

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

STATE OF MAINE and)
MAINE DEPARTMENT OF)
ENVIRONMENTAL)
PROTECTION,)
)
Plaintiffs,)
)
v.) CV-04-191-B-W
)
KERRAMERICAN, INC., et. al.,)
)
Defendants.)

**ORDER ON DEFENDANTS BLACK HAWK AND KERRAMERICAN, INC.’s
MOTIONS TO EXCLUDE THE TESTIMONY OF WILLIAM J. MICHIELS**

On September 11, 2006, Black Hawk and Kerramerican moved to exclude the testimony of William J. Michiels as an expert for Denison. *Black Hawk Mot. in Limine to Exclude Testimony of William J. Michiels* (Docket # 88); *Kerramerican Mot. to Exclude Testimony of William J. Michiels* (Docket # 98). Denison had originally listed Mr. Michiels as an expert witness to testify on whether the Court should pierce the corporate veil between Denison and Black Hawk, and whether Denison should be treated as an alter ego of Black Hawk. In response, Denison pointed out that Kerramerican has since clarified that it is currently not pursuing derivative liability, under either the corporate veil or alter ego theory. *Denison Mem. of Law in Opp’n to Mot. by Kerramerican and Black Hawk to Exclude Expert Testimony of William J. Michiels* at 2 (Docket # 118). Kerramerican replied that these theories may still be “fair game” at any trial and, therefore, the question of Mr. Michiels’s testimony is not moot. *Kerramerican Reply Mem. to Denison Opp’n to Mot. to Exclude Testimony of William J. Michiels* at 1 (Docket # 124).

The Court agrees with Kerramerican and Black Hawk on the question of mootness. Simply because Black Hawk and Kerramerican moved for summary judgment against Denison on grounds of direct liability does not preclude them from later arguing derivative liability, i.e. that the Court should pierce the corporate veil between Denison and Kerramerican or that Denison should be treated as an alter ego of Black Hawk.

Nevertheless, the Court disagrees with Kerramerican and Black Hawk that Mr. Michiels's proposed testimony should be excluded in its entirety by pre-trial motion. Performing its gate-keeping function, the Court has reviewed Mr. Michiels's proffered testimony and does not agree that it lacks appropriate foundation or would not be of assistance to the Court in arriving at its factual findings. Moreover, as this case will proceed to trial before the court, not a jury, the Court will be better able to determine at trial whether any portion of Mr. Michiels's testimony fails to satisfy the standards in *Daubert* or *Kumho Tire*,¹ how much weight, if any, to give his expert opinions, and whether his opinions stray into areas of law.

The Court DENIES the Kerramerican and Black Hawk motions to exclude the testimony of William J. Michiels (Docket # 88, 98).

SO ORDERED.

/s/ John A. Woodcock, Jr.
JOHN A. WOODCOCK, JR.
UNITED STATES DISTRICT JUDGE

Dated this 6th day of March, 2007

Plaintiff

STATE OF MAINE
TERMINATED: 06/28/2006

represented by **DENNIS J. HARNISH**
STATE HOUSE STATION 6

¹ *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579 (1993); *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).

AUGUSTA, ME 04333
207-626-8800
Email: dennis.harnish@maine.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

**ENVIRONMENTAL
PROTECTION, MAINE
DEPARTMENT OF**
TERMINATED: 06/28/2006

represented by **DENNIS J. HARNISH**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

KERRAMERICAN INC
TERMINATED: 06/28/2006

represented by **SCOTT D. ANDERSON**
VERRILL & DANA
1 PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112-0586
(207) 774-4000
Email: sanderson@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
VERRILL & DANA
1 PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112-0586
(207) 774-4000
Email: smahoney@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ALEXIA PAPPAS
VERRILL & DANA
1 PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112-0586
207/774-4000
Email: apappas@verrilldana.com
ATTORNEY TO BE NOTICED

Defendant

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**
LOWRY & ASSOCIATES
ATTORNEYS
343 GORHAM ROAD
SUITE 9
SOUTH PORTLAND, ME 04106
(207) 775-3819
Email: james@lowrylaw.com
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
RUDMAN & WINCHELL
84 HARLOW STREET
P.O. BOX 1401
BANGOR, ME 04401
(207) 947-4501
Email: pbuckley@rudman-
winchell.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ANTHONY D. PELLEGRINI
RUDMAN & WINCHELL
84 HARLOW STREET
P.O. BOX 1401
BANGOR, ME 04401
(207) 947-4501
Email: apellegrini@rudman-
winchell.com
ATTORNEY TO BE NOTICED

Defendant

DENISON ENERGY INC
TERMINATED: 12/15/2004

Defendant

DENISON MINES INC

represented by **DAVID G. SCOTT, II**
HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006

(202) 955-1500
Email: dscott@hunton.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ERIC J. MURDOCK
HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006
(202) 955-1500
Email: emurdock@hunton.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JEFFREY N. MARTIN
HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
SUITE 1200
WASHINGTON, DC 20006
(202) 955-1500
Email: jmartin@hunton.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. WHITMAN
RICHARDSON, WHITMAN,
LARGE & BADGER
465 CONGRESS STREET
P.O. BOX 9545
PORTLAND, ME 04112-9545
(207) 774-7474
Email: jwhitman@rwlb.com
ATTORNEY TO BE NOTICED

Defendant

BLACK HAWK MINING INC

represented by **PHILLIP D. BUCKLEY**
(See above for address)
ATTORNEY TO BE NOTICED

Cross Claimant

KERRAMERICAN INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

SEAN MAHONEY

(See above for address)

ATTORNEY TO BE NOTICED

V.

Cross Defendant

DENISON MINES INC

represented by **DAVID G. SCOTT, II**

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

ERIC J. MURDOCK

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

JEFFREY N. MARTIN

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

JOHN S. WHITMAN

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Cross Defendant

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**

(See above for address)

TERMINATED: 01/09/2007

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Cross Defendant

**GLENCAIRN GOLD
CORPORATION**

Cross Defendant

DENISON ENERGY INC
TERMINATED: 08/05/2005

Cross Defendant

BLACK HAWK MINING INC

represented by **JAMES C. BEARDSLEY**
(See above for address)
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Claimant

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**
(See above for address)
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Cross Defendant

KERADAMEX, INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Defendant

KERRAMERICAN INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Defendant

NORANDA, INC

TERMINATED: 11/08/2005

Cross Defendant

DENISON MINES INC

represented by **DAVID G. SCOTT, II**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ERIC J. MURDOCK
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JEFFREY N. MARTIN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. WHITMAN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Defendant

FALCONBRIDGE LIMITED

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAMES T. KILBRETH
VERRILL & DANA
1 PORTLAND SQUARE
P.O. BOX 586
PORTLAND, ME 04112-0586
(207) 774-4000
Email: jkilbreth@verrilldana.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Claimant

KERRAMERICAN INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Cross Defendant

DENISON MINES INC

represented by **DAVID G. SCOTT, II**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ERIC J. MURDOCK
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JEFFREY N. MARTIN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. WHITMAN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Defendant

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**
(See above for address)
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

KERRAMERICAN INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

ThirdParty Defendant

BLACK HAWK MINING INC

represented by **JAMES C. BEARDSLEY**
(See above for address)

TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Defendant

DENISON ENERGY INC
TERMINATED: 08/05/2005

ThirdParty Defendant

**GLENCAIRN GOLD
CORPORATION**

represented by **JAMES C. BEARDSLEY**
(See above for address)
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Claimant

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**
(See above for address)
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Cross Defendant

DENISON MINES INC

represented by **DAVID G. SCOTT, II**
(See above for address)

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ERIC J. MURDOCK
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

JEFFREY N. MARTIN
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

JOHN S. WHITMAN
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Cross Defendant

KERRAMERICAN INC

represented by **ALEXIA PAPPAS**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

SCOTT D. ANDERSON
(See above for address)
ATTORNEY TO BE NOTICED

ThirdParty Plaintiff

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**
(See above for address)
*TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

PHILLIP D. BUCKLEY
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

V.

ThirdParty Defendant

KERADAMEX, INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Defendant

NORANDA, INC
TERMINATED: 11/08/2005

represented by **SEAN MAHONEY**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Defendant

DENISON ENERGY INC
TERMINATED: 08/05/2005

ThirdParty Defendant

FALCONBRIDGE LIMITED

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JAMES T. KILBRETH
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Cross Claimant

DENISON MINES INC

represented by **DAVID G. SCOTT, II**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ERIC J. MURDOCK
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JEFFREY N. MARTIN
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

JOHN S. WHITMAN
(See above for address)
ATTORNEY TO BE NOTICED

V.

Cross Defendant

KERRAMERICAN INC

represented by **SCOTT D. ANDERSON**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY

ALEXIA PAPPAS
(See above for address)
ATTORNEY TO BE NOTICED

Cross Defendant

BLACK HAWK MINING LTD

represented by **JAMES C. BEARDSLEY**
(See above for address)
TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

PHILLIP D. BUCKLEY
(See above for address)

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ThirdParty Plaintiff

DENISON MINES INC

represented by **DAVID G. SCOTT, II**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ERIC J. MURDOCK
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

JEFFREY N. MARTIN
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

JOHN S. WHITMAN
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

V.

ThirdParty Defendant

BLACK HAWK MINING INC

represented by **JAMES C. BEARDSLEY**
(See above for address)
*TERMINATED: 01/09/2007
LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

PHILLIP D. BUCKLEY
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

ThirdParty Defendant

**GLENCAIRN GOLD
CORPORATION**

represented by **JAMES C. BEARDSLEY**
(See above for address)
*TERMINATED: 01/09/2007
LEAD ATTORNEY*

ATTORNEY TO BE NOTICED

ThirdParty Defendant

KERADAMEX, INC

represented by **ALEXIA PAPPAS**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ThirdParty Defendant

NORANDA, INC

TERMINATED: 11/08/2005

ThirdParty Defendant

FALCONBRIDGE LIMITED

represented by **JAMES T. KILBRETH**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SCOTT D. ANDERSON
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

SEAN MAHONEY
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

ALEXIA PAPPAS
(See above for address)
ATTORNEY TO BE NOTICED