

BEFORE THE FEDERAL MARITIME COMMISSION  
WASHINGTON, D.C.

|                                |   |                             |
|--------------------------------|---|-----------------------------|
| MINTO EXPLORATIONS, INC.       | ) |                             |
|                                | ) |                             |
| Complainant                    | ) | Docket No. 11-21            |
|                                | ) |                             |
| v.                             | ) | Honorable Clay C. Guthridge |
|                                | ) | Administrative Law Judge    |
| PACIFIC AND ARCTIC RAILWAY AND | ) |                             |
| NAVIGATION COMPANY             | ) |                             |
|                                | ) |                             |
| Respondent                     | ) |                             |
| _____                          |   |                             |

**ANSWER**

Respondent Pacific and Arctic Railway and Navigation Company ("PARN" or "Respondent") answers each paragraph of the Complaint of Minto Explorations, Inc. ("Minto" or "Complainant") as follows:

**PARTIES**

1. PARN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint and therefore denies them.
2. PARN lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of paragraph 2 and therefore denies them. The second sentence of paragraph 1 contains legal conclusions to which no response is required.
3. PARN admits the allegations in paragraph 3.
4. PARN admits the allegations in the first sentence of paragraph 4. The second sentence of paragraph 4 contains legal conclusions to which no response is required. PARN denies any other allegations in paragraph 4.

## JURISDICTION

5. The first sentence of paragraph 5 contains legal conclusions, to which no response is required. The second sentence of paragraph 5 contains Complainant's characterization of the allegations in its Complaint here. PARN generally denies that it has violated any provision of the Shipping Act of 1984 and specifically denies that it violated the Act in the manner alleged by Minto in paragraph 5. PARN denies any other allegations in paragraph 5.

6. The first sentence of paragraph 6 contain Minto's characterization of its Complaint (Case No. 3:11-cv-00031-JWS) in Federal District Court in Anchorage, Alaska, which speaks for itself and to which PARN filed an Answer and Counterclaim, and no other response is required. With respect to the allegations in the second and third sentences of paragraph 6, the Federal District Court granted PARN's Motion to Dismiss on the basis of primary jurisdiction and a copy of the Court's Order is an Attachment to Minto's Complaint here. All other allegations in that sentence characterize PARN's Motion to Dismiss, which speaks for itself, or paraphrases the Court's Order, which also speaks for itself. The third sentence of paragraph 6 contains a characterization of the current status of the litigation before the Federal District Court, and no further response is required. PARN denies any other allegations in paragraph 6.

7. The first sentence of paragraph 7 contains legal conclusions to which no response is required. The second sentence of paragraph 7 contains Minto's legal position as to the relationship between state and federal law, to which no response is required. PARN denies any other allegations in paragraph 7.

### FACTS COMMON TO ALL CLAIMS

8. PARN admits the allegations in the first sentence of paragraph 8. The second sentence of paragraph 8 contains Minto's characterization of a Purchase Agreement, which speaks for itself. PARN denies any other allegations in paragraph 8.

9. PARN admits the allegations in the first sentence of paragraph 9. The second sentence of paragraph 9 contains legal conclusions, to which no response is required. PARN denies any other allegations in paragraph 9.

10. The allegations in paragraph 10 contain legal conclusions, to which no response is required. PARN denies any other allegations in paragraph 10.

11. The allegations in paragraph 11 characterize a ruling by the Federal District Court, which speaks for itself. PARN denies any other allegations in paragraph 11.

12. PARN denies the allegations in paragraph 12.

13. PARN denies the allegations in paragraph 13.

14. The allegations in paragraph 14 characterize PARN's published tariff schedule, which speaks for itself. PARN denies any other allegations in paragraph 14.

15. The allegations in paragraph 15 contain legal conclusions, to which no response is required. PARN denies any other allegations in paragraph 15.

16. The allegations in paragraph 16 contain legal conclusions, to which no response is required. PARN denies any other allegations in paragraph 16.

17. PARN denies the allegations in paragraph 17.

18. PARN denies the allegations in paragraph 18.

## **VIOLATIONS**

19. The allegations in paragraph 19 contain legal conclusions, to which no response is required. PARN denies any other allegations in paragraph 19. PARN denies that it has violated the Shipping Act of 1984 or any other applicable state or federal law.

20. The allegations in paragraph 20 contain legal conclusions, to which no response is required. PARN denies that Minto has been damaged or harmed in any manner or suffered any compensatory damages. PARN denies any other allegations in paragraph 20.

## **AFFIRMATIVE DEFENSES**

21. Minto's Complaint fails to state a claim for which relief can be granted.

22. The dispute between the parties has become moot by the Federal District Court's decision with respect to Minto's contract claim.

23. PARN reserves the right to assert such other and further defenses, affirmative defenses, and counterclaims as may be disclosed to them during the course of discovery in this matter and in the time permitted by law.

24. Minto's claims for harm or damages are barred by Federal District Court's Final Judgment in *Minto Explorations Ltd. v. Pacific and Arctic Railway and Navigation Company*, Case No. 3:11-cv-00031-JWS.

## **PRAYER FOR RELIEF**

25. PARN denies that Minto is entitled to any relief under the Shipping Act of 1984 or under any other provision of state or federal law.

## **PLACE OF HEARING**

26. PARN requests that any hearing in this matter be held in Anchorage, Alaska.

DATED: January 18, 2012

Respectfully submitted,



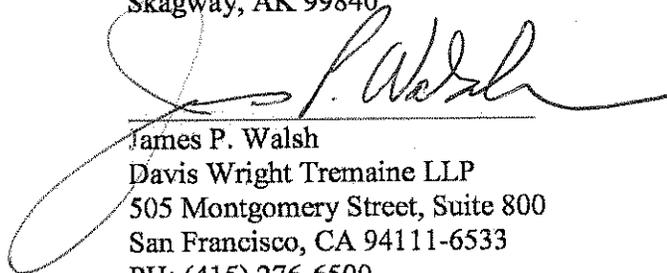
Eugene N. Hretzay

President

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Counsel for Respondent

## VERIFICATION

Eugene N. Hretzay declares under penalty of perjury pursuant to 45 C.F.R. § 502.6(e) that (1) he is the President of Pacific and Arctic Railway and Navigation Company; (2) he has read and signed this Answer for this proceeding on behalf of the Company; and (3) the facts stated in the Answer, upon his own knowledge and information received from others, he believes to be true and correct.

  
Eugene N. Hretzay

1 **Certificate of Service**

2 I, I.L. Girshman, declare under penalty of perjury under the laws of the State of California  
3 that the following is true and correct:

4 I am employed in the City and County of San Francisco, State of California, in the office of  
5 a member of the bar of this court, at whose direction the service was made. I am over the age of  
6 eighteen (18) years, and not a party to or interested in the within-entitled action. I am an employee  
7 of DAVIS WRIGHT TREMAINE, LLP, and my business address is 505 Montgomery Street, Suite  
8 800, San Francisco, California 94111-6533.

9 I caused to be served the following document:

10 **ANSWER**

11 I caused the above document to be served on each of the persons on the attached list by the  
12 following means:

13  I enclosed a true and correct copy of said document in an envelope and placed it for collection  
14 and mailing with the United States Post Office on January 18, 2012, following the ordinary  
15 business practice.

16 *(Indicated on the attached address list by an [M] next to the address.)*

17 I enclosed a true and correct copy of said document in an envelope, and placed it for collection  
18 and mailing via Federal Express on, for guaranteed delivery on, following the ordinary  
19 business practice.

20 *(Indicated on the attached address list by an [FD] next to the address.)*

21 I consigned a true and correct copy of said document for facsimile transmission on January 18,  
22 2012

23 *(Indicated on the attached address list by an [F] next to the address.)*

24  A true and correct copy of the paper original of said document was emailed as an electronic  
25 copy in .pdf format on January 18, 2012.

26 *(Indicated on the attached address list by an [EM] next to the address.)*

27 I am readily familiar with my firm's practice for collection and processing of  
28 correspondence for delivery in the manner indicated above, to wit, that correspondence will be  
deposited for collection in the above-described manner this same day in the ordinary course of  
business.

Executed on January 18, 2012, at San Francisco, California

  
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I.L. Girshman

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**Service List**

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**Counsel for Complainant**

[] Presiding Judge  
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(Courtesy Copy via email only)