

**DOCKETED**  
FEB 22 2002

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
Eastern Division

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 99 C 609
v.	)	Judge Conlon
	)	
FLOYD LELAND OGLE, <u>et al.</u> ,	)	
	)	
Defendants.	)	

**FINAL JUDGMENT OF PERMANENT INJUNCTION AND OTHER RELIEF  
AS TO DEFENDANTS  
DONALD F. TABOR AND KAILEY MINING & EQUIPMENT CO., LTD.**

Plaintiff Securities and Exchange Commission ("SEC"), having filed a Second Amended Complaint, and Defendants Donald F. Tabor ("Tabor") and Kailey Mining & Equipment Co., Ltd. ("Kailey Mining") in their attached initial Consent and Undertakings of Donald F. Tabor and Kailey Mining & Equipment Co., Ltd. dated June 29, 2000, and in their attached Final Consent and Undertakings of Donald F. Tabor and Kailey Mining & Equipment Co., Ltd. incorporated herein, having entered general appearances, having admitted the jurisdiction of this Court over the subject matter of this action, having consented to the jurisdiction of this Court over them, having waived the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, having waived any right they might have to appeal from the entry of this Final Judgment as to Donald F. Tabor and Kailey Mining & Equipment Co., Ltd. ("Final Judgment"), and, without admitting or denying the allegations of the Second Amended

Complaint (except as to jurisdiction, which they admit), having consented to the entry of this Final Judgment, and the Court, having previously entered on August 15, 2000, a Judgment of Permanent Injunction and Other Relief as to Defendants Donald F. Tabor and Kailey Mining & Equipment Co., Ltd. enjoining them from engaging in transactions, acts, practices and courses of business which constitute violations of Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. § 78j(b)] and Rule 10b-5 [17 C.F.R. § 240.10b-5] and Regulation M [17 C.F.R. Part 242] promulgated thereunder, and Sections 5 and 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. §§ 77e and 77q(a)], and requiring Tabor and Kailey Mining, jointly and severally, to pay or cause to be paid disgorgement of all profits and monies received as a result of the conduct alleged in the Second Amended Complaint, including prejudgment interest thereon, in an amount and upon such terms as may be determined by agreement of the parties or by the Court upon motion brought on by the Commission pursuant to the Local Rules of this Court, and requiring Tabor and Kailey Mining to pay civil penalties in an amount and upon such terms as may be determined by agreement of the parties or by the Court upon motion brought on by the Commission pursuant to the Local Rules of this Court, and the parties having agreed that the Commission will waive disgorgement and not seek the imposition of civil penalties based on the Defendants' sworn statement of financial condition, as updated by the sworn declaration of their counsel of record on September 19, 2001, that indicate Defendants' inability to pay disgorgement or penalties, and the Court being fully advised in the premises:

I.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendants pay disgorgement in the amount of \$1,029,000, representing their gains as a result of the conduct alleged in the Second Amended Complaint, together with pre-judgment interest in the amount of \$618,985, for a total of \$1,647,985. Based upon Defendants' sworn representations in their Statement of Financial Condition dated June 26, 2000, as updated by the sworn declaration of their counsel of record on September 19, 2001, and other documents submitted to the Commission, payment of all of the disgorgement and pre-judgment interest thereon is waived, contingent upon the accuracy and completeness of their Statement of Financial Condition.

II.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that based on Defendants' sworn representations in their Statement of Financial Condition dated June 26, 2000, as updated by the sworn declaration of their counsel of record on September 19, 2001, and other documents submitted to the Commission, the Court is not ordering them to pay a civil penalty. The determination not to impose a civil penalty and to waive payment of all of the disgorgement and pre-judgment interest thereon is contingent upon the accuracy and completeness of their Statement of Financial Condition, as updated by the sworn declaration of their counsel of record on September 19, 2001. If at any time following the entry of this Final Judgment the Commission obtains information indicating that Defendants' representations to the Commission concerning

their assets, income, liabilities, or net worth were fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made, the Commission may, at its sole discretion and without prior notice to Defendants, petition the Court for an order requiring Defendants to pay the unpaid portion of the disgorgement, pre-judgment and post-judgment interest thereon, and the maximum civil penalty allowable under the law. In connection with any such petition, the only issue shall be whether the financial information provided by Defendants was fraudulent, misleading, inaccurate, or incomplete in any material respect as of the time such representations were made. In its petition, the Commission may move this Court to consider all available remedies, including, but not limited to, ordering Defendants to pay funds or assets, directing the forfeiture of any assets, or sanctions for contempt of this Final Judgment. The Commission may also request additional discovery. Defendants may not, by way of defense to such petition: (1) challenge the validity of this Consent or the Final Judgment; (2) contest the allegations in the Second Amended Complaint filed by the Commission; (3) assert that payment of disgorgement, pre-judgment and post-judgment interest or a civil penalty should not be ordered; (4) contest the amount of disgorgement and pre-judgment and post-judgment interest; (5) contest the imposition of the maximum civil penalty allowable under the law; or (6) assert any defense to liability or remedy, including, but not limited to, any statute of limitations defense.

### III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the annexed Final Consent and Undertakings of Defendants Tabor and Kailey Mining be, and the

same hereby is, incorporated herein with the same force and effect as if fully set forth herein.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this action for all purposes, including the implementation and enforcement of this Final Judgment.

There being no reason for delay, the Clerk of the Court is hereby directed, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, to enter this Final Judgment forthwith.

  
UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_

2/19/02