IN THE WARDEN'S COURT
HOLDEN AT SYDNEY ON
15TH JULY, 1982
BEFORE J.L. McMAHON,
CHIEF MINING WARDEN.

R.J. & R.L. CONNOLLY

v.

AMOCO MINERALS AUST. LTD. AND
THE SHELL COMPANY OF AUSTRALIA LTD.

BENCH:

This has been the hearing of an application for assessment of compensation payable under the Mining Act, 1973. Part VIII of that section provides for compensation to be either the subject of a valid agreement which has to be lodged with the Secretary of the Department of Mineral Resources or for an assessment by a Warden and I have heard evidence following upon the application made by Akks Pty. Ltd. on behalf of Mr. and Mrs. Connolly for such an assessment.

Mr. and Mrs. Connolly are the joint proprietors of a property called "Day Dawn" at Kerr's Creek in the Orange district in central New South Wales. Amoco Minerals Aust. Ltd. holds Exploration Licence No. 1075 and part of the land covered by that licence is included in "Day Dawn". Recently Amoco Minerals Aust. Ltd. entered into partnership with The Shell Company of Australia Ltd. in relation to the proposed exploration activities and both of these companies have been named as respondents.

As I understand the application and the evidence given to support it, Mr. Connolly has complained about damage to a crossing at "Pine Creek" which is a location on "Day Dawn" adjacent to a copse of pine trees, oil on the surface of the water of a dam, erosion arising from disturbance of the surface of the soil on access tracks and drill sites, and damage to a motor vehicle of his which occurred when it was attempting the "Pine Creek" crossing.

It is clear that the Connollys had signed a compensation agreement, copy of which is exhibit 3 before me, with Amoco Minerals Aust. Ltd. which was dated 26th August, 1979. In it, certain compensation rates were set but the agreement in

paragraph 2 contained a provision that in the event of actual loss exceeding in value the amount calculated in accordance with the terms of the agreement, the parties could negotiate to determine an agreed amount of compensation for loss in lieu of the rates set out in the exhibit and it went on "and in default of agreement the matter may be directed to a mining warden for assessment". The Connollys have inferred that they signed the agreement under pressure. It is apparent from the evidence that Mr. Connolly previously worked as a demolisher in Sydney and had suffered an accident resulting in physical and mental handicap and the need for treatment of these conditions. Both Mr. and Mrs. Connolly say that when they signed the agreement Mr. Connolly had only just returned from hospital and he did not read it. Mrs. Connolly has stated in evidence that her husband, having had a nervous breakdown and a representative of Amoco, Mr. Chiswell, being most anxious to have the agreement signed, pressed them to readily sign it. She inferred that she did not know the contents of the agreement although I put to her certain things as to payments which she would be receiving and she acceded that she could understand the amounts payable to them for drill holes.

Mr. Robert Kempthorne, who holds a power of attorney on behalf of the Connollys, also gave evidence of the nervous breakdown and physical injury being suffered by Mr. Connolly. Mr. Kempthorne is a management consultant and his company, Akks Pty. Ltd., had been initially responsible for the application which I am now considering. It seems clear from Mr. Kempthorne's evidence that he had given the Shell company permission to go onto the land of "Day Dawn", having spoken to personnel from that company, and that on a dispute arising he had visited "Day Dawn" with the company representatives with a view to negotiation towards a settlement.

Putting aside for the moment the evidence of undue pressure as deposed to by the Connollys, it seems to me that paragraph 2 of the agreement is sufficient for me to say that it is competent for the Warden to assess compensation, bearing in mind that there is evidence that there has been unsuccessful negotiations between the parties prior to the application currently before me being lodged.

As to the actual assessment, Mr. James Heap, a senior geologist with the exploration companies, agreed that substantial work had taken place on "Day Dawn" in 1981 by means of a drilling programme, the taking of samples from bedrock and the bulldozing of certain access tracks to facilitate the entry and movement of drilling machinery. The joint venture partners had now completed work on "Day Dawn". Initially relationships between himself and the Connollys had been smooth until Mr. Connolly had seen certain work that had gone on and had become upset. Mr. Heap gave evidence of inspections with Mr. Kempthorne of "Day Dawn" and the demand for a large sum of money by way of compensation. There had earlier been compensation payable to Mr. and Mrs. Connolly but it was agreed that the assessment herein is to be for work done on a so-called second project which commenced late in 1981. Mr. Heap gave evidence of an occasion when Mr. Connolly had come across a surveyor from Shell on "Day Dawn", had come into the Orange office of Shell and subsequently the police had to be called, following which Mr. Connolly was asked to leave the office.

Mr. Maxell Rangott, Mr. Heap's superior within the Shell organisation, being the supervising geologist for New South Wales in the Metals Division of that company, gave evidence about visiting "Day Dawn" with Mr. Heap and seeing Mr. Kempthorne and Mr. Connolly. They had visited each drill site but he gave evidence about no agreement between the two sides about compensation. He was of the view that the land was worth between $20 and $30 per hectare for timbered country and that which was cleared between $40 and $50 per hectare. He indicated that although the results of analyses of the soil samples were not encouraging, Shell may wish to come back to "Day Dawn" to conduct further exploration.

I deal firstly with the request for the damage to the "Pine Creek" crossing. Mr. Connolly's evidence is that prior to the respondents interferring with it, it was possible to drive a vehicle without difficulty across the crossing which had been constructed with logs. Now deep cuttings existed on either side in the earth, the centre contains holes so deep that he had damaged his vehicle in one of them. He added that the pipe which conveyed the water through the crossing was inadequate. Mr. Connolly felt that a figure of $2,000 to $3,000 would be

required to make good the crossing. No doubt the respondents' motives were to create a crossing for their machinery giving a reasonable degree of convenience and safety to the approach, traversal and exit of it. The respondents did not deny that only a 15 cm polythene pipe had been inserted to conduct the water which flowed along the creek from time to time and it seems reasonable to assume that a certain amount of damage to the crossing from the higher side would take place, especially if the pipe became blocked by debris. I am of the opinion therefore that a figure of $2,000 as sought by Mr. Connolly is not unreasonable and I propose to include in any assessment that figure. I turn then to the dam adjacent to one of the sites which Mr. Connolly says is covered by an oil slick. It is a matter of common knowledge that drilling machinery uses oil and that it would be possible for oil to drop onto the earth in a catchment area and find its way by gravity in water to a dam. It is also a matter of common sense that stock would not be likely to drink such water unless forced to do so by drought conditions. Some mention was made during the evidence about the value of detergent to dissolve the oil and I think that the figure of $300 placed upon the restoration of the water by Mr. Connolly is too high and more properly should be in the vicinity of $130. My assessment will include that latter amount. Sworn evidence from Mr. Connolly was to the effect that his "Chevrolet Blazer" vehicle was damaged when a wheel of it went into one of the deep holes at the "Pine Creek" crossing. No evidence refuting this was given by the respondents and I am left in the position of having to accept the evidence of damage, which I think to be reasonable. The figure of $580 as claimed by Mr. Connolly will be included in my assessment.

Finally, Mr. Connolly made mention of "thousands of dollars" of damage done to his land and likely to take place by reason of erosion to the surface of the land caused by disturbances over the tracks and drill sites. It is necessary for sites to be cleared so that drilling can take place and for access roads to be bulldozed over virgin ground or existing tracks to be up-graded to permit movement of the drilling machinery. Mr. Connolly conceded this. It is also apparent from the evidence that seven drill holes were sunk at some six sites and that some of the land over which the access tracks were inserted were up

steep grades. In relation to restoration of this disturbed land, Mr. Connolly sought between $6,000 and $8,000.

The respondents have on the other hand claimed that the damage done was minimal and it is implied from their evidence that the areas will be recovered by vegetation over a relatively short period. Some of the sites are in timbered country and I would feel that there is a reasonable chance of re-growth of timber in such a time as would prevent excessive erosion taking place. Further, some of the tracks would be of advantage to a landowner especially in supervision of stock activities and bushfire fighting. I agree, however, that some erosion could take place in times of heavy rainfall but I think that the figure of $6,000 to $8,000 far excessive. Some remedial work has to take place and I am of the view that $1,500 adequately would cover the cost, bearing in mind the other advantages which now arise from the existence of the tracks. My assessment therefore is $1,500.

Taking into account the $2,000 for the "Pine Creek" crossing, the $130 for the dam, the $580 for the repair to the vehicle, and the $1,500 for the correction of the erosion, I assess compensation herein at $4,210. I direct that a cheque payable by the respondents be sent to Akks Pty. Ltd. within three months from today. If necessary, payment of the compensation can be made through the Registrar. I make no order for costs otherwise.