

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Zeiben, 2014 ABASC 167

Date: 20140505

Lawrence Zeiben, Grit International Inc., and Texas Petroleum Inc.

Corrected Decision: A corrigendum was issued on 15 October 2014; the corrections have been made to the text and the corrigendum is appended to this Decision.

Panel: Bradley G. Nemetz, Q.C.
Ann Rooney, FCA, ICD.D
Dr. Ian Beddis

Representation: Andrew Wilson
Adrienne Wong
for Commission Staff

Lawrence Zeiben
for the Respondents

Submissions Completed: March 13, 2014

Decision: May 5, 2014

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I. INTRODUCTION

[1] The Alberta Securities Commission (the **Commission**) staff charged Lawrence Zeiben (**Zeiben**), Grit International Inc. (**Grit**), Texas Petroleum Inc. (**Texas Petroleum**), Advanced Investor Intelligence Inc. (**Advanced**), and Berith Ward Chambers (**Chambers**) with various breaches of the Alberta Securities Act (the **Act**).

[2] Prior to the hearing settlements were reached with Advanced and Chambers. The hearing proceeded against Grit on the allegation of illegal distribution (section 110); against Grit, Texas Petroleum and Zeiben on allegations of making misleading or untrue statements (section 92(4.1)) of the Act, and fraud (section 93(b)); and against Zeiben and Grit for disclosing scientific or technical information contrary to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**).

[3] At the hearing Zeiben, without the benefit of counsel, represented himself, Grit and Texas Petroleum.

[4] Zeiben was educated as a nurse. He became a book-keeper and, at the time relevant to these proceedings, was operating a book-keeping business in Grande Prairie, Alberta.

[5] Zeiben came up with the idea of acquiring a series of small, private oilfield services businesses (which he referred to as "Mom and Pop Sandblasting and Painting businesses") and amalgamating them into one entity. Later, in furtherance of that idea, he acquired Grit, a Nevada corporation, and arranged for its shares to be traded on German stock exchanges.

[6] Grit was incorporated in Nevada in 2000. Zeiben purchased it and had it registered in Alberta in 2008. From 2007 until the date of the hearing Zeiben was a director, the CEO and the controlling shareholder of Grit. He was the sole director and officer of Texas Petroleum.

[7] By 2010 Zeiben's plans changed and Grit became the parent of a series of shell companies which were to acquire and operate businesses in a variety of industries.

[8] Zeiben's new plans for Grit did not materialize and the public image projected by Zeiben and Grit of Grit's activities was in stark contrast to the company's actual operations. To the public Grit was portrayed as:

an Industrial Resources and Investment Management Conglomerate with interests in:

- *Precious metals*
- *Energy*
- *Environmental Technology*
- *Industrial Manufacturing & Services*

In reality it never owned or operated more than a janitorial service and a small sand-blasting and coating company.

[9] In the course of their activities Grit and Texas Petroleum never issued a prospectus or preliminary prospectus. The office and controlling mind of Grit and Texas Petroleum was in Grande Prairie. Individuals in Alberta, Canada and elsewhere acquired its shares. For the reasons which follow we find the allegations of illegal distribution, misleading statements, fraud, and breach of National Instrument 43-101 to have been proven.

[10] The Alberta Securities Commission has jurisdiction over these respondents for breaches of Alberta securities law as the two companies were headquartered in Alberta, their controlling mind was resident in Alberta, and many of the activities that are the subject of the allegations occurred in part in Alberta.

II. THE ALLEGATIONS

[11] The allegations against Advanced and Chambers were resolved before the hearing. At the conclusion of the hearing staff withdrew certain allegations against the remaining respondents. A summary of the allegations remaining for determination are as follows:

Illegal Distribution of Grit shares

Between 2009 and 2011 Grit traded its shares in Alberta in circumstances where such trades were distributions, contrary to section 110 of the Act, R.S.A. 2000, c.S-4, as amended (the "Act").

At no time did Grit file, or have filed on its behalf, a prospectus or preliminary prospectus with the ASC in regards to trading in its shares, nor was any receipt ever issued by the ASC for a prospectus or preliminary prospectus filed by on or behalf of Grit in regards to trading in its shares. At all material times no applicable exemption to the prospectus requirement was available to or relied upon by Grit for distributing its shares.

Misrepresentations regarding Grit

Between July 2010 and April 2011 Zeiben caused Grit to make multiple statements about Grit that Zeiben and Grit knew or reasonably ought to have known were, in a material respect, misleading or untrue or failed to state a fact that was required to be stated or was necessary to make the statements not misleading. Zeiben and Grit knew or ought to have known these statements would reasonably be expected to have a significant effect of the market price or value of Grit securities, contrary to s.92 (4.1) of the Act.

Improper disclosure of scientific or technical information

Grit and Zeiben disclosed scientific or technical information concerning a mineral project contrary to the requirements of National Instrument 43-101 – Standards of Disclosure for Mineral Projects (NI43-101). Specifically, the disclosure was not based on information prepared by or under the supervision of a qualified person or approved by a qualified person, as that term is defined in NI43-101. In addition, or alternatively, Grit and Zeiben failed to include the name of the qualified person who prepared, supervised the preparation, or approved the written disclosure of scientific or technical information, contrary to section 3.1 of NI43-101. Grit and Zeiben disclosed the quantity, grade, or metal or mineral content of a deposit that has not been characterized as an appropriate mineral resource or reserve category, contrary to section 2.3(a) of NI43-101.

Misrepresentation regarding Texas Petroleum

Between November, 2010 and April, 2011 Zeiben caused Grit and Texas Petroleum to make multiple statements about Texas Petroleum. Zeiben, Grit, and Texas Petroleum knew or reasonably ought to have known the statements were, in a material respect, misleading or untrue or failed to state a fact that was required to be stated or was necessary to make the statements not misleading, and all knew or ought to have known these statements would reasonably be expected to have a significant effect of the market price or value of Texas Petroleum securities, contrary to s.92 (4.1) of the Act.

Fraud on Grit and Texas Petroleum investors

Between November, 2010 and April, 2011 Zeiben, Grit and Texas Petroleum knowingly made, directly or indirectly, false or misleading statements to investors and potential investors of Grit and Texas Petroleum, as outlined in the misrepresentation allegations set out above, contrary to s.93(b) of the Act.

The false or misleading statements made by Zeiben regarding Grit and Texas Petroleum fundamentally misrepresented the nature of Grit and Texas Petroleum' business affairs, and fundamentally misrepresented the true nature of an investment in Grit and Texas Petroleum, especially the risk element inherent in such an investment.

Zeiben knew the statements he was making regarding Grit and Texas Petroleum were false or misleading, and knew these statements could put the pecuniary interest of investors or potential investors of either Grit or Texas Petroleum at risk. Alternatively, Zeiben was reckless that this could be the case.

Zeiben was at all times the controlling mind of Grit and Texas Petroleum, such that his state of knowledge is imputed to both Grit and Texas Petroleum.

III. THE FACTS

A. Hearing and Witnesses

[12] The hearing took place from January 13 to January 24, 2014 and the panel heard the evidence of Mr. Paul Kavanagh (**Kavanagh**), an investigator for the Commission, Mr. Lorne LaRochelle (**LaRochelle**), a former director and COO of Grit, Mr. John Maisey (**Maisey**), a former consultant to Grit and former President of Texas Petroleum, Chambers, a web designer and analyst, Mr. William Lypowich (**Lypowich**), a friend and business partner of Zeiben and an investor in Grit, and Zeiben.

[13] Zeiben has a high school diploma followed by a diploma in nursing received in 1988. He left nursing and went to work for Farm Business Consultants in Saskatoon and there learned basic book-keeping/accounting. He eventually moved to Grande Prairie, Alberta and set up his own business providing book-keeping/accounting services to the public. He has no formal education or certification in accounting.

[14] LaRochelle was a client of Zeiben's book-keeping/accounting business. He has a grade 10 education and wide-ranging work history including trucking, contracting and consulting. Zeiben helped him with his various businesses. In 2008 and 2009 LaRochelle owned a car wash and storage business. He trusted Zeiben and became involved with Zeiben when Zeiben was pursuing the idea of consolidating various oil and gas service companies into a conglomerate.

LaRochelle became a shareholder, and director of Grit and its COO. He had a falling out with Zeiben in the summer of 2010 and ceased his involvement with Grit.

[15] At the time of the hearing Chambers was a self-employed web designer and internet marketer for bankruptcy trustees. He has a Bachelor of Commerce degree. He worked as a broker and was working for a company called Frontier Consulting which approached public companies to "raise their profile" when he came into contact with Grit. Eventually Zeiben and Grit paid Chambers and Chambers' new company Advanced for a "research report" on Grit. Later Advanced ran websites for Grit and Texas Petroleum. Chambers and Advanced were charged with breaches of Alberta securities laws in connection with their activities with Grit. Chambers and Advanced admitted to making materially misleading or untrue statements about Grit and Texas Petroleum, contrary to section 92 (4.1) of the Act and agreed to testify at this hearing.

[16] Maisey, through his company North American Ventures, was retained by Grit to raise money and conduct investor relations. Maisey's background and experience involved working in his father's heating and air-conditioning business, driving trucks, involvement in a restaurant and bar business and then, "helping people find money in the marketplace". He also became president of Texas Petroleum at Zeiben's request.

[17] Lypowich was a schoolmate of Zeiben. In 1997 Zeiben and Lypowich met again and Zeiben started doing taxes and book-keeping for Lypowich's company, Billy's Hoe Service. Lypowich found Zeiben to be honest and hardworking. He invested about \$70,000 in Grit in two tranches, one in 2007 and the other in 2009. He received none of his money back.

B. Background

[18] While Zeiben was operating his accounting business in Grande Prairie he came up with the concept of amalgamating various oil and gas service companies, which he referred to in his written submission as "Mom and Pop" businesses, into a single corporation. The companies that he was targeting were private businesses which provided sandblasting, coating and painting for the oilfield and pipeline applications. The first two companies that he considered were Grove Sandblasting Ltd. (Grove Sandblasting) and Allard Sandblasting Ltd. (Allard Sandblasting).

[19] Zeiben shared his ideas with LaRochelle who became interested in them. At that time LaRochelle's business interests consisted primarily of three car washes and a retail storage operation.

[20] While Zeiben was considering Grove Sandblasting and Allard Sandblasting he came across the name of Aldo Rotondi (**Rotondi**) who advertised that he could provide shell companies listed publicly for trading. Zeiben flew to Toronto to meet Rotondi and eventually acquired such a shell company (Grit) for \$50,000. Rotondi's group was retained to provide investor relations. During this time, and indeed throughout the time material to these proceedings, Zeiben was trying to arrange bank financing to make acquisitions and he was also attempting to obtain less traditional financing from lenders prepared to lend against Grit's shares.

[21] In late 2009 and the spring of 2010 LaRochelle and Zeiben were searching for other small businesses that Grit might acquire. Those discussions included putting LaRochelle's storage business and LaRochelle's brother's trucking business into Grit. Other businesses considered included concrete finishing and steel assembly.

[22] By early 2010 Zeiben had arranged a listing of Grit's shares on the Frankfurt exchange but trading volumes were small. During the spring of 2010 Grit was raising funds from the public by way of loans (some convertible for shares and some not) and sale of shares from treasury. Agreements totaling in excess of \$400,000 and cheques totaling \$182,000 drawn on Alberta bank accounts were entered into evidence. The investigator's evidence was that he had learned that Grit raised perhaps \$1,000,000 from the public in Alberta during this time.

[23] Initial bank financing for potential acquisitions proved difficult to obtain. He arranged a form of credit with the Alberta Treasury Branch but did not meet the requirements to draw on it. Equity lines of credit were unproductive given the low volumes of stock trading. Grove Sandblasting, the only operating company acquired, which was acquired by giving its owners shares in Grit, encountered cash flow problems.

C. Change of Course

[24] Zeiben was frustrated with the situation and was looking for alternatives. In June of 2010 he made two contacts that proved important to these proceedings.

[25] He located Llew Watkins (**Watkins**) on the internet who held himself out to have investor relations expertise. He was also contacted by Chambers who also purported to have investor relations expertise.

[26] During his evidence Zeiben stated, concerning the languishing share price and trading volumes that

While I'm CEO, president of the company, yes, something wasn't ... succeeding. So I knew I was at that point in time going to seek ... I needed a better writer. I needed somebody who could do press releases. I'm obviously not making much of an impact.

[27] What he felt was needed was to get the market moving, to get greater trading volume in the stock.

[28] Watkins put Zeiben in touch with Warren Wayne (**Wayne**). Wayne contacted Zeiben by email on June 17, 2010. He brought Zeiben the concept that would become Grit's new business model, a parent company with holding companies in various industrial sectors. It was this concept that lies at the heart of the allegations of fraud and misrepresentation. Wayne also purported to have a number of business acquisitions under contract to his company which he would transfer to Grit if he and Zeiben could come to an understanding on Wayne's ownership in Grit.

[29] Over the summer of 2010 LaRochelle did not like the direction Grit was going and in August Zeiben and LaRochelle had a falling out. LaRochelle and his brother refused to roll their companies into Grit in exchange for Grit's shares but did not return the shares they had received.

LaRochelle was concerned about the number of Grit's shares that Zeiben was issuing to third parties including promoters. Once LaRochelle left Zeiben was the only officer, director and employee of Grit. Other individuals who had anything to do with the activities of Grit and Texas Petroleum that give rise to these proceedings were, at best, consultants and contractors to Grit. Some held shares received for services rendered or to be rendered to Grit.

[30] Before Zeiben met Wayne he had already caused Grit to incorporate a subsidiary, Grit Canada Acquisitions Inc. (**Grit Acquisitions**). After the meeting with Wayne, Zeiben caused Grit Acquisitions to incorporate four subsidiaries, Grit Dynamics Inc., Grit Minerals Inc., Grit Petroleum Inc. and Grit Utilities Inc. Grit Acquisitions acquired Grove Sandblasting from Mr. and Mrs. Groves.

[31] Chambers was hired to prepare information about Grit for dissemination on the internet.

[32] Wayne introduced Zeiben to Maisey who was said to have had experience in raising money. Zeiben caused Grit to hire Maisey and Maisey's company, North American Ventures, as investor relations consultants. Maisey was issued 5,000,000 Grit shares on September 24, 2010 and on September 26, 2010 Maisey sent Zeiben and Wayne a detailed plan aimed at increasing Grit's public profile and stimulating its share price and trading volumes.

[33] As part of this initiative Maisey introduced Zeiben and Grit to a promoter in Germany, Torsten Prochow (**Prochow**), whom Maisey advised was very knowledgeable in raising capital in Europe.

[34] Zeiben and Grit subsequently hired Prochow and individuals related to Prochow to assist with German investor relations and raising capital in Europe. Unbeknownst to Zeiben in 2000 Prochow had been sanctioned by the U.S. Securities and Exchange Commission for touting German stock in the U.S. and ordered to disgorge \$111,520 and pay a civil penalty of \$50,000.

[35] By the end of September 2010 everything was in place for the re-launch of Grit with its new business model. All Grit needed was something to announce. The only businesses that Grit owned were Grove Sandblasting and a janitorial business that remained for Zeiben to operate after he and LaRochelle parted ways. However, Grit had a team of promoters, investor relations consultants, and web designers.

D. Grit Press Releases

[36] On October 1, 2010 Grit issued a press release which stated:

GRIT International is a Canadian based company registered in the State of Nevada, US; - Diversified Industrial Services Company, offering Support Services, Utilities, Oil & Gas and Mineral holdings.

[37] Grit had no "Support Services" to offer, no "Utilities", no "Oil & Gas", and no "Mineral holdings".

[38] The press release also stated that "the businesses that make up GRIT International work together to provide stable revenue from the energy and mining industry." Grit had no mining or energy assets. It had no operations that worked together.

[39] On October 7, 2010 Grit issued a press release that included the statement:

We aim to impress upon you further as current & future stakeholders that as management we foresee a conservatively estimated calendar year ended share price of 7.00 Euros. We rationalize this through our consolidated projected actual asset values and revenue earnings. We forecast a share price of ≥ 60.00 Euros in 2015.

[40] At that point Grit's shares were trading at approximately 0.40 Euros. It had no real basis for projecting a year end (i.e. in 90 days) a share value of 7 Euros. It had no "actual asset values" or "revenue earnings" that would justify these projections.

[41] On October 8, 2010 the website and press release stated that, "as the corporation continued to unveil its growth strategies it is becoming more and more apparent that GRIT's development is growing exponentially". Grit was not growing at this time, not to mention that it was not growing "exponentially". It never progressed beyond Grove Sandblasting and the janitorial business.

[42] On October 12, 2010 Grit issued a press release asserting that it had an agreement with BCT Mining (**BCT**) of Vancouver, B.C. to acquire mineral properties in Canada, Africa and South America. While the press release went out without Zeiben's authorization, he was involved in its preparation. On cross examination he admitted that Grit never entered into any agreement with BCT, and that he never talked to anyone at BCT.

[43] The press release also asserted that the BCT transaction gave Grit shareholders an indicated share value of \$15 per share. Zeiben said that the representation of value was to encourage investors to buy Grit shares.

[44] Eight days later, on October 20, 2010, Grit again issued a press release this time concerning the possibility of acquiring a Texas based oil and gas company, TXO PLC (**TXO**). At this time Zeiben had not talked to anyone from TXO, and did not meet anyone from that corporation until approximately November 17, 2010. He signed some type of letter of intent to acquire TXO but cancelled the letter of intent a few days later. However, Zeiben never retracted the press release or updated shareholders on this failed initiative. Grit's public postings continued to represent it as a corporate opportunity.

[45] On November 11, 2010 Grit published a press release concerning the supposed BCT mineral acquisition. It stated, in part:

GRIT International Inc. ... is pleased to announce that GRIT's mining division Grit Minerals and joint venture partner BCT mining have begun work and preparation on its Canadian mining properties. ... The famous Cariboo, Barkerville, Atlin, and Bridge River Goldfields are part of this rich placer package. When total volume of mineable material and conservative grade estimates are calculated, contained gold exceed \$3 billion. ... Preliminary information indicates

that these hardrock properties could produce up to 2,000,000 ounces of gold over the next 10 years and will continue to produce well into the future.

[46] Grit never acquired any mineral interests from BCT, never entered into any joint venture with BCT, and never retracted this press release nor the prior BCT press release.

[47] Zeiben planned a trip to Frankfurt to meet with investors starting November 22, 2010. Prior to that trip, on November 15, 2010, he caused Grit to issue a press release that stated:

GRIT International Inc. ("GRIT") (FRANKFURT: 3GR1) is pleased to announce that it has executed and completed the acquisition of all the issued (25,000,000 Common Shares) and outstanding shares of the West African Resources Company Ariva Resources Ltd.

[48] He admitted on cross examination that he did not need to make this announcement before the Frankfurt trip but he did so because of the trip. Zeiben later determined that Ariva did not have the mineral rights it claimed and unwound the transaction. He never retracted the press release or disclosed to the public that the acquisition had been cancelled even though a press release to that effect was prepared.

[49] It should be noted that the above strategy of press releases was having its desired effect. The share price of Grit rose in October and November 2010 to a high of .80 Euros with significant increases in the volumes of the shares traded.

[50] The Grit press releases continued into 2011 with a February 2, 2011 Grit press release which stated:

Texas Petroleum shares are expected to open at €0.75. The company has properties in the U.S. States of Kansas and Oklahoma and proven reserves of over 9 Million Barrels of Oil, with an estimated value of over \$800,000,000 USD. GRIT International will retain approximately 22% ownership through its subsidiaries after the spin-off, GRIT now has additional value once calculated; if valuing GRIT shares could equate to .. €0.30 - €0.40 and giving Texas Petroleum a value of approximately €55 million.

[51] Zeiben prepared this press release which referred to the potential acquisition of Timberlake Energy Inc. (**Timberlake**) which had assets in Kansas and Oklahoma. This release was posted after Zeiben had cancelled the earlier oil and gas acquisition (TXO) announced by Grit. Grit did not advise investors that the TXO transaction had been cancelled. Thus, an investor or potential investor reading the Grit website would have been left with the impression that the Timberlake acquisition was in addition to the TXO acquisition, not in substitution. Zeiben cancelled the Timberlake acquisition yet again he gave no notice of this to the public. Therefore, an investor would be led to believe that two oil and gas acquisitions had been made when in fact neither was finalized. Texas Petroleum, which began as a subsidiary of Grit but was subsequently spun out to Grit shareholders directly, never had any oil and gas assets.

E. Texas Petroleum Press Releases

[52] While the above narrative relates to press releases issued by Grit, the allegations before us also allege misrepresentations made by Zeiben and Texas Petroleum.

[53] Some background to Texas Petroleum is useful. It was incorporated in Alberta on November 11, 2010, its shareholder was Grit Acquisitions and Zeiben was its only director. (Maisey became its nominal president from November 2010 until he resigned that position in March of 2011.)

[54] The plan was for Texas Petroleum to acquire oil and gas assets and then be spun out from under Grit to Grit's shareholders. Texas Petroleum was to be listed on the Frankfurt exchange. This idea was developed by Prochow. The company was incorporated, listed on the Frankfurt exchange and spun out to the shareholders of Grit. However, it never completed the acquisition of any oil and gas assets.

[55] When Wayne became involved with Zeiben and Grit he represented that he had a number of business acquisitions under contract which he could transfer to Grit. One of the companies that Wayne purported to have an arrangement with was TXO, the Texas oil and gas company referenced above. Wayne told Zeiben that he had commitment letters on the acquisition of TXO that could be "re-written to Grit" if Wayne could come to satisfactory terms with Zeiben concerning his relationship with Grit.

[56] As it transpired Wayne had no agreement with TXO. On or about November 17, 2010 Zeiben met with the principals of TXO and tentatively agreed to a transaction that would see TXO becoming part of Grit. TXO officers accompanied Zeiben to Germany for meetings starting November 22 with potential investors. Before Zeiben left Germany to return to Canada he concluded that he could not work with TXO and terminated the proposed acquisition.

[57] By November 27, 2010 Zeiben had a potential replacement for the TXO transaction. This was Timberlake. Once again, Texas Petroleum never entered into any binding contract to purchase Timberlake with the result that Texas Petroleum never had any oil and gas assets or operations.

[58] With this background we now turn to Texas Petroleum's press releases and statements placed on the internet.

[59] Zeiben hired Chambers and Advanced to prepare material on Texas Petroleum and to post that material on the Advanced website. He paid Chambers and Advanced in Grit shares and in cash.

[60] In March of 2011 a report posted on the internet by Advanced indicated that Texas Petroleum had substantial assets and operations. The asserted assets and operations arose from the proposed Timberlake acquisition that Zeiben had stated could be used as a substitute for the TXO transaction to "save face" after he cancelled the TXO transaction.

[61] The March report included a representation that Texas Petroleum had producing properties in Kansas. It asserted that Texas Petroleum "has producing wells in the state of Kansas, where it owns over 10.5 million barrels of oil in proven reserves, representing over \$70 million in assets" and "as of the end of 2010, the company [Texas Petroleum] has 76 active wells in eastern Kansas ...".

[62] At the end of 2010 Texas Petroleum had no agreement with Timberlake and therefore had no active wells.

[63] Discussions regarding this opportunity involved a meeting in Calgary between Zeiben and the principals of Timberlake around January 24, 2011 and a meeting in Toronto around March 19, 2011. Some type of an agreement was signed in Toronto under which Texas Petroleum agreed to issue 7,000,000 shares to acquire Timberlake or its assets and pay, over time, \$2,000,000.

[64] Shortly after the Toronto meeting Zeiben learned that a sheriff was seizing Timberlake assets and he cancelled the transaction and never delivered any of the Grit shares to Timberlake or its shareholders. Before he learned of the sheriff's actions he had made a contribution towards Timberlake's payroll but that ceased when he learned of the seizures.

[65] Neither Zeiben nor Grit, which retained 25% of the shares of Texas Petroleum, nor Texas Petroleum ever issued any press release or posted anything on the internet that indicated that the Timberlake transaction had been cancelled and that those assets were not available to Texas Petroleum.

F. Non-Compliance with NI 43-101

[66] The Grit press release of October 12, 2011 referred to above contained disclosure of information regarding mineral resources or reserves. In particular:

GRIT MINERALS expects to acquire a minimum of 24 new leases in Canada by the end of the year as it works towards its target of having 250 substantial Canadian leases in development, joint venture and full production. Many of these Canadian leases are high grade gold deposits with anywhere from 20,000 to 150,000 ounces of gold depending of course on the size of the lease and the ease of access.

If the anticipated results re proved out, the value of this lease [in Africa] could be in the (Gold:\$1,353.00 US/oz) \$1,350,000,000 USD

Expected 1,500,000 ounces of gold todays value of \$1,350.00 US, placing reserves estimates over \$2.0 Billion US; GRIT shareholder value of \geq \$15.00 US per share.

[67] The November 11 press release also contained information concerning mineral reserves, (para. 44 above).

[68] During his testimony Zeiben acknowledged that he never saw any report which purported to comply with NI 43-101.

G. Zeiben's Knowledge and Control of Grit and Texas Petroleum

[69] Zeiben was the controlling shareholder of Grit. He was its principal and, after LaRochelle quit, its only director. After LaRochelle left, Zeiben was also Grit's only employee. He was Texas Petroleum's sole director. He retained all of those individuals and companies that participated in the issuance of press releases and the preparation of website material concerning Grit and Texas Petroleum. He controlled all of the Grit subsidiary companies, including Texas

Petroleum. Given the above we find that Zeiben was the controlling mind of Grit, Texas Petroleum and all of Grit's subsidiaries.

[70] We find that Zeiben was actively engaged in the development and projection of the public image (more properly described as the public façade) of Grit and Texas Petroleum and that he knew what was being disseminated to the public, by press releases, the company's website, and the Advanced website which promoted Grit and Texas Petroleum.

[71] A few references will suffice to make this point, however, these are not exhaustive of the evidence before us concerning his knowledge.

- (a) Zeiben agreed that he approved all press releases but one.
- (b) The plan for the new Grit was set out in a "to do list" Maisey forwarded to Zeiben on September 26, 2010 which included:

Delivery of first 10 full text press release draft

--- News about financials (\$14.00 and €7.06 per share etc.)

--- News about new website launch and corporate re-branding
(including IR features)

--- News about Clifford Chance engagement

--- News about Deloitte engagement

--- News about Goldman Sachs engagement

--- Listing news for Berlin Stock Exchange

--- Grit announces acquisition of textile company (including
figures)

--- Grit plans alternative energy and environmental project
(including figures)

- (c) Grit issued press releases, in furtherance of the plan - on October 1st, (announcing four divisions); October 2 (announcing oil and gas subsidiary); October 7th (forecasting the future price of Grit shares); October 8 (announcing an intention to hire one of the big four accounting firms); October 12 (announcing the acquisition of mineral properties); October 20 (announcing the spin off of the oil and gas company).
- (d) On November 11, 2010 Grit announced Canadian and African mining ventures.
- (e) On November 12, 2010 Zeiben emailed Maisey as follows:

Just a mental observations. We have had news to out this week. And it was not CDF News it was more B-, B, B+, A- ... Volume is extremely light. If GRIT does not sign these deals, than is this what we get in return, if GRIT signs the deals then all hell breaks loose and the price of the stock goes through the roof. News driven; but we have the news this week... This is

not the price we were all counting on ... And I know, once things are so called in place – other things can be done... Just weak; very weak...

- (f) Zeiben, on cross examination, concerning this email, said that what he had been trying to do with the news campaign was to generate hype and to "get the market excited about Grit and the share price bid up".
- (g) Zeiben's intention in the creation of this public image is also indicated by a November 4, 2010 email to Prochow in which Zeiben stated about a potential transaction between Grit and an entity called Silver Dragon that "we can always cancel the deal" and

Now you will see why I want the stock to be higher ... a lot higher ... so the ration is \geq in GRIT's favour ... otherwise at the end I cancel the deal or we go ahead with it because it is in GRIT's favour ... I want to start it in GRIT's favour...

- (h) When questioned by Mr. Wilson about this November 4 email, the following exchange occurred:

Q. And that's what Grit, in fact, did. You announced TXO. It never happened. You didn't retract. You announced Timber Lake. Ultimately, it didn't happen. You didn't retract. Ariva was announced. That didn't happen. It wasn't retracted. Grit did exactly what you've described here, sir. Do you disagree with that?

A. No, I don't.

IV. THE ISSUES

[72] In summary form the issues before us are:

- (a) Did Grit illegally distribute shares contrary to section 110 of the Act, e.g. without a prospectus, preliminary prospectus, or appropriate exemptions?
- (b) Did Grit in 2010 and 2011 make material mis-statements about Grit, contrary to section 92(4.1) of the Act and, if so, is Zeiben also responsible for those mis-statements?
- (c) Did Grit make improper disclosures of scientific or technical information concerning mineral projects without having a proper underlying report, contrary to NI43-101, and, if so, is Zeiben also responsible for such breach?
- (d) Did Grit and Texas Petroleum, in 2010 and 2011, make material mis-statements about Texas Petroleum contrary to section 92(4.1) of the Act and, if so, is Zeiben also responsible for those mis-statements?
- (e) Are Zeiben, Texas Petroleum, and Grit liable in fraud, pursuant to section 93(b) of the Act for knowingly making, directly or indirectly, false or misleading statements to investors or potential investors of Texas Petroleum and Grit?

V. ANALYSIS AND DISCUSSION

A. Position of Parties

1. Staff

[73] Staff submitted that the evidence supported a finding of guilt on all of the allegations set out in the Notice of Hearing, other than those which it withdrew at the end of the hearing.

[74] Staff asserted that Zeiben was the controlling mind of the companies and was responsible for their activities including their failure to follow Alberta securities laws and their misrepresentations to the public.

2. Zeiben

[75] Zeiben submitted twenty pages of written submissions supported by oral submissions. While this is not an exhaustive summary of his submissions, we feel that we should highlight those and briefly comment.

[76] The submissions began by asserting that it was not reasonable for us to find that Zeiben ought to have known that the companies were subject to Alberta securities laws as he was never told that by any of his various advisors or consultants such as his bankers, transfer agents, lawyers who incorporated and registered Alberta companies for him, investor relations consultants, and public relations consultants, including individuals in Canada and Germany. He asserts that the Commission's investigation into the matter was slow and incomplete. He asserts that he co-operated with the Commission and that this shows his innocence, as does the fact that he sold none of his shares during the material periods of time.

[77] He submits that he relied upon others for the appropriateness and accuracy of the public information disseminated about the companies. He asserts that, according to Wikipedia, a "letter of intent" constitutes an agreement between "the parties before the agreement was finalized".

[78] For the reasons which follow we find that Zeiben's submissions are not persuasive. In addition to our more detailed findings in this decision we point out that the fact that others did not tell him what the law was is no defence. Indeed, there is no evidence that he asked anyone who was qualified to provide such legal advice, the correct questions concerning whether or not he and his companies were subject to Alberta securities laws. Co-operation with the Commission's investigation, while laudable, is not an excuse for failure to comply with the law during the period leading up to the investigation. The fact that he did not sell his stock, but held on to it, hoping that the company would prosper in the long run, is not a defence to the failure to follow securities laws, nor is it a defence to making public misrepresentations concerning the companies. Further, he cannot delegate his obligation to comply with the law, and indeed there is no evidence that he attempted to do that. Despite what Wikipedia says, letters of intent concerning purchase and sale are not necessarily binding agreements to acquire assets. Each letter of intent needs to be read according to its precise terms, but normally they are letters committing to negotiate towards binding purchase and sale agreements, not binding agreements for the purchase and sale of assets.

[79] We were not provided with any of these alleged contracts but the fact that Zeiben cancelled them with such ease suggests that they were not binding purchase and sale agreements and that he knew that they were not binding purchase and sale agreements.

[80] Finally, it is no defence to complain about the efficacy of an investigation. All the more so when the investigation revealed facts sufficient to lead to charges and sufficient to result in findings of breaches of securities laws at a hearing, as set out in this decision.

B. Standard of Proof

[81] In coming to the above recitations and findings of fact, and in the findings that we make later in this decision, the panel is applying the standard of proof set out in the Supreme Court of Canada's decision in *F.H. v. McDougall*, 2008 SCC 53 at paragraph 46 which requires that the allegations and facts must be proven with evidence, "sufficiently clear, convincing and cogent to satisfy the balance of probabilities test". That test is met where the existence or occurrence of an alleged fact required to be proven is more probable than its non-existence or non-occurrence.

C. Controlling Mind and Responsibility for Allegations

[82] Zeiben was the sole director of Texas Petroleum and he was a director of Grit, and for most of the period applicable to the allegations before us, he was the only director, officer and employee of Grit. We find that Zeiben's knowledge, actions and intentions as the controlling mind of Grit and Texas Petroleum are, in law, the knowledge, actions and intentions of Grit and Texas Petroleum with respect to the allegations against those companies which are before us.

[83] Further, we find that Zeiben, as the controlling mind of the companies, is liable for the acts and representations that he caused those companies to make to the public and which are the subject matter of the allegations before us in this hearing. Therefore, we find that Zeiben is personally liable for any misrepresentation and fraud committed by Grit and Texas Petroleum as outlined in this decision.

D. Illegal Distribution

[84] Section 110 (1) of the Act prohibits a person or a company from trading in securities unless a preliminary prospectus and prospectus has been filed and a receipt obtained from the Commission. "Distribution" is defined as a "trade in securities of an issuer that have not been previously issued". An "issuer" is defined as including a company "that has outstanding securities". The Act includes shares in its definition of securities.

[85] Before us staff took the position that the facts proven demonstrate a breach of section 110(1). Counsel also asserted that there is no evidence of any valid exemption to the prospectus requirement and pointed out the onus is upon the respondent to prove that its trades were covered by a valid exemption.

[86] Zeiben, in his submissions, did not challenge the factual underpinnings of the allegations, nor did he attempt to assert that the securities were sold under any valid exemption. Rather he asserted that he was not aware of any requirement for Grit to comply with Alberta securities legislation and that, if required, someone should have let him know. He asserted that people that should have known and should have told him included a law firm that he worked with, the Royal

Bank with whom Grit banked, the law firm that assisted him in getting the company extra-provincially registered in Alberta, the trust company that was Grit's Canadian transfer agent, Chambers who was providing public relations and investor relations advice, Wayne who introduced him to the idea of the conglomerate, Maisey and Prochow, and Mr. Jim Adams, about whom we heard nothing during the course of the hearing, but in Zeiben's submissions was asserted to have something to do with Texas Petroleum in Germany.

[87] As stated above, ignorance of the law is no defence. Asserting that other people should have told you the law is not a defence. All the more so when there is no evidence that the right questions were asked of anyone qualified to give legal advice on Alberta securities law.

[88] Turning to the evidence concerning breach of section 110(1), it is clear that the mind, management, and principal place of business of Grit was Grande Prairie, Alberta. Zeiben was its controlling shareholder; he was throughout one of its directors, and at times its only director. It is clear that Grit issued securities to the public, including a number of individuals in Alberta. Also from Alberta he caused to be issued shares to a number of contractors and other people. Further, through its press releases and websites, Grit was advertising and soliciting purchase of its shares. Those press releases and websites were accessible in Alberta. These were acts in furtherance of the sale of Grit shares, and such activities are encompassed by the definition of the words "trade" and "distribution" under the Act. We have evidence of individuals within Alberta who invested and who issued cheques on Alberta bank accounts to Grit for shares or contracts which were convertible into shares.

[89] The purpose of requiring a prospectus disclosure is to provide investors with full, true and plain disclosure of the material facts about an issuer so that those investors or potential investors can make an informed decision. The facts of this case show a willful disconnect between the public façade being projected and the true facts of the company.

[90] With respect to taking advantage of exemptions to prospectus requirements Grit did not consider itself subject to Alberta securities laws and therefore made no attempt to sell its shares to people in circumstances to which an exemption would apply. The Commission has held that it is up to the issuer to adduce evidence to show that it was relying upon a valid exemption to the prospectus requirements (see *Re: Aurora*, 2011 ABASC 105 at para. 133). No such evidence was put before us.

[91] We find that the allegation that Grit illegally distributed shares contrary to sub-section 110(1) of the Act to be proven.

E. Material Misrepresentation Regarding Grit, Contrary to Section 92(4.1) of the Act

[92] The position of staff is that Grit and Zeiben made materially misleading statements concerning Grit. The position of Zeiben and Grit is that Zeiben believed that the statements being made were true at the time, that many of the statements spoke of future prospects, that he relied upon others to prepare projections, that the projections that he made he believed were accurate, and that he had no intention to mislead. He also sought to rely on a blanket "safe harbor statement" contained at the bottom of each release indicating that forward-looking statements are subject to uncertainties. He pointed out that he fully co-operated with the

investigation and that he did not engage in selling his shares in the public market, but rather tried to build up the company for the long term.

[93] Turning to the section in question, sub-section 92(4.1) reads:

(4.1) No person or company shall make a statement that the person or company knows or reasonably ought to know

(a) in any material respect and at the time and in light of the circumstances in which it is made,

(i) is misleading or untrue, or

(ii) does not state a fact that it required to be stated or that is necessary to make the statement not misleading,

and

(b) would reasonably be expected to have a significant effect on the market price or value of a security or an exchange contract.

[94] Based on the facts accepted it is clear that Zeiben was the controlling mind of Grit, and that he was instrumental in the preparation and dissemination of press releases and other material put on the internet concerning Grit. Accordingly we find that, to the extent that the Grit press releases and information put out about the company were inaccurate or misleading, Zeiben and Grit are equally liable for those misrepresentations.

[95] Turning to the misrepresentations concerning Grit, the October 1, 2010 press release was materially misleading, in that Grit was a company whose only business was a janitorial service and a sandblasting company. It had no "support services", "utilities", "oil and gas", or "mineral holdings".

[96] With respect to the October 7 press release we find that there was no reasonable basis for making the projections that were being made and that there were no underlying actual asset values or revenue that would in any way justify these projections. Nor was there any reasonable prospect for the company reaching those projections within 90 days.

[97] The October 8 press release was misleading in stating that the company was growing exponentially.

[98] Turning to the press releases regarding the BCT proposed transaction, being October 12 and November 11, 2010, these releases assert a transaction that never existed. In particular no Grit company ever entered into a "joint venture" with BCT or indeed had any contract at all with BCT.

[99] The press release of October 20 announced the possible acquisition of a Texas based oil and gas company. Again while the press release may have been accurate as of October 20 allowing the press release to stand without retraction or correction after it was clear that any transaction that had been entered into with respect to that company had been cancelled and that

no transaction would ever take place resulted in the information being placed in the public realm by Zeiben and Grit being misleading.

[100] The same applies to the November 22, 2010 press release concerning the acquisition of Ariva. That transaction never closed and was in fact cancelled by Grit when it learned that Ariva did not have the underlying assets which it represented to have. Again, failing to publish a correction resulted in the public being misled by Grit's press releases and web postings. We are also concerned about the fact that a press release advising that the Ariva transaction had been cancelled was prepared but was never distributed. The panel finds that this is more than a mere oversight; it is rather part of a course of conduct by Grit and Zeiben to portray a false positive image of the company to drive up the share price and trading volumes.

[101] Finally, the February 2, 2011 Grit press release which dealt with the potential Timberlake acquisition is misleading. The press release asserted that Texas Petroleum "has properties" in the United States, in Kansas and Oklahoma. It had no such properties at that time. The evidence shows that the earliest it could make that assertion would have been March 2, 2011 when apparently an "offer to purchase" was dated. However, Grit and Zeiben did nothing to correct this mis-information once Zeiben had cancelled the entire transaction. We find material misrepresentation regarding Grit proven.

F. Non-Compliance with NI 43-101

[102] Securities regulators have developed specific rules for disclosure of scientific or technical information concerning mineral properties, and they are contained in the above National Instrument.

[103] These rules are designed to protect the public from unsubstantiated claims of value in companies that have mineral projects. Mineral projects are difficult to value for a number of reasons. The projected amount of minerals found under any property is difficult to assess at the best of times and, once assessed cannot be fully recovered. Beyond that the steps and costs associated with extracting, refining, and transporting the mineral to market and the price that can be ultimately achieved for that product, all add additional layers of complexity and uncertainty to the task of ascertaining the value of a mineral project for shareholders of a company.

[104] NI 43-101 addresses some of these challenges by setting rules for such disclosure. Staff of the Commission made the following submission regarding the disclosure regime:

The NI 43-101 disclosure regime requires, among other things that: (i) issuers' public disclosure on important topics be based on the work of professionals with relevant expertise and experience, who apply appropriate standards to their work, and who have a stake in good disclosure by having their names attached publicly identified qualified persons; and (ii) particular care be taken in the use of terminology in public disclosure, so that facts are clearly articulated, and ambiguous or simply misleading language (which might, for example, indicate to a reader that something profitable has been discovered when in fact more work must be done to make that determination) is avoided.

[105] The October 12, 2011 press release references millions of ounces of gold worth billions of dollars and provides an indicated share value equal to or greater than \$15 U.S. per share.

[106] In the November 11, 2011 press release Grit projected 2,000,000 ounces of gold which could be produced over a ten-year period.

[107] These statements were made in contravention of NI 43-101. Zeiben never saw a report that purported to comply with NI 43-101. These types of statements made by the promoters and the corporation concerning mineral projections are prime examples of the mischief addressed by NI 43-101 and ignored by Zeiben and the company.

[108] Failure by Grit and Zeiben to comply with NI 43-101 has been established.

G. Misrepresentation Regarding Texas Petroleum, Contrary to Section 92(4.1) of the Act

[109] The position of staff is that Zeiben caused Grit and Texas Petroleum to make false representations concerning Texas Petroleum. Many of the misrepresentations made about Texas Petroleum were made through the Advanced website.

[110] Some of the particulars of the false or misleading statements alleged by staff are set out in the Notice of Hearing as follows:

40.1 The company currently has producing wells in the state of Kansas, where it has over 10.5 million barrels of oil in proven reserves, representing over \$70 million in assets;

40.2 At this time, Texas Petroleum had upward of \$70 million in assets;

40.3 By the end of 2011, we expect the company to have approximately \$200 million in assets;

40.4 The company has over 10.5 million barrels of oil in proven reserves;

40.5 The company has several producing wells in Kansas and lists 10.58 million proven barrels of oil in reserves;

40.6 There are presently 4.7 million barrels of oil in proven reserves which the company plans to bring into production in 2011 and 2012;

40.7 Texas Petroleum should be producing over 5,300 barrels of oil by the end of 2012;

40.8 Texas Petroleum properties have significant oil reserves still to be tapped and brought to market;

40.9 The firm expects to grow in accessible asset base to \$500 million - \$1 billion over the next 5-7 years;

40.10 Texas Petroleum has approximately 10.5 million barrels of proven reserves and the capacity to increase production. Shares are bid on the Frankfurt Exchange at 0.80€. Based solely on its accessible reserves, the company has a conservative valuation of approximately 3.00€.

40.11 Expect to see Texas Petroleum shares move to a more realistic valuation of 3.00€ toward the end of 2011;

40.12 The large reserves held on current Texas Petroleum properties are key factors playing to the company's potential strength;

40.13 Texas Petroleum has all the elements needed for long-term success. The company has good quality properties and experienced management with hands-on experience; and

40.14 There are few risks with this company since its production costs are low and the price/demand for the product is high.

[111] As pointed out earlier, the Kansas properties were from the proposed Timberlake acquisitions.

[112] As noted earlier, Grit and Texas Petroleum never entered into any binding contract to acquire that company or its assets and Zeiben cancelled the proposed transaction when he learned that a sheriff was in the process of executing against Timberlake assets.

[113] As stated in our discussion on misrepresentation concerning Grit, we found that the press release information placed on the internet concerning Texas Petroleum contained misrepresentations of the true facts concerning the oil and gas assets of Texas Petroleum. Zeiben was the controlling mind of Grit and Texas Petroleum, he knew what was being placed on the website, he knew that it was not true, he took no steps to correct the misinformation, and indeed put forward the Timberlake transaction to "save face" after cancelling the TXO transaction without advising the public that the TXO transaction was dead.

[114] Accordingly, we find that Zeiben, Grit and Texas Petroleum have breached section 92 (4.1) of the Act in placing on the web information concerning Texas Petroleum's proposed acquisition of TXO and Timberlake.

H. Fraud on Grit and Texas Petroleum Investors

[115] Zeiben, Grit and Texas Petroleum also are alleged to have knowingly made, directly or indirectly, false or misleading statements to investors or potential investors of Grit and Texas Petroleum in violation of section 93(b) of the Act.

[116] Section 93(b) reads:

No person or company shall, directly or indirectly, engage or participate in any act, practice or course of conduct relating to a security or exchange contract that the person or company knows or reasonably ought to know will ... (b) perpetrate a fraud on any person or company.

[117] The Act does not define fraud but the Supreme Court of Canada has discussed fraud in the criminal context and has stated that proof of fraud requires proof of two things, a guilty act (*actus reus*) and a corresponding guilty mind (*mens rea*). The Court stated as follows:

These doctrinal observations suggest that the *actus reus* of the offence of fraud will be established by proof of:

1. the prohibited act, be it an act of deceit, a falsehood or some other fraudulent means; and

2. deprivation caused by the prohibited act, which may consist in actual loss or the placing of the victim's pecuniary interests at risk.

Correspondingly, the *mens rea* of fraud is established by proof of:

1. subjective knowledge of the prohibited act; and
2. subjective knowledge that the prohibited act could have as a consequence the deprivation of another (which deprivation may consist in knowledge that the victim's pecuniary interests are put at risk).

Where the conduct and knowledge required by these definitions are established, the accused is guilty whether he actually intended the prohibited consequence or was reckless as to whether it would occur.

R. v. Th roux, [1993] 2 S.C.R. 5, paras 27 and 28

[118] The Alberta Court of Appeal has pointed out that an intention to dupe an investor/purchaser is not required and that recklessness or willful blindness is sufficient to meet the mental element required to convict in cases of fraud:

Moreover the *mens rea* element of the offence of fraud requires only clear evidence that the appellant intentionally engaged in the prohibited act knowing such conduct could result in deprivation. Whether the appellant may have intended to dupe the purchaser is irrelevant to the requisite *mens rea* for fraud. His recklessness as to the consequences as demonstrated by his willful blindness about the potential safety of the vehicle is sufficient to satisfy the *mens rea* element of the offence.

R. v. Aggarwall, 2005 ABCA 434 at para. 7

[119] The Notice of Hearing makes the following allegations in connection with fraud:

43 Staff allege Zeiben, Grit and Texas Petroleum knowingly made, directly or indirectly, false or misleading statements to investors and potential investors of Grit and Texas Petroleum, as outlined in paragraphs 29, 30, 39 and 40 above.

44 The false or misleading statements made by Zeiben regarding Grit and Texas Petroleum fundamentally misrepresented the nature of Grit and Texas Petroleum's business affairs, and fundamentally misrepresented the true nature of an investment in Grit and Texas Petroleum, especially the risk element inherent in such an investment.

45 Zeiben knew the statements he was making regarding Grit and Texas Petroleum were false or misleading, and knew these statements could put the pecuniary interest of investors or potential investors of either Grit or Texas Petroleum at risk. Alternatively, Zeiben was reckless that this could be the case.

46 Zeiben was at all times the controlling mind of Grit and Texas Petroleum, such that his state of knowledge is imputed to both Grit and Texas Petroleum.

[120] The particulars referenced above (i.e. paragraphs 29, 30, 39 and 40) are the allegations of misrepresentation regarding Grit (paragraphs 29 and 30) and the allegations of misrepresentation regarding Texas Petroleum (paragraphs 39 and 40). These are in turn references to the

representations made in the Grit and Texas Petroleum press releases and postings on the websites of Grit and Advanced.

[121] We now turn to the elements of the offence and the evidence.

[122] We have found that Zeiben was the controlling mind of Grit and Texas Petroleum. He was deeply involved in the public image that Grit and Texas Petroleum were projecting to the world and he understood and intended that the public image would create an interest in Grit's and Texas Petroleum's shares so that investors and potential investors would become excited about the companies and their prospects and engage in the purchase and sale of the companies' stocks.

[123] Zeiben hoped and expected that such information in the public realm would increase the trading volumes of the stock and the share price. The fact that Zeiben's hope that projecting to the public misleading optimistic facts and projections about the companies would lead to an increase in the share price and value of stock traded which in turn would allow the companies to raise funds to allow them to make the story of the companies come true is no defence to the charges of misrepresentation or fraud.

[124] For the purpose of section 93(b), we find that the acts of Zeiben as officer, director and controlling mind of the two companies are the acts of the two companies and that Zeiben's knowledge and intention as a directing mind of the two companies constitute the intention and knowledge of the companies.

[125] Turning to the "prohibited acts" these are the making of misleading or untrue statements concerning the companies to investors and prospective investors.

[126] The statements contained in the press releases and internet postings are statements to investors or potential investors.

[127] As discussed, we have found many of such statements to be misleading. Taken as a whole the press releases and other information posted on the internet portrayed Grit as a multi-faceted conglomerate with extensive assets and capabilities. This façade was designed and erected once the original Grit business model had failed to gain traction. Its actual assets and capabilities were lost or obscured in the erection of the new Grit façade. Transactions which were merely contemplated were portrayed as completed and not retracted when abandoned. New prospects were piled on top of abandoned prospects. Behind all of this was only a book-keeper/accountant, a janitorial business and a small sandblasting company in financial difficulty. The disparity between the façade and the reality goes beyond recklessness. Zeiben and the companies he controlled deliberately created the façade in hopes that Grit and Texas Petroleum would eventually make the story true.

[128] We find that Zeiben was not merely reckless (in the sense that he did not care whether the information put out about the company was true and remained true), but that he knew that much of what was being put out in the press and on the internet was not true. He knew that announcing a potential deal would likely drive the stock price up. We find that he also knew that

advising the public that a previously announced potential acquisition had fallen through would likely have a negative effect upon the stock.

[129] Were people "deprived" by this activity? Clearly investors traded on this misinformation, just as Zeiben hoped they would. The emails, the cross examination on his emails (paragraph 71 above), the share trading history (paragraph 49 above), and the subsequent collapse of the share price when the façade came down clearly illustrate the connection between the hype, investment activity, and loss of investments.

[130] Zeiben knew what was being put up on the internet for public consumption, he knew of the relationship between good news and share price, and he was an active participant in the creation of the public image.

[131] Zeiben stated that he was not selling his shares; he was just trying to get the companies going. He was relying upon others for information on these acquisitions and on the projections, that the press releases contained statements that they were forward looking and could not be relied upon.

[132] In our view these arguments do not assist Zeiben. These points do not change the fact that many of the statements were material statements of current facts that were not true (for example assets were listed as already owned when they were not). It does not excuse the posting of announcements for pending deals, leaving those announcements in the public realm, yet cancelling the deals and not advising the investors.

[133] In conclusion, on this issue of fraud, we accept the submission of staff that

Zeiben's actions in this regard meet all four elements set out in Thérout: false representations knowingly made to investors regarding deals between Grit and/Texas Petroleum and other companies that were never consummated, assets that Grit and Texas Petroleum did not own, and these misrepresentations were made as a means of inducing (and causing) investors to invest in order to increase Grit's share price.

I. Acts Contrary to Public Interest

[134] Given our findings of facts and of violations of or non-compliance with the Alberta securities laws by Zeiben, Grit and Texas Petroleum, it is obvious that Zeiben, Grit and Texas Petroleum have acted contrary to public interest.

[135] A false picture of the companies was presented to investors in Alberta and elsewhere. The prospectus requirements, designed to ensure fair and full disclosure, were ignored. The requirements of NI 43-101 to ensure that information given out by companies on mineral projects are based on something more than a promoter's press releases were ignored. Indeed, the securities laws of Alberta were ignored. Beyond that Zeiben, Grit and Texas Petroleum engaged in the deliberate creation of a public façade to the detriment of shareholders.

[136] The inevitable happened. The façade attracted investors, pumped up the share price, increased share sales, and, when the façade came down, disappointed investors lost their investment.

[137] The breaches we have found go to the heart of the regulation of the sale of securities in Alberta and are contrary to the public interest.

VI. CONCLUSION AND NEXT STEPS

[138] We have found the allegations of breach of securities laws by Zeiben, Grit and Texas Petroleum to have been established on the balance of probabilities.

[139] Zeiben's assertions that he should not be found guilty because he did not know that he was violating any law and that he relied on others around him to tell him what the law was and what he needed to do to comply, is not accepted. Not knowing the law is not a defence when being charged with violation of it. Everyone is taken to know the law. This is all the more so in the case of an individual who chooses to go into the business of acquiring, promoting and running a public company subject to the *Alberta Securities Act*. It is incumbent upon individuals who undertake this type of activity to familiarize themselves with the law applicable to the activity.

[140] Our findings above conclude the first part of the hearing. What remains to be decided is what further orders should be made, in the public interest, against the respondents. The parties are directed to contact the Commission Registrar by **May 20, 2014** to set a date for the second part of the hearing which will address the question of sanctions.

May 5, 2014

For the Commission:

"original signed by"
Bradley G. Nemetz, Q.C.

"original signed by"
Ann Rooney, FCA, ICD.D.

"original signed by"
Dr. Ian Beddis

Corrigendum of the Decision

In paragraph [71] of the Decision, the year referenced in subparagraphs (d), (e) and (g) has been corrected to read "2010" rather than "2011".