

09-373561

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**MARCIA LUZMILA RAMÍREZ PIEDRA  
JAIME POLIVIO PÉREZ LUCERO, and  
ISRAEL PÉREZ LUCERO**

Plaintiffs

and



**COPPER MESA MINING CORPORATION  
TSX INC., TSX GROUP INC.  
WILLIAM STEARNS VAUGHAN, and  
JOHN GAMMON**

Defendants

**STATEMENT OF CLAIM**

**TO THE DEFENDANTS**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiffs.  
The claim made against you is set out in the following pages.

**IF YOU WISH TO DEFEND THIS PROCEEDING**, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFFS' CLAIM, and \$10,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400 for costs and have the costs assessed by the court.**

Date: March 3, 2009

Issued by:

Local Registrar

 A. Anissimova  
Registrar

Address of 393 University Avenue, 10<sup>th</sup> floor  
Court office: Toronto ON M5G 1E6

**TO: COPPER MESA MINING CORPORATION**  
2900 – 550 Burrard Street  
Vancouver BC V6C 0A3  
Canada

**AND TO: TSX INC.**  
P.O. Box 450  
3rd Floor, 130 King Street W.  
Toronto, ON  
M5X 1J2

**AND TO: TSX GROUP INC.**  
P.O. Box 450  
3rd Floor, 130 King Street W.  
Toronto, ON  
M5X 1J2

**AND TO: WILLIAM STEARNS VAUGHAN**  
30 Wellington Street East, Suite 1602,  
Toronto ON M5E 1S3  
Canada

**AND TO: JOHN GAMMON**  
55 Harbour Square, Suite 2818  
Toronto ON V5J 2L1  
Canada

## CLAIM

### ***I. Relief Claimed***

1. The Plaintiff Marcia Luzmila Ramírez Piedra, claims from the Defendants TSX Inc. and TSX Group Inc. for:
  - (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$500,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) Her costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
2. The Plaintiff Jaime Polivio Pérez Lucero claims from the Defendants TSX Inc. and TSX Group Inc. for:
  - (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$500,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) His costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
3. The Plaintiff Israel Pérez Lucero claims from the Defendants TSX Inc. and TSX Group Inc.:

- (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$500,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) His costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
4. The Plaintiff Marcia Luzmila Ramírez Piedra claims from the Defendant William Stearns Vaughan for:
- (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$10,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) Her costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
5. The Plaintiff Jaime Polivio Pérez Lucero claims from the Defendants William Stearns Vaughan and John Gammon for:
- (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$10,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;

- (d) His costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
6. The Plaintiff Israel Pérez Lucero claims from the Defendant William Stearns Vaughan for:
- (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$10,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) His costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
7. The Plaintiff Marcia Luzmila Ramírez Piedra claims from the Defendant Copper Mesa Mining Corporation (previously known as Ascendant Copper Corporation) for:
- (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$20,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) Her costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.

8. The Plaintiff Jaime Polivio Pérez Lucero claims from the Defendant Copper Mesa Mining Corporation (previously known as Ascendant Copper Corporation) for:
  - (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$20,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) His costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.
9. The Plaintiff Israel Pérez Lucero claims from the Defendant Copper Mesa Mining Corporation (previously known as Ascendant Copper Corporation) for:
  - (a) General, aggravated, and special damages in the amount of \$100,000.00;
  - (b) Punitive and exemplary damages in the amount of \$20,000,000.00;
  - (c) Pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*;
  - (d) His costs of this application on a substantial indemnity basis, together with post-judgment interest thereon pursuant to s. 129 of the *Courts of Justice Act*; and
  - (e) Such further and other relief as this Honourable Court may deem just.

## ***II. Summary of Claim***

10. The Defendants TSX Inc. and TSX Group Inc., by listing Copper Mesa Mining Corporation (formerly known as Ascendant Copper Corporation) on the Toronto Stock Exchange and thereby providing access to substantial amounts of capital to Copper Mesa

Mining Corporation, caused or materially contributed to the assaults that were committed and death threats that were issued against the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez by employees, agents or affiliates of Copper Mesa or its subsidiaries. TSX Inc. and TSX Group Inc. are liable in negligence and otherwise for the harms caused to the Plaintiffs that were materially contributed to or caused by their acts and omissions.

11. The Defendants Vaughan and Gammon are directors of Copper Mesa Mining Corporation. Through their acts and omissions, the Defendants caused or materially contributed to assaults that were committed and death threats that were issued against the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez by employees, agents or affiliates of Copper Mesa or its subsidiaries. These death threats and assaults were committed because of the Plaintiffs' opposition to the mineral exploration activities of Copper Mesa. The Defendants Vaughan and Gammon are liable in negligence and otherwise for the harms caused to the Plaintiffs that were materially contributed to or caused by their acts and omissions.
12. Copper Mesa is vicariously liable in law for legal claims made against its agents for harms created by them in the course of their duties. As members of Copper Mesa's board of directors, Vaughan and Gammon are agents of the Copper Mesa. Copper Mesa is therefore vicariously responsible for the damage materially contributed to or caused by Vaughan and Gammon's acts and omissions.

### ***III. The Parties***

#### **A. The Plaintiffs**

13. The Plaintiff Marcia Luzmila Ramírez Piedra ("Marcia Ramírez") is President of two community groups, "Asociación EcoJunín" and "Defensoras de la vida" and is a resident of the village of Chalguyacu Alto, located adjacent to Junín, in Cotacachi County, Imbabura Province, Ecuador, an area in which Copper Mesa Mining Corporation has attempted to carry out mineral exploration activities potentially leading to the excavation

of an extremely large-scale open-pit copper mine. Marcia Ramírez is opposed to the proposed Junín mining project.

14. The Plaintiff Jaime Polivio Pérez Lucero (“Polivio Pérez”) is President of the Community Development Council in Junín, and is a resident of the village of Chalguyaco Bajo, located adjacent to Junín, in Cotacachi County, Imbabura Province, Ecuador, an area in which Copper Mesa Mining Corporation has attempted to carry out mineral exploration activities potentially leading to the excavation of an extremely large-scale open-pit copper mine. Polivio Pérez is opposed to the proposed Junín mining project.
15. The Plaintiff Israel Pérez Lucero (“Israel Pérez”) is a resident of the village of Chalguyaco Alto, located adjacent to Junín, in Cotacachi County, Imbabura Province, Ecuador, an area in which Copper Mesa Mining Corporation has attempted to carry out mineral exploration activities potentially leading to the excavation of an extremely large-scale open-pit copper mine. Israel Pérez is opposed to the proposed Junín mining project.

#### **B. The Defendants**

16. The Defendant TSX Inc. (formerly known as the “Toronto Stock Exchange Inc.” prior to a change of name on July 10, 2002, and the “Toronto Stock Exchange” prior to demutualization on April 3, 2000) is a company incorporated under the laws of Ontario, and is a wholly-owned subsidiary of TSX Group Inc. TSX Inc., through its board of directors, has authority to govern and regulate the Toronto Stock Exchange (“the Toronto Stock Exchange” or “the Exchange”) which it does by, among other things, considering and approving applications to list on the Exchange, as well as by maintaining a company’s securities once listed.
17. The Defendant TSX Group Inc. is incorporated under the laws of Ontario and is the holding company of TSX Inc. It “owns and operates” the TSX Venture Exchange and the Exchange, as widely advertised by TSX Group Inc. At all material times, the directors of the TSX Group Inc. and TSX Inc. were the same individuals.



18. The Defendant Copper Mesa Mining Corporation, formerly known as “Ascendant Copper Corporation” prior to a name change on July 11, 2008, is a Canadian junior mining company incorporated under the laws of British Columbia (hereinafter referred to as “Copper Mesa” or “Ascendant”).
19. The Defendant William Stearns Vaughan (“Vaughan”) resides in Toronto, Ontario, and is a member of the board of directors of Copper Mesa. Vaughan has been a member of the board of directors since June 2, 2006.
20. The Defendant John Gammon (“Gammon”) resides in Toronto, Ontario, and is a member of the board of directors of Copper Mesa. Gammon has been a member of the board of directors since February 27, 2007.

***IV. Material facts for the claims against Defendants TSX Inc., TSX Group Inc., Vaughan, Gammon and Copper Mesa***

**A. The proposed open-pit mining project in Junín, Ecuador**

21. The community of Junín is located in the cloud forest of the remote mountains of northern Ecuador in one of the most ecologically diverse regions on earth, in an area sometimes referred to as Intag. Junín has been the epicentre of a serious land-use conflict since 1993 that pits a series of mining companies who have sought to exploit the large copper reserve thought to be located underneath Junín against the members of the local community who seek to prevent the environmental degradation, negative social impacts and loss of livelihood they fear would come with mining activities. Widespread and sustained local opposition to mining forced the first owners of the mining concession, a Japanese company called Bishimetals, to abandon the project in 1997.
22. Ascendant was incorporated under the laws of British Columbia on May 5, 2004 with the intention of raising substantial amounts of operating capital by listing on the Toronto Stock Exchange through an initial public offering (the “IPO”).

23. On or around July 1, 2004, Ascendant Holdings Ltd. ("Ascendant Holdings"), a junior exploration company incorporated in Bermuda, purchased three mining concessions located near Junín through one of its subsidiaries. There were at the time, and have continued to be, disputes about the legal validity of the concessions and of their purchase.
24. On or around November 30, 2004, Ascendant Holdings Ltd. spun off two of its copper projects by transferring 100% of the issued and outstanding shares of its subsidiary Ascendant Copper (Barbados) Corporation ("Ascendant Barbados") to Ascendant. Ascendant (Barbados), in turn, owned the above Junín concessions and others, through its subsidiary Ascendant Copper Ascendcopper S.A. (Ecuador), ("Ascendant (Ecuador)"). Both the subsidiary and the Junín concessions, amongst other entities and property, were transferred along with the shares of Ascendant (Barbados).
25. It was intended that Ascendant would then begin exploration activities in what would be the first step towards the opening of a large-scale open-pit copper mining project in Junín (the "Junín Project").

**B. Ascendant's corporate relationships**

26. Throughout the relevant time period, Ascendant wholly owned and operated at least nine subsidiaries incorporated in the jurisdictions of Barbados, Ecuador, British Columbia and Colorado. These corporations include Ascendant (Ecuador) and Ascendant (Barbados). Ascendant had total control over all nine subsidiaries in law and in fact. At all relevant times, Gerald Davis, a director as well as the Chief Executive Officer ("CEO") and President of Ascendant, was also the CEO of all nine subsidiaries. The board of directors of Ascendant was responsible for the formulation of corporate policy and practices, and maintained de facto control over the technical, operational, managerial and financial activities of all nine subsidiaries at all times. Hereinafter, the term "the Ascendant/Copper Mesa Group" will refer to Copper Mesa Mining Corporation (formerly known as Ascendant Copper Corporation) itself or any of its wholly-owned subsidiaries.

27. Between January 1, 2005 and May 1, 2005, Ascendant entered into a contractual agreement with Ascendant Exploration S.A. Ascendex ("Ascendex"), a subsidiary of Ascendant Holdings Ltd. Under this agreement, Ascendex was to perform exploratory and related project work on the Junín concessions. From January 1, 2005 to May 1, 2005, Ascendex was an agent of Ascendant.

**C. The Ascendant/Copper Mesa Group and conflict with the local community at and around Junín**

28. According to Ascendant, the Junín Copper Reserve is the second largest, if not the largest, unexploited copper/molybdenum deposit in the world, and could be worth in excess of US\$32 billion over the life of the proposed mine.
29. Local community opposition to the Junín Project was and is a major barrier to any exploration and mining activities in the region. Prior to and after the IPO described above, employees, agents and affiliates of the Ascendant/Copper Mesa Group engaged in a campaign of intimidation, harassment, threats and violence aimed at silencing the widespread and sustained local opposition to mining in order to ready the way for exploration and eventual open-pit mining.
30. In or around July 2004, the Ascendant/Copper Mesa Group caused a non-profit organization called Corporation for the Development of Garcia Moreno ("CODEGAM") to be incorporated in Ecuador for the purposes of operating in the area around Junín to delegitimize and suppress widespread community opposition to the Junín Project and to create the appearance of support for the proposed open-pit copper mine. Tactics employed by individuals associated with CODEGAM included, for example, physically assaulting individuals who attended public meetings opposed to mining in November 2004, April 2005 and October 2005; issuing death threats against leaders of the community opposition to the Junín Project; active attempts to destabilize and alter local governance structures by illegitimately seeking the creation of new municipal boundaries; initiating false criminal prosecutions against prominent opponents of the Junín Project; and advocating for the expulsion from the region of leaders opposed to mining. From its

inception in 2004 until abandoned by the Ascendant/Copper Mesa Group in February of 2006, the Ascendant/Copper Mesa Group was CODEGAM's sole source of funding.

31. Tactics similar to those employed by CODEGAM were also used by employees, agents or affiliates of the Ascendant/Copper Mesa Group.
32. On or around December 15, 2004, Auki Tituaña Males ("Mayor Tituaña"), the Mayor of the municipal government of Cotacachi County (the county in which Junín is located) wrote to Chris Werner and John Grist, members of the board of directors of Ascendant (Ecuador) and Ascendant Holdings, with concerns regarding serious violence instigated by those companies against community members opposed to the Junín Project. Mayor Tituaña specifically mentioned a number of reports he had received from Junín community members citing death threats made against local leaders opposed to the Junín Project.
33. In or around 2005, Ascendant President and CEO Gerald Davis stated that the company was aware that funding provided by Ascendant to CODEGAM may have resulted in "threats and abuses".

**D. Specific information provided to TSX Inc. alerting it to the high risk of future violence in Junín**

34. Members of the community of Junín and the surrounding area were aware that the successful listing of Ascendant on the Toronto Stock Exchange would result in a significant influx of capital to the Corporation, some of which would be spent on undermining opposition to mining through the use of intimidation and violence. Accordingly, individuals from the area around Junín and elsewhere informed Canadian securities regulators and the Toronto Stock Exchange that if the IPO was approved, violence was likely to result and members of the community could be seriously harmed. Examples of these warnings include:
  - a) On or around March 8, 2005, Mayor Tituaña of the local county wrote a letter addressed to the Finance and Audit Committee of the Toronto Stock Exchange

requesting that Ascendant not be authorized to list its shares on the Toronto Stock Exchange. Males' letter warned that the Ascendant/Copper Mesa Group had caused serious internal conflicts and confrontations within Junín and had adopted a divisive strategy provoking confrontations within the community which could lead to the loss of human lives. Males noted that a respected Ecuadorian human rights organization, *Comision Ecumenica de Derechos Humanos* ("CEDHU") had documented and denounced human rights violations instigated by the Ascendant/Copper Mesa Group in Junín.

- b) On or around October 12, 2005, the then-Executive Director of the Canadian Environmental Law Association, Paul Muldoon ("Muldoon"), copied the Toronto Stock Exchange Listed Issuer Services Director, Tom Graham, on a letter that brought attention to the increasing conflict in Ecuador in relation to Ascendant's Junín Project. Muldoon's letter noted the history of community opposition to mining developments in Junín and questioned how Ascendant planned to address this opposition.
35. The Toronto Stock Exchange requires that all listing applications be accompanied by supporting documentation, which must include a prospectus. This prospectus serves the purpose of disclosing detailed information that is relevant to valuing the securities, and is submitted to the Exchange's Listings Committee for consideration and approval prior to listing.
36. On or around October 14, 2005, Ascendant submitted a final prospectus ("the Prospectus") to the Toronto Stock Exchange as required by the TSX Company Manual. The Prospectus outlines in detail the history of the conflict between the Ascendant/Copper Mesa Group and the local community, and takes note of the potential for future violence. In particular, the Prospectus states that:
- a) "[t]ensions surrounding potential exploration and mining work on the Junin property have risen, creating the potential of further escalating violence unless

steps are taken to diffuse the situation,” and goes on to report a specific incident in which members of an “anti-mining group” felt “threatened”;

- b) Ascendant funded CODEGAM, and that CODEGAM was “undertaking activities that might be considered divisive and controversial”;
  - c) there have been various allegations of human rights abuses and physical threats committed by Ascendant and CODEGAM against anti-mining groups and individuals, including allegations contained in a complaint to the Canadian National Contact Point of the OECD Guidelines on Corporate Social Responsibility as well as a letter sent to Ascendant by an American law firm;
  - d) road access required to complete any work on the Junín Project has been blocked by opponents to the mine; and
  - e) Ascendant believes that it has the right to use “armed forces and police presence” if it is obstructed from carrying out its activities.
37. Despite such notification from the community and from Ascendant itself that listing Ascendant created a serious risk of increased violence and conflict within the community, on or around November 21, 2005, TSX Inc. listed Ascendant Copper Corporation on the Toronto Stock Exchange, thereby enabling Ascendant to commence trading of its common share under the symbol “ACX”. Ascendant’s initial public offering grossed just under US\$10 million. At the time, these funds represented virtually all of the Ascendant/Copper Mesa Group’s operating capital.

**E. At all material times, the Ascendant/Copper Mesa Group was dependant on funding provided through the Toronto Stock Exchange**

38. Junior mining exploration companies are by and large dependant on the stock market for all of the capital required to fund their operations; the high degree of financial risks associated with mineral exploration tend to make junior mining companies ineligible or unable to raise funds through other sources.

39. The Toronto Stock Exchange actively promotes itself as providing “the best access in the world for capital” for junior mining exploration companies. Almost 60% of the world’s mining companies are listed on either the TSX or the TSX Venture exchanges, both of which are owned by TSX Inc. In 2007, mining companies raised approximately CAN\$19.07 billion in equity capital financing on these two exchanges, a figure that represents approximately 35% of the total world equity capital for mining. In 2007, over 79 billion mining shares, valued at CAN\$482 billion, traded on the TSX and the TSX Venture exchanges.
40. Further, the Toronto Stock Exchange specifically markets and promotes itself to companies who are operating, or are contemplating operating, in areas characterized by geographical remoteness, weakness of governmental institutions, and vulnerability to conflict and violence. For example, the Toronto Stock Exchange specifically emphasizes its specialized ability to provide access to financing for companies with projects located in the Democratic Republic of Congo.
41. Ascendant, as a junior mining exploration company, was at all times essentially dependant on the Toronto Stock Exchange for access to capital; without such funds, any significant operation by the Ascendant/Copper Mesa Group would have been impossible. Of the approximately US\$26.7 million raised by Ascendant up to July 2007, over 85% was raised on the Toronto Stock Exchange; the remainder was characterized as “seed financing” and was used to fund costs associated with listing.

**F. Increase in conflict in Junín**

42. In or around December 2005 there was an increase in conflict between the Ascendant/Copper Mesa Group and Junín community members opposed to the proposed Junín Project. At a community meeting, over three hundred local residents voted to burn down a mining camp building after ensuring that it was empty of people as a reaction to the aggressive tactics employed by the Ascendant/Copper Mesa Group. This conflict was reported in, among other sources, *The Globe and Mail* and *The Ottawa Citizen* on December 14, 2005.

43. After December 2005, about one month after listing on the Toronto Stock Exchange, the Ascendant/Copper Mesa Group contracted one or more private security forces (the “Ascendant/Copper Mesa Group Security Forces” or “Security Forces”) with capital it had acquired through financing on the Toronto Stock Exchange. Many members of the Ascendant/Copper Mesa Group Security Forces were off-duty members or ex-members of the Ecuadorian military.
44. In or around June 2006, the Security Forces increased their presence and activity in Junín. The Security Forces and other employees, agents or affiliates of the Ascendant/Copper Mesa Group increasingly employed tactics of intimidation that included uttering threats of physical violence to community members opposed to the proposed Junín Project.
45. On or around November 1, 2006, armed members of the Security Forces were involved in a violent confrontation with anti-mine protesters in the village of Barcelona, located near Junín. The Ascendant/Copper Mesa Group Security Forces used tear gas, guard dogs and machetes to disrupt the protest and disperse the crowd, which included children.
46. Throughout 2006, Ascendant reported a large increase in Ascendant’s “exploration costs” despite the fact that no physical exploration of the Junín property had actually taken place. Ascendant’s documents indicate that the increases in “exploration costs” included providing funds for “security”.

**F. Private Placement on the Toronto Stock Exchange**

47. Despite various occurrences of violence or threats of violence, and despite warnings about the risk of future violence, the Toronto Stock Exchange continued to facilitate the funding of the Ascendant/Copper Mesa Group by approving a brokered private placement of shares on November 15, 2006. Ascendant grossed over US\$4.5 million from this private placement.
48. Ascendant’s press releases dated October 31, 2006 and November 15, 2006 state that part of the proceeds from the November 15, 2006 private placement would be used to advance



a so-called “agricultural program on the Company’s extensive land holdings in the Junin area.” The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the alleged “agricultural program” refers to the Ascendant/Copper Mesa Group Security Forces. Many of these alleged “agricultural” workers have publicly admitted that they were off-duty members or ex-members of the Ecuadorian military.

**G. Physical assaults and death threats against the Plaintiffs Marcia Ramírez, Polivio Pérez, Israel Pérez and others that occurred on or around December 2, 2006**

49. On or around December 2, 2006, a large group of armed members of the Ascendant/Copper Mesa Group Security Forces violently confronted Junín community members on a remote forest roadway leading into Junín.
50. The Security Forces, wearing uniforms and bullet-proof vests and armed with restricted weapons including shotguns, handguns and anti-personnel pepper-spray, advanced upon a small group of unarmed community members, many of whom were women, who had gathered on the small gravel forest road leading into the community to block what they thought to be illegal and dangerous intruders. The Security Forces approached to within a metre or two of the group of community members.
51. After members of the community on the roadway pleaded with the Security Forces to withdraw or to call police, one member of the Security Forces suddenly and without any provocation drew a canister of anti-personnel pepper-spray and discharged it point blank into the face and eyes of the Plaintiff Marcia Ramírez and other community members. Various members of the Security Forces then drew their guns and began shooting wildly. The Plaintiff Israel Pérez was wounded by the shooting. These events are collectively referred to as the “December 2<sup>nd</sup> Assault”.
52. As part of the Security Forces’ activities of December 2, the company obtained access to a helicopter from the Ecuadorian armed forces which flew in the area during the assault.
53. This assault was denounced publicly by the Ecuadorian human rights organization CEDHU on December 4, 2006.

54. Around and after the December 2<sup>nd</sup> Assault, the Plaintiff Polivio Pérez received various threats against his life . These threats were issued by the Ascendant/Copper Mesa Group's employees, security forces, agents or affiliates in an attempt to intimidate him into abandoning his opposition to the proposed Junín mining project and his leadership role in that struggle.

**H. Defendants Vaughan and Gammon were specifically alerted to the risk of future violence or threats of violence**

55. On or around April 27, 2007, Carlos Zorrilla, an environmentalist and community member from the Junín area, and others met with the Defendants Vaughan and Gammon in Toronto, Ontario to ensure that they — as directors of Ascendant Copper Corporation — were aware of the violence, death threats and physical assaults committed by the security forces, employees, affiliates or agents of the Ascendant/Copper Mesa Group.
56. During this meeting, Carlos Zorrilla specifically alerted the Defendants Vaughan and Gammon to the ongoing conflict and described for them the violent tactics employed by the Ascendant/Copper Mesa Group Security Forces against community members opposed to the Junín Project. Carlos Zorrilla showed Vaughan and Gammon photographs of the December 2<sup>nd</sup> Assault that depicted Security Forces pepper-spraying and drawing and shooting guns. Some of the photographs shown to Vaughan and Gammon are attached as Schedule A.
57. Carlos Zorrilla expressly told Defendants Vaughan and Gammon of the likelihood of future violence against community members opposed to the Junín Project as a result of the Ascendant/Copper Mesa Group's actions, and asked Vaughan and Gammon for their commitment that there would be no more violence committed by the Ascendant/Copper Mesa Group.
58. The Defendants Vaughan and Gammon promised not to be part of “illegal, immoral, unethical and unprincipled” activities and promised to ask for an explanation from Ascendant as to why the company was employing ex-members of the Ecuadorian military in Junín.

**I. Physical assault and death threats against Polivio Pérez that occurred on and around June 23, 2007 and July 31, 2007**

59. On, before and around June 23, 2007, the Plaintiff Polivio Pérez received various threats against his life. These threats were issued by employees, agents or affiliates of the Ascendant/Copper Mesa Group and were an attempt to intimidate Polivio Pérez into abandoning his opposition to the proposed Junín mining project as well as his leadership role in that struggle. These events are collectively referred to as the “June 23<sup>rd</sup> Death Threats”.
60. On or around July 31, 2007 in the centre of the town of García Moreno, near Junín, a mob led by employees, agents or affiliates of the Ascendant/Copper Mesa Group assaulted the Plaintiff Polivio Pérez with sticks and rocks before the police intervened. This event is referred to as the “July 31<sup>st</sup> Assault”.
61. As a result of these incidents, Polivio Pérez was put under police protection.
62. The death threats issued against Plaintiff Polivio Pérez were the subject of an Urgent Alert issued by Amnesty International on July 25, 2007, and were specifically mentioned by Amnesty International in its global survey of human rights entitled “Amnesty International Report 2008: The State of the World’s Human Rights”.

***V. Prior Public knowledge regarding the risk of violence by junior mining companies***

63. The acts and omissions of the Defendants Vaughan, Gammon, TSX Inc. and TSX Group occurred in the context of numerous well known and widely reported instances around the world of publicly-listed Canadian mining companies, particularly junior mining companies, using violence and threats of violence against local opposition to mining through the use of security forces as detailed in examples below. The Plaintiffs assert that the Defendants Vaughan and Gammon were aware or ought to have been aware of all or many of these instances, and ought to have taken them into consideration in the carrying out of their duties as directors. The Plaintiffs assert that the Defendants TSX Inc.

and TSX Group were aware or ought to have been aware of all or many of these instances, and ought to have taken them into consideration prior to listing Ascendant.

**A. Parliamentary Standing Committee on Foreign Affairs and International Trade**

64. On April 19, 2005, Professor Bonnie Campbell of the Faculty of Political Science and Law at l'Université du Québec à Montréal presented a Memorandum to the Standing Senate Committee on Foreign Affairs. Professor Campbell discussed the tendency of Canadian junior mining companies to operate in areas vulnerable to conflict. Professor Campbell further noted that these companies often use private security companies or co-opt armed groups to advance their purposes, with resulting human rights abuses. Professor Campbell called attention to the fact that Canadian junior mining companies comprise the majority of mining companies listed on the Toronto Stock Exchange.
65. In June of 2005, the Parliamentary Standing Committee on Foreign Affairs and International Trade ("SCFAIT") presented a report to the Government of Canada in which it outlined concerns regarding the systemic involvement of Canadian mining companies in human rights violations in developing countries. SCFAIT called for major law reforms to ensure that Canadian companies were accountable for human rights violations they commit. The report was presented after the Parliamentary Subcommittee on Human Rights and International Development had held a hearing on the alleged human rights violations instigated by TVI Pacific Inc. ("TVI"), a Calgary-based junior mining company listed on the Toronto Stock Exchange and operating in the Philippines. The Subcommittee also heard evidence about other Canadian resource companies operating in Colombia, Sudan and the Democratic Republic of Congo. SCFAIT noted its concerns about TVI's possible impact on human rights through its alleged use of "military-trained-and-controlled forces" that "allegedly led to a militarization of the region and related human rights abuses." The report recommended that the Government of Canada further investigate the activities of TVI.
66. In June of 2006, the Canadian government launched the National Roundtables on Corporate Social Responsibility and the Extractive Industry to seek input from civil

society, industry and government about potential solutions to the problems identified in the SCFAIT report. Public sessions were held in Vancouver, Calgary, Toronto and Montreal.

**B. The link between Canadian mining companies and human rights abuse reported by the press and non-governmental organizations**

67. Prior to the listing of Ascendant on November 21, 2005, there were numerous articles in the Canadian press as well as reports produced by non-governmental organizations that discussed human rights abuses committed by private security forces hired by publicly-listed Canadian mining companies against local opposition to mining in developing countries. Many of these reports drew particular attention to the link between junior mining corporations and human rights abuses. These articles and reports include the following examples.
68. An article in *La Presse*, published on June 17, 2005, detailed the controversy surrounding the Canadian mining company, Anvil Mining Ltd. ("Anvil"), listed on the Toronto Stock Exchange, and its alleged role in the massacre of approximately 100 Congolese civilians. It was alleged that Anvil loaned a plane and vehicles to the Congolese military in order to suppress a small local rebellion. The article pointed out that a United Nations investigation reported over 100 casualties, and that at least 28 of these could have been the result of summary executions. The article also noted that numerous Canadian and international non-governmental organizations were calling for the Canadian Government, the Ontario Securities Commission and the Toronto Stock Exchange to further investigate.
69. In July 2005, Global Witness, a well-established United Kingdom-based non-governmental organization dedicated to monitoring the links between resource extraction and human rights abuses, released a report entitled "Paying for Protection: The Freeport Mine and the Indonesian Security Forces." The report discussed the well-publicized controversy surrounding the relationship between the Indonesian military and police forces and the mining company Freeport-McMoRan ("Freeport"), an American mining

company listed on the New York Stock Exchange. The report highlighted alleged payments made by Freeport's Indonesian subsidiary to individual members of the Indonesian military and police suspected of involvement in confrontations, ambushes and deaths of community members in 2002. It urged American and Indonesian authorities to further investigate. Although this report discussed an American company, it called attention to the larger problem of investment in the resource extraction industry in areas at risk of conflict.

70. On October 1, 2005, *The Ottawa Citizen* published an article that specifically discussed the allegations of human rights abuses instigated by Canadian mining companies and junior mining companies in particular. The article listed countries where allegations of human rights abuses have been linked to Canadian mining projects, and included Ecuador on that list. The article discussed allegations of human rights abuses instigated by TVI, which included death threats and shootings instigated by company-hired security forces against local opponents to the mine. Moreover, the article specifically quoted a local community member and local environmentalist, Carlos Zorrilla, who indicated he had been "targeted by death threats over a Canadian mining project in his native Ecuador."
71. On October 3, 2005, *The Ottawa Citizen* published an article that highlighted the role Canadian mining companies play in environmental and human rights violations. The article discussed the allegations involving TVI and noted that company security forces "are often at the centre of controversy over human rights abuses."
72. On June 4, 2006, *The Ottawa Citizen* published an article on a Canadian mine in Papua New Guinea owned by Barrick Gold Corporation. The article specifically discussed allegations that security forces hired by the mine have "killed 14 people and injured hundreds of others over the past 10 years."
73. In 2006, the Halifax Initiative—a coalition of non-governmental organizations, faith groups and unions—published a Canadian Mining Map highlighting 23 case studies of Canadian mining projects located all over the world associated with severe adverse social, environmental and human rights impacts.

**VI. Legal claims against the Defendants TSX Inc., TSX Group, Vaughan, Gammon and Copper Mesa**

- A. The Defendant TSX Inc. is liable for the death threats and physical assaults committed against Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez that occurred on or around December 2, 2006, June 24, 2007 and July 31, 2007**

Legal duty

74. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that TSX Inc. is under a legal duty to “take reasonable care to avoid conduct that entails an unreasonable risk of harm to others” (*Odhavji Estate v. Woodhouse* [2003] 2 S.C.R. 263 at para. 45). In particular, TSX Inc. is under a legal duty not to list a corporation when there is a reasonably foreseeable and serious risk that funds raised on the Exchange will be used in such a way as to harm individuals such as the Plaintiffs. In the alternative, TSX Inc. is under a legal duty not to list a corporation on the Exchange without instituting precautionary measures to prevent a serious risk that funds raised through the Exchange will be used to harm individuals such as the Plaintiffs.

Knowledge

75. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that TSX Inc. knew or ought to have known of the serious risk of harm to members of the Junín community posed by listing Ascendant on the Toronto Stock Exchange. In particular:
- a) Ascendant submitted its Prospectus to the Toronto Stock Exchange as required by the TSX Company Manual prior to approval for listing. In this document, TSX Inc. was informed of considerable past problems with community relations, of allegations of past threats and human rights abuse committed by the Ascendant/Copper Mesa Group and its affiliates, and specifically of “the potential of further escalating violence”.
  - b) TSX Inc. was specifically informed of past allegations of violence committed by the Ascendant/Copper Mesa Group and its employees, agents or affiliates prior to

the listing date through letters sent by Mayor Males and Muldoon, among others. In these letters, TSX Inc. was warned about the serious risk of future violence if the listing was allowed.

- c) Given its position as the global leader in the financing of junior mining companies, the Defendant TSX Inc. knew or ought to have known prior to the date of listing of the well-publicized and documented reports and press coverage discussing Canadian mining companies—particularly junior companies— that have committed human rights abuse through the use of private security forces in developing countries, including specific media reports on the conflict in Junín.
  - d) Given its position as the global leader in the financing of junior mining companies, and its public efforts to market its services to companies that operate in areas characterized by remoteness, weakness of governmental institutions, and that are vulnerable to conflict and violence, the Defendant TSX Inc. knew or ought to have known that listing Ascendant would affect individuals such as the plaintiffs in the communities where the Ascendant/Copper Mesa Group operates.
  - e) Given its position as the global leader in the financing of junior mining companies, the Defendant TSX Inc. knew or ought to have known that Ascendant, as a junior mining company, was dependant on the Exchange for the financing of its operations, and that there was a high risk that funds raised on the Exchange would be used to hire security forces and would contribute to patterns of threats and violence against opponents to the Junín project.
76. The Defendant TSX Inc. accordingly knew or ought to have known that there was a serious risk that financing made available to Ascendant through listing on the Toronto Stock Exchange (in particular through an IPO and later through private placements) would at least in part be used by the Ascendant/Copper Mesa Group or its employees, agents or affiliates to perpetrate violence (including physical assaults and death threats) as did occur on or around December 2, 2006, June 24, 2007, and July 31, 2007.



### Breach of legal duty

77. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that despite the fact that the Defendant TSX Inc., through its board of directors, has the power to govern and regulate the Toronto Stock Exchange under section 13.0.8 of the *Toronto Stock Exchange Act*, TSX Inc. in fact took no steps to attempt to reduce the risks created by providing access to capital to junior mining companies of the sort that have a record of perpetrating violence against local populations. The powers of TSX Inc. include the ability to impose policies, rules and regulations, and to issue orders and directives aimed at modifying the behavior of companies that list on the Exchange; such powers could have been used to reduce the risk of adverse harms that occur as a consequence of listing junior mining companies such as Ascendant.
78. The Defendant TSX Inc. could have, for instance, required those in industries associated with a high incidence of human rights abuse and other social harm to sign on to and participate in corporate social responsibility governance frameworks such as the Voluntary Principles on Security and Human Rights as a precondition to listing. Similar measures are currently taken in the banking industry; all major Canadian banks require companies to which they provide project financing to comply with the Equator Principles (a set of standards used to determine, assess and manage the social and environmental risks associated with such financing) as a condition precedent to providing project finance.

### Causation

79. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that despite what TSX Inc. knew or ought to have known regarding the risk of harm to the Plaintiffs posed by listing Ascendant, the Defendant TSX Inc. facilitated and made possible access to over US\$25 million in equity financing to the Ascendant/Copper Mesa Group by listing Ascendant on the Toronto Stock Exchange.

80. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the capital raised on the Toronto Stock Exchange financed the Ascendant/Copper Mesa Group's operations in Ecuador. These operations included hiring Security Forces as well as creating and financing agents and affiliates such as CODEGAM in order to influence local politics, which they often did through violent means. Specifically, this financing allowed the Ascendant/Copper Mesa Group to hire and pay for the Security Forces that physically assaulted the Plaintiffs Marcia Ramírez and Israel Pérez on or around December 2, 2006; and was necessary to recruit and direct the employees, agents or affiliates of the Ascendant/Copper Mesa Group who issued death threats against the Plaintiffs Polivio Pérez, as well as those who physically assaulted him on or around July 31, 2007.
81. The Plaintiffs therefore assert that the financing provided by the Toronto Stock Exchange caused or materially contributed to the harm suffered by the Plaintiffs.

#### Harm

82. The Plaintiffs suffered significant physical and emotional harm as a result of TSX Inc.'s acts or omissions. The Plaintiffs Marcia Ramírez and Israel Pérez were pepper-sprayed and shot at; the Plaintiff Israel Pérez received a leg wound as a result of gun fire; and the Plaintiff Polivio Pérez was physically beaten and has been directly and repeatedly threatened with death because of his opposition to mining.
83. The systematic and intentional creation of an atmosphere of fear by employees, agents or affiliates of the Ascendant/Copper Mesa Group since its arrival in Junín in 2004 led to the assaults and threats of December 2, 2006, June 24, 2007 and July 31, 2007. In addition to the physical harm suffered by the Plaintiffs as a result of these assaults, all of the Plaintiffs suffered the emotional trauma of knowing that they are no longer safe in their own community.

## Jurisdiction

84. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the acts or omissions giving rise to liability on the part of the Defendants TSX Inc. and TSX Group Inc. took place in Ontario and that Ontario is the proper jurisdiction for the adjudication of this claim. In particular:

- a) The head and registered offices of the Defendants TSX Inc and TSX Group are in Ontario.
- b) The Defendants TSX Inc. and TSX Group are both incorporated under the laws of Ontario.
- c) The process of listing Ascendant on the Toronto Stock Exchange, including all decisions required as part of the listing process, occurred in Ontario.

**B. The Defendant TSX Group is liable for the death threats and physical assaults committed against the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez that occurred on or around December 2, 2006, June 24, 2007 and July 31, 2007**

85. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendant TSX Group Inc., as the sole shareholder of TSX Inc., is liable for the assaults and threats against the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez in that:

- a) TSX Group Inc. at all material times “owned and operated” the Exchange and its listing committees, as stated on its public website;
- b) TSX Group Inc. at all material times maintained effective control of TSX Inc. through its shareholder structure; and
- c) At all material times, the TSX Group Inc.’s directors were the same as TSX Inc.’s directors.

86. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that in the alternative, TSX Group Inc. is, in these circumstances, vicariously liable for the acts of its wholly-owned subsidiary, TSX Inc.
87. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the acts or omissions giving rise to liability on the part of the Defendants TSX Inc. and TSX Group Inc. took place in Ontario and that Ontario is the proper jurisdiction for the adjudication of this claim. In particular:
- a) The head and registered offices of the Defendants TSX Inc and TSX Group are in Ontario.
  - b) The Defendants TSX Inc. and TSX Group are both incorporated under the laws of Ontario.
  - c) The process of listing Ascendant on the Toronto Stock Exchange, including all decisions required as part of the listing process, occurred in Ontario.

**C. The Defendant Vaughan is personally liable for the physical assaults and death threats against the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez that occurred on or around December 2, 2006**

Legal duty

88. The Plaintiffs Marcia Ramírez, Polivio Pérez, and Israel Pérez assert that the Defendant Vaughan is under a common law legal duty to avoid acts or omissions that create a foreseeable and serious risk of harm to individuals such as the Plaintiffs. In particular, the Defendant Vaughan had a legal duty to avoid acts or omissions that caused or materially contributed to physical assaults or death threats against community members opposed to the Junín Project of the very sort that did, in fact, occur on December 2, 2006.
89. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the board of directors of Ascendant was and is responsible for the stewardship of Ascendant; this

includes ultimate responsibility for the management of the business and the conduct of Ascendant's affairs generally. Further, the board of directors was and is responsible for the formulation of corporate policy and practices, and maintained de facto control over the technical, operational, managerial and financial activities of all nine subsidiaries of Ascendant (i.e. the Ascendant/Copper Mesa Group) at all relevant times.

90. As a director, the Defendant Vaughan had wide powers, authority and responsibility, along with other directors, to establish and enforce corporate policy, appoint and supervise executive officers of the company, and investigate acts by the corporation, its employees, agents and affiliates as required.
91. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez further assert that there is a severe power imbalance between the members of the Junin community and the directors of Ascendant. While the directors have the resources, authority and ability to assess and mitigate the risk of violence perpetrated by the Ascendant/Copper Mesa Group, the members of the community affected by that same violence do not.
92. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez further assert that because Copper Mesa is incorporated in British Columbia, the Defendant Vaughan is subject to the legal duty contained in section 142 (b) of the *British Columbia Business Corporations Act* ("BCBCA"), which states that a director or officer of a company, when exercising the powers and performing the functions of a director or officer of the company, must exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances. In this case, the acts and omissions giving rise to a breach of the duty of care occurred in Ontario. The *Ontario Business Corporations Act* and the *Canada Business Corporations Act* contain essentially the same director's duty of care.
93. The Plaintiffs assert that the Defendant Vaughan breached his legal duty to exercise the care and diligence required of him as a director by failing to avoid acts or omissions that caused or materially contributed to physical assaults or threats against community members opposed to the Junín Project as required by the common law and the above statutory provisions.

## Knowledge

94. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendant Vaughan had, or ought to have had, knowledge of the serious risk that security forces, employees, agents or affiliates of the Ascendant/Copper Mesa Group would issue death threats or commit physical assaults against community members opposed to the Junín Project, of the very sort that occurred on or around December 2, 2006. The particulars of this knowledge include:

- a) In his role as director, the Defendant Vaughan had, or should have had, knowledge of the past violent confrontations that occurred before his appointment as director, and of the role employees, agents or affiliates of the Ascendant/Copper Mesa Group had had in perpetrating them. The Defendant Vaughan had access to significant information regarding the Junín conflict and the corresponding high risk of potential future violence perpetrated by the Ascendant/Copper Mesa Group. Past violent confrontations were repeatedly noted in Ascendant's public documents, including its Prospectus.
- b) Prior to and after the Defendant Vaughan's appointment to Ascendant's board of directors, the ongoing conflict in Junín and the allegations of human rights abuse perpetrated by the Ascendant/Copper Mesa Group or its affiliates were the major barrier to Ascendant's exploration activities on the Junín concessions and had been extensively discussed and considered by the executive, the board and other staff members.
- c) As a director of Ascendant, the Defendant Vaughan had actual knowledge of corporate policy and practices regarding Security Forces and local community relations.
- d) Ascendant is a small corporation with only four direct employees. One of these employees, Gerald Davis, is not only President and CEO of Ascendant but also CEO of all of Ascendant's subsidiaries (i.e. all companies that comprise the Ascendant/Copper Mesa Group). The Defendant Vaughan had the means to be and was in regular communication with these employees.

- e) The Defendant Vaughan, as a leading expert on mining and natural resources law who has been involved in natural resources transactions in more than 60 countries, is very well-acquainted with the mining industry and therefore knew, or ought to have known, of the numerous and widely published reports on Canadian mining companies — in particular junior mining companies — committing violence against local opposition to mining in developing countries through the use of private security forces, including the incidents reported in the Canadian press and elsewhere.

Breach of legal duty

95. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that despite the Defendant Vaughan's knowledge of the specific danger posed by Ascendant to members of the Junín community and his powers and authority as director, as well as the ultimate control over the corporation that was exercised by the directors, Vaughan:
- a) operated the company in a manner that created a high risk of violence against community members opposed to the proposed Junín Project;
  - b) approved corporate policies and practices intended to eliminate widespread opposition to the proposed Junín Project, including policies and practices relating to the Ascendant/Copper Mesa Group Security Forces;
  - c) approved funding to the Security Forces and other agents and affiliates of the Ascendant/Copper Mesa Group who had in the past and were likely in the future to assault and threaten members of the community opposed to the Junín Project;
  - d) failed to adequately supervise the executive of Ascendant;
  - e) failed to institute proper corporate policies and practices so as to prevent threats and assaults from being committed by the Ascendant/Copper Mesa Group's employees, Security Forces, agents or affiliates;
  - f) failed to join recognized corporate social responsibility governance frameworks aimed at the protection of human rights (such as the Voluntary Principles on

Security and Human Rights), and failed to ensure the implementation and fulfillment of the requirements of such governance frameworks; and

- g) failed to raise concerns about and investigate reported past incidents of violence committed by the Ascendant/Copper Mesa Group's agents, employees or affiliates.

96. At all material times, Ascendant purported to have adopted the "Voluntary Principles on Security and Human Rights" (the "Security Principles"), a set of principles and mechanisms that have been publically promulgated by a group of interested governments and corporations, and claimed to have included the Principles as part of the board of directors' Stewardship Responsibilities. In fact, Ascendant had never actually formally signed on to the Principles, and neither the Defendant Vaughan, as director, nor Ascendant took any steps to implement any of the requirements contained therein.

97. The Plaintiffs further assert that the Defendant Vaughan's continued failure to use his power and influence as a director to take any of the steps listed above constitutes a tacit approval of past actions taken by the Ascendant/Copper Mesa Group's employees, agents or affiliates in previous violent incidents. In the circumstances, Vaughan's approval through silence was tantamount to an authorization of future acts of violence.

98. Throughout its operating history, Ascendant repeatedly breached key requirements of the Security Principles. In particular, in the December 2, 2006, June 23, 2007 and July 31, 2007 threats and assaults, the Ascendant/Copper Mesa Group's Security Forces violated the Security Principles by:

- a) providing offensive, rather than only defensive or preventative security services;
- b) using force when not strictly necessary and not in proportion to a threat;
- c) unlawfully carrying and using restricted weapons;



- d) violating the rights of individuals who were exercising their rights of freedom of association and peaceful assembly and other human rights;
  - e) engaging in activities exclusively the responsibility of the state law enforcement authorities; and
  - f) failing to ensure that contractual provisions mandating the application of Security Principles were included in agreements between the Ascendant/Copper Mesa Group and its Security Forces.
99. In the time between being appointed director on June 2, 2006 and the December 2, 2006 Assault, the Defendant Vaughan attended four board meetings and one Corporate Governance Committee meeting.

#### Causation

100. The acts and omissions of the Defendant Vaughan materially contributed to or caused the threats issued against the Plaintiffs and the physical assaults of the Plaintiffs committed by employees, agents or affiliates of the Ascendant/Copper Mesa Group that occurred on or around December 2, 2006, including by permitting and condoning such threats of violence and acts of violence.

#### Harm

101. The Plaintiffs suffered significant physical and emotional harm as a result of the Defendant Vaughan's acts or omissions. The Plaintiffs Marcia Ramírez and Israel Pérez were pepper-sprayed and shot at; the Plaintiff Israel Pérez received a leg wound as a result of gun fire; and the Plaintiff Polivio Perez has been directly and repeatedly threatened with death because of his opposition to mining.
102. The threats of violence and acts of violence by the employees, agents and affiliates of Ascendant/Copper Mesa Group since its arrival in Junín in 2004 created an atmosphere

of fear in the communities. In addition to the physical harm suffered by the Plaintiffs as a result of these assaults, all of the Plaintiffs suffered the emotional trauma of knowing that they are no longer safe in their own community.

### Jurisdiction

103. The Plaintiffs Marcia Ramírez, Israel Pérez and Polivio Pérez assert that the acts or omissions giving rise to liability on the part of the Defendant Vaughan took place in, and are substantially connected to, Ontario and that, for these reasons and others, Ontario is the proper jurisdiction for the adjudication of this claim. In particular:

- a) The Defendant Vaughan carried out much of his duties of corporate directorship in Ontario, including by means of corporate board meetings, committee meetings and other meetings held in Ontario; corporate communications received in, sent from, or participated in in Ontario by means of mail, telephone calls, conference calls, e-mails, couriers, faxes and otherwise; and corporate work carried out in and from his home and office located in Ontario.
- b) The capital and funds raised for the corporation which were used in and were essential to the commission of the wrongs alleged herein were raised in Ontario through the Toronto Stock Exchange.
- c) The Defendant Vaughan resides and works in Ontario.
- d) The Defendant Copper Mesa Corporation carries on business in Ontario.

104. The claims in this action arise out of the same series of transactions or occurrences as the claim issued in Ontario by the Plaintiffs against the Toronto Stock Exchange (formally referred to as TSX Inc. and TSX Group Inc.) in Court File No. 07-CV-344095 PD1, and the Plaintiffs assert that it is just and necessary that that claim and this action be consolidated and heard together in Ontario.

**D. The Defendants Vaughan and Gammon are personally liable for the physical assault and death threats against Polivio Pérez that occurred on or around June 23, 2007 and July 31, 2007**

Legal duty

105. The Plaintiff Polivio Pérez asserts that the Defendants Vaughan and Gammon are under a common law legal duty to avoid acts or omissions that create a foreseeable and serious risk of harm to individuals such as the Plaintiff Polivio Pérez. In particular, Vaughan and Gammon had a legal duty to avoid acts or omissions that caused or materially contributed to the physical assaults or death threats against community members opposed to the proposed Junín Project of the very sort that did, in fact, occur on or around December 2, 2006.
106. The Plaintiff Polivio Pérez asserts that the board of directors was and is responsible for the stewardship of Ascendant; this includes ultimate responsibility for the management of the business and the conduct of Ascendant's affairs generally. Further, the board of directors was and is responsible for the formulation of corporate policy and practices, and maintained de facto control over the technical, operational, managerial and financial activities of all nine subsidiaries of Ascendant (i.e. the Ascendant/Copper Mesa Group) at all relevant times.
107. As directors, the Defendants Vaughan and Gammon had wide powers, authority and responsibility, along with other directors, to establish and enforce corporate policies, appoint and supervise executive officers, and investigate acts committed by the corporation, its employees, agents and affiliates.
108. The Plaintiff Polivio Pérez further asserts that there is a severe power imbalance between members of the Junin community and the directors of Ascendant. While the directors have the resources, authority and ability to assess and mitigate the risk of violence perpetrated by the Ascendant/Copper Mesa Group, the members of the community affected by that same violence do not.

109. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez further assert that because Copper Mesa is incorporated in British Columbia, the Defendant Vaughan is subject to the legal duty contained in section 142 (b) of the *British Columbia Business Corporations Act* (“BCBCA”), which states that a director or officer of a company, when exercising the powers and performing the functions of a director or officer of the company, must exercise the care, diligence and skill that a reasonably prudent individual would exercise in comparable circumstances. In this case, the acts and omissions giving rise to a breach of the duty of care occurred in Ontario. The *Ontario Business Corporations Act* and the *Canada Business Corporations Act* contain essentially the same director’s duty of care.
110. The Plaintiff Polivio Pérez asserts that the Defendants Vaughan and Gammon breached their legal duty to exercise the care and diligence required of them as directors by failing to avoid acts or omissions that caused or materially contributed to the assaults that were committed or threats that were issued against community members opposed to the proposed Junín Project as required by the common law and the above stated provisions.
111. The Plaintiff Polivio Pérez further asserts that representations made by the Defendants Vaughan and Gammon to Carlos Zorrilla demonstrate that Vaughan and Gammon recognized and acknowledged their legal duty to avoid acts and omissions that materially contribute to or cause threats to be issued and physical assaults to be committed against community members opposed to the Junín Project.

#### Knowledge

112. The Plaintiff Polivio Pérez asserts that the Defendants Vaughan and Gammon had or ought to have had knowledge of the serious risk that Security Forces, employees, agents or affiliates of the Ascendant/Copper Mesa Group would issue death threats or commit physical assaults against community members opposed to the Junín Project, of the very sort that did, in fact, occur on or around June 23, 2007 and July 31, 2007. The particulars of this knowledge include:

- a) Carlos Zorrilla and others met with Vaughan and Gammon on or around April 27, 2007 to specifically discuss past incidents of violence perpetrated by Security Forces, employees, agents or affiliates of the Ascendant/Copper Mesa Group. In particular, Carlos Zorrilla showed Vaughan and Gammon photographic evidence of the December 2<sup>nd</sup> Assault. Vaughan and Gammon were specifically warned about the high risk of future threats and physical assaults committed by employees, agents or affiliates of the Ascendant/Copper Mesa Group.
- b) In their roles as directors, Vaughan and Gammon had, or should have had, knowledge of the past violent confrontations that occurred before their appointment as directors, and of the role employees, agents or affiliates of the Ascendant/Copper Mesa Group had had in perpetrating them. Vaughan and Gammon had access to significant information regarding the Junín conflict and the corresponding high risk of potential future violence perpetrated by the Ascendant/Copper Mesa Group. Past violent confrontations were repeatedly noted in Ascendant's public documents, including its Prospectus.
- c) Prior to and after Vaughan and Gammon's appointment to Ascendant's board of directors, the ongoing conflict in Junín and the allegations of human rights abuse perpetrated by the Ascendant/Copper Mesa Group or its affiliates was the major barrier to Ascendant's exploration activities on the Junín concessions and had been extensively discussed and considered by the executive, the board and other staff members.
- d) As directors of Ascendant, Vaughan and Gammon had actual knowledge of corporate policy and practices regarding Security Forces and local community relations.
- e) Ascendant is a small corporation with only four direct employees. One of these employees, Gerald Davis, is not only President and CEO of Ascendant but also CEO of all of Ascendant's subsidiaries (i.e. all companies that comprise the

Ascendant/Copper Mesa Group). The Defendants Vaughan and Gammon had the means to be and were in regular communication with these employees.

- f) The Defendant Vaughan, a leading expert on mining and natural resources law who has been involved in natural resources transactions in more than 60 countries, and the Defendant Gammon, the former Assistant Deputy Minister of Mines for Ontario and a founder of the World Mines Ministries Forums, are well-acquainted with the mining industry and therefore knew, or ought to have known, of the numerous and widely published reports on Canadian mining companies — in particular junior mining companies — committing violence against local opposition to mining in developing countries through the use of private security forces, including the incidents reported in the Canadian press and elsewhere.

#### Breach of legal duty

113. The Plaintiff Polivio Pérez asserts that despite the Defendants Vaughan and Gammon's knowledge of the specific danger posed by Ascendant to members of the Junín community and their powers and authority as directors as well as the ultimate control over corporate policies that was exercised by directors, Vaughan and Gammon:
- a) operated the company in a manner that created a high risk of violence against community members opposed to the proposed Junín Project;
  - b) approved corporate policies and practices intended to eliminate widespread opposition to the proposed Junín Project, including policies and practices relating to the Ascendant/Copper Mesa Group Security Forces;
  - c) approved funding for Security Forces and other agents and affiliates of the Ascendant/Copper Mesa Group who had in the past and were likely in the future to assault and threaten members of the community opposed to the Junín Project;
  - d) failed to adequately supervise the executive of Ascendant;

- e) failed to institute proper corporate policies and practices so as to prevent threats and assaults from being committed by the Ascendant/Copper Mesa Group's employees, Security Forces, agents or affiliates;
  - f) failed to join recognized corporate social responsibility governance frameworks aimed at the protection of human rights (such as the Voluntary Principles on Security and Human Rights), and failed to ensure the implementation and fulfillment of the requirements of such governance frameworks; and
  - g) failed to raise concerns about and investigate reported past incidents of violence, and in particular, failed to inquire as to why the Ascendant/Copper Mesa Group was employing off-duty or ex-members of the Ecuadorian military in Junín, as they had promised Carlos Zorrilla they would.
114. The Plaintiff further asserts that the Defendants Vaughan and Gammon's continued failure to use their powers and influence as directors to take any of the steps listed above constitutes a tacit approval of past actions taken by the Ascendant/Copper Mesa Group's employees, agents or affiliates in previous violent incidents. The Defendants Vaughan and Gammon's approval through silence is tantamount to an authorization of future acts of violence.
115. Further, at all material times, Ascendant purported to have adopted the "Voluntary Principles on Security and Human Rights" referred to above, and claimed to have included the Principles as part of the board of directors' Stewardship Responsibilities. In fact, Ascendant had never actually formally signed on to the Principles, and the Defendants Vaughan and Gammon took no steps to implement any of the requirements contained therein
116. Throughout its operating history, Ascendant repeatedly breached key requirements of the Security Principles. In particular, in the December 2, 2006, June 23, 2007 and July 31, 2007 threats and assaults, the Ascendant/Copper Mesa Group's Security Forces violated the Security Principles by:

- a) providing offensive, rather than only defensive or preventative security services;
- b) using force when not strictly necessary and not in proportion to the threat;
- c) unlawfully carrying and using restricted weapons;
- d) violating the rights of individuals who were exercising their rights of freedom of association and peaceful assembly and other human rights;
- e) engaging in activities exclusively the responsibility of the state law enforcement authorities; and
- f) failing to ensure that contractual provisions mandating the application of the Security Principles were included in agreements between the Ascendant/Copper Mesa Group and its Security Forces.

117. In the time between meeting with Carlos Zorrilla and the assaults and threats of June and July 2007, the Defendants Vaughan and Gammon attended approximately four board meetings.

#### Causation

118. The acts and omissions of the Defendants Vaughan and Gammon materially contributed to or caused the threats issued against the Plaintiff Polivio Perez and the physical assault of Plaintiff Polivio Pérez committed by employees, agents or affiliates of the Ascendant/Copper Mesa Group that occurred on or around June 23, 2007 and July 31, 2007, including by permitting and condoning such threats of violence and acts of violence.



### Harm

119. The Plaintiff Polivio Pérez suffered significant physical and emotional harm as a result of the Defendants Vaughan and Gammon's acts or omissions. The Plaintiff Polivio Perez was beaten and has been directly and repeatedly threatened with death because of his opposition to mining.
120. The threats of violence and acts of violence by employees, agents and affiliates of the Ascendant/Copper Mesa Group since its arrival in 2004 and in 2007 created an atmosphere of fear in the communities. In addition to the physical harm suffered by Polivio Pérez as a result of these assaults, he has suffered the emotional trauma of knowing that he and his family are not safe in his own community.

### Jurisdiction

121. The Plaintiff Polivio Pérez asserts that the acts or omissions giving rise to liability on the part of the Defendants Vaughan and Gammon took place in, and are substantially connected to, Ontario and that, for these reasons and others, Ontario is the proper jurisdiction for the adjudication of this claim. In particular:
- a) The Defendants Vaughan and Gammon carried out much of their duties of corporate directorship in Ontario, including by means of corporate board meetings, committee meetings and other meetings held in Ontario; corporate communications received in, sent from, or participated in in Ontario by means of mail, telephone calls, conference calls, e-mails, couriers, faxes and otherwise; and corporate work carried out in and from their homes and offices located in Ontario.
  - b) The capital and funds raised for the corporation which were used in and were essential to the commission of the wrongs alleged herein were raised in Ontario through the Toronto Stock Exchange.
  - c) The Defendant Copper Mesa Corporation carries on business in Ontario.

122. The Defendants Vaughan and Gammon reside and work in Ontario. The claims in this action arise out of the same series of transactions or occurrences as the claim issued in Ontario by the Plaintiffs against the Toronto Stock Exchange (formally referred to as TSX Inc. and TSX Group Inc.) in Court File No. 07-CV-344095 PD1, and the Plaintiffs assert that it is just and necessary that that claim and this action be consolidated and heard together in Ontario.

**E. Copper Mesa Mining Corporation is vicariously liable for harm caused by the acts and omissions of Defendants Vaughan and Gammon**

123. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendant Copper Mesa is vicariously liable for the physical assaults and threats against the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez in that:

- (a) Vaughan and Gammon are directors of Copper Mesa, and are therefore agents of Copper Mesa;
- (b) The Defendants Vaughan and Gammon breached their legal duty to avoid acts or omissions that would cause or materially contribute to assaults or threats against community members opposed to the proposed Junín Project as detailed herein;
- (c) this legal duty was breached in the course of their ordinary duties as directors of Copper Mesa.

124. The Plaintiffs Marcia Ramírez, Israel Pérez and Polivio Pérez assert that the acts or omissions giving rise to liability on the part of the Defendants Vaughan and Gammon, and therefore giving rise to the vicarious liability of Copper Mesa, took place in, and are substantially connected to, Ontario and that, for these reasons and others, Ontario is the proper jurisdiction for the adjudication of this claim. In particular:

- a) The Defendants Vaughan and Gammon carried out much of their duties of corporate directorship in Ontario, including by means of corporate board meetings, committee meetings and other meetings held in Ontario; corporate

communications received in, sent from, or participated in in Ontario by means of mail, telephone calls, conference calls, e-mails, couriers, faxes and otherwise; and corporate work carried out in and from their homes and offices located in Ontario.

- b) The capital and funds raised for the corporation which were used in and were essential to the commission of the wrongs alleged herein were raised in Ontario through the Toronto Stock Exchange.
- c) The Defendants Vaughan and Gammon reside and work in Ontario.
- d) The Defendant Copper Mesa Corporation carries on business in Ontario.
- e) The claims in this action arise out of the same series of transactions or occurrences as the claim issued in Ontario by the Plaintiffs against the Toronto Stock Exchange (formally referred to as TSX Inc. and TSX Group Inc.) in Court File No. 07-CV-344095 PD1, and the Plaintiffs assert that it is just and necessary that that claim and this action be consolidated and heard together in Ontario.

## ***VII. Punitive damages***

### **A. Punitive damages claimed against TSX Inc. and TSX Group Inc.**

- 125. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the negligent listing of Ascendant by the Defendants TSX Inc. and TSX Group Inc. was reckless and high-handed to such a degree as to indicate complete indifference to the welfare and safety of vulnerable individuals such as the Plaintiffs and therefore justifies punitive damages.
- 126. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendants TSX Inc. and TSX Group Inc. have systematically disregarded the human rights of the Plaintiffs Marcia Ramírez, Polivio Pérez, Israel Pérez and other members of the community of Junín in order to maintain their competitive advantage as one of the world's most important sources of capital for junior mining companies. The Plaintiffs

Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendants TSX Inc. and TSX Group Inc. have thereby offended the ordinary standards of decent conduct in Canadian society.

127. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the negligent listing of Ascendant by the Defendants TSX Inc. and TSX Group Inc. is part of a wider deliberate corporate strategy to consciously ignore knowledge they had or ought to have had regarding violence instigated by companies they choose to list.

128. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the particulars justifying punitive damages include:

- a) The Defendants TSX Inc. and TSX Group Inc. consciously ignored specific warnings they had received and knowledge they had or ought to have had regarding the harmful activities of the Ascendant/Copper Mesa Group in Junín, including information regarding the risk of future violence submitted by Ascendant as part of its required filings to the Toronto Stock Exchange.
- b) TSX Inc. and TSX Group Inc. knew or ought to have known that members of the Junín community were vulnerable to violence instigated by the Ascendant/Copper Mesa Group, and in the face of this knowledge TSX Inc. and TSX Group Inc. consciously committed acts or omissions that caused or materially contributed to the violent assaults and death threats by employees, agents or affiliates of the Ascendant/Copper Mesa Group that did in fact occur on December 2, 2006, June 24, 2007 and July 31, 2007.
- c) TSX Inc. and TSX Group Inc. benefited financially from the listing of Ascendant through the collection of listing and maintenance fees.
- d) On numerous other occasions, the Defendants TSX Inc. and TSX Group have similarly ignored and turned a blind eye to harmful corporate practices by their

listed companies in order to secure financial benefits and a business advantage as the world's most important source of capital for junior mining companies.

129. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the negligent acts and omissions of the Defendants TSX Inc. and TSX Group Inc. as outlined above have the effect of allowing and in fact encouraging the imprudent, irresponsible and harmful public listing of mining companies. As a result, the Defendants have benefited financially from enabling the human rights abuse of the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez and other similarly situated persons all over the world.
130. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that, given the financial status of the Defendants TSX Inc. and TSX Group Inc., compensatory damages are an insufficient sanction as they would amount to no more than a license fee for the Defendants TSX Inc. and TSX Group Inc. to continue to disregard the human rights of those located in areas where companies listed on the Toronto Stock Exchange operate.
131. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez therefore assert that it is appropriate, just and necessary for the Court to award large punitive damages to offset the financial gains and competitive advantage that these Defendants have derived from turning a blind eye to the harmful corporate practices of the companies they choose to list and thereby financially enable.
132. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez further assert that it is appropriate in these circumstances to award large punitive damages to act as a deterrent given that the Defendants TSX Inc. and TSX Group Inc. are aware that in cases such as this case they are highly likely to escape liability for the harm they have caused or materially contributed to. Given that the type of harm experienced by the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez and other similarly situated persons occurs in remote regions in developing countries, those causing the harm often escape detection or prosecution and victims rarely have the capacity or resources to commence legal proceedings. As a result, the Defendants TSX Inc. and TSX Group Inc. will

continue to operate with impunity and disregard for the harm they cause or materially contribute to unless large punitive damages are awarded to act as a deterrent.

133. The Plaintiffs therefore claim damages as stated.

**B. Punitive damages claimed against the Defendant Vaughan and the Defendant Copper Mesa Mining Corporation for the acts and omissions of the Defendant Vaughan**

134. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the intentional acts and omissions by the Defendant Vaughan that caused or materially contributed to the assaults and death threats that occurred on or around December 2, 2006, June 23, 2007 and July 31, 2007 were reckless and high-handed to such a degree as to indicate complete indifference to the welfare and safety of vulnerable individuals such as the Plaintiffs, and therefore justify punitive damages.

135. Local opposition to the mine led by various community members including the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez represents one of the largest impediments to the success of the Junín Project. The financial success of Copper Mesa, in turn, depends on the success of that project. Estimates provided by Copper Mesa suggest that the Junín Project could result in net revenue of US\$32 billion.

136. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendant Vaughan has systematically disregarded the human rights and legal rights of the Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez in an attempt to ensure the financial success of Copper Mesa, specifically by ignoring and tacitly approving the use of threats and violence against the Plaintiffs and others in order to deal with local opposition to the mine. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the Defendant Vaughan has thereby offended the ordinary standards of decent conduct in Canadian society.

137. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that the elements of the Defendant Vaughan's misconduct include the following:

- (a) Vaughan consciously ignored knowledge he had, or ought to have had, regarding the creation of an atmosphere of fear through the use of violence, physical assaults, and death threats by the Ascendant/Copper Mesa Group and its affiliates in Junín.
  - (b) In regard to the assault and threats that occurred on or around June 23, 2007 and July 31, 2007 against the Plaintiff Polivio Pérez, Vaughan ignored specific photographic evidence that demonstrated the past occurrence and the acute risk of future occurrences of physical assaults and death threats committed by employees, agents or affiliates of the Ascendant/Copper Mesa Group.
  - (c) Vaughan knew or ought to have known that members of the Junín community were vulnerable to violence instigated by the Ascendant/Copper Mesa Group, and despite this knowledge, Vaughan consciously committed acts or omissions that caused or materially contributed to the violent assaults and death threats by employees, agents or affiliates of the Ascendant/Copper Mesa Group that did in fact occur on or around December 2, 2006, June 23, 2007 and July 31, 2007.
138. The Defendant Vaughan stood to gain very large financial benefits through stock options made available to him as a director if the Junín Project became a producing mine. Vaughan's acts and omissions that caused or materially contributed to the physical assaults and death threats against the Plaintiffs increased the chance that the Junín Project would become a producing mine.
139. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez assert that given the expected large financial gain of the Defendant Vaughan, compensatory damages are an insufficient sanction under these circumstances as they would amount to no more than a license fee for the Defendant Vaughan to continue to disregard the human rights and legal rights of others for the financial gain of himself and Copper Mesa.
140. The Plaintiffs Marcia Ramírez, Polivio Pérez and Israel Pérez therefore assert that it is appropriate, just and necessary for the Court to assess large punitive damages to offset

the potential large financial gains that the Defendants Vaughan and Copper Mesa expect to derive from the acts and omissions that caused or materially contributed to the death threats and physical assaults.

141. The Plaintiffs therefore claim damages as stated.

**C. Punitive damages claimed against the Defendants Gammon and the Defendant Copper Mesa Mining Corporation for the acts and omissions of the Defendant Gammon**

142. The Plaintiff Polivio Pérez asserts that the negligent acts and omissions by the Defendant Gammon that caused or materially contributed to the assaults and death threats that occurred on or around June 23, 2007 and the July 31, 2007 were malicious or reckless to such a degree as to indicate complete indifference to the welfare and safety of vulnerable individuals such as the Plaintiff, and therefore justify punitive damages.

143. Local opposition to the mine led by various community members (including the Plaintiff Polivio Pérez) represents one of the largest impediments to the success of the Junín Project. The financial success of Copper Mesa, in turn, depends on the success of that project. Estimates provided by Copper Mesa suggest that the Junín Project could result in net revenue of US\$32 billion.

144. The Plaintiff Polivio Pérez asserts that the Defendant Gammon has systematically disregarded the human rights and legal rights of the Plaintiff Polivio Pérez in an attempt to ensure the financial success of Copper Mesa, specifically by ignoring and tacitly approving of the use of threats and violence against the Plaintiff and others in order to deal with local opposition to the mine. The Defendant Gammon has thereby offended the ordinary standards of decent conduct in Canadian society.

145. The Plaintiff Polivio Pérez asserts that the elements of the Defendant Gammon's misconduct include the following:



- (a) Gammon consciously ignored knowledge he had, or ought to have had, regarding the creation of an atmosphere of fear through the use of violence, physical assaults, and death threats by the Ascendant/Copper Mesa Group and its affiliates in Junín.
  - (b) Gammon ignored specific photographic evidence that demonstrated the past occurrence and the acute risk of future occurrences of physical assaults and death threats committed by employees, agents or affiliates of the Ascendant/Copper Mesa Group.
  - (c) Gammon knew or ought to have known that members of the Junín community were vulnerable to violence instigated by the Ascendant/Copper Mesa Group, and despite this knowledge consciously committed acts or omissions that caused or materially contributed to the violent assaults and death threats by employees, agents or affiliates of the Ascendant/Copper Mesa Group that did in fact occur on or around June 23, 2007 and July 31, 2007.
146. The Defendant Gammon stood to gain very large financial benefits through stock options made available to him as a director if the Junín Project became a producing mine. Gammon's acts and omissions that caused or materially contributed to physical assaults and death threats against the Plaintiff increased the chance that the Junín Project would become a producing mine.
147. The Plaintiff Polivio Pérez asserts that given the expected large financial gain of the Defendant Gammon, compensatory damages are an insufficient sanction under these circumstances as they would amount to no more than a license fee for Gammon to continue to disregard the human rights and legal rights of others for the financial gain of himself and Copper Mesa.
148. The Plaintiff Polivio Pérez therefore asserts that it is appropriate, just and necessary for the Court to assess large punitive damages to offset the potential large financial gains that the Defendants Gammon and Copper Mesa expect to derive from the acts and omissions

that caused or materially contributed to the physical assaults and death threats perpetrated against the Plaintiff.

149. The Plaintiff Polivio Pérez therefore claims damages as stated.

***VIII. Service of the Defendant Copper Mesa Mining Corporation outside of Ontario in Accordance with Rule 17***

150. This statement of claim is to be served on Copper Mesa Mining Corporation outside of Ontario without a court order in accordance with rule 17.02 (g), (o) and (p).

**A. Rule 17.02 (g)- Tort Committed in Ontario – in respect of a tort committed in Ontario**

151. The claims against Copper Mesa Mining Corporation are for vicarious liability for the acts and omissions of members of Copper Mesa's board of directors. The acts and omissions of these directors that give rise to vicarious liability occurred in Ontario, as detailed above.

**B. Rule 17.02 (o)- Necessary or Proper Party – against a person outside Ontario who is a necessary and proper party to a proceeding properly brought against another person served in Ontario**

152. The claims against Copper Mesa Mining Corporation are for vicarious liability for the acts and omissions of members of Copper Mesa's board of directors. These tortfeasors are residents of Ontario and will be served in Ontario, as detailed above. Further, the acts and omissions that give rise to this claim occurred in Ontario, as detailed above.

**C. Rule 17.02 (p)- Person Resident or Carrying on Business in Ontario – against a person ordinarily resident or carrying on business in Ontario**

153. The Defendant Copper Mesa Mining Corporation carries on business in Ontario. Particulars include the fact that Copper Mesa Mining Corporation raised capital and funds in Ontario through the Toronto Stock Exchange, which funds were used in and were essential to the commission of the wrongs alleged above.

## **IX. Consolidation with previous Claims**

154. The Plaintiffs file this Statement of Claim as a consolidation, together with amendments, of the claims previously filed in *Ramirez et al v. T. S. X. Inc. et al* (Court File No. 97-CV-344095 PD1) and *Ramirez et al v. Copper Mesa Mining Corporation* (Court File No. CV-08-00367556-0000). The claims set out in those Statements of Claim and in this Statement of Claim arise out of the same series of transactions or occurrences, and are based on the same material facts. The Plaintiffs assert that it is just, necessary and convenient that the claims be consolidated, together with the amendments contained herein. The Plaintiffs assert that the Defendants have suffered no prejudice, and will suffer no prejudice, from this consolidation and the amendments.

Date: March 3, 2009

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**Solicitors for the Plaintiffs**

**Schedule A**

(Photographs attached (2))







**MARCIA LUZMILA RAMÍREZ PIEDRA et al.**  
Plaintiffs

v.

**COPPER MESA MINING CORPORATION et al.**  
Defendants

Court File No. *2024-373561*

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**STATEMENT OF CLAIM**

**KLIPPENSTEINS**

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