

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

IN RE PHELPS DODGE CORP. SHAREHOLDER ) Master File No. CV2006-017963  
LITIGATION )  
\_\_\_\_\_) (Consolidated with No. CV2006-053422)  
)  
This Document Relates To: ) **NOTICE OF PENDENCY AND PROPOSED**  
) **SETTLEMENT OF CLASS ACTION**  
)  
ALL ACTIONS. )  
\_\_\_\_\_) (Assigned to Hon. Thomas Dunevant, III)

***IF YOU HELD PHELPS DODGE CORPORATION ("PHELPS DODGE") COMMON STOCK AT ANY TIME BETWEEN THE CLOSE OF TRADING ON NOVEMBER 17, 2006 THROUGH AND INCLUDING THE EFFECTIVE TIME OF THE MERGER BETWEEN PHELPS DODGE & FREEPORT-McMORAN COPPER AND GOLD, INC. ("FREEPORT"), YOUR RIGHTS MAY BE AFFECTED BY THE SETTLEMENT OF A CLASS ACTION.***

The Superior Court of Maricopa County, Arizona authorized this Notice. This is not a solicitation from a lawyer.

- The settlement resolves a lawsuit over whether Defendants breached their fiduciary duties to, or aided and abetted the breach of fiduciary duties to, the shareholders of Phelps Dodge in connection with the acquisition of Phelps Dodge by Freeport (the "Merger"). Phelps Dodge, J. Steven Whisler, Archie W. Dunham, William A. Franke, Robert D. Johnson, Marie L. Knowles, Charles C. Krulak, Jon C. Madonna, Dustan E. McCoy, Gordon R. Parker, William J. Post, Martin H. Richenhagen, Jack E. Thompson and Freeport are the Defendants.
- The settlement provides for the disclosure of additional information by Phelps Dodge and Freeport regarding the acquisition of Phelps Dodge by Freeport in Forms 8-K that were filed with the U.S. Securities and Exchange Commission on or about March 8, 2007. Plaintiffs believe disclosure of such information was necessary in order for Phelps Dodge shareholders to make an informed vote on the proposed acquisition of Phelps Dodge by Freeport. The Defendants have also agreed that if, within one year following the Effective Time of the Merger (as defined in the Merger Agreement) Freeport shall sell, transfer or otherwise dispose of or agree to dispose of all or substantially all of the capital stock of Phelps Dodge or all or substantially all of the assets of Phelps Dodge (whether by merger, consolidation or otherwise, in one or more transactions) to any entity that is not owned or controlled by Freeport, Freeport shall upon the closing of such transaction establish a cash fund (the "Fund") in the amount of \$125 million for the benefit of the holders of Phelps Dodge stock immediately prior to the Effective Time of the Merger. The settlement also provides for payment of Plaintiffs' attorneys' fees and expenses.
- Please read this Notice carefully.

## YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

### DO NOTHING

### EXCLUDE YOURSELF

This is the only option that allows you to participate in another lawsuit against the Defendants relating to the legal claims in this case.

### OBJECT

You may write to the Court if you don't like this settlement.

### GO TO A HEARING

You may ask to speak in Court about the fairness of the settlement.

- These rights and options — *and the deadlines to exercise them* — are explained in this Notice.
- The Court in charge of this case must decide whether to approve the settlement.

## BASIC INFORMATION

### 1. Why Did I Get This Notice?

You or someone in your family held shares of Phelps Dodge common stock between the close of trading on November 17, 2006, and March 19, 2007, the date of the Effective Time of the Merger, inclusive.

The Court ordered this Notice because you have a right to know about a proposed settlement of a class action lawsuit before the Court decides whether to approve the settlement.

This Notice explains the lawsuit, the settlement and your legal rights.

The Court in charge of the case is the Superior Court of Maricopa County, Arizona and the case is known as *In re Phelps Dodge Corp. Shareholder Litigation*, Case No. CV2006-017963.

### 2. What Is This Lawsuit About?

This case was brought as a class action. The Plaintiffs allege that the Defendants breached their fiduciary duties to, or aided and abetted the breach of fiduciary duties to, the shareholders of Phelps Dodge common stock in connection with the acquisition of Phelps Dodge by Freeport and they sought to stop the Defendants from proceeding with the Merger. The Plaintiffs also challenge the fairness of the terms of the acquisition agreement and they allege that the public statements and descriptions of the Merger omitted information necessary for Phelps Dodge shareholders to make an informed vote on the proposed acquisition.

The Defendants contend that the allegations are meritless. They contend that the Merger was approved by the independent board of Phelps Dodge directors, which was advised by two financial advisors. The Defendants further contend that their public statements and descriptions of the Merger included all information that a reasonable investor would consider important in deciding whether to vote in favor of the Merger.

### 3. Why Is This a Class Action?

In a class action, one or more people or entities (in this case Benjamin Nathanson, Rochelle Phillips and Frank Knisley), sue as class representatives on behalf of people and entities who are similarly situated. These similarly situated people and entities are called a Class or Class Members, if the Court determines that the lawsuit should proceed as a class action. One court resolves the issues for all Class Members, or in the case of a Settlement, all Settlement Class Members.

#### **4. Why Is There a Settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. Instead, both sides agreed to a settlement, thereby avoiding the costs and risks of a trial. Before agreeing to finalize the settlement, Plaintiffs' Counsel negotiated for the right to conduct discovery to confirm that the material terms of the Merger were fair. Following completion of the discovery, Plaintiffs' Counsel have determined that they believe the additional disclosures that Defendants agreed to provide to shareholders were sufficient to allow Phelps Dodge shareholders to make an informed vote on the Merger, and that the terms of the agreement to distribute additional consideration in the event that Freeport sells, transfers or disposes of all or substantially all of the stock or assets of Phelps Dodge are fair to Phelps Dodge shareholders.

#### **5. How Do I Know if I Am Part of the Settlement?**

The Settlement Class includes all holders of Phelps Dodge common stock between the close of trading on November 17, 2006, through March 19, 2007, the date of the Effective Time of the Merger, inclusive, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them. Excluded from the Settlement Class are Defendants and members of the immediate families of any Individual Defendant, entities that any Defendant controls, officers and directors of Phelps Dodge and Freeport and the legal representatives, heirs, successors or assigns of any such excluded Person or entity.

### **THE SETTLEMENT BENEFITS**

#### **6. What Does the Settlement Provide?**

Plaintiffs have alleged the Defendants agreed to the Merger without having engaged in fair and open negotiations with all potential bidders, and without having performed a viable market check and/or open auction for the sale of the Company. Plaintiffs further alleged that the terms of the Merger Agreement impermissibly tilted the playing field in favor of Freeport, effectively deterring would-be competing bids for the Company. Finally, Plaintiffs alleged that the Individual Defendants failed to disclose all material information relating to the proposed Merger. Defendants have denied Plaintiffs' allegations, and have contended that the independent Phelps Dodge board of directors approved the terms of the Merger, that the board was advised by two financial advisors, and that each provided an opinion that the terms of the Merger are, from a financial perspective, fair to the Phelps Dodge shareholders. Defendants also have denied that other potential bidders were deterred from making a competing bid for Phelps Dodge, and have contended that, even though the Merger Agreement allowed Phelps Dodge to terminate the Merger Agreement in the event that Phelps Dodge were to receive a superior proposal, Phelps Dodge did not ever receive an indication of interest from any potential competing bidders. To settle the lawsuit, Defendants made available to Phelps Dodge's shareholders additional information related to the Merger in the Form 8-K and agreed to enter into the agreement to distribute \$125 million in the event that Freeport sells, transfers or disposes of all or substantially all of the stock or assets of Phelps Dodge within one year after the Effective Time of the Merger. Defendants acknowledge that the pendency of this lawsuit was the prevailing factor in Defendants' decision to provide this additional information to Phelps Dodge shareholders and to enter into the divestment agreement.

#### **7. What Does It Mean to Be Part of the Settlement Class?**

If you are in the Settlement Class, that means you cannot sue or be part of any other lawsuit, if one is filed, against the Defendants or other Released Persons (as defined below) about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you.

In addition, you are releasing your claims, including "Unknown Claims" as defined below, against the Defendants and other Released Persons that you may have arising out of the acts of the Defendants or other Released Persons, which were asserted or could have been asserted in the lawsuits or in an action in any other forum, by the Plaintiffs or any Settlement Class Members against any of the Released Persons and which have arisen, could have arisen, arise now or hereafter arise out of, are based upon or relate in any manner to the allegations, facts, events, matters, acts, occurrences, statements, representations, omissions or any other matter, thing

or cause whatsoever, or any series thereof, embraced, arising out of, based upon, involved or set forth in, or referred to in or otherwise related to: (i) the Merger Agreement, including any amendment thereto, or the Merger; (ii) any fiduciary or other obligations of any of the Released Persons in connection with the Merger Agreement, including any amendment thereto, or the Merger; (iii) the negotiations in connection with the Merger Agreement, including any amendment thereto, or the Merger; (iv) the process employed by any of the Released Persons that led to the Merger Agreement, including any amendment thereto, or the Merger, or the decision to enter into the Merger Agreement, including any amendment thereto, or the Merger; or (v) the disclosure obligations of any of the Released Persons or the disclosures made in connection with the Merger Agreement, including any amendment thereto, or the Merger, including but not limited to any allegations or misrepresentations and/or omissions in the Preliminary Joint Proxy Statement, Definitive Joint Proxy Statement or the Supplemental Disclosure, or in any exhibits or amendments to any of them; provided, however that Released Claims shall not include: (1) the right of the Plaintiffs to enforce the terms of the Stipulation and the Settlement; or (2) claims, if any, based on an allegation regarding the accuracy of financial statements in the Proxy or Form S-4 or any amendment thereto, including any financial statements incorporated therein by reference, provided that such excepted claims do not relate to the Merger (the "Released Claims"), against each of Defendants and their respective predecessors, successors, heirs, executors, trustees, estates, parents, subsidiaries, associates, affiliates, agents, shareholders, families, spouses and marital communities (including, without limitation, any investment bankers, commercial bankers, lenders, accountants, advisors, consultants, insurers, reinsurers or attorneys and any past, present or future officers, directors and employees of Phelps Dodge and Freeport, their predecessors, successors, heirs, executors, trustees, estates, parents, subsidiaries, associates, affiliates, agents, shareholders, families, spouses and marital communities, and their subsidiaries, affiliates and agents) (the "Released Persons").

"Unknown Claims" includes claims that you do not know or suspect to exist, which if you knew, might affect your agreement to release the Released Persons and the Released Claims, or might affect your decision to object to or not object to the Settlement.

If the Stipulation and the Settlement are approved by the Court, you shall be deemed to waive any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which governs or limits any person's release of the Unknown Claims. The foregoing waiver includes without limitation an express waiver, to the full extent permitted by law, by you of any and all rights under California Civil Code §1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The foregoing waiver further includes without limitation an express waiver, to the full extent permitted by law, by you, of any and all rights under any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California Civil Code §1542.

## **THE LAWYERS REPRESENTING YOU**

### **8. Do I Have a Lawyer in This Case?**

The law firms of Robbins Umeda & Fink, LLP and The Weiser Law Firm, P.C. represent you and other Settlement Class Members. These lawyers are called Plaintiffs' Settlement Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### **9. How Will the Lawyers Be Paid?**

Defendants have agreed that if the other conditions of the settlement are satisfied, Freeport or any of its wholly-owned subsidiaries shall pay the attorneys' fees and expenses and costs of Plaintiffs' Counsel of \$1,950,000.00. The parties negotiated this fee amount after reaching agreement on the additional disclosures and the divestment agreement. In addition, Plaintiffs' Counsel may apply for attorneys' fees of no more than 23.5% of the Fund, if one is established pursuant to the divestment agreement.

## OBJECTING TO THE SETTLEMENT

You can tell the Court that you don't agree with the settlement or some part of it.

### 10. How Do I Tell the Court that I Don't Like the Settlement?

If you are a Settlement Class Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a letter saying that you object to the settlement in *In re Phelps Dodge Corp. Shareholder Litigation*, Case No. CV2006-017963. Be sure to include your name, address, telephone number, your signature, the number of shares of Phelps Dodge common stock that you held as of the close of trading on November 17, 2006, through and including the date of the Effective Time of the Merger, and the reasons you object to the settlement. Mail the objection to the following five different places such that it is received no later than July 16, 2007 by each of the following:

#### *Court*

Clerk of the Court  
MARICOPA COUNTY SUPERIOR COURT  
101 W. Jefferson, #412  
Phoenix, AZ 85003

#### *Counsel for Plaintiffs*

Brian J. Robbins  
S. Benjamin Rozwood  
ROBBINS UMEDA & FINK, LLP  
610 West Ash Street, Suite 1800  
San Diego, CA 92101  
Patricia C. Weiser  
Debra S. Goodman  
THE WEISER LAW FIRM, P.C.  
121 N. Wayne Avenue, Suite 100  
Wayne, PA 19087

*Counsel for Defendants Phelps Dodge Corporation, Whisler, Dunham,  
Franke, Johnson, Knowles, Krulak, Madonna, McCoy, Parker, Post,  
Richenhagen and Thompson*

Gary W. Kubek  
DEBEVOISE & PLIMPTON LLP  
919 Third Avenue  
New York, NY 10022

*Counsel for Defendant Freeport-McMoRan Copper & Gold, Inc.*

Charles S. Duggan  
DAVIS POLK & WARDWELL  
450 Lexington Avenue  
New York, NY 10017

## **EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you do not want to be part of this settlement, but you want to keep the right to sue or continue to sue the Defendants on your own about the same legal issues in this case, then you must take steps to get out of the class. This is called excluding yourself or is sometimes referred to as opting out of the class.

### **11. How Do I Get Out of the Class?**

To exclude yourself from the class, you must send a letter by mail stating that you want to be excluded from the class. Write to *In re Phelps Dodge Corp. Shareholder Litigation*, Case No. CV2006-017963, at the address below. You must include your name, address, telephone number, your signature, and proof of the number of shares of Phelps Dodge common stock held from the close of trading on November 17, 2006 through and including March 19, 2007, the date of the Effective Time of the Merger. You must mail your exclusion request postmarked no later than July 16, 2007, to:

*Phelps Dodge Shareholder Litigation*  
Notice Administrator  
P.O. Box 62041  
Phoenix, Arizona 85082-9959

You cannot exclude yourself by telephone or by e-mail. If you ask to be excluded, you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit.

### **12. If I Do Not Exclude Myself, Can I Sue the Defendants for the Same Thing Later?**

No. If the Court approves the Settlement, unless you exclude yourself, you give up any right to sue the Defendants for the claims resolved by this lawsuit. If you have a pending lawsuit against any of the Defendants, speak to your lawyer in that case immediately. Remember, the exclusion deadline is July 16, 2007.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a hearing to decide whether to approve the settlement. You may attend and you may ask to speak, but you don't have to.

### **13. When and Where Will the Court Decide Whether to Approve the Settlement?**

The Court will hold a fairness hearing at 11:00 a.m. on September 10, 2007 at the Maricopa County Superior Court, 101 W. Jefferson, #412, Phoenix, Arizona, 85003. At this hearing the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court will listen to people who have asked to speak at the hearing. The Court may decide these issues at the hearing or take them under consideration. We do not know how long the Court's decision will take. The Court has reserved the right to adjourn or continue the fairness hearing without further notice to you.

### **14. Do I Have to Come to the Hearing?**

No. Plaintiffs' Counsel will answer questions the Court may have, but, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. As long as you submitted your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

### **15. May I Speak at the Hearing?**

You may ask the Court for permission to speak at the fairness hearing. To do so, you must send a letter saying that it is your intention to appear in *In re Phelps Dodge Corporation Shareholder Litigation*, CV2006-017963. Be sure to include your name, address, telephone number, and your signature. Your notice of intention to

appear must be received no later than July 16, 2007 at 5:00 p.m. (PST), by the Clerk of the Court, Plaintiffs' Counsel, and Defendants' counsel, at the addresses listed in question 10.

### **GETTING MORE INFORMATION**

#### **16. Are There More Details About the Settlement?**

This Notice summarizes the proposed settlement. This summary is qualified by, and subject to, the detailed terms of the Stipulation of Settlement together with its exhibits entered into as of May 14, 2007. You can get a copy of the Stipulation of Settlement during business hours at the Clerk of the Court, Maricopa County Superior Court, 101 W. Jefferson, #412, Phoenix, Arizona, 85003; or by writing to S. Benjamin Rozwood, c/o Robbins Umeda & Fink, LLP, 610 West Ash Street, Suite 1800, San Diego, CA 92101.

#### **17. How Do I Get More Information?**

You can call (619) 525-3990 or write to Robbins Umeda & Fink, LLP, 610 West Ash Street, Suite 1800, San Diego, CA 92101.

### **SPECIAL NOTICE TO NOMINEES**

If you held any Phelps Dodge common stock as of the close of trading on November 17, 2006, through and including March 19, 2007, the date of the Effective Time of the Merger as nominee for a beneficial owner, then, within ten (10) calendar days after you receive this Notice, you must either: (1) send a copy of this Notice by first class mail to all such persons or entities; or (2) provide a list of the names and addresses of such persons or entities to the Nominee Notice Administrator:

*Phelps Dodge Shareholder Litigation*  
c/o The Garden City Group, Inc.  
P.O. Box 9158  
Dublin, OH 43017-4158

If you choose to mail the Notice yourself, you may obtain from the Nominee Notice Administrator (without cost to you) as many additional copies of these documents as you will need to complete the mailing. To request additional copies, you may send a written request to the address above or call 800-391-7473. Regardless of whether you choose to complete the mailing yourself or elect to have the mailing performed for you, you may obtain reimbursement for or advancement of reasonable administrative costs actually incurred or expected to be incurred in connection with forwarding the Notice and which would not have been incurred but for the obligation to forward the Notice, upon submission of appropriate documentation to the Nominee Notice Administrator.

### ***DO NOT TELEPHONE THE COURT REGARDING THIS NOTICE***

DATED: May 21, 2007

BY ORDER OF THE COURT  
SUPERIOR COURT OF ARIZONA  
COUNTY OF MARICOPA