Daily* shall be paid by Freeport.

6. Freeport's Counsel shall, at or before the Final Hearing, file with the Court proof, by affidavit or declaration, of the filing of the Stipulation and publication of the Notice.

7. All current Freeport shareholders shall be bound by all orders, determinations and judgments in the *Shae*v Action concerning the Settlement, whether favorable or unfavorable to any of them.

8. Pending final determination of whether the Settlement should be approved, neither Freeport nor any current Freeport shareholder shall commence or prosecute against any of the Released Persons any action or proceeding in any court or tribunal asserting any of the Released Claims.

9. All papers in support of the Settlement and the award of attorneys' fees and expenses shall be filed with the Court and served at least seven (7) calendar days prior to the Settlement Hearing.

10. Any current record holders and beneficial owners of common stock of Freeport as of June 15, 2010 may appear and show cause if he, she, or it has any reason why the terms of the Settlement should not be approved as fair, reasonable, and adequate, or why a judgment should not be entered thereon; provided, however, that unless otherwise ordered by the Court, no current Freeport shareholder shall be heard or entitled to contest the approval of all or any of the terms and conditions of the Settlement, or, if approved, the Judgment to be entered thereon approving the same, unless that Person has, at least fourteen (14) days prior to the Final Hearing, filed with the Clerk of the Court and served on the following counsel (delivered by hand or sent by first class mail) appropriate proof of status as a Freeport shareholder, dates of ownership of Freeport stock, written objections (including the basis therefore), and copies of all such papers in support thereof:

Counsel for Plaintiffs

A. Arnold Gershon, Esq.
BARRACK RODOS AND BACINE
1350 Broadway, Suite 1001
New York, New York 10018

Counsel for Freeport, Phelps, and the Individual Freeport Defendants

Lawrence Portnoy, Esq.
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

Counsel for the Individual Phelps Defendants

John S. Kiernan, Esq.
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022

The written objections and copies of any papers and briefs in support thereof to be filed in Court shall be delivered by hand or sent by first class mail to:

County Clerk, New York County
New York County Courthouse
60 Centre Street, Room 161
New York, New York 10007

11. Any current Freeport shareholder who does not make his, her, or its objection in the manner provided in the preceding paragraph of this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objections to the fairness, adequacy, or reasonableness of the Settlement as incorporated in the Stipulation and to the award of attorneys' fees and expenses to Plaintiffs' Counsel, but shall be bound by the Judgment to be entered and the releases to be given.

12. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be

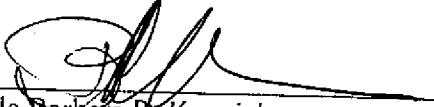
deemed to be or may be offered, attempted to be offered or used in any way by the Settling Parties as a presumption, a concession or an admission of, or evidence of, any fault, wrongdoing or liability of the Settling Parties or of the validity of any Released Claims; or (b) is intended by the Settling Parties to be offered or received as evidence or used by any other person in any other actions or proceedings, whether civil, criminal or administrative. The Released Persons may file the Stipulation and/or the Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim; and any of the Settling Parties may file the Stipulation and documents executed pursuant and in furtherance thereto in any action to enforce the Settlement.

13. The Court may approve the Settlement, with such modifications as may be agreed to by the Settling Parties, if appropriate, without further notice to current Freeport shareholders.

14. The Court reserves the right to continue or adjourn the date of the Final Hearing or modify any other dates set forth herein without further notice to current Freeport shareholders, and retains jurisdiction to consider all further applications arising out of or connected with the Settlement.

IT IS SO ORDERED.

Dated: 6/16, 2010


The Honorable Barbara R. Kapnick
Justice of the Supreme Court, Commercial Division

BARBARA R. KAPNICK
J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----	X
VICTORIA A. SHAEV, <i>et al.</i> ,	:
	:
Plaintiffs,	:
	:
- against -	:
	:
RICHARD C. ADKERSON, <i>et al.</i> ,	:
	:
Defendants,	:
	:
- and -	:
	:
PHELPS DODGE CORPORATION and	:
FREEMPORT-McMoRAN COPPER & GOLD INC.,	:
	:
Nominal Defendants.	:
-----	X

NOTICE OF SETTLEMENT OF DERIVATIVE LITIGATION

TO: ALL CURRENT RECORD HOLDERS AND BENEFICIAL OWNERS OF THE COMMON STOCK OF FREEPORT McMoRAN COPPER & GOLD INC. (“FREEPORT” OR THE “COMPANY”) AS OF JUNE 15, 2010

PLEASE TAKE NOTICE that the above-captioned shareholder derivative litigation (the “*Shaev* Action”) is being settled on the terms set forth in a Stipulation of Settlement dated June 15, 2010 (the “Stipulation”).¹ On August 5, 2010, at 2:30 p.m., a hearing (the “Final Hearing”) will be held before the Honorable Barbara R. Kapnick of the New York State Supreme Court, Commercial Division, 60 Centre Street, New York, New York 10007 to determine: (1) whether the terms and conditions of the Settlement should be approved as fair, reasonable, adequate; (2) whether to approve the Fee Award for Plaintiffs’ Counsel; and (3) whether the *Shaev* Action should be dismissed on the merits and with prejudice.

Because this is a shareholders’ derivative action brought for the benefit of Freeport, there are no proofs of claim in this settlement. No individual Freeport shareholder has the right to receive any individual compensation as a result of the settlement of this action. The *Shaev* Action, which challenged certain executive compensation practices at Freeport, has been settled in connection with recent executive compensation decisions and corporate governance changes at Freeport. Freeport has agreed to pay Plaintiffs’ Counsel’s attorneys’ fees and expenses in an amount of up to \$1,950,000, subject to approval by the Court.

IF YOU ARE A CURRENT OWNER OF FREEPORT COMMON STOCK, YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THE *SHAEV* ACTION.

Any shareholder of Freeport that objects to the Settlement of the *Shaev* Action shall have a right to appear and to be heard at the Final Hearing, provided that he, she, or it was a

¹ This notice should be read in conjunction with, and is qualified in its entirety by reference to, the text of the Stipulation, which has been filed with the Court and is available on the websites of FCX, www.fcx.com, and plaintiffs’ counsel, www.barrack.com. All capitalized terms herein have the same meanings as set forth in the Stipulation.

shareholder of record or beneficial owner as of June 15, 2010. Any shareholder of Freeport who satisfies this requirement may enter an appearance through counsel of such shareholder's own choosing and at such shareholder's own expense or may appear on their own. However, no shareholder of Freeport shall be heard at the Final Hearing unless no later than 14 days prior to the date of the Final Hearing, such shareholder has filed with the Court and delivered to Plaintiffs' Counsel, Freeport's Counsel, and Individual Phelps Defendants' Counsel a written notice of objection, their ground for opposing the Settlement, and proof of both their status as a shareholder and the dates of stock ownership in Freeport. Only shareholders who have filed and delivered valid and timely written notices of objection will be entitled to be heard at the Final Hearing unless the Court orders otherwise.

If you wish to object to the Settlement, you must file a written objection setting forth the grounds for such an objection with the Court on or before July 22, 2010 with service on the following parties:

Counsel for Plaintiffs

A. Arnold Gershon, Esq.
BARRACK RODOS AND BACINE
1350 Broadway, Suite 1001
New York, New York 10018

Counsel for Freeport, Phelps, and the Individual Freeport Defendants

Lawrence Portnoy, Esq.
DAVIS POLK & WARDWELL LLP
450 Lexington Avenue
New York, NY 10017

Counsel for the Individual Phelps Defendants

John S. Kiernan, Esq.
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022

Inquiries may be made to Plaintiffs' Counsel:

A. Arnold Gershon, Esq.
BARRACK RODOS AND BACINE
1350 Broadway, Suite 1001
New York, New York 10018
(215) 963-0600

Any current Freeport shareholder who does not make his, her, or its objection in the manner provided in the preceding paragraph of this Order shall be deemed to have waived such objection and shall forever be foreclosed from making any objections to the fairness, adequacy, or reasonableness of the Settlement and to the award of attorneys' fees and expenses to Plaintiffs' Counsel, and shall be bound by the Judgment to be entered and the releases to be given.

**PLEASE DO NOT TELEPHONE THE COURT OR FREEPORT REGARDING
THIS NOTICE.**

Dated: June 16, 2010

BY ORDER OF THE COURT
NEW YORK STATE SUPREME COURT,
NEW YORK COUNTY, COMMERCIAL
DIVISION

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----- X
VICTORIA A. SHAEV, *et al.*, :
 :
 : Plaintiffs, :
 : Index No. 650425/2008E
 :
 : - against - :
 : Commercial Division
 :
 RICHARD C. ADKERSON, *et al.*, :
 :
 : Defendants, :
 : The Hon. Barbara R. Kapnick
 :
 : - and - :
 : EXHIBIT 3
 :
 PHELPS DODGE CORPORATION and :
 FREEPORT-McMoRAN COPPER & GOLD INC., :
 :
 : Nominal Defendants. :
 :
----- X

[PROPOSED] ORDER AND FINAL JUDGMENT

This matter came before the Court for hearing pursuant to the Order of this Court, dated June 16, 2010 (“Order”), on the application of the Settling Parties for approval of the proposed settlement (“Settlement”) set forth in the Stipulation of Settlement dated June 15, 2010 and the exhibits thereto (the “Stipulation”);

The Court, having read and considered the Stipulation, heard arguments of counsel, granted preliminary approval of the Settlement by Order dated June 16, 2010, and having considered objections (if any) raised by current Freeport shareholders at the Final Hearing, and being fully advised of the premises and good cause appearing therefore, the Court enters this Order and Final Judgment.

NOW THEREFORE, IT IS HEREBY ORDERED:

1. This Order and Final Judgment incorporates by reference the definitions in the Stipulation, and all capitalized terms used herein shall have the same meanings as set forth in the Stipulation.
2. This Court has jurisdiction over the subject matter of the *Shaev* Action, including all matters necessary to effectuate the Settlement, and over all Settling Parties.
3. The Court finds that the Notice provided to Freeport shareholders met all applicable substantive and procedural requirements, was appropriate under the circumstances, and constituted due and sufficient notice to all Persons and entities entitled thereto.
4. The Court finds that the terms of the Stipulation and Settlement are fair, reasonable and adequate as to each of the Settling Parties, and hereby finally approves the Stipulation and Settlement in all respects, and directs the consummation and implementation of the Settlement in accordance with the terms and provisions of the Stipulation.

5. The *Shaev* Action and all claims contained therein, as well as all of the Released Claims, are dismissed with prejudice. The Settling Parties are to bear their own costs, except as otherwise provided in the Stipulation.

6. Upon the Effective Date, as defined in the Stipulation, Freeport, Plaintiffs (acting on their own behalf and derivatively on behalf of Freeport), and each of Freeport's shareholders (solely in their capacity as Freeport shareholders) shall be deemed to have, and by operation of this Order and Final Judgment shall have fully, finally, and forever released, relinquished and discharged the Released Claims against the Released Persons and any and all claims (including Unknown Claims) arising out of, relating to, or in connection with the defense, settlement or resolution of the *Shaev* Action against the Released Persons, provided that nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

7. Upon the Effective Date, as defined in the Stipulation, each of the Released Persons shall be deemed to have, and by operation of this Order and Final Judgment shall have fully, finally, and forever released, relinquished and discharged each and all of the Plaintiffs and Plaintiffs' Counsel from all claims (including Unknown Claims) arising out of, relating to, or in connection with the institution, prosecution, assertion, settlement or resolution of the *Shaev* Action or the Released Claims. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the terms of the Stipulation.

8. The Court hereby approves the Fee Award of \$ _____ in accordance with the Stipulation and finds that such fee is fair and reasonable.

9. Neither the Stipulation nor the Settlement, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement: (a) is or may be deemed to be or may be offered, attempted to be offered or used in any way by the Settling

Parties or any other Person as a presumption, a concession or an admission of, or evidence of, any fault, wrongdoing or liability of the Settling Parties, or of the validity of any Released Claims; or (b) is intended by the Settling Parties to be offered or received as evidence or used by any other person in any other actions or proceedings, whether civil, criminal or administrative. The Released Persons may file the Stipulation and/or this Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, standing, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim. Any of the Settling Parties may file the Stipulation and documents executed pursuant and in furtherance thereto in any action to enforce the Settlement.

10. Without affecting the finality of this Order and Final Judgment in any way, this Court hereby retains continuing jurisdiction with respect to implementation and enforcement of the terms of the Stipulation.

11. In the event that the Settlement does not become effective in accordance with the terms of the Stipulation, this Order and Final Judgment shall be vacated and all Orders entered and released delivered in connection with the Stipulation and this Order and Final Judgment shall be null and void, except as otherwise provided for in the Stipulation.

12. This Order and Final Judgment is a final, appealable judgment and should be entered forthwith by the Clerk.

IT IS SO ORDERED.

Dated: _____, 2010

The Honorable Barbara R. Kapnick
Justice of the Supreme Court, Commercial Division