

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Jean H. Toal
Acting Circuit Court Judge

Appellate Case No. 2025-002104

RECORD ON APPEAL
(VOLUME XIV)

John A. Tibbs and Margaret B. Tibbs,.....

Plaintiffs,

v.

3M Company; 4520 Corp., Inc.; A.O. Smith Corporation; A.W. Chesterton Company; ABB Inc.; Air & Liquid Systems Corporation; AIW-2010 Wind Down Corp.; Amentum Environment & Energy, Inc.; Anchor/Darling Valve Company; Armstrong International, Inc.; Asbestos Corporation Limited ASCO, L.P.; Atlas Asbestos Co.; Atlas Turner, Inc.; AWT Air Company, Inc.; Bahnson, Inc.; Banner Industries International, Inc.; Banner Industries, LLC; Banner Industries of N.E., Inc.; Barretts Minerals Inc.; Beaty Investments, Inc.; Bechtel Corporation; The Bonitz Company; Brand Insulations, Inc.; BW/IP Inc.; Canvas CT, LLC; Cape PLC; Carboline Company; CB&I Laurens, Inc.; Cleaver-Brooks, Inc.; Consolidated Electrical Distributors, Inc.; Copes-Vulcan, Inc.; Covil Corporation; Crane Instrumentation & Sampling, Inc.; Crosby Valve, LLC; Daniel International Corporation; Davis Mechanical Contractors, Inc.; Dezurik, Inc.; Duke Energy Carolinas, LLC; Duke Energy Corporation; Eaton Corporation; Ellington Insulation Company, Inc.; Emerson Electric Co.; Fisher Controls International LLC; Flame Refractories, Inc.; Flowserve Corporation; Flowserve US Inc.; Fluor Constructors International; Fluor Constructors International, Inc.; Fluor Daniel Services; Fluor Enterprises, Inc.; FMC Corporation; Foster Wheeler Energy Corporation; Gardner Denver Nash, LLC; General Boiler Casing Company, Inc.; General Cable Corporation; General Cable Industries, Inc.; General Electric Company; Gould Electronics Inc.; Goulds Pumps, Incorporated; Goulds Pumps LLC; Great Barrier Insulation Co.; Grinnell LLC; Hajoca Corporation; Howden North America Inc.; HPC Industrial

RECEIVED

Jan 05 2026

S.C. SUPREME COURT

Services, LLC; IMO Industries Inc.; ITT LLC; Joy Global Underground Mining LLC; K-Mac Services Incorporated; Metropolitan Life Insurance Company; Mine Safety Appliances Company, LLC; MP Supply, Inc.; The Nash Engineering Company; Occidental Chemical Corporation; Paramount Global; Patterson Pump Company; PECW Holding Company; Pfizer Inc.; Piedmont Insulation, Inc.; Plastics Engineering Company; Presnell Insulation Co., Inc.; Redco Corporation; Riley Power Inc.; Rockwell Automation, Inc.; RSCC Wire & Cable LLC; Schneider Electric USA, Inc.; Sequoia Ventures Inc.; Spirax Sarco, Inc.; SPX Corporation; Stafford Insulation Company; Standard Insulation Company of N.C., Inc.; Starr Davis Company, Inc.; Starr Davis Company of S.C., Inc.; Sterling Fluid Systems (USA) LLC; TE Wire & Cable, LLC; Thermo Electric Company, Inc.; Union Carbide Corporation; Valves and Controls US, Inc.; Velan Valve Corp.; Viking Pump, Inc; Vistra Intermediate Company LLC; The William Powell Company; Wind Up, Ltd.; Yuba Heat Transfer LLC; and Zurn Industries, LLC, ... Defendants,

of which

Asbestos Corporation Limited is the..... Appellant in Related Case,

and

Cape PLC, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas, ... Third-Party Plaintiff/Respondent,

v.

Anglo American PLC, individually and as successor in interest to Anglo American Corporation of South Africa Ltd.; DeBeers PLC; DeBeers Centenary AG; DeBeers Consolidated Mines Ltd.; DeBeers S.A.; DeBeers UK Ltd.; DeBeers Jewelers US, Inc.; Angle American US Holdings Inc.; Element Six US Corp.; Element Six Technologies US Corp.; Element Six Technologies (OR) Corp.; First Mode Holdings, Inc.; Platinum Guild International (USA) Jewelry Inc.; Forevermark US Inc.; Anglo American Crop Nutrients (USA), LLC; Charter Consolidated Ltd.; ESAB Corporation; Central Mining & Investment Corporation Ltd.; Cape Holdco Ltd.; The Law Debenture Corporation PLC; Cape Industrial Services Group Ltd.; Mohed Altrad; Altrad UK Ltd.; Cape UK Holdings Newco Ltd.; Altrad Services Ltd., f/k/a Cape Industrial Services Ltd.; Altrad Investment Authority SAS; Sparrows

Offshore Group Ltd.; Hawk Bidco US Inc.; Arranco US, LLC; Third-Party
Sparrows Offshore, LLC; The Sparrows Group, LLC, ... Defendants,

of which

Charter Consolidated Ltd.; ESAB Corporation; Central Mining &
Investment Corporation Ltd; Mohed Altrad; and Altrad Investment
Authority SAS, are the Appellants.

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
Kevin A. Hall
S.C. Bar No. 15063
kevin.hall@wbd-us.com
M. Elizabeth O'Neill
S.C. Bar No. 104013
elizabeth.oneill@wbd-us.com
1221 Main Street, Suite 1600
Columbia, SC 29201
(803) 454-6504

*Attorneys for Appellants Mohed Altrad and
Altrad Investment Authority SAS*

SMITH ROBINSON, LLC

G. Murrell Smith, Jr.
murrell@smithrobinsonlaw.com
Jonathan M. Robinson
jon.robinson@smithrobinsonlaw.com
Shanon N. Peake
shanon.peake@smithrobinsonlaw.com
3200 Devine Street
Columbia, SC 29205
803.254.5445

Attorneys for Respondent

GORDON REES SCULLY MANSUKHANI,
LLP

A. Victor Rawl, Jr.
S.C. Bar No. 09261
vrawl@grsm.com
677 King Street, Suite 450
Charleston, SC 29403
843.278.5900

*Attorneys for Appellants Charter Consolidated
Ltd., ESAB Corporation, and Central Mining
and Investment Corporation Ltd.*

GALLIVAN, WHITE & BOYD, PA

John T. Lay, Jr.
jlay@gwblawfirm.com
Gray T. Culbreath
gculbreath@gwblawfirm.com
Lindsay A. Joyner
ljoyner@gwblawfirm.com
Eleanor L. Jones
ejones@gwblawfirm.com
1201 Main Street, Suite 1200
Columbia, SC 29201
803.779/1833

Attorneys for Respondent

MORGAN, LEWIS & BOCKIUS LLP

Troy S. Brown
troy.brown@morganlewis.com
Dana E. Becker
dana.becker@morganlewis.com
1701 Market Street
Philadelphia, PA 19103
215.963.5000

Lauren McCulloch Semlinger
lauren.semlinger@morganlewis.com
1000 Louisiana Street, Suite 4000
Houston, TX 77002
713.890.5467

Paul A. Scrudato
paul.scrudato@morganlewis.com
101 Park Avenue
New York, NY 10178
212.309.6000

Attorneys for Respondent

Other Counsel of Record:

KASSEL MCVEY

Theile B. McVey
tmcvey@kassellaw.com
John D. Kassel
jkassel@kassellaw.com
Jamie D. Rutkoski
jrutkoski@kassellaw.com
1330 Laurel Street
Columbia, SC 29201
803.256-4242

Counsel for Plaintiffs

DEAN OMAR BRANHAM SHIRLEY LLP

Charles William Branham, III
tbranham@dobslegal.com
Kevin W. Paul
kpaul@dobslegal.com
David Christopher Humen
dhumen@dobslegal.com
1801 North Lamar Street, Suite 300
Dallas, TX 75202
214.722.5990

Counsel for Plaintiffs

TABLE OF CONTENTS

<u>Document</u>	<u>Page</u>

Volume I

Order on Motion to Confirm the Appointment of the Receiver (Oct. 13, 2025).....	1

Tibbs Pleadings

<i>Tibbs</i> Complaint (Apr. 5, 2023).....	50
<i>Tibbs</i> First Amended Complaint (May 3, 2023).....	141
“Cape PLC’s” Answer (June 29, 2023)	245
Putative Receiver’s Third-Party Complaint (June 30, 2023).....	249

Volume II

Motions to Dismiss for Lack of Personal Jurisdiction and Motions to Dissolve Receivership

Mohed Altrad’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	316
Altrad Investment Authority SAS’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	336
ESAB’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023).....	360
Central Mining’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	377
Charter Consolidated’s Motion to Dismiss for Lack of Personal Jurisdiction with Affidavit (Sept. 1, 2023)	394

Volume III

Altrad Defendants’ Motion to Dissolve the Putative Receivership with Exhibits from <i>Park</i> Tort Case (Sept. 1, 2023)	411

Volume IV

ESAB’s Motion to Dissolve the Putative Receivership (Oct. 6, 2023)	807
Centrral Mining’s Motion to Dissolve the Putative Receivership (Oct. 6, 2023).....	813
Charter Consolidated’s Motion to Dissolve the Putative Receivership (Oct. 6, 2023)	819

Putative Receiver’s Opposition to Motion to Dissolve (Oct. 18, 2023) (without exhibits).....	825
ESAB’s Memorandum in Support of Motion to Dismiss (Oct. 23, 2023)	862
Central Mining’s Memorandum in Support of Motion to Dismiss (Oct. 23, 2023)	903
Charter Consolidated’s Memorandum in Support of Motion to Dismiss (Oct. 23, 2023).....	942

Volume V

Transcript of Hearing (Oct. 25, 2023)	982
Altrad Defendants’ Objections to Proposed Order (Dec. 4, 2023) (without exhibits)	1034
ESAB’s Objections to Proposed Order (Dec. 4, 2023) (without exhibits)	1056
Central Mining’s Objections to Proposed Order (Dec. 4, 2023) (without exhibits).....	1073
Charter Consolidated’s Objections to Proposed Order (Dec. 4, 2023) (without exhibits)	1089
Order Denying Motions to Dismiss for Lack of Personal Jurisdiction and to Dissolve Receivership (Dec. 6, 2023).....	1104

Initial Notices of Appeals

Altrad Defendants’ Notice of Appeal (Dec. 18, 2023)	1178
ESAB’s Notice of Appeal (Dec. 19, 2023).....	1196
Central Mining’s Notice of Appeal (Dec. 19, 2023)	1213
Charter Consolidated’s Notice of Appeal (Dec. 19, 2023).....	1230

Answers to Third-Party Complaint

Altrad Defendants’ Answer (Jan. 2, 2024)	1247
Charter Defendants’ Answer (Jan. 2, 2024).....	1310

Initial Proceedings Before the Court of Appeals

Altrad Defendants’ Initial Appellate Brief (Feb. 22, 2024).....	1371
Charter Defendants’ Initial Appellate Brief (Feb. 22, 2024)	1429

Volume VI

Receiver’s Motion to Dismiss Appeal (Apr. 16, 2024)	1491
Court of Appeals Order Dismissing Appeal (May 9, 2024)	1518

Activity Pending Appeal

Receiver’s Motion to Compel Against Herbert, Smith Freehills (Nov. 18, 2024)	1522
Receiver’s Motion for Summary Judgment (Nov. 8, 2024)	1556
Supreme Court Order (Jan. 16, 2025)	1637

Remand and Post-Remand Proceedings

Supreme Court Order (June 26, 2025)	1643
Putative Receiver’s Motion to “Confirm” Appointment (July 11, 2025)	1649
Altrad Defendants’ Notice of Recent Supreme Court Authority Voiding Litigation (July 18, 2025)	1691
Charter Defendants’ Objection to the Receiver’s Motion to Confirm (July 18, 2025)	1711

Volume VII

Transcript of Hearing (July 22, 2025)	1721
Joint Response to the Circuit Court’s First Report (July 31, 2025)	1915
Altrad Defendants’ Objection to Proposed Order (Aug. 4, 2025)	1924
Charter Defendants’ Objection to Proposed Order (Aug. 5, 2025)	1943
Transcript of Hearing (Aug. 12, 2025)	1967
Letter from Circuit Court (Aug. 13, 2025)	2036
Altrad Defendants’ Objections to Letter (Aug. 27, 2025)	2039
Charter Defendants’ Objection to Letter (Aug. 27, 2025)	2057
Transcript of Hearing (Oct. 6, 2025)	2087

Volume VIII

Order Approving Confidential Settlement and Qualified Settlement Fund Operating Agreement (Oct. 30, 2025)	2172

Park Filings

Initial Complaint (June 4, 2021)	2206

Note: All subsequent complaints in *Park*, as well as other materials related to service, scheduling trial, and the case being “fully resolved,” are attached as exhibits to the Altrad Defendants’ Motion to Dissolve the Receivership in **Volume III**.

Receiver’s Amended Complaint Against Troutman Pepper Locke (Aug. 9, 2023)	2276
Troutman Pepper Locke’s Motion to Dissolve the Putative Receivership (Sept. 15, 2023) (without exhibits)	2285
Receiver’s Motion to Clarify (Nov. 1, 2024).....	2306
Order Granting Receiver’s Motion to Clarify (Nov. 5, 2024)	2312
Troutman Pepper Locke’s Rule 59 Motion Regarding Order Granting Motion to Clarify (Nov. 15, 2024) (without exhibits).....	2316
Order on Motion to Enforce Subpoenas [Confirm the Appointment of the Receiver in <i>Park</i>] (Oct. 13, 2025)	2324
Order Vacating Confirmation of Appointment in <i>Park</i> (Oct. 30, 2025)	2367

Volume IX

Complete Park Probate File

Park Will	2370
Application for Formal Testacy and Appointment as Personal Representative	2387
Inventory and Appraisement of Estate.....	2415
Receipt and Release of Beneficiary Fiona Wiley (May 21, 2022)	2432
Receipt and Release of Beneficiary Alastair Park (May 22, 2022)	2433
Receipt and Release of Beneficiary Keith Park (June 6, 2022).....	2434
Sworn/Notarized Application to Close Estate and Discharge Personal Representative (June 6, 2022)	2435
Probate Court Order Closing Estate (Aug. 26, 2022)	2436
Probate Court Order Terminating Appointment as Personal Representative (Aug. 26, 2022).....	2438
Application for Subsequent Appointment (July 24, 2025)	2443
Certificate of Appointment (July 30, 2025).....	2447
<i>Park</i> Mediation Appointment (May 24, 2022)	2448

<i>Park</i> is “Fully Resolved” Email of Counsel (June 3, 2022)	2449

Additional Activity of the Receiver

“Tolling Agreement” (June 12, 2023)	2457
Receiver’s Complaint Against Winston & Strawn, LLP (Sept. 5, 2024)	2461
Letter from Winston & Strawn on behalf of CIHL (Aug. 30, 2024)	2488
Complaint in <i>Adams v. Cape plc</i> (Richland County Nov. 12, 2024)	2498
Acceptance of Service as “Attorney For” Cape plc (Nov. 12, 2024)	2588

Volume X

International Authorities

<i>Adams v. Cape Industries plc</i> (1990) 1 Ch 433 (CA)	2589
Appendix to <i>Adams v. Cape Industries plc</i> (1990) 1 Ch 433 (CA)	2729
<i>CIHL v. Protopapas</i> [2024] EWHC 2999 (“ <i>Mann I</i> ”)	2769
Schedule of Overlap between <i>Adams</i> and “Third-Party Complaint”	2854
Transcript of Preliminary Proceedings in <i>Mann I</i> (Oct. 9, 2024)	2875
<i>Cape plc v. Protopapas</i> , Case DBYB-W-B7J-PM3N (Montpellier Court of Appeal Apr. 8, 2025)	2923
<i>Altrad Investment Auth. SAS v. Protopapas</i> [2025] EWHC 2470 (Ch) (“ <i>Smith</i> ”)	2937
Agreement for Full and Final Settlement and Release of Claims	2976
<i>CIHL v. Protopapas</i> [2025] EWHC 2706 (Ch) (“ <i>Mann IP</i> ”)	2986

Additional Materials

South Carolina Receivership Statute (1880)	3004
South Carolina Receivership Statute (1897)	3009
In re Plan of Arrangement or Compromise of Asbestos Corporation Limited, Case No. 235-11- 000008-259 (Superior Court of Quebec July 30, 2025)	3013
Altrad Defendants’ Notice of Appeal of October 13, 2025 Order (Oct. 14, 2025)	3044
Charter Defendants’ Notice of Appeal of October 13, 2025 Order (Oct. 14, 2025)	3050

Volume XI

Orders Designated by Receiver

Order Appointing Receiver, <i>Park v. Armstrong International, Inc., et al.</i> , No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Richland Cnty. March 17, 2023)	3057
Order Granting the Receiver's Motions to Compel Discovery Responses of Third-Party Defendants and 30(b)(6) Depositions of Arranco US, LLC & Central Mining & Investment Corp. Ltd., <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. March 12, 2024)	3061
Order Granting the Receiver's Motions to Compel Discovery Responses of Third-Party Defendants and 30(b)(6) Depositions of Arranco US, LLC & Central Mining & Investment Corp. Ltd., <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. March 12, 2024)	3075
Order, <i>Tibbs v. 3M Co., at al.</i> , Appellate Case No. 2025-002104 (S.C. November 26, 2025)	3109

Motions, Memoranda, and Other Filings Designated by Receiver

Plaintiffs' Motion to Appoint Receiver, <i>Park v. Armstrong International, Inc., et al.</i> , No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Richland Cnty. March 6, 2023)	3114
Appellants Mohed Altrad and Altrad Investment Authority SAS's Motion for Protective Order and to Dissolve Receivership, <i>Tibbs v. 3M Co., et al.</i> , No. 2023- 4 CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. September 20, 2023)	3244
Appellants Mohed Altrad and Altrad Investment Authority SAS's Legal and Procedural Opposition to the Purported Receiver's Motion for Summary Judgment, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. November 22, 2024)	3248

Volume XII

Appellants Mohed Altrad and Altrad Investment Authority SAS's Legal and Procedural Opposition to the Purported Receiver's Motion for Summary Judgment, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. November 22, 2024), <i>continued</i>	3516
Appellants Charter Consolidated Ltd.'s and ESAB Corporation's Memorandum in Opposition to Receiver's Motion for Summary Judgment, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. November 22, 2024)	3789

Volume XIII

Appellants Charter Consolidated Ltd.’s and ESAB Corporation’s Memorandum in Opposition to Receiver’s Motion for Summary Judgment, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759, <i>continued</i> (S.C. Ct. Com. Pl. Richland Cnty. November 22, 2024).....	4005

Volume XIV

Appellants Charter Consolidated Ltd.’s and ESAB Corporation’s Memorandum in Opposition to Receiver’s Motion for Summary Judgment, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759, <i>continued</i> (S.C. Ct. Com. Pl. Richland Cnty. November 22, 2024)	4373
Notice of Release of Claims, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. June 4, 2025).....	4603
Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. July 11, 2025)	4629
Exhibits 1–81, including all subparts, to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. July 11, 2025)	4669

Volume XV

Exhibits 1–81, including all subparts, to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759, <i>continued</i> (S.C. Ct. Com. Pleas, Richland Cnty. July 11, 2025)	4834

Volume XVI

Exhibits 1–81, including all subparts, to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759, <i>continued</i> (S.C. Ct. Com. Pleas, Richland Cnty. July 11, 2025)	5302

Volume XVII

Exhibits 1–81, including all subparts, to Report of the Receiver Relating to the Factual Predicate Underlying the Cape Appointment Order, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759, <i>continued</i> (S.C. Ct. Com. Pleas, Richland Cnty. July 11, 2025)	5789

Volume XVIII

Bench Brief to the Court on the Status of the Park Case, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. August 4, 2025) and <i>Park v. Armstrong International, Inc., et al.</i> , No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Richland Cnty. August 4, 2025)	6260

The Receiver for Cape’s Pre-Trial Memorandum, <i>Tibbs v. 3M Co., et al.</i> , No. 2023- CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. October 16, 2025).....	6517
Notice of Filing Supplemental Exhibit to Bench Brief to the Court on the Status of the Park Case, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. August 6, 2025) and <i>Park v. Armstrong International, Inc., et al.</i> , No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Richland Cnty. August 6, 2025), including exhibit to the same.....	6512
Appellants Mohed Altrad and Altrad Investment Authority SAS’s Omnibus Response to the Receiver’s Numerous Filings, <i>Tibbs v. 3M Co., et al.</i> , No. 2023- CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. October 19, 2025).....	6622
Notice of Filing, France Summons for Hearing, <i>Tibbs v. 3M Co., et al.</i> , No. 2023- CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. December 22, 2025), including exhibit to the same	6633
Notice of Filing Supplemental Exhibit to Bench Brief to the Court on the Status of the Park Case, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. August 6, 2025) and <i>Park v. Armstrong International, Inc., et al.</i> , No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Richland Cnty. August 6, 2025), including exhibit to the same.....	6512

Volume XIX

Notice of Filing, France Summons for Hearing, <i>Tibbs v. 3M Co., et al.</i> , No. 2023- CP-40-01759 (S.C. Ct. Com. Pleas, Richland Cnty. December 22, 2025), including exhibit to the same, <i>continued</i>	6512

Transcripts Designated by Receiver

Trial Transcript, Volume I, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. October 20, 2025)	6767

Volume XX

Trial Transcript, Volume II, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. October 21, 2025)	7038
Trial Transcript, Volume III, <i>Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. October 22, 2025)	7337

Other Items Designated by Receiver

<i>McDaniels v. Carey Canada</i> , No. 83-1412 (D.N.J. Nov. 11, 1985) (unpublished)	7476
<i>Brown v. Lac D’Amiante Du Quebec, Ltd.</i> , No. 84-357 (E.D. Pa. June 12, 1985) (unpublished)	7508

<i>Figueroa v. Charter Consolidated P.L.C.</i> , No. 4351 (2123) (Ct. Comm. Pl. Phil. Cnty. June 24, 1985) (unpublished)	7525

Volume XXI

<i>Trial Exhibits in Tibbs v. 3M Co., et al.</i> , No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. October 20-22, 2025) Designated by Receiver	
The Receiver for Cape’s Fourth Amended Trial Exhibit List, <i>Tibbs v. 3M Co.</i> , et al., No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. Richland Cnty. November 18, 2025)	7529
Trial Exhibit 43, Telex from A. Penna to S. Milwid (July 4, 1977)	7541
Trial Exhibit 52, NAAC Sales List (undated).....	7542
Trial Exhibit 63, Trial Testimony of Anthony John Penna, <i>Adams v. Cape Indus. plc</i> , [1990] Ch. 433 (Q.B. Mar. 14, 1988).....	7572
Trial Exhibit 68, Deposition of Charles G. Morgan, <i>Barber v. Pittsburgh Corning Corp.</i> , No. GD 79-21544 (Ct. Com. Pl. Allegheny Cnty., Pa. Oct. 31, 1980)	7589
Trial Exhibit 102, 2023 Altrad Annual Report	7593
Trial Exhibit 107, Altrad Website, <i>Our History</i> (2024).....	7596
Trial Exhibit 117, Correspondence from Winston & Strawn London LLP to Peter D. Protopapas (Aug. 30, 2024)	7598
Trial Exhibit 138, Letter from R. Oren to Lloyd’s (May 7, 2025)	7608
Trial Exhibit 207, North America: Contact Us, Altrad RMD Kwikform Website, https://www.rmdkwikform.com/us/contact-us/ (last accessed Nov. 17, 2025)	7613
Trial Exhibit 208, United States, Altrad RMD Kwikform Website, https://www.rmdkwikform.com/us/ (last accessed Nov. 17, 2025).....	7616
Trial Exhibit 209, ESAB US – Sales Terms & Conditions, ESAB Website, https://esab.com/us/nam_en/terms-and-conditions-of-sales/ (last accessed Nov. 17, 2025)	7618
Trial Exhibit 218, RMD Kwikform North America Inc., South Carolina Secretary 7 of State Business Entities Online Report (last accessed Oct. 20, 2025)	7623
Trial Exhibit 225, South Carolina Secretary of State Search Business Entries Online Search, ESAB Corporation (last accessed Nov. 6, 2025)	7624
Trial Exhibit 242, Deposition of Richard Gaze, <i>Yandle v. PPG Indus., Inc.</i> , Civil Action Nos. TY-74-3-CA & TY-74-13-CA (E.D. Tex. June 4-5, 1975)	7625

Trial Exhibit 250, ESAB Corporation, Workers Compensation Coverage Verification, South Carolina Workers Compensation Commission)	7740

Additional Items

<i>Adams v. Cape plc</i> Judgement with Statement of Primary Facts	7746
<i>In re Asbestos Litig. Venued in Middlesex Co.</i> , No. L-37243-79 (N.J. Super. Ct July 10, 1987)	7850
<i>Dillman v. Celotex</i> , No. A87-599 Civil (D. Alaska Aug. 22, 1988).....	7904
<i>Kessinger v. North American Asbestos Corp.</i> , No. 87-L-120 (11th Cir. McClean Co., Ill. Dec. 1, 1988)	7914
<i>A.J. Adams, et al. v. A.W. Chesterton, a Corporation, et al.</i> (1st Cir., Hinds Co. Miss.).....	7951
<i>Denham v. Unarco Industries, Inc., et al</i> , No. 85-L-360 (11th Cir. McClean Co., Ill, Dec. 1, 1988)	7972
<i>Gray v. Crown Cork & Seal Co., et al.</i> , No., 84-6067 (W.D. Ark. Jan. 7, 1986).....	7990
<i>A.J. Adams, et al. v. A.W. Chesterton, a Corporation, et al.</i> (1st Cir., Hinds Co. Miss.).....	7951

Exhibit F

3216781

ELECTRONICALLY FILED - 2024 Nov 22 11:49 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF McLEAN

----- x
LOIS J. THACKER, et al. :
Plaintiff :
v. : No. 82 L 49
UNR INDUSTRIES, INC, et al. :
Defendants :
----- x

SKALC
DISCOVER
FILE COPY

Deposition of MR JOHN NEIL CLARKE, produced, sworn
and examined the 21st day of April 1983 at the offices of Messrs
Linklaters & Paines, Barrington House, 59-67 Gresham Street,
London, EC2V 7JA, England.

Walter H. Clark, of 24 Chancery Lane, London WC2A 1LS,
England, acted as Reporter.

1 APPEARANCES:

2 For the Plaintiff:

JAMES WALKER, LTD.
P.O. Box 3455,
Bloomington, Illinois 61710

4 By: JAMES WALKER

5 For the Defendant Charter Consolidated PLC:

6 SHEARMAN & STERLING,
7 53 Wall Street,
New York, N.Y. 10005

8 By: WERNER L. POLAK

9 and

JEREMY G. EPSTEIN

10 Also present:

MISS LOUISE BACKHOUSE)

11 MR H. RAINE)

12 of MESSRS LINLATERS & PAINES

London, England
April 21 1983
9.15 a.m.

MR JOHN NEIL CLARKE,

having been duly and publicly sworn,

testified as follows:

DIRECT EXAMINATION BY MR WALKER

Q State your name, please.

A John Neil Clarke.

Q What is your date of birth?

A 7th August 1934.

Q Within Charter when you are addressed by your first name what name are you normally addressed by?

A Neil.

Q Where do you live?

A My home address is "High Willows", Park Avenue, Farnborough Park, Kent, in England.

Q Where do you make your office?

A 40 Holborn Viaduct, London EC1.

Q Would you outline your educational background, please?

A Could you explain that?

Q Do you hold any degrees?

A Yes.

Q What degrees do you hold and from what institutions did you receive them?

A I hold a degree of Bachelor of Laws from the University of London.

Q In what year did you receive that?

A 1955.

Q Any others?

1 A No other degrees, no.

2 Q Have you been engaged in any other courses of study after
3 receiving the Batchelor of Laws degree?

4 A Yes. I was articted and qualified as a chartered accountant.

5 Q I am not familiar with who tests or certifies accountants.
6 Who is that?

7 A It is the Institute of Chartered Accountants in England and
8 Wales, which is the major body of professional accountancy in
9 this country.

10 Q When were you certified?

11 A 1959. If I could just correct that, we would say "When did
12 you qualify?", and I qualified in 1959.

13 Q Just as an aside, in the States if someone isn't, for example,
14 board certified in a particular area, if is often they will
15 say "I am qualified. I could take the exam if I wanted to,
16 but I have just chosen not to".

17 MR EPSTEIN: "Certified" has a very different meaning here.

18 MR WALKER: Yes, it must have.

19 Q In any event, within your accounting profession there is no
20 higher level of accomplishment or measure of competence than
21 to be, as you say, qualified; is that correct?

22 A There is a higher level, which is to become a Fellow of the
23 Institute of Chartered Accountants, which I am.

24 Q How is that done, sir?

25 A It is normally achieved by spending a number of years in
26 professional practice. In my case that was attained after,
27 I think, five years in professional practice.

28 Q And is a fellowship bestowed by the same group?

1 A Yes.

2 Q How long have you practised accounting? Since 1959?

3 A I was a professional accountant as a partner in a firm of
4 chartered accountants from 1960 to 1969.

5 Q In 1969 you stopped working for that firm and started working
6 for whom?

7 A I retired from my partnership and entered the employment of
8 Charter Consolidated Services.

9 Q Had you ever previously done any professional work for any
10 corporation which makes either its actual or has a registered
11 office at 40 Holborn Viaduct?

12 A I had not.

13 Q You have worked continuously for Charter Consolidated Services
14 since 1969?

15 A I have been employed by them since 1969. I have spent three
16 years on secondment, when I was not in full-time employment
17 but on secondment to another company.

18 Q Will you explain that procedure, please?

19 A I will try and do so. In 1976 I was asked if I would accept
20 a period of three years' secondment to another company to fill
21 a particular post in that company. I remained an employee of
22 Charter Consolidated Services and a director of Charter, but I
23 in fact went to work for another company during that period.

24 Q For whom did you work?

25 A Anglo American Corporation of South Africa.

Q Where did you work?

17 A In Johannesburg.

8 Q Did you live there for that three year period?

1 A It was in fact two years and nine months, but I lived there
2 during that period.

3 Q Where were you born?

4 A In Lincoln, England.

5 Q Have you ever received a pay check or had a deposit to your
6 personal checking account from an entity other than Charter
7 Consolidated Services?

8 A Other than during my period of secondment, I have never
9 received a pay check from other than Charter Consolidated
10 Services. I do receive directors' fees from other companies
11 where I sit on the board, but as I have a full-time contract
12 of employment with Charter Consolidated Services those fees go
13 to Charter Consolidated Services. In other words, I assign
14 the fee that I receive to Charter. I still receive one
15 director's fee in my personal capacity, which I retain.

16 Q Which one is that?

17 A That is the Anglo American Corporation of South Africa.

18 Q Were you paid during this two year nine month period when you
19 were in Johannesburg by Charter Consolidated Services during
20 that time?

21 A I received a small retaining payment from Charter Consolidated
22 Services, because I remained a director of the company; but my
23 prime source of income was from Anglo American Corporation
24 of South Africa.

25 Q During that two year nine month period you received less from
26 Charter than you had the one or two years before that; is that
27 correct?

28 A Much less.

1 Q From whom else did you receive income during that two year
2 nine month period in addition to Charter?

3 A From Anglo American Corporation of South Africa.

4 Q When did that period begin and end?

5 A It began in January 1977. It ended on the 30th September
6 1979.

7 Q Who made the decision that you would go to Johannesburg?

8 A I did.

9 Q Did you ask to go or did someone offer you the position?

10 A I was asked if I would be prepared to go to fill a vacancy
11 that existed there.

12 Q And apparently you accepted?

13 A I accepted.

14 Q Who asked you?

15 A Three people. The chairman of the Anglo American Corporation,
16 whose name is Mr H.F. Oppenheimer, the deputy chairman,
17 Mr Gavin Relly and another member of the executive committee
18 of Anglo American Corporation whose name is Ogilvie Thompson.

19 Q Who was the chief executive officer of Charter at that time?

20 A M.V. Hofmeyr.

21 Q Was the position that you filled during that two years and
22 nine months rather similar to the position that someone had
23 held before your arrival?

24 A It was the position of finance director, and it was exactly
25 the same position as an individual had held before my
26 arrival.

27 Q What was the name of that individual?

28 A Mr E.P. Gush.

1 Q How did his position end?

2 A He had been asked, and had accepted, to accept a post at
3 another company.

4 Q What company was that?

5 A Hudson Bay Mining and Smelting Limited.

6 Q What was your title position at Charter before you went?

7 A I was the executive director responsible for finance.

8 Q What was your title position when you returned to England?

9 A The managing director of Charter.

10 Q Who was the executive director for finance at this time of
11 Charter?

12 A Could you specify which time?

13 Q As of today.

14 A As of today, the executive director responsible for finance
15 is Francis Howard.

16 Q Has anyone else filled that post from January 1977 to the
17 present?

18 A Yes, somebody else has. I retired from that post in January
19 1970 and Mr B.W. Pain took over the responsibility.

20 Q And he held it for how long, or until when?

21 A May I just try and get the exact date? I think the end of
22 1979. It might have been March 1980; it might have been
23 October 1979.

24 Q And did Howard follow him?

25 A Yes, indeed.

26 Q Did you say "Pain" or "King"?

27 A Pain - P-a-i-n.

28 Q Did you hold a position other than financial director for AA?

1 A I was an executive director, which is a member of the
2 executive committee, responsible for finance.

3 Q Did you hold that position in addition to being financial
4 director throughout the two years nine months?

5 A No. Initially I was a director of the corporation responsible
6 for finance. Then in January 1978 I was appointed an
7 executive director, still responsible for finance.

8 Q How were you chosen to be managing director of Charter?

9 A By the board of the company.

10 Q Of which you were a member at that time?

11 A Of which I was a member at the time.

12 Q Who owns the building at 40 Holborn Viaduct?

13 A The physical building?

14 Q Yes, sir.

15 A I am not exactly sure, but Charter Consolidated Services I
16 think would be the owners. It could be Charter Consolidated
17 Limited, which is the holding company, but I believe it to be
18 Charter Consolidated Services.

19 Q Charter Consolidated Limited holds shares of whom?

20 A Charter Consolidated Limited is a public company quoted on the
21 Stock Exchange. It holds shares in its prime subsidiary
22 companies.

23 MR POLAK: You are referring to PLC here?

24 A Yes. Charter Consolidated is what we now call in this
25 country a public limited company. It used to be simply
26 called "Limited".

27 MR WALKER: So Charter Consolidated Limited is the same as
28 Charter PLC?

1 A I am afraid it is a change in nomenclature but not in sub-
2 stance.

3 Q By what arrangement does AA also have offices in that same
4 building?

5 A It is an arrangement that essentially derives from history.
6 The entire offices are owned by Charter, or Charter
7 Consolidated Services' wholly owned subsidiary, and it
8 provides a range of services to Anglo American and a large
9 range of other South African companies, for which it charges
10 arm's length fees.

11 Q Does anyone sublet from either Charter or Charter Consolidated
12 Services, whichever it is that owns the building?

13 A I am not quite sure what you mean by "sublet".

14 Q Perhaps just "lease" would be a better word. Does anyone
15 lease a portion of the building from Charter or Charter
16 Consolidated Services?

17 A Not to my knowledge.

18 Q Are there any people who office at 40 Holborn who are paid by
19 Anglo American Corporation of South Africa?

20 A Are there any people resident at 40 Holborn Viaduct who are
21 paid by Anglo American Corporation of South Africa?

22 Q Yes.

23 A Not to my knowledge, other than myself and one other person
24 who receives a normal director's fee as a director of Anglo
25 American Corporation.

26 Q Mr Richardson?

27 A Indeed.

28 Q Anything else that is done at 40 Holborn Viaduct other than

1 whatever you and Mr Richardson do as directors of AA for AA is
2 done by employees of Charter Consolidated Services?

3 A Yes.

4 Q Has that been the case since the creation of Charter, so far
5 as you know?

6 A It has been the case so long as I have been aware of these
7 matters. I can't speak for the period before I was an
8 employee of Charter.

9 Q Nothing has come to your attention to indicate that it was
10 different from the present arrangement in the first five years
11 of Charter's existence; is that correct?

12 A I have no knowledge of anything in the first five years which
13 would be different from the current situation.

14 Q Does AA have any employees anywhere in the world?

15 A By "AA" do you mean the Anglo American Corporation?

16 Q Anglo American Corporation of South Africa Limited, or whatever
17 its full name is.

18 A It has employees in South Africa, certainly, in its head
19 office there.

20 Q Would these be officed at more than one location?

21 A There are two main offices in South Africa, one at 44 and one
22 at 45 Main Street, Johannesburg. They happen to be on
23 opposite sides of the thoroughfare in Johannesburg.

24 Q But it is your belief that there are people there that are
25 paid directly by Anglo American Corporation of South Africa
26 in a manner similar to the way that you were paid from 1977
27 to 1979?

28 A It is my knowledge that during 1977 to 1979 the staff of the

1 Anglo American Corporation were paid by the Anglo American
2 Corporation in exactly the same way as employees of most
3 companies are paid.

4 Q Does Anglo American Corporation provide this service-type
5 service (is the best I can do) to any corporations as Charter
6 Consolidated Services does to, for example, Charter or Anglo
7 American Corporation in England?

8 A Yes, it does. It provides services to a wide range of
9 mining and industrial companies. It provides them in the
10 same way that the major mining finance houses of South Africa
11 also provide services to their industrial and mining invest-
12 ments.

13 Q Are there any words or phrases used to describe those companies
14 to which Anglo American provides services?

15 MR POLAK: Do you understand that question?

16 A I am not quite certain what the point of the question is.

17 MR WALKER: For example, wouldn't you call those companies to
18 whom Charter provides services in England as basically the
19 Charter companies or the Charter group of companies?

20 A In the case of Charter we use the phrase "client companies",
21 because they are companies for the most part to whom we
22 simply supply services on an arm's length basis in which we
23 do not have an investment. We may have had investment in the
24 past. For example, in a gold mine, to whom we would also
25 supply, for example, share registration services because it
26 has an English registration. Charter also has a separate
27 group of companies in which we may have an investment
28 interest and may supply services, for example computer

1 services, to one of our subsidiary companies. If I can then
2 turn to the case of the Anglo American, I think the normal
3 term that would tend to be used would be "associated companies"
4 because they would be gold mines or coal mines in which Anglo
5 American or its investment companies had an investment
6 interest and retain an investment interest, and to which the
7 Anglo American Corporation might supply, and normally does
8 supply, very high level technical services.

9 Q Charter Consolidated Services provides services to some
10 corporations in which Charter does not own stock?

11 A Absolutely, yes.

12 Q And those you call clients?

13 A We call those client companies.

14 Q Then it also provides services to corporations in which
15 Charter does own stock?

16 A Yes.

17 Q What do you call those?

18 A Client companies, or in some cases they would be subsidiary
19 companies, or in some cases they would be companies in which
20 we also had an investment. We regard them all as client
21 companies. The only distinction is whether we have an
22 investment or whether we don't. In terms of the provision
23 of services, it makes no difference.

24 Q And the difference between a subsidiary and a company in which
25 you have an investment is in terms of stock ownership or some
26 other quantitative difference. What is the difference?

27 A The position of subsidiary is purely the distinction when the
28 shareholding interest exceeds 50.01 per cent.

1 Q Do you know if Anglo American provides services to corporations
2 in which it has no ownership interest?

3 MR POLAK: At the present time?

4 A I can't speak for the present time, because I have no direct
5 or intimate knowledge. During the period when I had knowledge
6 when I was in Johannesburg, I can't immediately think of an
7 instance where it supplied services to a company in which it
8 did not have an investment interest. That does not mean to
9 say that there was not one; merely that I have no knowledge of
10 it.

11 MR WALKER: You are a member of the board of Cape Industries?

12 A I am at the current time, yes.

13 Q How long have you been? In other words, when did you first
14 start?

15 A I joined the board of Cape Industries early in 1980.

16 Q And have you been on it ever since?

17 A I have.

18 Q Are you on the board of any of its subsidiaries?

19 A I am not.

20 Q Have you ever been?

21 A I have not.

22 Q How did it come to be that you are on the board of Cape?

23 A When I became managing director of Charter in 1979 Cape was
24 Charter's largest industrial subsidiary company, and I had
25 relatively little knowledge of its business. I thought as
26 chief executive of Charter I should know and understand the
27 business as best I can; it was an important investment
28 interest for Charter; and I talked to the chairman of Cape

1 about this, and he in fact suggested that I should join the
2 board of Cape and then I would be able to see at first hand
3 what the business of the company was about as a non-executive
4 director.

5 Q Who was the chairman of the board of Cape?

6 A The chairman of the board of Cape at that time was Lionel
7 Stopford Sackville. If I may, I would like just to correct
8 my previous answer, because I had assumed, I think, it was
9 only in May 1980 that Geoffrey Higham became the chairman of
10 Cape; but in fact the person I talked to was Geoffrey Higham,
11 who was the managing director of Cape. My former colleague,
12 Lionel Stopford Sackville, was about to retire from the chair.

13 Q So which part of your answer did you correct, then?

14 A The part I would like to correct is I think I said I talked
15 to the chairman of Cape. In fact, I talked to Geoffrey
16 Higham, who was the managing director of Cape and who I knew
17 would take over as the chairman of Cape.

18 Q How did you know that?

19 A It was known that Lionel Stopford Sackville would retire from
20 the chairmanship of Cape, and I knew from my colleagues who
21 were on the Cape board that Geoffrey Higham was intended to
22 take over as the chairman from him.

23 Q By whom was Geoffrey Higham intended to take over?

24 A I don't understand the question.

25 Q You talked to Higham apparently in late 1979 or early 1980?

26 A Just so. Yes.

27 Q And at that time Higham was managing director, he was on the
28 board, but he was not chairman of the board; is that true?

1 A That is correct.

2 Q And you said you learned from your colleagues that it was
3 intended that when Stopford Sackville retired from the board
4 of Cape and therefore ceased being its chairman it was
5 intended that Higham would become chairman of the board; is
6 that true?

7 A It was intended that he would become chairman.

8 Q And my question is: Who intended this?

9 A The board of Cape Industries.

10 Q Which members of the board did you learn from that Higham
11 was intended to be the next chairman?

12 A From my charter executive colleagues who were directors of
13 Cape Industries at that time, and also from the other non-
14 executive directors of Cape.

15 Q Who were your colleagues at Charter that were on the Cape
16 board?

17 A John Richardson and Francis Howard.

18 Q Did you personally talk to the other Cape board members before
19 you went on the board?

20 MR POLAK: What about?

21 MR WALKER: About anything.

22 A No, I think not. I might well have talked to Messrs Richard-
23 son and Howard, but not about this specific subject. My only
24 recollection is discussing it with Geoffrey Higham.

25 Q Did even Higham himself know he was going to be the next
26 chairman of the Cape board?

27 A He would have been aware of that.

28 Q Did he tell you that?

1 A He did not tell me that.

2 Q So you learned from either Richardson or Howard that the board
3 of Cape -- strike that. You learned in late 1979 or early
4 1980 from either Richardson or Howard or both that the board
5 of directors of Cape intended that Geoffrey Higham would be the
6 next chairman of the board after Stopford Sackville stopped
7 serving as chairman; is that correct?

8 A Correct. May I just give you an understanding of this which
9 might assist you?

10 Q You may.

11 A I would have returned to become managing director of Charter.
12 I would be aware, because it was known to me, that Lionel
13 Stopford Sackville was retiring as chairman of Cape. As
14 managing director of Charter I had to make an assessment of
15 all of Charter's investment positions. I would have said to
16 Messrs Richardson and Howard: "Now, I understand that Lionel
17 is retiring as the chairman of Cape. Who is going to succeed
18 him?". They would say to me: "It has been discussed.
19 Geoffrey Higham is the person who is going to take over".

20 Q At that time was Higham a Charter employee?

21 A He was not a Charter employee. He was a non-executive
22 director.

23 Q A non-executive director of Charter or Cape?

24 A A non-executive director of Charter.

25 Q He is currently a Charter employee; is that correct?

26 A He is an executive director of Charter. He is employed by
27 Charter Consolidated Services. In fact, he is on a contract
28 of secondment from Cape Industries.

1 Q Is that a written contract?

2 A It is an exchange of letters, which amounts to a written
3 contract.

4 Q One letter from each company, or more than one?

5 A It would be one letter from Charter Consolidated Services to
6 Cape Industries, so far as I know. I have no knowledge of any
7 other letters.

8 Q Who prepared the letter from Charter to Cape concerning this
9 contract of (and I know I will butcher the word) secondment?

10 A Secondment. It would have been prepared by the personnel
11 consultant of Charter on Charter's behalf.

12 Q And then is there some type of acceptance by Cape?

13 A There would be a letter of acceptance by Cape.

14 Q Have you seen the specific letter as it regards Geoffrey
15 Higham?

16 A I have seen the specific letter from Charter to Cape. I have
17 not seen, to my knowledge, the response from Cape.

18 Q Does the Charter to Cape letter basically set forth all the
19 terms, so that you would anticipate that all Cape would have
20 done is say "We acknowledge this situation"?

21 A The letter from Charter would certainly set out the terms.
22 I can't speak to the acknowledgement from Cape, because I
23 haven't seen it.

24 Q What I mean is: Would you anticipate that about all they
25 would do is accept or reject, or do you think they would have
26 said "Well, we don't like that deal, but why don't we do it
27 under this deal"?

28 A It would be left to the personnel consultant of Charter. If

1 there was any problem in relation to the acceptance he would
2 normally, and would indeed, consult me. He hasn't consulted
3 me. But it is entirely, therefore, assumption on my part that
4 there was no major problem relating to it.

5 Q If things worked as you believe they should and have, the
6 contract is set forth in the letter from Charter to Cape?

7 A That is so.

8 Q You have seen that letter?

9 A I have seen it.

10 Q What does it say?

11 A It says "It is agreed that Mr Higham will accept a period of
12 secondment from Cape Industries to Charter for a period of
13 three years". It would set out his remuneration and the way
14 in which it would be paid.

15 Q How will Mr Higham's remuneration be paid during this period
16 of time?

17 A The prime source of payment will be Charter Consolidated
18 Services. In reaching the net amount that is paid by
19 Charter Consolidated Services, account will be taken of
20 certain director's fees which he receives from other companies;
21 in one case an entirely independent third party, a non-
22 executive directorship; in the other case a fee which he does
23 receive from the Cape company.

24 Q For being director or in addition to the usual director fee?

25 MR POLAK: I am sorry. From Cape? Is that what you are talking
26 about?

27 MR WALKER: That is what I meant my question to be.

28 Q Do you understand the question?

1 A Not exactly. Can you rephrase it?

2 Q As I understand it, the letter from Charter to Cape, in
3 discussing the amount of money that Higham is to get from the
4 two of those organizations plus any others that are known to
5 Charter and Cape, says that the biggest chunk of money will
6 come from Charter; is that correct?

7 A That is correct.

8 Q It recites that he will receive a director fee from a company
9 different from both Charter and Cape; is that correct?

10 A It will recite that Charter knows that he receives director's
11 fees from a company which is entirely independent of Charter and
12 Cape and that he receives a fee or fees from Cape companies.
13 Because he receives these, the net amount payable by Charter
14 is adjusted by those receipts.

15 Q What is the name of the company that is not related to
16 Charter and Cape?

17 A It is the Rugby Portland Cement Co.

18 Q Does Charter have any investment in that?

19 A Not to my knowledge.

20 Q Does Anglo American?

21 A Not to my knowledge.

22 Q Does Minorco?

23 A No.

24 Q Was Mr Higham connected with that corporation prior to his
25 being employed by any of Charter or Cape?

26 MR POLAK: I am sorry. Is that the cement company?

27 MR WALKER: Yes, that is what I meant.

28 A To my knowledge he had no connection with it whatsoever.

1 Q Do you know how it is that he was invited to participate on
2 the board of that corporation?

3 A I can only give you hearsay evidence, which is derived from
4 discussing it with him, and he has told me that the company
5 wished to appoint a non-executive director to strengthen the
6 non-executive membership of the board, and he was asked if he
7 would like to take up this appointment.

8 Q Did he, so far as you know, ask anyone at Cape or Charter or
9 anywhere else if it would be permissible for him to do so?

10 A He would certainly not have asked anybody at Charter. It
11 would be normal courtesy, indeed a requirement, to have con-
12 sulted whoever was then the chairman of Cape at the time of
13 his appointment.

14 Q Who was the chairman of Cape at the time of Mr Higham's
15 appointment to - I have forgotten the name of that company?

16 A The Rugby Portland Cement Co. I don't know the date on which
17 he was appointed.

18 Q So you don't know specifically whether he in fact did or did
19 not ask anyone at Cape whether he could serve on Rugby
20 Portland Cement?

21 A I do not know that.

22 Q Going back to the letter between Charter and Cape regarding
23 Higham's pay, in category 1 we have the amount Charter is
24 going to pay Higham, in category 2 we have the discussion
25 of how much he is getting from the cement company, in
26 category 3 how much he is getting from Cape?

27 A Yes.

28 Q Does the letter recite that Higham receives money from any

1 Charter subsidiary or sub-subsidiary other than the one known
2 as Cape Industries Limited?

3 A No, it does not.

4 Q Does Higham get money from any subsidiary of Cape Industries
5 Limited?

6 A Subsidiary of Cape Industries Limited?

7 Q Yes.

8 A The only one of which I am aware is the one disclosed in this
9 letter.

10 Q Which one is that?

11 A It is Cape -- I can't give you the full name of the company,
12 but it is known in the Cape group as CASAP, which I think is
13 the South African subsidiary company.

14 Q Would the 1981 annual report help you find the name of that
15 company?

16 A It may do so.

17 Q Would you look at it a minute, please?

18 A (The witness perused the document). It doesn't help me,
19 because it is not listed under the principal subsidiary
20 companies.

21 Q The letter was written when?

22 A The letter would have been written in approximately May 1980,
23 and will have been renewed April 1983.

24 Q Does "renewed" mean that the terms were recited again, or
25 were the terms just repeated without change or alteration?

26 A "Renewed" means that the initial three year period of
27 secondment was coming to an end, and it was necessary, because
28 we wished to retain his skill in dealing with industrial

1 matters, for a further period of three years.

2 Q That talks about the term. What about the dollars? Well, you
3 don't have dollars. What about the money part of it?

4 A The renewal recites the current level of remuneration and the
5 current deductions for director's fees from the current level
6 of remuneration.

7 Q In the April 1983 letter does it talk about the three cate-
8 gories discussed in the May 1980 letter?

9 A So far as I am aware, yes.

10 Q Category 2, which is the amount that he receives from the
11 cement company, is that still based only on the fact that he
12 is a non-executive director?

13 A Yes.

14 Q Category 3, the amount that he receives from Cape in what you
15 believe is CASAP, is there any other subsidiary or sub-
16 subsidiary of Charter other than Cape Industries Limited
17 and CASAP mentioned in category 3?

18 A Not to my knowledge.

19 Q In May 1980 how much was recited as having been received from
20 Cape Industries Limited, having been received or to be
21 received in the three year period?

22 A I can't remember the exact figure.

23 Q Was it more or less than the director fees paid to non-
24 executive directors?

25 A It seems to me that you haven't completely appreciated the
26 position. There is one fee payable by a Cape subsidiary, the
27 one that we have discussed. I have no knowledge whether that
28 is larger or smaller than any other fee paid to directors of

1 that Cape subsidiary.

2 Q The May 1980 letter from Charter to Cape, was it addressed to
3 Cape Industries Limited, so far as you know?

4 A Yes.

5 Q As I understand it the letter says that "It is our intention
6 that Higham should make something like ten units of money and
7 we recognize he is getting X units from the cement company and
8 Y units from Cape Industries Limited and CASAP. Therefore,
9 that leaves Z units to be paid from Charter". Am I correct?

10 A Using your notation, to my recollection the letter says: "The
11 remuneration which he would receive as an executive director
12 of Charter on secondment from Cape Industries is (a) to
13 determine the actual amount payable by Charter Consolidated
14 Services, we have to deduct (b) the fee which you and he have
15 informed us he receives from the Rugby Portland Cement Co.,
16 and (c) the fee that you and he have informed us he receives
17 from a Cape subsidiary".

18 Q So (c) is just one amount. It is just from the Cape subsidiary
19 and it is not two amounts, one coming from Cape Industries
20 Limited and the other from the subsidiary of Cape Industries;
21 is that it?

22 A So far as I can remember it is purely an amount coming from
23 the Cape subsidiary.

24 Q Do the non-executive directors of Cape receive any fee, so
25 far as you know?

26 A The non-executive directors of Cape Industries do receive fees.

27 Q The executive directors of Cape don't really receive a
28 director fee; they just receive pay for being officers or

1 employees or both of Cape; is that correct?

2 A So far as I know, yes.

3 Q Just like you don't receive a director fee per se for being a
4 director of Charter?

5 A I do not specifically know the position of Cape, but it
6 follows the position that I have at Charter. It would be
7 exactly the same.

8 Q Do you know what label, if any, is given to the compensation
9 that Mr Higham was receiving as of May 1980 from CASAP? One
10 such label would be "director's fee".

11 A To my recollection from the letter it is described as a
12 director's fee.

13 Q Do you know anyone else who was a director of CASAP in May
14 1980?

15 A No, I don't.

16 Q Do you know anyone else who was a director of CASAP in April
17 1983?

18 A No, I don't.

19 Q Do you know anyone else who in either May of 1980 or April
20 1983 was a director of CASAP?

21 A I do not know of any individual who is a director of CASAP.
22 As a limited company it would have a board of directors. I do
23 not know who the individuals are.

24 Q But you do believe Mr Higham is one of them?

25 A From the letter which deals with his secondments I am aware
26 that he receives a fee from a company within the Cape group.
27 My recollection is that it is called CASAP. I therefore know
28 that he is a director of that company receiving a director's

1 fee.

2 Q Does Cape Asbestos South Africa (Proprietary) Limited conform
3 with your understanding as to the four words used in the title
4 of the corporation known as CASAP?

5 A Would you just recite the full name again?

6 Q Cape Asbestos South Africa (Proprietary) Limited?

7 A Applying the sequence of the full words to the sequence of the
8 initials which have been shortened to CASAP, they would follow.

9 Q Where has Mr Higham made his office since this arrangement
10 between Charter and Cape was entered into?

11 A He has an office at 40 Holborn Viaduct, and he has an office
12 at 114 Park Street, which is the head office of Cape
13 Industries.

14 Q Where does he normally start his day?

15 A You had better, to be precise, just define "the start of the
16 day".

17 Q Well, I imagine he starts it at the breakfast table, but does
18 he normally go to one or the other of those addresses each
19 day at the beginning of the day, or is it a toss-up and you
20 just don't know which one he is likely to go to first?

21 A Because I have a list of the movements of the executive
22 directors of Charter and senior managers of Charter, when I
23 consult that list I know on a particular day where they would
24 be. From my knowledge of that list Geoffrey Higham would
25 start, using your definition, some days at 114 Park Street,
26 some days at 40 Holborn Viaduct, some days at the industrial
27 company investments, both of Charter and of Cape, visiting the
28 companies. On other days he might attend or he would attend

1 meetings of the British Institute of Management, of which he
2 is a member of the council, of the CBI, in which he plays a
3 part - that is the Confederation of British Industries - and
4 on other days he would be attending board meetings of the
5 Rugby Portland Cement Co.

6 Q So there may not be such a thing as a normal starting place
7 for his day?

8 A It depends entirely on the requirements of his job.

9 Q And has this been true throughout the last three years, so
10 far as you know?

11 A To my knowledge that has been the case.

12 Q He has had all the responsibility you have just described?

13 A Yes. If it would help you to give you an approximate
14 summation of his time, I would expect, because Cape is an
15 important investment of Charter, that he would spend between
16 40 and 50 per cent of his time there, and he would spend
17 perhaps 40 or 50 per cent of his time, ignoring the outside
18 activities, in relation to the other Charter industrial
19 companies, attending the meetings of the Charter executive
20 committee and discussing the general business of the Charter
21 company.

22 Q Since you have become managing director, what percent of the
23 earnings of Charter have been earned in Cape Industries
24 Limited and subsidiary companies?

25 A To give you accurate figures I would have to refresh my memory
26 from the Charter accounts and detailed schedules which show
27 those accounts; but if you will allow me to look at those I
28 will do my best to help you.

1 Q Surely. (Document handed to the witness).

2 MR POLAK: For the record, Mr Clarke is looking at the 1982
3 annual report of Charter, and he also has in front of him the
4 1981 annual report of Cape Industries.

5 A Please don't record this, but you will understand I am not as
6 familiar with the detail as I might once have been.

7 MR WALKER: I am not trying to test your exact knowledge. I am
8 just trying to get a general feel for it.

9 A Let me give you an example. In the year to March 1982 the
10 profit of Charter before taxation was £59 million. The
11 approximate contribution of Cape to that total profit - I
12 stress "approximate" - would have been a little over
13 £7 million. The precise income derived by Charter from Cape
14 is limited entirely to our share of the dividend paid by
15 Cape, and in the year to December 1981 Cape paid a dividend of
16 £1.68 million of which Charter would have received approxi-
17 mately £1.1 million.

18 Q Is there any firm in which Charter has a majority interest
19 that is a bigger contributor to the profit or income of
20 Charter than Cape?

21 A Would you please define "firm" and "interest"?

22 Q On pages 36 and 37 of the 1982 Charter annual report there is
23 a listing of the principal activities of Charter, and I
24 think each entry on the left-hand column of those two pages
25 would be the type of interest I am talking about. Among
26 those, and excluding all not listed, where would Cape rank
27 in its contributions to Charter's profits and income?

28 A We must just define this, if we may, in two categories. One

1 would be capital values and the other would be contributions
2 to the income statement. In terms of capital values,
3 Anderson Strathclyde today, Johnson Matthey, the Malaysian
4 Mining Corporation, the Minerals & Resources Corporation and,
5 until earlier this week, the Rio Tinto-Zinc Corporation, would
6 be far larger in capital values than the investment in Cape
7 Industries. Again, if you will forgive me for not being
8 precise, but in terms of contributions to the income state-
9 ment, in terms of investment income, the contributions from
10 Johnson Matthey, Malaysian Mining Corporation and the Rio
11 Tinto-Zinc Corporation would be far larger than the dividends
12 we derive from Cape, and there would be others. In terms of
13 the gross income - and I define Cape as contributing to the
14 operating profit - we would find that Anderson Strathclyde,
15 Johnson Matthey and Alexander Shand Holdings would be
16 significantly larger than the contribution from Cape in the
17 share under review.

18 Q Would those comparisons you made as to Anderson Strathclyde
19 have been true before you so substantially increased your
20 holdings in Anderson Strathclyde?

21 A You will have to be specific as to the period, but if I may
22 take the year to 31st March 1983 as being the most recent
23 that is available, Anderson Strathclyde in that period has
24 indicated publicly that it will have profits of £15.5 million.
25 Charter's share of those profits on an associated company
26 basis prior to increasing our investment to a level of control
27 would be approximately 30 per cent. In terms of the reported
28 Cape profit for the year to 31st December 1982, I think I am

1 right in saying that the Anderson Strathclyde contribution
2 would be larger than Cape to the income statement of Charter.

3 Q The 30 per cent Anderson Strathclyde?

4 A Yes. Again, if it would help you, I would also be right in
5 saying that the contribution of Johnson Matthey on a similar
6 basis would be significantly larger than the contribution of
7 Cape.

8 Q Your position there has been somewhat stable over the last
9 couple of years?

10 A It has been exactly stable.

11 Q For what period did the April 1983 letter extend Higham's
12 relationship with Charter?

13 A For a further period of three years.

14 Q Higham is how old?

15 A He is approximately 56.

16 Q Is there any other Cape -- strike that. Is there any other
17 Charter employee who is currently on secondment toward
18 Charter besides Higham?

19 A To my knowledge there are three or four.

20 Q Are there any Charter employees who, as you were in 1977 and
21 1978, are on secondment away from Charter?

22 A There are some, yes.

23 Q Is this the first time that an employee has gone from Cape to
24 Charter under secondment, so far as you know?

25 A To my knowledge, yes.

26 Q Has any employee ever gone from Charter to Cape under
27 secondment, so far as you know?

28 A To my knowledge, no.

1 Q Why do you and Richardson keep your director fees from Anglo
2 American Corporation but, so far as I know, neither you nor
3 he nor anyone else who has worked in this whole aggregate of
4 corporations have ever kept any other director fee?

5 MR POLAK: Objection to the "aggregate", but you can answer.

6 A You will have to explain to me what you call "aggregate
7 corporations".

8 MR WALKER: Can I do that for a second? I am baffled personally
9 why, when someone works for a corporation in which the
10 Oppenheimer interest is significant or substantial, or some
11 adjective, everyone seems to want to deny it. Maybe it is for
12 legal purposes, and I understand the whole need for proper
13 semantics and label in legal wars; but other than for that
14 there are strong relationships between and among Charter,
15 Anglo American, Minorco, De Beers, which are well defined in
16 the annual reports of those corporations, but seem never to
17 come from the mouth of people who work with those
18 corporations. That is what I mean by this aggregate of
19 corporations such as, in your career, where you worked for
20 Charter, you were asked to go to work for Anglo American for
21 a period of time, which you do, you come back to Charter and
22 your career is even enhanced as a result of your having
23 worked for the other corporation.

24 A I think ----

25 MR POLAK: Wait a second. There is no question. There was a
26 position statement.

27 A I did want to make that clear. It seems to me, with respect,
28 Mr Walker, you made a statement. Let me say I don't agree

1 with your statement. I don't think you have asked me a
2 question.

3 MR WALKER: Among your friends is there a way that you communicate
4 to them the relationship, if any, between, for example,
5 Charter and Anglo American?

6 MR POLAK: I don't understand that question either.

7 MR WALKER: Do you understand it, Mr Clarke?

8 A I don't, no.

9 Q Well, for example, back in 1977 one of your friends hears that
10 you are going to South Africa and they say: "Neil, what is
11 this? Did you get canned or are you switching careers or
12 whatever?", and you would have said "No, I consider this a
13 promotion. Anglo American is associated with, related to, a
14 sister of, the owner of" - what words or phrases would you
15 have used to describe the relationship between Anglo American
16 Corporation and Charter?

17 A I would have said exactly what happened, and indeed did say
18 what happened. "I have been asked if I would go for a
19 period of three years to work for the Anglo American Corpor-
20 ation. I have got to know some of the people during my time
21 in Charter. Charter has indicated to me that it would be
22 prepared to release me for three years, and indeed would
23 regard it favorably. With a lot of misgivings I have
24 accepted it". But I would equally add, if I may, that "I have
25 accepted it precisely for three years, because I don't want to
26 transfer my home and my family to South Africa on a permanent
27 basis".

28 Q That is how you would have answered your friend?

1 A It is exactly how I answered many queries from many friends.

2 MR WALKER: Can you find where I was before I did that? I was
3 asking him something about this practice among this
4 association or aggregate of companies. It will be quite a
5 while back. (The reporter read the question starting at line 1
6 on page 31).

7 Q Have you ever been on the board of Minorco?

8 A Yes.

9 Q Are you now?

10 A Yes.

11 Q Do you keep your director fees from Minorco?

12 A No.

13 Q To whom do you assign them?

14 A Charter Consolidated Services.

15 Q Have you ever been on the board of De Beers?

16 A No.

17 Q How many different boards are you now on?

18 A I can't give you the exact number, but I am on the board of
19 approximately 12 public limited companies and possibly on the
20 board of about 40 or 50 companies that would normally be
21 wholly owned investment subsidiaries of the Charter group.

22 Q So in your life you have been on at least 50 or 60 boards?

23 A I have.

24 Q And most of those directorships have been after your
25 association with Charter?

26 A Not all, but most.

27 Q And all of those directorships that you held after your first
28 association with Charter you have never kept the director

1 fees except for the fee from Anglo American Corporation; is
2 that true?

3 A That is true. Not in every case, but I have been a member of
4 the board of another company where I have kept the director's
5 fee in a personal capacity, and I keep the director's fees
6 from Anglo American because it is a personal appointment. I
7 am not representing Charter on the board of Anglo American. I
8 am appointed in my personal capacity.

9 Q What other corporations have you kept your director fees in?

10 A They are private corporations in England in which I have an
11 entirely personal connection.

12 Q Are any of these clients of Charter?

13 A No, they are not.

14 Q Do you still serve on any of those boards?

15 A No, I do not.

16 Q Have you ever served on any of those boards after your first
17 association with Charter?

18 A Yes, I have, but before I became a director of Charter.

19 Q Once you became a director of Charter you stopped serving on
20 corporations not clients of or owned in whole or in part by
21 Charter; is that correct?

22 A I did not stop as a result of becoming a director of Charter.
23 When I retired from professional practice I was allowed by
24 arrangement with Charter to retain a small number of
25 interests which over a period of time I have retired from.

26 Q So the 40 or 50 boardships -- strike that. You served on at
27 least 40 boards of directors as a representative director of
28 either Charter or some subsidiary of Charter; is that correct?

1 A I have served on a large number of boards as a representative
2 of Charter. When I was in South Africa I served on a very
3 large number of boards as a representative of the Anglo
4 American Corporation.

5 Q Would the retention of director fees be a 100 per cent complete
6 test as to whether your service as a director was in a
7 representative capacity or in a personal capacity?

8 A It would not be an absolute test. It is a good guideline. It
9 is not an absolute test.

10 Q When in your career has the test failed to indicate the
11 correct answer?

12 A In my career, none.

13 Q So far as you know in the career of any other Charter
14 director has application of that test ever failed to yield
15 the correct answer?

16 A It is not within my knowledge in relation to any other
17 individual in Charter. I can give you the general policy
18 which I, as chief executive of Charter, laid down and have
19 continued, as it was the policy established before I was chief
20 executive, and that is quite simply that I and each of my
21 colleagues have a whole time service contract with Charter,
22 and therefore, with one exception, we do not regard ourselves
23 as being available to secure private gain by serving on
24 boards of companies.

25 Q That is your way of answering, that except for Anglo
26 American -- no; strike that. Am I correct, then, that any
27 time a Charter employee assigns the fees that would have
28 otherwise been payable to him as a director to Charter, that

1 is an indication that his service on the board of whatever
2 corporation we are talking about is in a representative
3 capacity wherein the Charter employee represents Charter?

4 A I made it clear that it is not an absolute test. It is a
5 guideline. Let me also make it clear that where he serves on
6 a board as a representative of Charter it is absolutely clear
7 that the director's fees he may receive from that appointment
8 are assigned to Charter. It would be clear from the case of
9 Mr Higham, which we have discussed, that he serves on the
10 board of Rugby Portland Cement in a personal capacity. In
11 other words, it is an appointment which has no connection with
12 any client or investment interest of Charter. It will equally
13 be obvious that because he has a full-time employment that in
14 that case we suggested to him, and he accepted, that the level
15 of his remuneration should be reduced by the fee that he
16 receives from Rugby Portland Cement.

17 Q But to get back to my question, do you know of any exception
18 to the rule that whether or not a Charter employee assigns
19 the fees that are payable to him as a director is always an
20 accurate test of whether a Charter employee is serving on a
21 board in a representative capacity?

22 A You have got rather a lot of double negatives in that
23 question, I think. Could you rephrase it?

24 Q Do you agree with me that the assignment of director fees
25 to Charter is an infallible test as to whether the Charter
26 employee is serving as a representative -- is an infallible
27 indication that the Charter employee is serving as a
28 director as a representative of Charter?

1 A No, I do not agree.

2 Q Do you know of any exceptions to that rule?

3 A Yes, I do.

4 Q Please recite them.

5 A One exception is my appointment to the board of the Hudson
6 Bay Mining & Smelting Company, in which Charter does not have
7 an investment interest and where the director's fees are paid
8 to me but assigned by me to Charter. I think I am right in
9 saying that.

10 Q You believe that your representation on the board -- that
11 your service on the board of the Hudson Bay Mining Company
12 is not as a representative of Charter?

13 A That is correct.

14 Q But yet for some reason you assign the fee from that
15 directorship to Charter?

16 A I think that is correct.

17 Q Why do you do so?

18 A The time that I spend on the service of attending board
19 meetings of the Hudson Bay Mining Company has to come out of
20 the time for which Charter pay me to exercise full-time
21 devotion to its duties and not Hudson Bay's.

22 Q Why does a different result obtain so far as the fee you
23 receive from Anglo American Corporation?

24 A I do not attend board meetings of the Anglo American
25 Corporation on a regular basis. As I have already indicated,
26 in that case it is one exception of holding the appointment in
27 a personal capacity. If I may assist you, in the case of
28 Hudson Bay Mining originally Charter did have an investment

1 in this company. It no longer does have an investment. It
2 has sold it. I have continued to serve on the board.

3 Q Has there been an election of board members since Charter's
4 investment ended?

5 A Yes.

6 Q How many?

7 A Forgive me if I am not precise, but certainly one, probably
8 two and it could even be three.

9 Q Do you regularly attend those board meetings?

10 A Yes.

11 Q Do you know of any other exceptions to the rule as stated
12 about five minutes ago? The first and only exception you
13 have stated so far is the Hudson Bay Mining Company.

14 A Yes. If I can help you, Mr Walker, I think there would be
15 other companies, for example, Zambia Cotton Investments. I
16 don't recall whether I receive a director's fee, but I think
17 I do, and that fee I would assign to Charter. I do not
18 represent Charter on the board of that company.

19 Q Any others?

20 A Yes. I sit on the board of Consolidated Goldfields in this
21 country. I receive a director's fee, I assign that to
22 Charter. I do not represent Charter on the board of that
23 company.

24 Q Any others?

25 A Just allow me to run through my list of directorships, would
26 you? Yes; I sit on the board of the Anglo American Gold
27 Investment Trust. I receive a director's fee. I do not
28 assign that either to Charter or retain it personally.

1 Q You don't assign it to Charter, nor do you ----

2 A Retain it personally.

3 Q What do you do with it?

4 A Assign it to the Anglo American Corporation.

5 Q Why do you do that?

6 A Because historically when I served as a finance director of
7 Anglo American in South Africa I sat on the board of the
8 Anglo American Gold Investment Corporation. Following the
9 normal practice, I assign the director's fee to Anglo American.
10 I have been asked if I will continue to sit on the board of
11 the company. It is, after all, a company for which Charter
12 offers share registration services in London. I never, unless
13 I happen to be in South Africa, attend board meetings. I don't
14 hold the appointment in a personal capacity. I don't spend
15 time from Charter in serving on the board.

16 Q What do you do for Anglo American Gold, then?

17 A If there was a particular problem which related to that
18 company on which the board wished to consult me, they would
19 know that I would be ready and available to help. If I can
20 coincide a visit to South Africa (and my visits to South
21 Africa are rare) with a meeting of the board of the company, I
22 would try and attend it to understand what is going on.

23 Q Have you attended any board meetings since you left South
24 Africa in 1979?

25 A One, yes.

26 Q How often does the board meet?

27 A I believe four times a year. It may be more frequently.

28 Q Can you think of any other exceptions?

1 A Not to my knowledge, no.

2 Q Can you think of any exceptions in the directorship of any
3 other director of Charter besides yourself?

4 A I can't reply beyond my own knowledge, and I have knowledge of
5 none. Therefore, I can't help you.

6 MR WALKER: Does anyone want a break now?

7 MR POLAK: Fine.

8 (A short recess was taken)

9 MR WALKER: Mr Clarke, have you ever been deposed before?

10 A No, I haven't.

11 Q I assume you have met with Mr Polak in connection with this
12 deposition where he has prepared you for it. Is that true?

13 A We had a discussion earlier this week, yes.

14 Q Have you met with anyone besides him or at the same time as
15 you met with him concerning this deposition?

16 A Mr Epstein.

17 Q Anyone else?

18 A No.

19 Q Have you met with anyone at Cape in connection with this
20 deposition?

21 A No.

22 Q Have you had anyone prepare a memo for you regarding this
23 deposition?

24 A No.

25 Q Or regarding this case?

26 A No.

27 Q Do you know any of these gentlemen. L.K. J-o-o-s-t-e?

28 A Could you spell it again?

1 Q You are free to look at it. It is the top listed name on the
2 left: L.K. J-o-o-s-t-e.

3 A I don't know him and I have never met him.

4 Q Do you know H.P. Hart?

5 A No.

6 Q Do you know G.P. Osterlow?

7 A No.

8 Q Do you know H.E.A.O. Siebert?

9 A No.

10 Q Do you know P.A. van Zyl?

11 A I don't.

12 Q C.W. Walters?

13 A C. ... ?

14 Q Excuse me. C.H. Walters.

15 A I don't know him. I have never met him. The name Walters is
16 familiar.

17 Q Your familiarity with the name of Walters comes from what?

18 A I don't know. I have never met him. It may not be the same
19 man. He might be a mining engineer in Johannesburg whose name
20 would be familiar to me. But I have never met him.

21 Q You don't even recognize the initials C.H. in connection with
22 whatever Walters you know; is that correct?

23 A Correct.

24 Q How about D.W. Stockberg?

25 A No.

26 Q Do you know K.H. Wallis?

27 A Yes, I do.

28 Q What do you know about him?

1 A He is the London representative of General Mining Union
2 Corporation.

3 Q Have you had any professional or business connection with him?

4 A To my knowledge I have no professional or business connection
5 with him. I know him because he is a member of the mining
6 industry here in London, and I would meet him from time to
7 time in connection with -- for example, the last time I met
8 him was in relation to a lunch given by the Institution of
9 Mining and Metallurgy to raise funds for that charitable
10 purpose.

11 Q Do you know L.J. Baines?

12 A No.

13 Q Do you know V.G.W. Daynes - D-a-y-n-e-s?

14 A No.

15 Q Or J.M. Scott?

16 A No.

17 Q When you were in Johannesburg were you ever in the General
18 Mining Union Corporation offices?

19 A Three, possibly four or five times, yes.

20 Q Were you ever in the offices of GEFCO, which are the initials
21 for -- or do you know the corporation for which they are the
22 initials?

23 A I think it would be the Gricola Exploration and Finance
24 Company.

25 Q Correct.

26 A I would not have been in its offices unless those offices
27 coincide with the offices of the Union Corporation, and I
28 know of the company as a member of the Union Corporation

1 General Mining Group, but I have never visited GEFCO as such.

2 Q Before you went to South Africa you were aware that Charter had
3 a majority interest in Cape; is that correct?

4 A I was aware before I went to South Africa that Charter held a
5 majority interest in Cape.

6 Q And you were aware that Cape had a number of subsidiaries in
7 South Africa?

8 A I was aware that Cape had a mine or mines in South Africa and
9 a manufacturing plant in South Africa. I was not aware of the
10 corporate structure of Cape as such.

11 Q While you were there for that two year nine month period did
12 you ever have any contact with any of the people who carried
13 on whatever Cape carried on in South Africa, whether or not
14 you knew at that time or prior thereto the exact structure
15 through which Cape did this?

16 A I would have had, to my memory, contact on two occasions,
17 purely on a social basis, with the man that was the managing
18 director of Cape's affairs in South Africa.

19 Q What was that man's name?

20 A Now you have got me, because I am trying to remember who that
21 was. Please don't record that.

22 MR POLAK: Mr Clark has got to record everything you say.

23 A His name was Daugherty. I have forgotten his Christian name,
24 but his wife was called Rosa.

25 MR WALKER: Do you know for whom he works today?

26 A I don't.

27 Q Do you know if his employment, whatever corporate structure
28 he was employed through at the time you met him, has ended?

1 A I remember that when Cape as I understand it disposed of its
2 mining interests in South Africa Daugherty, who was the man
3 responsible for the South African interests of Cape, left the
4 employment of Cape and went to continue running the mines with
5 the new owner of those mines.

6 Q How would you spell his name?

7 A I am trying to remember. To the best of my recollection his
8 name would be D-o-u-g-h-t-e-r-t-y. I have actually now, if I
9 can correct my earlier evidence, remembered his Christian name,
10 which was Simon.

11 Q Did you play any role in the negotiations that led to the sale
12 of the Cape interests in South Africa?

13 A No.

14 Q Who handled that?

15 A I do not know the names of the individuals. It would be the
16 Cape management who would handle it. Again, if it may assist
17 you - and I am trying to be purely helpful - I do remember
18 receiving a courtesy call when I was in Johannesburg from
19 Geoffrey Higham and the man who was the finance director of
20 Cape.

21 Q Stephenson?

22 A Stephenson; and they told me when they were there they were
23 coming in to have a talk, as, I may say, practically any of
24 us, including the chairmen of most of the large American
25 banks, did during my time in South Africa, telling me that they
26 had come in the hope of being able to sell mining interests.
27 Beyond that knowledge, I had no part, no knowledge, no
28 participation in any of the negotiations, nor awareness of

1 the terms.

2 Q Higham and Stephenson stopped to talk to you not for your
3 advice as to what they should or shouldn't do, but merely
4 because they had known you from when they and you or all
5 three lived in London?

6 A They called to pass the time of day.

7 Q Do you have any information as to the bank or banks from whom
8 buyers or people who are more like buyers than sellers in a
9 transaction through which Cape disposed of its mining
10 interests?

11 A I am sorry; I don't understand your question.

12 Q Do you know much about the mechanics of how this sale took
13 place in terms of share swaps and A taking B taking C and that
14 type of thing?

15 A I have already made it clear I had absolutely no knowledge
16 of the details of the mechanics of the transaction.

17 Q Are you aware of any bank or banks which provided some or all
18 of the loans that provided some or all of the money that Cape
19 received for its mining interests?

20 A No.

21 Q Have you ever heard of a company North American Asbestos
22 Corporation?

23 A I have heard of its name purely as a result of this
24 litigation.

25 Q Have you ever heard of the name of any other corporation which
26 was used in the sale or distribution of asbestos besides
27 North American Asbestos Corporation?

28 A Used by whom?

1 Q By anyone.

2 A I would know that Johns Manville was a producer and no doubt
3 marketer of asbestos, but I have no knowledge of any company
4 within the Cape group, if that is the purpose of your question,
5 which was engaged or has been engaged or at any time engaged
6 in the sale of asbestos.

7 Q Are you aware of a corporation known as Associated Minerals
8 Corporation?

9 A Associated Minerals Corporation? No, I am not. Does it have
10 any acronym?

11 Q Not known to me.

12 A I am not aware of the company.

13 Q Has anyone described to you the corporate shells or names used
14 to market asbestos after the dissolution of North American
15 Asbestos Corporation?

16 A No-one has described it to me at any time. I have no know-
17 ledge, and would have no knowledge as an investor in Cape, of
18 the detail of any selling organization for any of its products.

19 Q Are you familiar with a corporation known as Cape Asbestos
20 Fibers Limited?

21 A No.

22 Q Do you know of a corporation known as Cape Overseas?

23 A No.

24 Q Do you know of a corporation that has the words "Cape" and
25 "Overseas" in its title?

26 A I am aware of the subsidiaries of Cape which have the name
27 "Cape" in it. I am not aware of any company where the two
28 words "Cape" and "Overseas" come together, unless they be

1 listed in the back pages of the annual report, where I think
2 you will find perhaps Cape Overseas Contracts Limited, although
3 I may have got the name wrong; but if they are listed in the
4 back of the report at some stage I will have read the report
5 and no doubt seen the names there. I am not familiar with
6 the structures and the purposes of the companies.

7 Q Have you read the reports that Cape and its subsidiaries have
8 filed with Companies House in England?

9 A I would have seen and have seen the Cape annual report. It is
10 a document which is issued to shareholders and which will be
11 filed by Cape with the Registrar of Companies in this country.
12 I have not seen the report filed with the Registrar of any
13 individual company within the Cape parent and subsidiary
14 relationship.

15 Q What part of Cape Industries Limited's activities is conducted
16 secretly from the public, if any?

17 A I am not aware of any part of Cape Industries' activities
18 that is conducted secretly.

19 Q Is there known to you a policy of not disclosing to the public
20 those corporations in which Cape has total or partial owner-
21 ship?

22 A Cape, like any other public company, is subject to the
23 Companies Act, the Company Law rules and the Stock Exchange
24 rules of this country, and I would expect, as a member of
25 the board of Cape since 1980, for the company to follow
26 those rules precisely.

27 Q What about the policy unrelated to the rules? Does Cape have
28 a policy that "We will disclose to the public the following

1 and no others"? Does it have any policy at all as to what of
2 its corporate ownership will be disclosed to the public and
3 what will not?

4 A During my membership of the Cape board there has been no
5 discussion of such policy, nor has any such policy been
6 presented to the board.

7 Q So far as you know the employees of Cape are free to discuss
8 with people who inquire of them what subsidiaries Cape has?

9 A I don't know the answer to that.

10 Q If you remember, I asked the question "So far as you know".
11 You almost by definition have to know what you know, Mr Clarke.

12 A Yes. Your question, if I may say so, is rather a convoluted
13 one, but if I may give you a simple answer ----

14 Q Please don't answer it if you don't understand it.

15 A As I understand the question you are asking me, it is simply
16 this: Are the employees of Cape able to discuss with the
17 general public the activities of any of the subsidiaries of
18 Cape? My answer simply is this, that I do not know of any
19 instructions given to the employees of Cape as to whether they
20 can or cannot discuss the activities of those subsidiaries.
21 As a member of the board I would expect them to observe the
22 normal corporate rules, and that would include keeping as
23 confidential the information that comes to them in confidence
24 as employees, and it would equally mean ensuring that their
25 duties, their public obligations under the Companies Acts, under
26 the Stock Exchange rules and under any other rules that have
27 been passed by the regulatory authorities in this country are
28 fully observed.

1 Q In other words, your personal expectations as a member of the
2 board of Cape are that the employees should disclose nothing
3 other than that which is required to be disclosed by the
4 printed laws of England?

5 A That is not the question that you put to me.

6 Q What is your answer to the question I have just put to you?

7 A I know of no policy within Cape that has been enunciated or
8 applied to limit (as I think you infer by your question) merely
9 following the letter of the law. It is something which to my
10 knowledge has never been discussed or come before the board,
11 and I have no personal knowledge of the instructions that are
12 given to Cape employees by that company.

13 Q What is your position as a member of the board of Cape and
14 as the chief executive officer of its majority shareholder as
15 to whether employees of Cape should respond to inquiries as to
16 the subsidiaries of Cape or corporations in which Cape has
17 a share investment?

18 A My response would be that I would expect the management of Cape
19 to attend to these matters, and that the direction that the
20 board would give to them is to ensure that they follow the
21 legal requirements. Secondly, that they also follow the
22 interests of the shareholders.

23 Q Is it your opinion that the interests of the shareholders are
24 best served by disclosing only that which the law requires
25 and no other information?

26 A That, if I may say so, is an extremely hypothetical question.
27 I don't regard myself as capable of answering it.

28 Q In 1979 Cape Industries Overseas Limited filed a report with

1 the Registrar of Companies over the signature of M.N. House.

2 Do you know Mr House?

3 A I do know Mr House.

4 Q And one other member whose signature I can't read of the
5 board of Cape Industries Overseas Limited, which stated as
6 follows: "As part of the sale of the mining division of Cape
7 Industries Limited on 29th June 1979 the company disposed of
8 its investment in Associated Mineral Corp. AG", and then it
9 lists some other corporations. I haven't been able to learn
10 from you or any of the other people deposed this week, nor
11 from inquiries to the Cape office, as to any information
12 about Associated Mineral Corporation. In your opinion is it
13 the position of Cape to keep that information secret?

14 A I cannot give you an opinion because I have absolutely no
15 knowledge of the position. I think you said that that was
16 dated 1979.

17 Q I did.

18 A It was certainly prior to my membership of the Cape board,
19 and I have no knowledge of the matters into which you are
20 inquiring.

21 Q We have now taken it out of the hypothetical and put it to the
22 specific, and I am asking you what your position as a member
23 of the Cape board and as chief executive officer of its
24 majority shareholder is as to whether Cape employees who have
25 knowledge of the Associated Mineral Corporation should discuss
26 with me or anyone else facts about Associated Mineral
27 Corporation.

28 MR POLAK: Do you have a position?

1 A I was going to say this, if I may: My position as a member
2 of the board, and non-executive member of the board, is that I
3 would have expected the management of the company to have
4 taken very careful heed of the entire position to have received
5 the best possible advice that it could get, and it is within
6 their discretion, as the management, to decide the attitude
7 that they believe it is in the best interests of the company to
8 adopt.

9 MR WALKER: What factors would you expect them to apply to this
10 decision?

11 A I have no knowledge of the facts, and therefore I am unable to
12 comment on the factors beyond the general position of
13 principle that I have just explained.

14 Q What factors would influence management to remain secret as to
15 Cape's ownership of another corporation?

16 MR POLAK: Objection as to the assumption in the question. You
17 can answer it.

18 A I don't know what factors, because I have no knowledge of the
19 facts.

20 MR WALKER: I don't know what more you need to know. I have
21 told you that Cape Industries Limited has a subsidiary known
22 as Cape Industries Overseas Limited, that it filed a report
23 which indicated that it had this interest in Associated
24 Mineral Corporation, and my question to you is: What con-
25 siderations would justify the employees of the company -- the
26 refusal of employees of the company to disclose the relation-
27 ship between Cape and Associated Mineral Corporation or the
28 existence of Associated Mineral Corporation?

1 A Mr Walker, I am quite unable to help you. I don't know
2 whether they have not disclosed it. I don't know what factors
3 the management have looked at in not disclosing, if indeed
4 they have failed to disclose. So I am very sorry, but I
5 really can't help you in this matter.

6 Q What does Cape do that it needs to keep secret from the
7 public?

8 MR POLAK: I am sorry. Could I have that question read?
9 (The reporter read the pending question). I object to the
10 question. I don't understand it.

11 MR WALKER: You may answer, Mr Clarke.

12 MR POLAK: If you understand it.

13 A I don't understand it. It is so big a question or so narrow
14 a one that perhaps Mr Walker can help us by making it a little
15 bit more precise.

16 MR WALKER: Does Cape engage in any activity which it has a
17 policy of keeping secret from the public?

18 A Again it is a general question, but let me try and answer it.
19 If Cape produces a new building board which has a particular
20 formulation which may have an intrinsic value because it
21 improves the inherent qualities of the board in terms of the
22 moisture or light or fire resistance, I would certainly
23 expect the management of the subsidiary company of Cape to
24 guard very jealously the formulation of that product because
25 it is of commercial value to Cape. Beyond that I can't think
26 of any other instance.

27 Q Do you expect that the extent of Cape's ownership in another
28 corporation would be part of the chemical formula of one of

1 Cape's products?

2 A Again, I don't understand your question. Would you try and
3 make it clearer, please?

4 Q I asked you whether to your knowledge Cape was engaged in any
5 activity which it had a policy to keep secret, and your
6 response was "Well, Cape might be making something such as an
7 insulating board which it would like -- the specifications and
8 formula for which it would like to keep secret so that others
9 can't copy it". Is that true so far?

10 A Yes; that there is a commercial value in the precise
11 formulation of the product.

12 Q Now my question is: Would you anticipate that the extent of
13 Cape's ownership of another corporation would be any part of
14 the formulation of the product?

15 A I can't anticipate what I don't know. I am afraid it is too
16 general and too hypothetical a question to give you an answer.

17 Q You are here to tell me under oath that Cape's ownership of
18 Associated Mineral Corporation could well be a part of the
19 chemical formula for one of Cape's products?

20 A I think, Mr Walker, I am here to tell you under oath what I
21 know, not what might be the hypothetical or matter of opinion,
22 and the question that you put to me seems to me to be entirely
23 one of opinion. I can't. I don't know.

24 Q In your opinion is there any possibility whatsoever that
25 Cape's ownership of -- that the extent of Cape's ownership of
26 Associated Mineral Corporation could be a part of any
27 formula or specification for one of Cape's products?

28 MR POLAK: Objection as to form.

1 MR WALKER: What is your answer, Mr Clarke?

2 A Could you tell me what objection as to form is?

3 MR POLAK: The problem obviously is "any possibility whatsoever".

4 Since you have no idea what Minerals does, I don't know
5 whether you can answer that question in terms of "any
6 possibility whatsoever".

7 A Thank you. That was helpful. As I have no knowledge of the
8 company that you have mentioned, equally I have no knowledge
9 what it did, what its responsibilities were, what its
10 activities were, and therefore I am quite unable to answer
11 your question.

12 MR WALKER: Would you read the question, please? (The reporter
13 read the question at line 24 on page 53).

14 A My answer remains the same. I have no knowledge of Cape's
15 ownership of this corporation. I have no knowledge of the
16 corporation. I am quite unable to give you any opinion as
17 to the precise nature of your question because I have
18 absolutely no knowledge of the company.

19 Q In your opinion Cape's ownership of another company and the
20 extent of that ownership if revealed could well disclose a
21 chemical formula or specification for a product; is that
22 correct?

23 MR POLAK: I object to the formulation of the question again;
24 but if you can answer it you can respond.

25 A I simply don't know. I don't understand your question.
26 I don't understand the connection that you are trying to draw.
27 So again you may be able to help me by phrasing your
28 question more precisely.

1 MR WALKER: Can you think of any reason why Cape would want to
2 keep its activities secret other than those that relate to
3 the formulation of specifications of a product?

4 A I have no knowledge of Cape keeping anything secret, but I can
5 understand why it is of important commercial value to keep a
6 precise formulation of a new product confidential.

7 Q Do you remember the question?

8 A Perhaps Mr Clark can help us. (The reporter read the last
9 question). As a non-executive member of the Cape board, I
10 know of no reason why Cape should keep activities secret,
11 and I have no knowledge of any activities that have been kept
12 secret.

13 Q Do you know of any reason why Cape wishes to keep secret its
14 ownership interest in Associated Mineral Corporation AG?

15 A I did not and do not know whether or not Cape has kept its
16 ownership of that company named by you secret, and I know of
17 no reason why it should either keep it secret or why it
18 should not.

19 Q What does Cape Asbestos South Africa (Proprietary) Limited
20 do?

21 A I don't know.

22 Q Is it a subsidiary of Cape?

23 A I do not know that it is, but with its name I would assume
24 that it is. It is certainly loosely described to me as
25 being a subsidiary of Cape.

26 Q Are you familiar with the explanatory statement in compliance
27 with section 207 of the Companies Act of 1948 and the scheme
28 of arrangement concerning Charter Consolidated Limited and its

1 arrangement with Minorco, Anglo American and De Beers that was
2 proposed and conducted in 1979?

3 A I am.

4 Q And is this 55 page document a copy of the scheme which you
5 have seen?

6 A From a brief inspection it is one of the printed copies of the
7 document issued to shareholders at that time.

8 Q On page 42, under numbered paragraph 5(a) there is mention of
9 a corporation named Cape Asbestos South Africa (Proprietary)
10 Limited. I would like for you to read that paragraph 5(a)
11 and as much else of this document as you wish to see if that
12 convinces you that that corporation is a subsidiary or sub-
13 subsidiary - or at least was on that day - of Cape Industries
14 Limited.

15 A This is a document which, in accordance with the requirements
16 of UK company law, has to have a section which discloses what
17 is called material contracts by Charter and its wholly owned
18 or partly owned subsidiaries within the period of two years
19 prior to the date of the document, and the paragraph to which
20 you have drawn my attention is a recital of a contract which
21 appears to be between Cape and a large number of other
22 companies in accordance with those disclosure requirements.
23 In that disclosure the name of Cape Asbestos South Africa
24 (Proprietary) Limited appears.

25 Q Have you read paragraph 5 on page 42?

26 A I have read paragraph 5(a).

27 Q After having read paragraph 5(a) do you have an opinion as to
28 -- based on that and everything else you know in life, do you

1 have any opinion whether or not Cape Asbestos South Africa
2 (Proprietary) Limited was a subsidiary of Cape on the date that
3 document was prepared?

4 A Let me simply limit my reply to this specific document. It
5 would have been prepared with due care and attention by the
6 officials of Charter, and I would be quite certain that the
7 recital is correct.

8 Q Does it recite that it is a subsidiary of Cape, or does it not?

9 A It does not, I think, recite that it is a subsidiary of Cape.
10 It merely lists Cape Asbestos South Africa (Pty) Limited as
11 one of the parties to this transation.

12 Q Am I correct that the introductory sentence to 5 says: "The
13 following contracts have been entered into and may be material"
14 and in substance that is what the introductory language says.
15 Then (a) describes a particular contract or group of contracts.
16 Do you agree?

17 A I agree.

18 Q (a) says as follows: "Dated 29th June 1979 between Cape
19 Industries Limited, Cape Industries Overseas Limited, Cape
20 Asbestos South Africa (Proprietary) Limited, Cape Blue Mines
21 (Proprietary) Limited, Egnep Proprietary Limited, Cape
22 Investments SA (Proprietary) Limited, Transvaal Consolidated
23 Land and Exploration Company Limited, Johannesburg Consoli-
24 dated Investment Company Limited and Slapville Limited, whereby
25 Cape disposed of its mining division comprising principally
26 the issued share capitals of Cape Blue Mines (Proprietary)
27 Limited and Egnep Proprietary Limited, together with the
28 majority of the trading assets and liabilities of Cape

1 Asbestos South Africa (Proprietary) Limited and Cape Asbestos
2 Fibers Limited for a cash consideration of Rand 28.6 million".

3 Do you agree with me that that language indicates
4 that Cape disposed of its mining interests comprising No. 1
5 Cape Blue Mines, No. 2 Egnep and No. 3 (because the language
6 used is "together with the majority of the trading assets and
7 liabilities of Cape Asbestos South Africa (Proprietary)
8 Limited") indicates that Cape Asbestos South Africa
9 (Proprietary) Limited is a subsidiary of Cape?

10 A It discloses to me exactly what it says, and the question
11 that you asked me was: Does that say that Cape Asbestos South
12 Africa (Proprietary) Limited is a subsidiary of Cape? It
13 doesn't say so. It is reasonable to infer, as it is a
14 disclosure provision of material contracts which affect Cape
15 as a subsidiary of Charter, and indeed all the other material
16 contracts that affect Charter, but this is a disclosure of
17 a material contract entered into by Cape Industries which I
18 know to be a subsidiary of Charter.

19 Q Could you explain to me how Cape could dispose of its mining
20 division of which the trading assets and liabilities of Cape
21 Asbestos South Africa (Proprietary) Limited was a part for
22 a cash consideration to Cape under some state of affairs
23 where Cape Asbestos South Africa (Proprietary) Limited was
24 not a subsidiary of Cape?

25 A Mr Walker, you have gone from a particular question to a
26 general. The particular question you asked me was whether
27 that document said that Cape Asbestos South Africa
28 (Pty) Limited was a subsidiary of Cape. The specific answer

1 is that it does not say that. It is perfectly reasonable
2 to infer that it is a subsidiary of Cape, but the document
3 itself doesn't say so.

4 Q What is your answer to this question, Mr Clarke?

5 A Which question?

6 Q The question which I have posed and to which you have not
7 answered.

8 MR POLAK: Mr Clark, would you please read that question again?

9 (The reporter read the question starting at line 19 on page
10 58). It is a hypothetical question and it is objectionable,
11 but if you can answer it go ahead and answer it. I don't
12 really care.

13 A I don't think it requires explanation. This is a recitement
14 of a contract which has taken place, and it must be assumed,
15 because it is disclosed there, that it is a valid transaction.
16 It must be assumed that Cape Industries is one of the parties
17 entitled to enter into it. It must be assumed that each of
18 the other parties was entitled to enter into it.

19 MR WALKER: What is your answer to the question, Mr Clarke?

20 A You are asking me a hypothetical question as to how something
21 can't happen.

22 Q I asked you if you can explain how Cape could sell that portion
23 of its mining division which consists of the trading assets
24 and liabilities of Cape Asbestos South Africa (Proprietary)
25 Limited without Cape Asbestos South Africa (Proprietary)
26 Limited being a subsidiary of Cape. If you don't know, that's
27 fine. If you know, I am ready to hear what you know.

28 A I don't know how it could not do something.

1 Q I asked you how it could do it without Cape Asbestos South
2 Africa (Proprietary) Limited being a subsidiary.

3 A It is still a negative.

4 Q What is your answer, Mr Clarke?

5 A My answer is this. There in that document is a disclosure of
6 a contract. Each of the parties to the contract would have
7 full powers to enter into the contract for it to be valid.
8 They have entered into the contract. I have no knowledge
9 beyond that of the conditions under which they could or could
10 not enter into the contract.

11 Q What is your answer to the question?

12 A I think I have attempted to answer the question about six
13 times.

14 Q No. You have pontificated six times at the end of the
15 question, but you haven't responded to the question. That is:
16 under what circumstances could Cape sell its mining division
17 which includes the assets and liabilities of Cape Asbestos
18 South Africa (Proprietary) Limited if Cape Asbestos South
19 Africa (Proprietary) Limited was something other than a
20 subsidiary of Cape?

21 A It remains a hypothetical question, and as it is a hypo-
22 thetical question my answer, despite many attempts to help
23 you, is that I do not know.

24 Q I don't know either. I appreciate your saying that. That
25 is what leads me to think that Cape Asbestos South Africa
26 (Proprietary) Limited is a subsidiary of Cape. Does it lead
27 you to the same conclusion?

28 A It is a reasonable inference for you to draw, in my opinion.

1 Q Sir, based upon your training and experience what inference
2 do you draw from that information?

3 A To give a hypothetical answer to your hypothetical question,
4 I would expect the company there to be a subsidiary of Cape,
5 but I do not know that it was a subsidiary of Cape.

6 Q Have you heard of the corporation Brakegate Limited?

7 A Would you spell that for me, please?

8 Q B-r-a-k-e-g-a-t-e.

9 A No, I haven't.

10 Q Do you know an accountant by the name of John Parkinson?

11 A John Parkinson?

12 Q Yes.

13 A I don't.

14 Q What other employees besides Geoffrey Higham are now or have
15 been on secondment from a subsidiary of Charter to Charter?

16 A Apart from Geoffrey Higham I can recall no other employees
17 who have been on secondment from a subsidiary of Charter to
18 Charter.

19 Q What other employees of Charter Consolidated Services have
20 been on secondment to Charter Consolidated Services? End of
21 question.

22 A You have asked me "What employees of Charter Consolidated
23 Services have been on secondment to Charter Consolidated
24 Services?". I think that is an impossible situation. You may
25 like to rephrase your question.

26 Q Don't you consider Higham currently to be an employee of
27 Charter Consolidated, or do you consider this secondment keeps
28 him from being an employee?

1 A No; he is an employee of Charter Consolidated Services Limited.

2 Q And he got there by this secondment from Cape; is that right?

3 A Yes.

4 Q Is there anyone else there that way, by means of this second-
5 ment from someone?

6 A I think I explained before: there are two, possibly three or
7 four, individuals who are employed by Charter Consolidated
8 Services who are there on a secondment basis.

9 Q State their names and the entity from which they came.

10 A I can only give you the ones that I have in my memory, but
11 one would be J.B. Cleasby, who is a consulting mining
12 engineer. He is on secondment to Charter, and has been for
13 many years, from the Anglo American Corporation of South
14 Africa. The second would be I.R.M. Chaseton, who is a
15 consultant metallurgist, and the description is exactly the
16 same. The third would be J. Tanton.

17 Q Would you spell his last name?

18 A T-a-n-t-o-n. He is a consulting mining engineer. I may have
19 given you the wrong description for John Cleasby. He is a
20 consulting engineer, but Tanton is a consulting mining
21 engineer. He is on secondment and subject to verification in
22 his case he is on secondment from a gold mine in South Africa.

23 Q Which gold mine?

24 A I am not sure of the exact name. It is probably Western Deep
25 Levels, but that must be subject to verification. It may
26 help you if I just give you the basis of this, in an attempt
27 to be of assistance to you. That is, when we need to obtain
28 highly skilled people we are able to seek to offer to obtain

1 secondments from the Anglo American Corporation, which does
2 employ directly a very large number of highly skilled mining
3 people.

4 Q The same skills that are valuable to Charter are those which
5 would make them valuable to AA; isn't that true?

6 A As I explained this morning, there are secondments from
7 Charter where we may have in our own staff people with
8 particular skills who other companies wish to employ and where
9 we do on occasions make arrangements to second them.

10 Q Let's take my question. What is your answer to that?

11 MR POLAK: Mr Clark, could you read back the question?

12 (The reporter read the last question).

13 A As a general assumption I can agree with that. It is
14 normally the other way round, because they have grown up in
15 one of the most active mining countries in the world, South
16 Africa. The skills that made them valuable to Anglo are the
17 prime ones. Because Charter has mining investments, we may
18 need to have those skills within Charter, and we seek to
19 obtain them in the best possible level of skill.

20 MR WALKER: Let's take, for example, this Cleasby. I assume
21 that AA could find things for Cleasby to do. Is that true?

22 A It is a theoretical question, but I am quite sure that
23 valuable employment could be found for him in many areas of
24 the world, not only in South Africa.

25 Q Of course, AA is active in many areas of the world, isn't it?

26 A Its mining interests for which it has a responsibility are
27 primarily in South Africa.

28 Q Maybe those that it provides technical service for; but so far

1 as corporate ownership is concerned it owns directly or
2 indirectly corporations all over the world; isn't that true?

3 A That is a very broad question. It of course has interests to
4 my knowledge which are outside the geographical region of
5 South Africa.

6 Q So what is it that Charter offers to AA that would entice AA
7 to release for a short or a long period of time someone such
8 as Cleasby whose training and education you and I agree would
9 make him a valuable employee in many locations including
10 in AA's own work?

11 A When he originally entered into a period of secondment, it was
12 at a time when Anglo American had a direct investment in
13 Charter Consolidated, and Charter Consolidated in its turn had
14 direct investments in mines. From that you will be able to
15 see that it is quite sensible for Anglo American to further
16 its investment in Charter by making available, in response to
17 a request from Charter, a highly skilled technical mining
18 consultant on secondment.

19 Q What about today?

20 A Mr Cleasby continues his employment in London, and we are
21 very keen to retain him here.

22 Q Why is it that AA is so keen to have him here with you?

23 MR POLAK: Objection as to the assumption in that question.

24 MR WALKER: You may answer.

25 A I think you had better try and rephrase the question, if I
26 respond to Mr Polak, because I am not quite certain what you
27 are saying to me.

28 Q Let's try it this way, Mr Clarke. If for some reason you

1 feel that my questions aren't clear or understandable, you just
2 feel free to indicate that they aren't and I will try to
3 rephrase them; but if you, unlike Mr Polak, aren't puzzled by
4 a question that I ask, then unless he directs you not to
5 answer it is O.K. for you to answer.

6 A I am indebted to Mr Polak for his advice, as always; but would
7 you be very kind and rephrase your question?

8 Q Why would AA currently be willing to have a skilled person such
9 as Mr Cleasby continue his service to Charter at a point when
10 at least in your words AA no longer has an ownership in
11 Charter?

12 A I think in my own words it was actually "direct investment
13 interest in Charter", if I could just correct that. It would
14 be quite simply this, that when the situation changed, as I
15 am sure you are aware, in 1979, it would be open to me to
16 say, as I did, "I would like to retain Mr Cleasby's
17 services".

18 Q Maybe we have solved the problem. You agree with me that AA
19 still has an investment in Charter through Minorco and perhaps
20 other means?

21 A Anglo American Corporation, to my knowledge, has a direct
22 investment in Minorco, and Minorco in turn has a direct
23 investment interest in Charter.

24 Q Would those two interests be sufficient without more to
25 justify Mr Cleasby helping Charter do whatever Charter sees
26 fit to have him do?

27 MR POLAK: Objection as to the form of the question. If you can
28 answer it, feel free.

1 A Let me see if I can help you. I think the interest that
2 Minorco has in Charter Consolidated is approximately 36 per
3 cent. The interest that Anglo American has in Minorco is
4 approximately 40 per cent. So if we multiply 40 by 36 - I used
5 to be able to do those sums in my head - Anglo American has
6 an indirect interest of about 14.4 per cent in Charter. But
7 the fundamental reply to your question is that it is open to
8 me, as the chief executive of Charter, to indicate to the
9 company from whom Mr Cleasby is seconded that I would be
10 extremely grateful if the secondment could continue; I wish to
11 retain his services; and that, in the best interests of
12 Charter and its investments, I have done. It is perfectly
13 open to the Anglo American Corporation, let me add, to say to
14 me "We are very sorry that we can no longer maintain
15 Mr Cleasby's secondment", and I then have the choice of going
16 out into the market to hire a replacement consulting
17 engineer.

18 MR WALKER: Do you remember the question?

19 A Mr Clark I am sure will be good enough to read it back to me.

20 Q If you don't, that's fine. Is it your answer that you don't
21 remember?

22 A I don't remember your precise question.

23 Q The question didn't have to do with whether or not you were
24 interested in having Mr Cleasby work for you; it had to do
25 with whether or not Anglo American would be motivated to have
26 its employee, Mr Cleasby, work for Charter rather than for
27 Anglo American. I would ask: Was Anglo American's ownership
28 interest in Charter sufficient to justify Mr Cleasby's

1 being in London working for Charter rather than being in South
2 Africa working for Anglo American more directly?

3 MR POLAK: That is a new question, and I have the same objection
4 because it is similar to the earlier one. You yourself,
5 Mr Walker, indicated that what you were trying to get at was
6 the motivation of South Africa, and it is impossible for
7 Mr Clarke to answer that. But if you want to try again and
8 give him an answer to it, fine, but I believe that you have
9 already done that.

10 A I really am trying to help, Mr Walker. I told you, I think,
11 the precise indirect investment interest that Anglo American
12 can have. The question that he poses to me I believe to be a
13 theoretical one, because I cannot talk to the motivation of
14 Anglo American Corporation. I then further tried to help you,
15 if I may, by saying exactly what happens in the case of an
16 individual like Mr Cleasby, and that is that the prime
17 responsibility for retaining his services is mine. Equally,
18 the company that seconded him has the free choice as to
19 whether they request him to return to them.

20 MR WALKER: Can you think of any other employees who have been
21 seconded from someone else to Charter besides the people you
22 have listed so far in this deposition today?

23 A There have been a number of instances in the past.

24 Q What are the names of those employees and the company from
25 which they came?

26 A You are asking me for what would probably be a very con-
27 siderable list. I can only give you some illustrations.

28 Q My question is for those that you remember.

1 A There would have been a consulting mining engineer called
2 Stephenson.

3 Q From whom?

4 A From Anglo American Corporation. Allow me just to take a
5 little time. I have got to try and remember a whole list of
6 names. There would be a consultant metallurgist called
7 Guise-Brown; there would be a mechanical or electrical
8 engineer - I think that was his profession - called Gander.

9 Q Mr Guise-Brown came from whom?

10 A From Anglo American Corporation. And so did Mr Gander.
11 Mr Walker, let me just give you the background. It may be of
12 assistance to you in this matter. I am speaking from general
13 knowledge and not specific knowledge, but when Charter came
14 into existence in 1965 it did not have its own skilled
15 technical staff. As it was seeking to invest in mining
16 ventures it needed to secure technical services, the availa-
17 bility of highly skilled technical people, and the natural
18 place for it to look was to the company that was then its
19 largest single shareholder, the Anglo American Corporation,
20 and to seek assistance in the obtaining of these technical
21 services. That is why there was a relatively long list of
22 names of whom I can only remember three immediately who have
23 followed this pattern. Again, if it may help you, there will
24 be quite similar instances in another direction. Charter has
25 a significant investment interest in the Malaysian Mining
26 Corporation. A consulting engineer by the name of Kieron
27 Forrestal is seconded to Malaysian Mining Corporation in
28 Kuala Lumpur. If it will help I can just give you the

1 general background and the reasons. I offer it purely to be
2 of assistance.

3 Q Any other employees of Charter that have been seconded to
4 someone?

5 A Oh, yes, there are a number of them.

6 Q What are the other employees and to whom have they or are they
7 seconded?

8 A I can give you a limited number of names, but in terms of
9 numbers I can tell you that there are at present round about
10 20. Let me just, if I may, give you the names which
11 immediately spring to mind. In the case of Beralt Tin &
12 Wolfram, Portugal, in which Charter has an important
13 investment interest, a geologist mine planner called Hebble-
14 thwaithe is seconded to the company.

15 Q Would you restate his name, please?

16 A Hebblethwaithe. Would you like me to spell it? It is
17 H-e-b-b-l-e-t-h-w-a-i-t-h-e. There is Peter Burnell,
18 P.C.D. Burnell, who is a director of Charter, not an executive
19 director of Charter. He is on secondment to Brazil to Anglo
20 American Corporation of Brazil. At the time of his secondment,
21 which was prior to 1979, Charter had a significant investment
22 interest in that company.

23 Q What is Burnell's area of knowledge and expertise?

24 A In general management.

25 Q Hebblethwaithe, what is his area? Mining engineering?

26 A He is a geologist, a mine planner. I have also mentioned to
27 you Forrestal in Malaysia. There would be others, but their
28 names don't immediately spring to mind.

1 Q Why secondment? Why not just cessation of one employment and
2 enter into a new employment relationship?

3 A It is relatively easy. If you take Mr Hebblethwaite, he is a
4 highly skilled man, and the mine requires that sort of level
5 of services to achieve a specific task. He will wish to
6 further his career by going to different responsibilities,
7 and therefore it is extremely important from his personal
8 aspect and from Charter's personal aspect that he remains part
9 of the CCS employment, and that we can at some stage fill a
10 requirement in South Croftey tin mines, in which we have a
11 significant investment interest, which may well have a need
12 for the mine planning skills which Mr Hebblethwaite has.
13 We can replace him in Portugal, as we are normally required
14 to in due course by a Portuguese, the secondment ends and he
15 can go to another assignment which furthers our investment
16 interests.

17 There are other reasons. Take Mr Burnell who, quite
18 like myself, is an employee of Charter with his origins in
19 England and his many years spent in the employment of that
20 company. Yet it is of great interest to go and serve else-
21 where for a period to broaden one's experience; but we have a
22 great wish to come back to this country, certainly in my case,
23 and certainly to my knowledge in his case, in due course and
24 take up perhaps a different responsibility here.

25 Q What are the other reasons?

26 A Quite fundamental reasons in terms of the individual, like his
27 pension rights. It is normally extremely damaging to
28 interrupt his pension provision. A significant reason, if I

1 may speak for Charter in terms of its corporate policy, is
2 that we would wish, as I have said, to be able to recall
3 these skills. Those are the ones that immediately spring to
4 mind.

5 Q As you were talking have you thought of any other employees
6 that are on secondment from Charter other than those you
7 have listed so far?

8 A I can't think of their names, but there would be geologists
9 in Spain and in South America, and indeed there are two
10 skilled mining people on secondment to South Crofley, a tin
11 mine in which we have an investment interest in Cornwall. I
12 can't give you their names; I can only describe the skills
13 normally of those who have gone.

14 Q So at the same time that you are borrowing mining engineers
15 and that type of thing from AA, companies owned or companies
16 in which AA has substantial ownership interests are
17 borrowing similar technically trained and skilled people from
18 Charter; is that correct?

19 MR POLAK: Objection. Go ahead if you can answer it.

20 A I have given you three instances of secondment. In two of
21 those they are interests in which Charter alone has an
22 investment interest and where we have seconded people entirely
23 to further our investment, and particularly - and I stress
24 this - because the management of the mines, in exactly the
25 same way as the management of the industrial subsidiaries,
26 is not located at Holborn Viaduct; it is located within the
27 mining company or the industrial company. If that management
28 sees the need for a particular skill - because in the case of

1 mining we have a cadre of people to look after our investments
2 in those mines - we are able to supply it. But your assumption
3 that these are to Anglo American's interests is incorrect. It
4 happens to be the case in Brazil. It is not the case in the
5 tin mine in Cornwall or the whole group of tin mines in
6 Malaysia. It is not the case necessarily in the exploration
7 projects in the Iberian peninsula.

8 MR WALKER: Who owns Malaysia Mining?

9 A Charter, and the Malaysian Government and the public, and the
10 Malaysian Government through its own investment institutions
11 owns the majority of the stock and has management responsi-
12 bility for the company, on which we have board seats, and have
13 requested that board to second highly skilled mining personnel.

14 Q Well, then, would it be fair to say that AA second people to
15 you but normally Charter does not second people to AA?

16 A That is a very general question. Each of the secondments is
17 normally concerned with a specific client. We have, as I
18 have explained, three instances, and only three instances, now,
19 of individuals seconded from Anglo American or an associated
20 gold mine in South Africa. There have been instances in the
21 past, myself included, when Charter has seconded people to
22 Anglo American or other companies in which Anglo American has
23 an interest. There have been many instances where Charter
24 has seconded people (and in every case I am dealing with the
25 mining side) to mining companies in which Charter alone has
26 an interest.

27 Q There would just be no way to make any generalities as to the
28 identity of the corporations from whom the employees come to

1 Charter, just as there wouldn't be any way to make any
2 generalities as to the identity of the corporations to whom
3 Charter employees are seconded; is that correct?

4 MR POLAK: I don't understand that question. Do you?

5 A I share your lack of clarity. If it will help Mr Walker,
6 perhaps, if I understand the thrust of his question, Charter
7 Consolidated Services employs something over 400 people in
8 its head office, and I am not now dealing with the quite
9 independent managements in the industrial or the mining
10 companies. Of those 400, 3 and only 3 are seconded from
11 Anglo American and 1, and only 1, is seconded from Cape
12 Industries.

13 MR WALKER: Are you on the board of The Central Mining &
14 Investment Corporation?

15 A I think I am, yes.

16 Q What position do you hold?

17 A A director.

18 Q Are you an executive director?

19 A The Central Mining & Finance Corporation is a pure investment
20 company, investment subsidiary of Charter, and administered
21 within 40 Holborn Viaduct. In accordance with legal require-
22 ments, it has a board of directors. It has no executive
23 directors and no separate employees or management.

24 Q In other words, the board really doesn't do anything?

25 A Oh, yes, of course it does.

26 Q Which members of the board are the executives? All of them,
27 none of them, or some of them?

28 A Would you just try and clarify that, please? I don't under-

1 stand what you are trying to get at.

2 Q As I understand it, the word "executive" comes from the verb
3 "execute"; is that true, as far as you know?

4 MR POLAK: Have you studied linguistics?

5 A Mr Walker, I am not trying to be obstructive. Would you please
6 try and clarify the question for me, and then I will do my
7 best to help.

8 MR WALKER: O.K. Is it your understanding that "executive" is a
9 word that is related to the verb "execute"?

10 MR POLAK: Do you know - yes or no?

11 A I don't know, no.

12 MR WALKER: Why do you call some of your directors at Charter
13 executive directors and some of them directors without the
14 word "executive" attached to it, or is that likewise?

15 A That is a much easier point on which to be clear. The
16 executive directors are derived from the five directors who
17 are members of the executive committee, and the executive
18 committee collectively and individually under my chairmanship
19 is charged with the day to day management of the business of
20 Charter and its wholly owned investment subsidiaries which
21 are administered within 40 Holborn Viaduct. The non-executive
22 directors are members of the board of Charter who attend the
23 board meetings which are held six times a year and are there
24 to guide, advise and question the executive committee on its
25 day to day management of the company.

26 Q Are there any executive directors of The Central Mining &
27 Investment Company?

28 A There are none.

1 Q Is there an executive committee of The Central Mining &
2 Investment Company?

3 A There is not.

4 Q Is there a chairman of the board of The Central Mining &
5 Investment Company?

6 A It is the practice that one of the directors takes the chair
7 at the meetings of the board which are required and are held.

8 Q Is there someone who is permanently called the chairman from
9 one annual meeting to another or one period to another that is
10 longer than the length of one board meeting?

11 A There is not. The normal practice would be when the board
12 meets that if I am present as the chief executive of Charter,
13 I would take the chair.

14 Q And the only characteristic that you have different from the
15 other members of The Central Mining & Investment Company as
16 it relates to your membership on that board is the fact that
17 you are the managing director of Charter; is that correct?

18 A I think you would have to be more precise. In English law,
19 members of Central Mining Investment Company normally would
20 be deemed to be the shareholders. If you are talking of
21 members of the board of that company, then, yes, the
22 distinction between the other members of the board and myself
23 is that I am the chief executive of Charter.

24 Q Is there a managing director of The Central Mining &
25 Investment Company?

26 A No, there is not.

27 Q Are you on the board of Central Mining Finance?

28 A I believe I am.

1 Q Who else is on the board of that corporation?

2 A Again, subject to verification, the other members of the
3 board would be John Richardson, Francis Howard, Anthony
4 Owston, who are three of my colleagues on the Executive
5 Committee of Charter. I believe, but subject to verification,
6 there are two other members of the board who are full time
7 employees of Charter Consolidated Services.

8 Q But are not directors of Charter?

9 A But are not directors of Charter. They may be alternate
10 directors of Charter.

11 Q Is there an Executive Committee of Central Mining Finance?

12 A No, there is not.

13 Q Is there a Chairman of the board of Central Mining Finance?

14 A The procedure is exactly the same as that that I have
15 described for Central Mining & Investment Corporation.

16 Q Is there a managing director of Central Mining Finance?

17 A No, there is not.

18 Q How often does the board of Central Mining Finance meet?

19 A As required, but normally it would meet twelve times a year,
20 perhaps. Perhaps less.

21 Q How long do those meetings take, on the average?

22 A I am afraid that is a general question. They take as long
23 as the specific business before the meeting requires.

24 Q Over the last twelve meetings you have attended, how long
25 did the longest one last and how quickly did the shortest one
26 end?

27 A I don't recall.

28 Q What is your best estimate?

1 A You are asking me to guess. I prefer not to.

2 MR POLAK: You cannot guess.

3 MR WALKER: What is your answer, Mr Clarke?

4 MR POLAK: You may answer, but you cannot guess. If you have
5 to guess, you cannot answer, and you must so state on the
6 record.

7 A If you are asking me to give an estimate or a guestimate,
8 the longest time might be 45 minutes, the shortest time
9 might be 5 minutes.

10 MR WALKER: Are minutes prepared of those meetings?

11 A Yes.

12 Q Who does that?

13 A A member of the secretarial department of Charter, who would
14 be an employee of Charter Consolidated Services Ltd.

15 Q Does Central Mining Finance own any shares of Cape Industries
16 Ltd.?

17 A I believe it does.

18 Q How many?

19 A I don't know the exact number that it holds.

20 Q What is your best estimate?

21 A I am afraid we are back to the previous point. I am
22 perfectly able to look up the precise number of shares.
23 I simply cannot guess.

24 Q What is your answer?

25 A You are asking me to guess, and I would prefer not to do so
26 and refuse to do so.

27 MR POLAK: I instruct you not to guess. You are supposed to
28 give facts, not guesses.

1 A It is a matter of record that is available, Mr Walker.
2 It is not a fact that I carry in my head, and I cannot give
3 you a precise answer.

4 MR WALKER: Are you able to state within a percentage of the
5 total shares of Cape how many shares or what percent is
6 owned by Central Mining Finance?

7 A I am not able to state that.

8 Q How many shares of Cape are outstanding?

9 A Approximately 30 million, to my knowledge.

10 Q Are you able to state within 5 million shares how many are
11 owned by Central Mining Finance?

12 A No, I am not.

13 Q Does it make any difference to you as managing director of
14 Charter how many shares of Cape are owned by Central Mining
15 Finance?

16 MR POLAK: I don't understand the question. Could you repeat
17 the question, please? (The Reporter read the pending
18 question). Objection. I don't understand the question.

19 MR WALKER: What is your answer, Mr Clarke?

20 MR POLAK: I don't know how you can answer that question.
21 Can you answer it?

22 A I simply don't understand not only the question but the
23 reasoning behind your question. Again, please try and make
24 it more explicit.

25 MR WALKER: Do you care how many shares Central Mining Finance
26 owns in Cape?

27 MR POLAK: Objection. I don't understand the question. Are
28 you saying whether it owns 5 million or 35 million, 100%

1 or 0%?

2 MR WALKER: What is your answer, Mr Clarke?

3 MR POLAK: I don't know how you can answer it, but if you wish,
4 O.K.

5 A I can't answer. "care" is a meaningless word in this purpose.
6 Can you be more specific, please?

7 MR WALKER: Is it of any concern to you how many shares of Cape
8 are owned by Central Mining Finance?

9 MR POLAK: The same objection. Answer it only if you know
10 what the question is.

11 A I really don't understand the question. You may be able
12 to rephrase it so that you can get the meaning behind it
13 clearer.

14 MR WALKER: How many corporations of which you are a director
15 own shares of Cape?

16 A The answer is a factual one. To my knowledge there are
17 certainly two companies within the Charter group which own
18 shares in Cape. By "Charter group", may I just be specific,
19 I am speaking of Charter and its wholly owned investment
20 subsidiaries.

21 Q What are those?

22 A The other shares would be held by Charter Consolidated
23 Investments Ltd. Other shares in Cape would be held by
24 Charter Consolidated Investments Ltd. to my knowledge.

25 Q Limited or PLC?

26 A I think it remains Limited, because PLC means public limited
27 company.

28 Q Does it make any difference to any concern that you have how

1 many shares are owned by Central Mining Finance -- how many
2 shares of Cape are owned by Central Mining Finance?

3 MR POLAK: Same objection.

4 A Would you allow me to try and help Mr Walker?

5 MR POLAK: At your peril!

6 A Mr Walker, in terms of my responsibility for the meticulous
7 administration of Charter it is obviously a matter of concern
8 to me where the shares in Cape are held within Charter and
9 its wholly owned subsidiaries. It may help you to know that
10 where they are held is very largely determined by historical
11 reasons and the time at which the shares would have been
12 acquired, because you are aware the holding has been increased
13 over a period of time. Again, purely to help you and to do
14 the best I can, it would be perfectly logical and I would
15 wish to see the shares consolidated in one company for simple
16 administrative reasons. There would normally, because of
17 the complex tax laws in this country, be very good reasons
18 why a company like Central Mining Finance is unable to
19 transfer its shares to another company in the Charter group
20 without incurring a specific tax liability which would be
21 a cash outflow from the Charter group. Obviously as the
22 managing director or the chief executive of Charter my concern
23 is to preserve its investments and its investment resources.

24 MR WALKER: Other than tax considerations is there any other
25 concern that you have as to the amount of shares owned by
26 Central Mining Finance?

27 MR POLAK: Same objection.

28 A I think we are really back to the same point. I have tried

1 to help you to explain the historical influences and the
2 influences which stop what I think you are assuming to
3 be the natural process of consolidating investment in one
4 holding. There may be other concerns, but it is really
5 part of the influence of history as to where they are held
6 and the difficulties in following what might be simplification.
7 There are no other concerns which immediately occur to me.

8 MR WALKER: Only you mentioned consolidation. I don't quarrel
9 with consolidation as being a factor. I can understand
10 where it would be a factor. But I am not trying to limit
11 it to that. I don't know what there are. You work for
12 a corporation that has got more corporate shells than Babe
13 Ruth hit home runs, so you obviously know more about why
14 corporations exist than I do or want to. That is why I am
15 asking you the question. You have mentioned the tax -----

16 A You are now making a statement and not asking me a question.

17 Q You have mentioned taxes, you have mentioned historical
18 reasons, but they seem to primarily relate to taxes. Is
19 there anything else that comes to your mind?

20 A The historical reasons do not relate to taxes. That is a
21 quite incorrect assumption on your part, if I may say so.

22 Q Let me interrupt. Maybe we can get to a question and
23 answer. You mentioned historical reasons and you mentioned
24 consolidation, and I interpreted your words to mean that
25 normally good administration would indicate that all share-
26 holdings of Cape by Charter be in one of Charter's corporations;
27 but historically they were in two corporations, and for tax
28 reasons there would be greater loss from combining them than

1 there would be from the inefficiencies of continuing to
2 own them in two corporations. Is that correct?

3 A There would be a specific cost of the attempt to follow
4 the logical step and to put the holdings into one place.

5 Q Would the cost be other than a tax cost?

6 A There could be the incidental costs of transfer, which are
7 stamp duties, there could also be a very significant tax
8 cost, because these investment interests are of very long
9 standing and represent historical costs. It is my
10 responsibility not to see the assets of Charter diminished
11 by incurring a tax bill which would arise purely from the
12 simple administrative step of seeking the apparent simplicity
13 of holding the holdings in one company.

14 Q Would it influence voting power or control?

15 A It would have no influence on those whatsoever.

16 Q Would it violate any oral or written contract that has been
17 entered into with any parties?

18 A None to my knowledge.

19 Q Would it violate any internal guidelines of Charter or any
20 other organization known to you?

21 A That is two questions. I can only answer the one. It would
22 violate no internal guidelines of Charter.

23 Q Would consolidation into one of either Central Mining
24 Finance or CCI Ltd. or a transfer from both of those
25 corporations to a third corporation violate the guidelines
26 of any of those corporations or of any other corporation
27 known to you, such as Charter or Cape itself?

28 A It would violate no guidelines that are known to me.

1 MR WALKER: This is a good place for me if it is for you.

2 MR POLAK: Of course.

3 (At 1 p.m. a recess was taken until 2.05 p.m.)

4 MR WALKER: When were you last in the United States?

5 A Towards the end of March this year.

6 Q Where did you land and what did you do?

7 A I landed at Kennedy Airport, had dinner in a restaurant
8 and attended a meeting the following morning, and then left for
9 England.

10 Q I had in mind more toward what business purpose brought
11 you there or if it is a social purpose not connected with
12 business just tell me it was a social purpose.

13 A No, it was a business visit.

14 Q What was it about?

15 A I attended a board meeting.

16 Q Of whom?

17 A Of Minerals and Resources Corporation.

18 Q Where?

19 A It was held in an office in the Citicorp Center.

20 Q Did you do anything else?

21 A No.

22 Q And did you fly out of New York again?

23 A Indeed I did, yes.

24 Q When were you in the States before that and what did you do?
25 Where did you land?

26 A The last visit before that was actually landing at Boston
27 Airport in transit to London.

28 Q Just landing, changing planes and taking off again?

1 A Exactly that.

2 Q And before that?

3 A I think it would be - let's make sure I get the sequence
4 right - almost certainly landing at Kennedy Airport in
5 transit to Toronto.

6 Q You did nothing at Kennedy other than change planes?

7 A That is right.

8 Q And before that?

9 A It could be visiting a town called Sioux City in Iowa.

10 Q Where did you land? When you first touched American soil
11 where did you land?

12 A At Sioux City, Iowa.

13 Q Where had you taken off from?

14 A Toronto.

15 Q What did you do in Sioux City?

16 A I went to visit a fertilizer factory and was taken on a
17 tour of the operations.

18 Q When was this?

19 A 1981.

20 Q What plant did you visit?

21 A Terra Chemicals Fertilizer Plant.

22 Q Is that T-e-r-a?

23 A T-e-r-r-a - Terra, deriving from the Latin "earth".

24 Q It is not related to your company that is T-a-r-a?

25 A Tara. No, it is not related to Tara.

26 Q Did you have any interest in it at the time?

27 A It was an interest, a company in which Hudson Bay Mining &
28 Smelting had an interest, and this was a visit by the board

1 of Hudson Bay Mining & Smelting.

2 Q Has the interest of Hudson Bay changed since that visit?

3 A It has not -- I am sorry; may I start that again, because
4 I would just like to think? The level of the interest of
5 Hudson Bay Mining may have increased since then, but I
6 believe it not to have increased. I am just trying to be
7 clear about the time, because it wasn't very far apart from
8 that, either before or after, when Hudson Bay had in fact
9 increased its interest; but I think this was afterwards.

10 Q Did you take off from Sioux City again?

11 A Yes, I did.

12 Q When were you in the States before that?

13 A I would have attended one other meeting of Minerals and
14 Resources Corporation when I paid one visit to Phoenix,
15 Arizona. I can't quite remember in which sequence they come.

16 Q The Minerals and Resources meeting was held where?

17 A In New York City.

18 Q You landed in New York and took off from New York?

19 A Yes, I would have done.

20 Q You didn't leave the City?

21 A No, except to get to the airport.

22 Q And the only thing you did was attend the board meeting
23 as far as business was concerned?

24 A Exactly that.

25 Q When you went to Phoenix did you land at Phoenix?

26 A I think I landed at New York and then took a plane which went
27 across to Phoenix and would have no doubt landed in one or
28 two other places on the way.

1 Q But you didn't get out?

2 A I didn't get out.

3 Q What did you do in Phoenix?

4 A I inspected the investment of Hudson Bay and indeed Minorco
5 in the Inspiration Copper Mine; and again it was a board
6 meeting of Hudson Bay paying one of its annual visits to
7 an investment interest in the company.

8 Q Did you do anything else in Phoenix of a business nature?

9 A No.

10 Q From what airport did you leave the States?

11 A Los Angeles, I think. It may have been San Francisco.
12 I went West from Phoenix and then caught a plane from there.

13 Q Where did you go from there? I mean when were you next
14 in the States before that visit?

15 A I think I only ever paid one other visit to the United States,
16 or possibly two. I went in late 1979 to visit an American
17 mining company about a mineral deposit that they have
18 in the United Kingdom. The only other visit before that
19 must have been in 1976 when I spent a day in New York coming
20 down from Toronto and called in and saw a number of investment
21 bankers.

22 Q In 1976 when you were there on behalf of whom were you
23 calling on investment bankers?

24 A I wasn't really calling on behalf of anybody. I happened to
25 have a day spare between business in Toronto and going on to
26 another meeting outside the United States. Having a day to
27 spare, I went into New York and called on a number of bankers
28 that I know, really just to exchange the time of day and talk

1 about conditions.

2 Q I assume part of your visit was to build general goodwill;
3 is that true?

4 MR POLAK: Which visit? To the bankers?

5 MR WALKER: The 1976 visits.

6 A Primarily it would have been to inform myself on what was
7 happening in New York, because it has a very significant
8 influence, say, in interest rates or exchange rates elsewhere
9 in that it would affect Charter's business.

10 Q Was any part of it to build goodwill on behalf of someone
11 whose interest you represent?

12 A No, it wasn't.

13 Q It was primarily to receive from those people information
14 and thereby benefit those people for whom you work or toward
15 whom you have an obligation?

16 A It was primarily to inform myself to enable me to discharge
17 the duties that I then had, which was Finance Director of
18 Charter.

19 Q Who paid for your being in New York?

20 A It would have been paid for by Charter Consolidated, so far
21 as I can remember.

22 Q In 1979 what company did you visit and where was the visit?

23 A I visited American Metal Climax, or AMAX, at their invitation
24 in Greenwich, Connecticut.

25 Q Where did you land?

26 A Kennedy Airport.

27 Q American Metal Climax is in what business?

28 A It is a natural resource business.

1 Q And what type of ore deposit did you discuss with them?

2 A I discussed our wolfram deposit at Hemerden in the County
3 of Devon in England.

4 Q Did you do anything else during that trip?

5 A Nothing of a business nature.

6 Q Have you ever been in the State of Illinois?

7 A I have never been to the State of Illinois. Let me just be
8 careful and say: so far as I know.

9 Q Does Hudson Bay have any employees?

10 A Does the Hudson Bay Mining & Smelting Company have any employees?

11 Q Yes.

12 A Yes, it does.

13 Q About how many?

14 A I can't give you an approximate figure. I can't estimate it.
15 I don't know.

16 Q Would you think it is more or less than ten?

17 A I would think it to be more than ten.

18 Q In other words, it does at least some of its business with
19 people who are paid by it, as opposed to the method that
20 Charter uses to do its business?

21 MR POLAK: Objection. I don't understand the question.

22 A I am not clear....

23 MR WALKER: Charter has no employees; isn't that true?

24 A Charter Consolidated, the public liability company, does not
25 have employees. I am not aware, although I am a director of
26 Hudson Bay Mining, whether they have a similar structure
27 whereby there is a service company which employs all the staff
28 of Hudson Bay Mining. I am a non-executive director of the

1 company. The individuals may be employed directly by Hudson
2 Bay; there may be a service company. It is perfectly common
3 practice.

4 Q Where is it common?

5 A It is extremely common in the United Kingdom, where my
6 experience is widest.

7 Q What about Anglo American Corporation? Do they pay their
8 employees or does a service company pay their employees?

9 A In the case of the Anglo American Corporation, they are paid
10 by the corporation itself.

11 Q Who are the directors of Charter Consolidated Services?

12 A Myself, John Richardson, my executive colleague, R.D. McVean,
13 who is the Charter personnel consultant, D.S.Booth, who is
14 the Company Secretary of Charter Consolidated. Subject to
15 verification, I believe R.J. Armitage is the manager of
16 Charter primarily responsible for administration and adminis-
17 trative services. There may be one or two more directors,
18 I am speaking from memory, but those five I am confident
19 are directors of that company.

20 Q Is there a managing director?

21 A There is not a managing director.

22 Q Is there a permanent chairman of the board?

23 A I am the chairman of the board.

24 Q Which of Charter and its associates do business in the
25 United States? Which of Charter -- let me ask another
26 question. Which of Charter and its subsidiaries do business
27 in the United States?

28 A Charter itself does no business in the United States.

1 Q Mr Clarke, excuse me a minute. That is not an answer to
2 my question, and when you say that then that just stimulates
3 me to get into a lot of examination we really don't need
4 to get in, I don't think. I am certain that if he wants that
5 conclusion from you Mr Polak will ask you either a question
6 himself or an affidavit or something of that nature.
7 If you would just answer my question as to which do, then
8 we won't -- I really think it will be in your interests to
9 answer it that way, because it will shorten up my response.
10 A I think if you could be courteous enough to let me finish
11 my answer, I may be able to help you on that question.
12 The question - and perhaps Mr Clark will be good enough to
13 read it back - was, as I understand it, "Which of Charter
14 and its subsidiaries does business in the United States?".
15 Is that correct?
16 Q That is exactly the question I asked you, Sir.
17 A Let me therefore make it clear that Charter PLC does no
18 business in the United States. Let me equally make it
19 clear that of the subsidiaries, the wholly owned investment
20 subsidiaries which form one class of our subsidiaries and
21 which are administered in Holborn Viaduct, they equally do
22 no business in the United States. In an attempt to answer
23 the positive side of the question, to my knowledge of the
24 Charter industrial subsidiaries which are independently
25 managed and do not operate from Holborn Viaduct, the following
26 companies do business in the United States: Pandrol
27 International, which you may be aware is a company primarily
28 involved in the manufacture and sale of railway fastenings;

1 Alexander Shand, through a subsidiary of Alexander Shand,
2 does business in the United States - or a sub-subsidiary -
3 and it is engaged in open-cast coal contract mining;
4 Perard Torque Tension, which is a mining equipment manufacturer
5 attempts to sell its products in the United States. May I
6 just borrow the Charter accounts for one moment?

7 Q Sure, (Accounts handed to the witness).

8 A One point to add to that. I understand that Heatrae-Sadia,
9 which is involved in the manufacture and sale of heating,
10 ventilation and refrigeration products, may have licenses
11 for one or two products, the original licences of which
12 were obtained by United States, or are held by United States,
13 companies. It does not, to my knowledge, seek to sell its
14 products in the United States.

15 Q Why does it have licenses from those companies?

16 A Because it believes that the products are attractive and
17 that they will find a market in the United Kingdom, which is
18 where the majority of its products are sold, and it wishes
19 to manufacture them here and sell them here.

20 Q Have I interrupted you? Are there any others?

21 A Not to my knowledge.

22 Q Of what companies in which Charter has an investment are you
23 a member of the board?

24 A May I distinguish the companies into a series of groups,
25 which may be of assistance to you?

26 Q You may.

27 A The first group are the wholly owned investment holding or
28 dealing companies administered within 40 Holborn Viaduct.

1 I am a member of the board of a number of those; we touched
2 on some of them this morning: Charter Consolidated Investment
3 The British South Africa Company, Central Mining Investment
4 Corporation. The second group are the wholly owned industrial
5 subsidiaries, which are quite separately and independently
6 managed and are not located in Holborn Viaduct. I am a member
7 of none of those boards. The third group are the partially
8 owned subsidiary companies, which may cover industry like
9 Cape, or they may cover mining like South Crofteyor Beralt Tin &
10 Wolfram. I am a member of none of those boards. Equally,
11 they are entirely separate and they have their own management
12 and location where the operations are conducted.

13 Q You are a member of Cape, Mr Clarke.

14 A I am sorry, I am a member of Cape, but apart from Cape I am
15 a member of no other of the boards of that sort. The third
16 grouping are the investment interests which are not subsidiary
17 companies, although they may be associated companies. The
18 definition of "associate" for this purpose which I would
19 use and which is used by Charter is a company in which we have
20 a 20% or more shareholding and a membership of the board.
21 To my knowledge I am a member of none of those boards, either.
22 And finally there are the many investment interests which don't
23 fall into the previous categories. In that case I am a member
24 of some of the boards. I will try and recite them from memory.
25 The Minerals & Resources Corporation; the Tara Exploration &
26 Development Company. I think that is all. If I might just
27 refresh my memory again from the list, I can tell you very
28 quickly. Let me just make one correction. I have overlooked

1 one. There is one company, which is a pure investment company,
2 called Euroanglo, in which Charter has a 25% interest and
3 which counts as an associate. I was, and I probably still
4 am, a member of that board.

5 Q Is that it, so far as you recall today?

6 A I am sorry?

7 Q Is that it, so far as you recall?

8 A That is the total list, yes.

9 Q Are Minorco shares publicly traded?

10 A Indeed they are, yes.

11 Q Do you have any reports of Minorco available at 40 Holborn?

12 A There are annual reports available of Minorco at 40 Holborn
13 Viaduct.

14 Q Who is on the board of Minorco?

15 A A large number of people. Let me try and give you the names,
16 would this be of assistance, as of today?

17 Q Yes. Is it more than twenty?

18 A No. It is, I would think, between fifteen and twenty.

19 Q O.K. Please.

20 A J. Ogilvie Thompson is the Chairman of Minorco; G.W.H.R. Relly;
21 E.P. Gush; H.R. Slack; H.R. Fraser; and then C.E. Ritchie;
22 F. Rohatyn; H.J. Schreiber; R.F. Richards; myself; Julio
23 Bozzano. There may be others. I don't immediately recall
24 them.

25 Q Are there any Oppenheimers on the board?

26 A Not at the present moment. I think that is correct.

27 Q You are the only member of the Charter board that is on the
28 Minorco board?

1 A Yes, I am. That is incorrect. I am the only member of the
2 Charter executive committee who is on the Minorco board.
3 You will find that J. Ogilvie Thompson and G.W.H. Relly are
4 also non-executive directors of Charter.

5 Q Have you looked into the history of the share ownership that
6 Charter has in Cape as to how it was acquired and under what
7 circumstances and so forth?

8 A I haven't looked into it. I am aware of the general history
9 from my experience as the finance director of Charter.

10 Q Have you discovered any time that a Cape rights issue was
11 conducted when some firm other than Central Mining before 1965
12 or Charter after 1965 was the underwriter of that rights
13 issue?

14 MR POLAK: Objection as to form. No foundation. But if you can
15 answer it....

16 A I can only speak from my knowledge from 1969. I haven't, as
17 you put it, looked into what happened prior to that time.
18 Of my memory, there was a rights issue by Cape I think in
19 1980. The company wished to acquire quite a significant
20 business. The advice of its bankers to its board, and
21 accepted by the board, was that the most effective method of
22 financing this issue was to have a rights issue, and I was
23 aware of that as a member of the board at the time. The Cape
24 management, and I believe accompanied by their merchant
25 bankers, but I could be wrong on that, came to discuss the
26 position with me, as the chief executive of Charter, to see
27 whether we would follow our interest in the rights issue
28 that the company proposed to make. This would be most material,

1 because without our interest it would be difficult to make
2 such a rights issue, and I proposed that we would subscribe
3 firm in relation to our proportion of the issue, and what is
4 more I thought it was very good business for Charter to
5 underwrite the rest, for two purposes, or three purposes to be
6 precise. One was that Charter might acquire more shares in
7 Cape; secondly, I believe the rights issue was an advantageous
8 piece of financial business for Charter on which it could earn
9 underwriting fees; and thirdly it was much more effective
10 vis-a-vis our investment in Cape that we didn't have to
11 incur the public fees that would be required for such an
12 issue, which would normally be paid to the underwriting
13 institutions in the City of London.

14 MR WALKER: My question was whether through your review of the
15 history of Cape you had discovered a Cape rights issue that
16 had been underwritten by some entity other than Central Mining
17 or Charter.

18 A I don't review the history of Cape.

19 Q Is that your way of answering: No, you have not found such a
20 rights issue?

21 A I think it is my way of saying that I don't really understand
22 your question, because it is posed as a negative. My answer
23 is that it is not something that I normally do to review
24 over a long period the history of Cape. Let me go further,
25 in case it may have some merit for you, that I would not at all
26 be surprised if in the past underwriting of Cape rights
27 issues had followed the traditional form of the City of
28 London, which means that they are publicly underwritten by

1 the underwriting institutions; but I know of no specific
2 instance because I have not reviewed the history of Cape.

3 Q Do you know who has underwritten the rights issues of Cape
4 prior to the 1980 rights issue?

5 A There may have been another occasion on which Charter
6 underwrote a rights issue. I would like to check that.
7 But I cannot as of now recall another instance on which
8 Charter has underwritten a rights issue in the sense of
9 common issue to all the shareholders. I can recall, again to
10 be of help to you, one instance much earlier in the seventies
11 where Cape wanted to issue shares to the vendor of a business
12 which it wished to buy and where the vendor wanted cash and
13 where we reached an arrangement with the vendor whereby we
14 could increase our investment in Cape by purchasing from him
15 the shares which Cape gave to him as consideration for the
16 acquisition of this business.

17 Q What instance was that?

18 A I think it was the acquisition in the mid-seventies of a
19 contracting business, and it was at a time when the Cape price
20 was extremely low and in our view the shares were a remarkably
21 good investment. That is why we were very happy to take
22 advantage of the occasion to increase our investment interest
23 in the company.

24 Q What was the name of the company?

25 A I don't recall the name of the company acquired.

26 Q Was it Newalls Insulation?

27 A It would probably be the Newalls contracting business, or the
28 Turner Newalls contracting business, but I don't know the name

1 of the individual company.

2 Q Did Cape buy any other business from Turner Newall or Newall
3 or Turner Brothers or any other entity that had either Turner
4 or Newall in its name other than the business that was
5 purchased by the issue of Cape stock to the seller of the
6 business in connection with an agreement between Charter and
7 the seller of the business that Charter would buy the shares
8 in Cape that the seller of the business received from Cape?

9 A That is such a long question I haven't followed it. Could
10 we clarify it, please?

11 Q Do you know of any acquisition by Cape of a business that has
12 the name Turner and/or Newall in its name other than the
13 acquisition that you just described in the last three to five
14 answers?

15 A I have described two acquisitions, the one in the mid-seventies,
16 which was certainly a business from Turner Newalls; the
17 business acquired in 1980 was a manufacturing business, also
18 acquired from Turner & Newall.

19 Q Any others?

20 A There are no other acquisitions that I am aware of whereby
21 Cape has issued shares, either by way of consideration to the
22 vendor or by way of a rights issue to its general shareholders,
23 to all its shareholders, to acquire a business. There are a
24 number of instances of which I am aware where Cape has
25 acquired other businesses and given cash consideration for
26 the businesses, but those the the only two instances that
27 I am aware of which have been financed by the issue of shares.

28 Q The only two businesses that you are aware of that Cape

1 acquired from Turner or Newall or Turner Newall?

2 A They are the only two businesses that I am aware of which
3 have been financed by the issue of shares. It is, so far as
4 I am aware, a complete coincidence that both of those have
5 been acquired from Turner & Newall. Cape may have bought
6 other businesses from Turner & Newall of which I am quite
7 unaware.

8 Q The only businesses which Cape has purchased from Turner or
9 Newall or Turner Newall or any combination of those two
10 words in the name of the business was the business acquired
11 in 1980 and the business acquired in the early 1970s; is that
12 correct?

13 A It is not correct. The only two businesses that I know of
14 that have been acquired from Turner & Newalls or any
15 combination of those names are the two I have described. There
16 may well be others of which I am completely unaware.

17 Q The two of which you have knowledge are the one in 1980 and
18 the one in the middle or early seventies; is that correct?

19 A That is correct.

20 Q Which of those two was the contracting unit of Turner Newalls?

21 A The earlier one.

22 Q And the 1980 acquisition had to do with a manufacturing
23 facility?

24 A It did.

25 Q What was manufactured there?

26 A Glass fiber insulation.

27 Q Who was the vendor of the Turner Newall contracting unit?

28 A I don't know.

1 Q Was it a person or a corporation or a combination?

2 A The ultimate parent of the vendor, whoever the vendor was,
3 would be the Turner & Newall Ltd. company, which is a widely
4 held public quoted company in the United Kingdom. Which
5 company within the Turner & Newall group was the vendor is
6 unknown to me.

7 Q Could this Turner & Newall contracting unit be called Newall
8 Insulation or Newalls Insulation, something to that effect?

9 A It could be called any combination of those. All I can tell
10 you is that I am not aware of its specific name except that
11 it was a contracting business.

12 Q Mr Clarke, I am going to show you a copy of the Cape Industries
13 Ltd. report and accounts 1975, which in a couple of different
14 places talks about the acquisition of the contract unit
15 division of Turner & Newall, and particularly on page - I don't
16 see a page number; it must be 6, because it is three in front
17 of 9, but in any event on the page captioned "Review of
18 Operations" there is a paragraph under "Cape Contracts Ltd"
19 which talks about the acquisition of the contracting division
20 of Newalls Insulation Co. Ltd. took place in early 1975.

21 I would like for you to read as much of the 1975 annual report
22 as you might wish to as it relates to the issue of shares
23 of Cape in connection with the acquisition of the division or
24 entirety of Newalls Insulation.

25 (A short recess was taken)

26 A Thank you. I have read the paragraph.

27 Q Would you like to take a break, too?

28 A No, not at all.

1 Q Does the part of the 1975 annual report that I referred you
2 to describe the acquisition that you described earlier when
3 you said that -- or very roughly you said; you said it well,
4 but I am trying to re-say it roughly -- that Cape issued
5 shares to the vendor and then Charter bought the Cape shares
6 from the vendor; is that correct?

7 A I think it would be the same transaction.

8 Q Now I would like to be more precise in my questions and in
9 your answers now that I have identified this 1975 transaction
10 as being the one. Which of the Cape companies issued shares
11 to the vendor on the Newalls side of the transaction?

12 A The only company capable of issuing shares is the public
13 quoted company. Those are the only shares which have a market
14 value, and that would have been the company which issued
15 shares.

16 Q Which at that time was either Cape Asbestos or Cape Industries,
17 whichever name it went under at the time; is that true?

18 A That is correct.

19 Q Now before Cape - let's call it Cape Industries because that
20 is at least what it was at the end of 1975 when the annual
21 report was published - before Cape Industries issued the
22 shares had Charter agreed with the Turner side of the
23 transaction -- excuse me; the Turner & Newall side of the
24 transaction -- as to the price at which Charter would buy
25 the Cape shares from Turner & Newall?

26 A The price at which the shares would be purchased would have
27 been agreed.

28 Q By any chance do you remember that price?

1 A My memory isn't that good, but it would be approximately 45p.
2 a share.

3 Q Was there any consideration from Cape Industries or any other
4 Cape company in addition to the shares of Cape Industries
5 that were transferred away from the Cape group toward the
6 Turner & Newall group?

7 A To my knowledge, none.

8 Q Were there any shares received by the Turner Newall side
9 of this transaction that were not purchased by Charter?

10 A To my knowledge, because Turner & Newalls wished in essence
11 to obtain cash, there were none.

12 Q The net effect of this transaction seems to be that Turner &
13 Newall gave up either a company or a division of a company and
14 received cash; is that correct?

15 A So far as Turner & Newall are concerned, the net effect would
16 be that they had sold the business for cash.

17 Q And the net effect on the Cape/Charter side of that transaction
18 appears to be that a business was gained by Cape -- strike that
19 I will start again. The net effect on the Cape/Charter side
20 of the transaction seemed to be that Cape gained a business,
21 Cape issued more shares, Charter lost cash and Charter gained
22 more shares in Cape. Is that true?

23 MR POLAK: I am objecting as to the form. You can answer it.

24 A Divide the effect into relevant parties. Charter: It increased
25 its investment in Cape at what it regarded as an advantageous
26 price, because you may not remember but 1974 early 1975 was a
27 period of profound recession here. The net effect on Cape
28 was that it purchased a business it wished to acquire

1 and financed the acquisition in the way which was most
2 appropriate to it at that time. Let me add that I was not
3 a member of the Cape board and I was not party to any of
4 the discussions to acquire the business or how it should be
5 financed. As one of the financial people in Charter I could
6 see the opportunity to increase our investment at what I
7 regarded as being an advantageous price relative to the market
8 conditions and the historical trend of the price. So it was
9 an investment opportunity.

10 MR WALKER: Did Charter give up anything other than cash?

11 A No.

12 Q Was there any approval by the shareholders of Charter -- strike
13 that. Did any shareholders of Cape other than the one
14 shareholder called Charter participate in the decision the
15 net effect of which was that Cape issued more shares in
16 exchange for Newalls Insulation Company which Cape knew at
17 the time of issuance would be purchased by its majority share-
18 holder, Charter?

19 A I am not aware whether the size of the transaction was such
20 as to require, within the normal Stock Exchange regulations,
21 the approval of the Cape shareholders. I would be quite
22 certain that the board and the management of Cape who would
23 be responsible for this side would have ensured that whatever
24 consents were required were obtained. From Charter's aspect,
25 the transaction was a small one, and it was entirely within
26 the sanction of the executive committee's authority.

27 Q Executive committee of whom?

28 A Of Charter.

1 Q I wasn't really talking about notice to Charter. Obviously
2 Charter had notice of this transaction. My question was
3 whether the non-Charter shareholders of Cape were advised of
4 the transaction whereby Charter increased its shareholding
5 in Cape at the time that Cape acquired a division of Newalls
6 Insulation Company.

7 A I am not aware of that.

8 Q This annual report implies that whatever was required was
9 plugged into the scheme of things under the name Cape Contract
10 Ltd. Are you familiar with a corporation having that name?

11 A Through my membership of the board of Cape since 1980 I am
12 aware of the existence of a company called Cape Contracts Ltd.
13 I have no knowledge as to the acquisition of the business
14 described as the Newalls Insulation business within Cape
15 and how it was fitted into the Cape corporate structure.

16 Q Is there more than one way as to how this could have been
17 handled up on the books of Cape and Cape Contracts Ltd.
18 where Cape's shares were issued in exchange for assets from
19 Newalls Insulation Company that when the dust settled were
20 recorded in Cape Contracts Ltd.?

21 MR POLAK: Objection as to form, but you can answer it.

22 A I think, Mr Walker, you are really inviting me to give a
23 general discourse on the methods by which corporate structures
24 are organized and how such acquisitions can be financed.

25 MR WALKER: It may not be complicated if your answer is "There
26 is only one way". If your answer is "There are many ways",
27 then I can see that it could get, as you say, complicated.
28 Why don't you answer first: Is there more than one way in

1 which this could be accomplished?

2 A From my professional knowledge, quite apart from the specifics
3 of this transaction, there would certainly be several ways
4 in which such an acquisition could be organized.

5 Q Given the specifics that are recorded right here in the 1975
6 Cape annual report, can you rule some of those out so that
7 it gets down to a manageable few?

8 A I can't. It would be something that would be entirely for
9 the Cape management to arrange, and I have no idea what
10 alternatives they looked at and which they discarded and how
11 they selected what appeared to that management to be the
12 most efficacious.

13 Q As you reviewed the 1975 Cape Industries annual report
14 did the annual report appear to you to describe the manner
15 by which the assets which were acquired in exchange for Cape
16 stock ended up being part of Cape Contracts Ltd.?

17 A I have only reviewed those accounts a few minutes ago in
18 response to your request. What they indicate to me is that
19 they acquired a business which they then naturally grouped
20 with a similar business that was already conducted within
21 Cape and its subsidiaries, nothing more or less than that.

22 Q What bookkeeping entries or transactions could reflect such
23 an activity?

24 MR POLAK: Objection as to form.

25 A I can't answer that. You are asking me to be specific about
26 something which is completely hypothetical.

27 MR WALKER: What more facts would you need than what you have?

28 A The facts I would need would be first the contract for the

1 acquisition of the assets, secondly the corporate structure
2 of the Cape group, thirdly the wishes of the management as to
3 how managerially they wished to conduct the business or
4 the assets that they were acquiring with the business that
5 they already had.

6 Q What more do you need in category 3 than the fact that
7 management obviously did decide that they wanted to put
8 those assets with whatever assets were already in the pocket
9 labelled "Cape Contracts Ltd"?

10 A Mr Walker, you are asking me to act as a bookkeeper. I have
11 not practised as a professional accountant for 13 years.
12 I have no intimate knowledge of how Cape conducts its books.
13 This is something that would be left to the chief accountant
14 in the company, the Secretary of Cape, to organize. You are
15 asking me to answer a completely hypothetical and many-faceted
16 question.

17 Q Are you saying you need more accounting knowledge than you
18 have or you need some facts relating to this transaction, or
19 both?

20 A I hope I would still have adequate accounting knowledge.
21 I would need to know all the facts of the transaction and
22 above all the wishes and intentions of the management. To
23 both those latter two, I have no knowledge whatsoever.

24 Q Let's say you were properly motivated today to find out
25 about this. Who would you go and ask about it?

26 A I would never be motivated to find out about it, but if I
27 had some specific wish to know the exact detail of the
28 transaction, the natural person to ask would be the chief

1 accountant of Cape.

2 Q Do you know that person's name?

3 A Yes.

4 Q What is it?

5 A It is J.L. Sparks.

6 Q How long has he held that post?

7 A I don't know.

8 Q Was he there in 1975 to your knowledge?

9 A He was a member of the Cape accounting staff in 1975. I am
10 not aware whether he was the chief accountant or not.

11 Q Which of the subsidiaries of Charter -- strike that. When
12 Charter got these shares from Turner Newall, into which of
13 its corporate shells did it place the shares?

14 A I don't remember.

15 MR POLAK: "corporate shells"?

16 MR WALKER: Corporate names, corporate pockets, corporate entities,
17 whatever.

18 MR POLAK: I would accept "corporate subsidiary".

19 MR WALKER: Do you know it to be a subsidiary?

20 MR POLAK: I think the two entities that we have talked
21 about so far, and the only two entities that have been
22 discussed as holding shares of Cape, have been two corporate
23 subsidiaries.

24 MR WALKER: That is certainly true today. I asked him into which
25 they first put it.

26 A Let me try and make it absolutely clear: we have no corporate
27 shells or corporate pockets, we have wholly owned investment
28 companies, and it is important that that is understood. I do

1 not remember which company the shares then acquired went into
2 If I applied the general principles adopted in Charter at that
3 time now, the shares, if the transaction was done today,
4 would be acquired by Charter Consolidated Investments.

5 Q If the transaction took place today, from what entity would
6 the cash come?

7 A The cash would come from the central cash resources of Charter
8 and its wholly owned investment companies managed within 40
9 Holborn Viaduct.

10 Q Do each of them have separate bank accounts?

11 A No, they don't. There is one central company which deals
12 with the day-to-day management of cash for those companies and
13 not for any other companies. It doesn't deal, for example,
14 with the wholly owned industrial subsidiaries or the partly
15 owned industrial subsidiaries or the wholly owned or partly
16 owned mining subsidiaries.

17 Q What is the name of that company?

18 A May I just borrow the Charter accounts? I am not absolutely
19 certain, but in normal circumstances it would be Charter
20 Consolidated Finance Ltd.

21 Q Are you on the board of that corporation?

22 A I believe not.

23 Q Have you ever been?

24 A I would have been when I was the finance director of Charter.

25 Q How does Charter Consolidated Finance keep track of all the
26 money that it is holding for all these other corporations?

27 MR POLAK: Objection.

28 A Would you like to rephrase your question? I don't understand

1 what it means.

2 MR WALKER: Are your pay checks -- is your pay delivered in the
3 form of a check or a direct deposit to some bank account
4 of your own?

5 A It is transferred to me by what is called a banker's credit
6 direct to a personal bank account.

7 Q When your account is increased what is the name of the
8 account which is decreased?

9 A Charter Consolidated Services Ltd.

10 Q What role does Charter Consolidated Financial play in these
11 finances?

12 A In terms of transferring money to my personal account for that
13 purpose, none. For the purpose of making sure that funds
14 are available to finance the payment of the entire salaries,
15 Charter Consolidated Finance would be notified of the total
16 debit for the monthly payroll and would be required to transfer
17 sufficient funds to the credit of Charter Consolidated Services
18 to meet that debit.

19 Q Where would Charter Consolidated Finance get the money if,
20 for example, there wasn't sufficient money in the account
21 of -- strike that. Is there currently an account in the name
22 of Charter Consolidated Service?

23 A You must be specific, if you would, about "account".

24 Q Is there a bank which, if you were to walk up to the
25 appropriate officer and say "Sir, what is the balance at this
26 moment in the account of Charter Consolidated Services?" -- no;
27 if you were to say him "Is there an account here at this bank
28 in the name of Charter Consolidated Services, and if so what

1 is the balance?", is there a bank at which the answer would be
2 "Yes", and then "X dollars"?

3 A Unless the person was properly authorized to ask, no
4 information would be given, obviously; but assuming that I,
5 as the chief executive of Charter, visited the normal clearing
6 bankers that serve Charter, there would be an account in
7 the name of Charter Consolidated Services Ltd.

8 Q Probably at more than one bank?

9 A That question I think contains an assumption. I think there
10 might be more than one account, but it would be at the same
11 bank.

12 Q At what bank do you currently have your account?

13 A Do you mean my personal account?

14 Q No, this Charter Consolidated account we are talking about,
15 or accounts.

16 A It would be with one of the United Kingdom major clearing
17 banks.

18 Q Give me the exact one if you know or an example if you don't.

19 A An example would be the National Westminster Bank Ltd.

20 Q If you went to the National Westminster Bank, asked for the
21 balance in the Charter Consolidated account as of a point in
22 time, do you anticipate that would be a calculable amount?

23 A I think you may have changed the question, because you used
24 the phrase "Charter Consolidated account".

25 Q Charter Consolidated Services.

26 A Would it be a definable amount?

27 Q Yes.

28 A Yes, it would.

1 Q Now let's assume there came the day to pay yourself and other
2 employees and the payrolls required 10 units, you, or whoever
3 it is that does this, told Charter Consolidated Finance "We
4 need 10 units", they looked at the account and they found
5 there was only a balance of 3 units there, where would Charter
6 Consolidated Finance get the other 7 or more units? Strike
7 that. Would you anticipate that Charter Consolidated Finance
8 would do anything in response to a situation that 10 units
9 were going to be paid to the accounts of employees and only
10 three units were on deposit?

11 MR POLAK: Objection. Do you understand that question?

12 A No. I think Mr Walker is having a bit of trouble with his
13 bookkeeping. Can I try and help you and tell you exactly
14 what would happen?

15 MR WALKER: Certainly.

16 A It is the responsibility of the personnel department to
17 calculate the amount required to pay the Charter Consolidated
18 Services staff, in other words all of those people at 40
19 Holborn Viaduct or at the office in Ashford employed by
20 Charter Consolidated Services Ltd. The payroll team would
21 advise Charter Consolidated Services - and that means that
22 they advise the chief accountant - of the amount required.
23 It is his responsibility to ensure that there are adequate
24 funds in the Charter Consolidated Services account to meet that
25 debit on the day on which it is due. He would obtain those
26 funds from the central cash resources of Charter Consolidated,
27 and those central cash resources as a matter of convenience
28 are managed within one company, Charter Consolidated Finance.

1 Let me explain why they are managed within one
2 company, and let me equally define I am only speaking of the
3 central cash resources, I am not referring to any of the
4 funds of the industrial subsidiaries or the mining subsidiaries
5 or anyone else. Those funds come from our central cash resources
6 Why do we have central cash resources? We are a company
7 whose business is investment. Investment of course requires
8 cash resources. That is one of the main functions that
9 central management has.

10 Q What would he do about the fact if he found the balance in the
11 account was 3 and he was getting ready to create a 10 unit
12 debit?

13 A You must please be specific, because you have retreated to
14 generalities. Are you saying if the account of Charter
15 Consolidated Services had 3 units and the debit for salaries
16 was 10?

17 Q Yes, Sir, I am.

18 A He would ensure that the account of Charter Consolidated
19 Services was in adequate funds to meet the debit of 10.

20 Q From where would he obtain the additional funds?

21 A The chief accountant would be aware of the debit and would
22 arrange to transfer those funds from central cash resources
23 which would be held in the name of Charter Consolidated Finance
24 Ltd.

25 Q Is the amount held in the name of Charter Consolidated
26 Finance an aggregate of the accounts of Charter Consolidated
27 PLC and each of its wholly owned non-operating subsidiaries?

28 A I don't understand your question. Would you make it clearer?

1 Q From what source do the funds held by Charter Consolidated
2 Finance come?

3 A Would you allow me to give a little discourse on the mechanics
4 of running the central cash resources of the company?

5 MR POLAK: If it shortens the day.

6 A Mr Walker, let's take a simple day in the life of the accounts
7 department at 40 Holborn Viaduct and let us see what cash
8 is coming in and what cash is going out. We might in the
9 morning receive dividends from 100 separate investment
10 interests ranging from very small amounts to quite substantial
11 amounts, some days in excess of one or two or three million
12 pounds. The investment department may in the previous Stock
13 Exchange account have sold part of its portfolio of investments
14 and will be receiving settlement through the Stock Exchange
15 system. The industrial companies may have come to the end
16 of their financial year, prepared their accounts and may
17 declare a dividend on the investment of the central company.
18 So we have got that cash coming in.

19 Now, what else are we doing? We have got to pay
20 the wages, so we make sure that Charter Consolidated Services
21 has the cash to do that. We may have to settle for buying
22 some investments. The checks must be drawn and issued for
23 that. At the end of the day we have got a surplus of cash;
24 more, happily, has come in than has gone out. It is then the
25 responsibility of Charter Consolidated Finance, managing the
26 central cash resources, to say "We will place today so much
27 a month on the money markets. We will buy certificates of
28 deposit for three months because we can see the cash pattern

1 over the next three months. We will buy tax reserve
2 certificates for 18 months ahead because there is a tax bill
3 to pay in that time". That is how the central management of
4 cash resources works. It is an entirely mundane practical
5 operation.

6 I hope that may have just clarified it for you.

7 MR WALKER: In other words, it doesn't make any difference
8 whether the cash comes in as a dividend from Cape Asbestos
9 which, if your recollection is correct, would be payable to
10 only two of the Charter companies, Central Mining Finance
11 and Charter Consolidated Investments?

12 A Yes, it makes a very great deal of difference. Each of those
13 companies has to keep its own separate accounts, the receipt
14 of the dividend has to be recorded by each, the transfer of
15 the funds to be placed on money market deposits to Charter
16 Consolidated Finance has to be recorded by each, Charter
17 Consolidated Finance has to maintain meticulous accounts of
18 each deposit of cash with it and where it is placed with
19 the company. It is extremely important who receives it
20 when the accounting entry is to be made.

21 Q How does Charter Consolidated Finance determine if it has
22 this, as you hope for, positive cash position at the end of
23 the day, which of the Charter companies will share in the
24 earnings of this money market fund investment or whatever else
25 is done with the positive cash position at the end of the day?

26 A It depends on who has deposited funds with it. Let us take
27 one of our industrial subsidiaries which has surplus cash and
28 wishes to maximize the return on it. It will request Charter

1 Consolidated Finance if it can place funds, and Charter
2 Consolidated Finance pays it a market rate of interest.
3 Indeed, normally an industrial company benefits by getting
4 an above average rate of interest, more than it could deposit
5 itself by a small margin. In the case of the wholly owned
6 companies managed within Charter itself, Charter Consolidated
7 Finance would record the receipt of the income.

8 Q How, at the end of the year, if at all, is there a division
9 of the income recorded initially in the name of Charter
10 Consolidated Finance?

11 A It shows up within its profit and loss account statement.

12 Q I understand. But, I mean, does it show up in the account
13 of Central Mining or any of the other subsidiaries of Charter?

14 A In the case of the wholly owned companies which are managed
15 within Holborn Viaduct and who may equally be drawing on
16 funds of Charter Consolidated Finance, we do not have credits
17 and debits for interest paid and interest received. In relation
18 to all the independently managed operating subsidiaries there
19 is the physical credit and debit of interest received and
20 interest paid.

21 Q If, for example, it turned out that Central Mining was a
22 contributor to this constant cash balance which you hope to
23 have so that in a sense if it was generating some of the cash
24 which Charter Consolidated Finance had to invest, but another
25 company, for example British South African Company, for whatever
26 reason was in a constant deficit situation and therefore was
27 using in a sense the cash generated, if we only had two
28 companies in the pool, by Central Mining, this borrowing and

1 lending would never show up -- well, the borrowing and lending
2 would show up, but the interest wouldn't show up in the end
3 of the year statements for either Central Mining or British
4 South Africa; is that correct?

5 A In normal circumstances, yes, but normally they are net
6 drawers on the funds of Charter Consolidated Finance Ltd.

7 Q The two that I used as an example or all companies?

8 A Most of them, as they are increasing their investments,
9 tend to have to be financed by Charter from the central cash
10 flow that is coming in from many sources. May I try and
11 clarify that? Charter Consolidated Finance may itself
12 borrow from the normal lending institutions. It borrows
13 because we wish to finance an increase in our investment
14 business. It on-lends then to the investment companies.
15 We don't charge interest because they are all 100% companies
16 within the central management at 40 Holborn Viaduct.

17 Q So I am correct, then, that there is no interest charge
18 made against nor report of interest earned in Central Mining
19 Finance as compared to its contribution to the cash of
20 Charter Consolidated Finance or its use of the cash held
21 in the name of Charter Consolidated Finance?

22 A As of my knowledge when I was the finance director, that would
23 be the case. It should be distinguished very much from the
24 position of the investment in a wholly owned industrial
25 subsidiary with its own independent management which may
26 deposit funds. It is then paid a market rate of interest, an
27 arm's length rate of interest.

28 Q So, to go back to where we started on this when I was trying

1 to find out where the cash might come from, from whichever
2 of the Charter subsidiaries eventually -- into whose name
3 the new Cape shares eventually reposed, if that company for
4 example wasn't long that much cash at that time, it still
5 didn't have to pay interest into the pool for whatever period
6 of time it was short; is that true?

7 A It still had to borrow the funds to finance the purchase from
8 Charter Consolidated Finance; but it didn't pay interest
9 on those funds. It would be helpful, I am sure, to you to
10 understand the reason why. We would have endless (because
11 of the nature of the business I have described) interest
12 calculations between the two 100% managed companies within
13 the head office at 40 Holborn Viaduct. We would pay an
14 enormous amount to our bookkeepers simply just to calculate
15 interest adjustments every day, with no benefit overall.

16 Q Do Central Mining and British South Africa each file a tax
17 return reflecting the separate transactions such as we just
18 described, or are they a part of a consolidated tax return?

19 A We don't have consolidated tax returns in this country.
20 Each company is obliged to file its own separate return
21 and is taxed quite separately on its own income; but again
22 you will understand that the Revenue, of course, are extremely
23 concerned with the accuracy of financial statements, but
24 they equally accept the rationality that one would not make
25 endless interest payments between two wholly owned subsidiaries.

26 Q Is the U.K. income tax graduated?

27 A We have taxes on income in this country, not an income tax
28 for corporate bodies, and so it is called corporation tax.

1 There are two levels of tax. On normal trading profits
2 the rate is currently 52%.

3 Q 52%?

4 A 52%, I think I am right in saying; and on what are called
5 capital profits at the rate of 30%.

6 Q Is that in any way similar to capital gains profits, or is
7 it a tax on the amount of capital at a given point in time, or
8 is it neither?

9 A It is the nearest equivalent to a tax on capital gains as
10 opposed to an activity in the nature of trade.

11 Q So am I correct that neither of these taxes are graduated? By
12 that I mean the rate goes up or down as a variation of amount.

13 A To my knowledge there is a special category of what are
14 called small corporations whose income up to - I don't know
15 what the figure is today, but it used to be £20,000 is taxed
16 at a more favorable rate; but that situation does not apply
17 to the companies within Charter.

18 Q So so far as Charter is concerned the tax rate is constant
19 and it varies only as to the nature of the transaction?

20 A It normally varies as to the nature of the company, which
21 is an historical factor; but again it may be of interest to
22 you that Central Mining Finance, because of its historic
23 background, is a trading company, and therefore every profit
24 that it makes is taxable at 52%. Charter Consolidated
25 Investments historically is an investment holding company for
26 tax purposes, and the gains it makes on its investments are
27 effectively taxed at 30%.

28 Q So the receipt of a dollar's worth of dividend on 10 shares of

1 Cape by each of those would result in two different drains
2 upon the finances of Charter?

3 A That is incorrect, no. It is only in relation to the capital
4 gain in relation to the disposal of investments. Normal
5 investment income is treated exactly the same for either
6 company.

7 Q Then if 10 shares of Cape were sold by each of Central Mining
8 and Charter Consolidated Investments for a total gain of \$1
9 per share there would be a greater tax paid by one of the
10 10 share transactions than the other; is that correct?

11 A That is a very complicated question, but let me answer what
12 I understand to be the intent of it. If Central Mining
13 Finance sells a share, the surplus on the disposal would be
14 taxed at 52% because of the long history of that company.
15 If Charter Consolidated Investments disposed of an investment
16 the tax payable would be effectively at the rate of 30%.

17 Q Would the method of computing the sale price and the method
18 of computing the what we call basis be the same for both
19 companies?

20 A You are getting into the complexities of the British tax
21 system, but the normal base in the case of both companies
22 is the historical cost of the shares, what it originally cost
23 to purchase them when the company first acquired them.

24 Q The 1975 report has this language: "Towards the end of the
25 year it was decided to make a rights issue of shares for cash
26 realising £4.9 million to provide for further capital projects
27 and to avoid increasing the company's indebtedness. This was
28 successfully accomplished, acceptances being received in

1 respect of 95% of the shares offered". In your opinion
2 does what I just read describe a transaction in addition to
3 the acquisition of the Turner & Newalls division?

4 A I don't know. It could be the same, it could be an entirely
5 separate transaction. From the way it is described, in my
6 professional opinion, answering the question as an academic
7 one, I would think it was a separate transaction.

8 Q Under the portion of the report described as "Share capital"
9 this paragraph appears: "The issued share capital was
10 increased on 1st July 1975 by the allotment of 1,628,958 new
11 ordinary shares as consideration for the acquisition of the
12 insulation contracting business referred to previously in this
13 report". Does that paragraph appear to describe the
14 acquisition of the Turner & Newalls division?

15 A Can I just read the paragraph?

16 Q Surely. Read the next one, if you would, please.

17 A (The witness perused the document). Yes. The answer to your
18 question is: Yes.

19 Q The next paragraph talks about a rights issue that was
20 subscribed to 97% and the remaining shares were sold on the
21 open market for the benefit of the shareholders - something.
22 The two paragraphs talk about two different events; is that
23 correct?

24 A Yes. It confirms the earlier answer which I gave you as an
25 academic one, that they appear to be two quite separate events.

26 Q Explain the business about selling the remaining 3% of the
27 rights issue that was not accepted by the shareholders as
28 being sold on the open market for the benefit of someone.

- 1 A The normal practice in the United Kingdom for public companies
2 when they have a rights issue is to arrange for the issue to
3 be underwritten. The purpose of underwriting is to ensure
4 that the company receives the cash for the full issue of
5 shares, even though all the shareholders in the company do not
6 take them up. The consequential arrangement is that if all
7 the shareholders do not wish to take up the shares but the rights
8 have a small value, the underwriters have to make arrangements
9 to cope with the position of those shareholders who have not
10 taken up their shares, because they are entitled to a modest
11 benefit, and the underwriters, in terms of their underwriting
12 contract, would sell the shares in the open market, having
13 themselves, under the terms of their underwriting obligation,
14 provided the purchase price or the subscription price for the
15 shares. The small benefit of selling the rights, as it is
16 called, is then passed to those shareholders who are entitled
17 to subscribe to the rights issue but have chosen not to do so.
- 18 Q You mean even if you don't elect to take the shares that
19 are your pro rata part of the rights issue, you still have some
20 benefit coming to you?
- 21 A That is an obligation normally of the rights issue to do that.
- 22 Q How is this benefit measured in terms of money?
- 23 A There is normally on the Stock Exchange what is called "the
24 price of the rights". Let me give you an example. Suppose
25 I have the right to subscribe for 1 Cape share at £1 in terms
26 of a general rights issue to all Cape shareholders, and the
27 Cape open market price at that time for the normal equity
28 capital is £1.20; the value to subscribe at £1 therefore has

1 a value of 20p. Now I may be impoverished and unable to take
2 up my shares. I may be stupid and not therefore then sell my
3 rights in the open market. The underwriters then do this
4 for me.

5 Q Do they send you a check for 20p. or for 20p. less certain
6 charges they are permitted to make?

7 A They normally have an arrangement, which is a purely practical
8 one, that for example checks wouldn't be issued for sums less
9 than £1 or £5.

10 Q I understand that.

11 A But they would send you a check for the difference between
12 the subscription price and what the rights can be sold for
13 on the open market, because the £1 has to go to Cape, the
14 rights issuing company.

15 Q My question is: Would it be for 20p. or 20p. less some
16 permissible charge that the underwriter is permitted to make
17 for doing whatever he did?

18 A The normal practice, if my memory is right, in these
19 circumstances is that the company enters into an underwriting
20 agreement with the underwriters which provides certain standard
21 scale fees which are common practice in the City of London.
22 I don't think there would be any other charge for selling the
23 rights other than the stockbroker's commission when he is
24 instructed to sell the rights.

25 MR POLAK: Mr Walker, I don't want to interrupt your line of
26 questioning, and I appreciate the education that Mr Clarke
27 is giving, but I would also appreciate it if we could get to
28 a question which has some relevance to jurisdiction.

1 MR WALKER: Any time you want to create an issue by telling
2 him not to answer I have observed you completely know how to
3 do that. It is clearly my position that this is totally
4 relevant to jurisdiction. It has to do with Charter's
5 activities vis-a-vis Cape.

6 MR POLAK: That an underwriter sends a check to a shareholder
7 who has refused to accept the rights issue, whether he gets a
8 £1.10 or a £1.20 check?

9 MR WALKER: I don't want to debate with you about things that
10 aren't in issue. If you want to put the next question in
11 issue I may or may not debate with you about that.

12 Q The next paragraph starts out: "Following these issues the
13 number of authorized and unissued ordinary shares was
14 reduced to 996,740". What does that mean?

15 A I can't give you an answer in relation to specific numbers,
16 but I can give you an answer which relates to the general
17 principles of companies' equity share capital in the United
18 Kingdom. The amount of the share capital is authorized by
19 the shareholders, normally in round millions. The effect of
20 first issuing the shares for the purchase of the business
21 from Turner & Newall and then issuing shares by way of rights
22 would mean that the issued share capital of the company, in
23 other words that held by the shareholders in total, was very
24 close to the authorized share capital of the company. At that
25 stage it is normal practice, because an increase in the share
26 capital requires the authorization of the shareholders in
27 general meeting, to seek their approval at the next suitable
28 annual general meeting to enlarge the share capital of the

1 company. This would then permit the company once again, if
2 a suitable transaction arose, to acquire it by issuing shares
3 or to have yet a further rights issue.

4 Q Earlier today when I was asking you to what rights issues
5 of Cape -- what rights issues of Cape were underwritten by
6 Charter, and you answered "The 1980 rights issues", and then
7 you explained the acquisition of the division of Turner &
8 Newall, in my opinion you have now added to that, having read
9 the 1975 report, that there was a rights issue in 1975; is
10 that correct?

11 A I have not. You have derived it from the report.

12 Q But what I mean is: do you agree that that was in addition
13 to the two activities you had already mentioned before you
14 saw the report?

15 A I am not clear as to your question. I was dealing with
16 activities in which Charter had been involved. You have
17 produced the Cape annual report, and from that you have been
18 able to indicate to me that that report makes reference to the
19 rights issue that is described in it.

20 Q Do you know who underwrote the 1975 rights issue?

21 A I don't know who underwrote it. I have no recollection of
22 underwriting it, and because I remember very clearly the
23 transaction in relation to the issue of shares for the Turner &
24 Newall insulation business, my deduction from that, unless my
25 memory is very faulty, is that Charter did not underwrite it,
26 because normally I would have remembered it.

27 Q Do you recall any other rights issue of Cape?

28 A No, I don't. As I said before, I can only recall the two

1 transactions.

2 Q The two you had in mind were the 1980 event and the middle
3 1970s event of acquiring the Newall property?

4 A These were clearly transactions in which I, on behalf of
5 Charter, had a role to play on behalf of Charter and
6 therefore had a clear recollection of them.

7 Q Were you with Charter when Charter made something that has been
8 described to me as the 50% tender offer for the Cape shares?

9 A No, I was not.

10 Q Is that phrase meaningful to you, the 50% tender offer?

11 A I am aware from my general knowledge of Charter that in 1969
12 it made an offer to acquire part of the equity capital of
13 Cape. I was not a member of Charter's staff at that time
14 and I have no recollection of the details of it.

15 Q Mr Howard testified that at the conclusion of that transaction
16 in 1969 Charter's ownership was approximately 62%, and he
17 testified it is about 67.3% today. Is your knowledge inconsis-
18 tent with that?

19 A My knowledge isn't inconsistent with that.

20 Q Do you know of any acquisition by Charter of Cape stock
21 between 1969 and today in addition to the purchase of the stock
22 issued to Turner & Newall which we have just described as
23 having taken place in 1975?

24 A I cannot recall any specific market purchases. Charter
25 certainly acquired by subscription in 1980 its proportion
26 of the rights issue that was then made. I do not remember
27 whether we took up further shares because the rest of the
28 shareholders didn't subscribe at that time in that issue which

1 we underwrote. There could well have been a small number of
2 shares that were not subscribed by the general body of
3 shareholders. There may also have been some market purchases
4 I am unaware of.

5 Q Have you read the Complaint filed by Mrs Thacker in this case?

6 A I have read it very briefly.

7 Q Have you read Mr Howard's affidavit?

8 A I have read that equally briefly.

9 Q Mr Howard's affidavit contains these two sentences: "I have
10 reviewed the Complaint in the present action and note that
11 it alleges that Charter dealt in asbestos, sold asbestos into
12 Illinois, and possessed extensive knowledge of the health
13 hazards of asbestos. These allegations are false".

14 Do you have any knowledge as to whether or not Charter has
15 ever dealt in asbestos?

16 A To my knowledge Charter has never dealt in asbestos.

17 Q Do you have any knowledge as to whether it did or it didn't?

18 A You are asking a double question with a double negative.
19 I have no knowledge of Charter ever dealing in asbestos,
20 and I think I would -- may I supplement this?

21 Q I agree with you that the negative is a difficult thing
22 to establish. It is like saying "Did an elephant walk by?"
23 when all you can say is "I looked for tracks and didn't see
24 any" or "I watched throughout the time you have in mind
25 and I didn't observe it" or "I can smell elephants a mile away
26 and I haven't smelt any". I realize that.

27 A Let's try and make it positive. To my knowledge Charter has
28 never dealt in, sold or mined asbestos.

1 Q Any information on the statement that Charter sold asbestos
2 into Illinois or the statement that Charter did not sell
3 asbestos into Illinois?

4 A Because to my knowledge, to the extent that that extends to
5 Charter affairs, Charter has never sold asbestos or dealt
6 with it in any way, it must follow that it has never sold it
7 into Illinois.

8 Q Do you have any information as to whether Charter possessed
9 extensive knowledge of the health hazards of asbestos?

10 A I can only speak as to my own knowledge. I became aware
11 of the health hazards of asbestos primarily when I became
12 the managing director of Charter in 1979 and learnt in the
13 reports I received from my colleagues of the existence of
14 this litigation.

15 Q Were those reports printed annual reports of Cape or
16 something different from that?

17 A No, quite different from that. You must remember that I
18 had returned from a period abroad when I had been for the
19 greater part out of this country; naturally when I came back
20 my colleagues would seek to inform me of the aspects of
21 Charter's affairs that they thought I should be aware of.
22 This litigation was one of those aspects.

23 Q By "this", are you talking about the Thacker litigation or
24 Illinois litigation or American litigation or just asbestos
25 disease litigation generally?

26 A I had no knowledge of the detailed cases comprised of what
27 broadly you might call the United States asbestos litigation
28 in which the defendants or the litigants have sought to

1 involve Charter Consolidated. At that time simply the
2 awareness that "litigation" existed.

3 Q Someone was suing Cape or its subsidiaries?

4 A No. Someone was seeking to involve Charter.

5 Q When was the first that you learned that someone, whether
6 it be asbestos workers or other asbestos suppliers which
7 for some reason were making a cross-claim against Charter or
8 Cape, when did you first learn that any of Charter, Cape or
9 any subsidiary of Charter or Cape were involved in asbestos
10 litigation? Was that in 1979 also?

11 A That is a very broad question. Let me deal specifically
12 first with Charter: 1979. In terms of Cape, prior to 1979
13 I was generally aware that there had been litigation by
14 former employees of Cape in the United Kingdom. I had no
15 knowledge of any litigation beyond that.

16 Q Did you have described to you some litigation arising out
17 of the Tyler, Texas plant?

18 A No.

19 Q Do you even know about that today, the so-called Tyler, Texas
20 litigation?

21 A I know that there has been litigation in Texas. I know nothing
22 beyond that.

23 Q Did you know that the litigation was specific as to Texas before
24 or after 1979?

25 A After 1979.

26 Q When did you first learn that employees of Cape were filing
27 claims in the U.K. against Cape or its subsidiaries?

28 A I would think in the mid-seventies; and the reason would be

1 quite simply because of the consolidation of Cape's accounts
2 as a partly owned subsidiary of Charter, and one of the items
3 which would show up in the accounts as a special item would
4 be the compensation for industrial disease, as I think it was
5 then called.

6 Q Did you first learn of it when it was first mentioned in the
7 annual reports? Strike that. Did you first learn of the fact
8 that Cape employees were filing claims against Cape when
9 asbestos disease claim costs were first described in the Cape
10 annual reports after you joined Charter in 1969?

11 A I don't recall that at all. I was simply aware, in terms of
12 being responsible for the ultimate accounts of Charter
13 Consolidated, that there was an item which had to be shown
14 separately, which was called, I think, "Compensation for
15 industrial disease". Therefore I was aware of it simply
16 because it was one special item in the overall consolidation
17 of Charter Consolidated's accounts.

18 Q Are we talking about when the item called "Compensation for
19 asbestos disease" first showed up in the books of Charter
20 or in the books of Cape?

21 A The item was never shown up in the books of Charter. It comes
22 into the accounts of Charter Consolidated entirely because
23 of the fact that Cape is a 67% subsidiary and the company law
24 statutes in this country require its accounts to be consolidated
25 with Charter's.

26 Q You joined Charter in 1969?

27 A Yes.

28 Q Is it your recollection that you first learned about it in

1 1969?

2 A No.

3 Q It was some time in the seventies when you first learned
4 about it?

5 A Yes.

6 Q As I understand it, you first learned of the fact that Cape
7 employees were suing Cape for asbestos disease claims when
8 an item which you said was roughly "Compensation for asbestos
9 disease" -----

10 A I didn't, I am sorry. I learnt that there was an item in
11 Cape's accounts which was called "Compensation for industrial
12 disease". I don't accept the descriptions that you have
13 just given.

14 Q What I am trying to determine is on what book or paper or
15 document was it that this entry "Compensation for asbestos
16 disease" appeared. In other words, what were you reading
17 when you in that point in life all of a sudden went from
18 someone who didn't know about this to someone who did know
19 about this?

20 A It would be the published accounts of Charter Consolidated Ltd.

21 Q So if we wanted to research this, if we found that point in
22 time when there was first an entry in the published accounts
23 of Charter Consolidated Ltd. that was labelled approximately
24 "Compensation for industrial disease", that would be the point
25 in time when you first were aware that Charter employees --
26 excuse me; that Cape employees were suing Cape for asbestos
27 disease?

28 A The first entry in the accounts would not necessarily be the

1 date at which I became aware.. It would be the first year in
2 which I was responsible as the finance director for the
3 production of the annual accounts.

4 Q When is the first year you were responsible?

5 A I would think that the first year would be 1975, and I would
6 be aware of this only to the extent that the chief accountant
7 would come to me and in pointing out the special items in the
8 accounts would say "We have shown this item which is derived
9 from Cape's published accounts as they are consolidated into
10 Charter's".

11 Q Do you believe that you saw that item, that being "Compensation
12 for industrial disease", the first year you were responsible,
13 which was 1975?

14 A I don't recall that at all.

15 Q We have now discussed when you first learned. Have you ever
16 talked with any other Charter employee or director to learn
17 when that person may have first learned?

18 A No, I haven't.

19 Q Do you know what, if anything, Mr Howard did to put himself
20 in a position to be able to say that Charter -- that the
21 statement in the Complaint that Charter possessed extensive
22 knowledge of the health hazards of asbestos is false?

23 A I do not know what specific work he would have done.

24 Q Do you know any part of what he would have done or did do?

25 A No. I can be absolutely confident, because he is a very
26 meticulous man, that he would have taken the greatest possible
27 care before issuing such a statement; but I do not know the
28 specific work.

1 Q For example, Mr Clarke, are you aware that Cape served in
2 some advisory or lobbying or negotiating capacity to those
3 people who developed the British Asbestos Regulations that
4 were published in 1931 and went into effect in 1933?

5 A I have no knowledge of that.

6 Q Do you know if Mr Howard knows that?

7 A I have no knowledge whether he knows or does not know.

8 Q Did you know Mr Gaze, Richard Gaze?

9 A I have met him perhaps once or twice.

10 Q Did you ever talk to him about asbestos disease?

11 A No. The only times I ever met him are on being invited
12 to lunch at Cape on some date in the 1970s, simply being
13 introduced to him as a person having lunch there.

14 Q Knowing Mr Howard as you do -- strike that. What, if
15 anything, is Cape doing to promote the sales of its products
16 in the United States?

17 A To my knowledge it is doing nothing to promote the sales of its
18 products in the United States.

19 Q Are there Cape products -- are there products that Cape makes
20 that are similar to products that are used in the United States?

21 A That is a terribly broad question. Can you be more specific?

22 Q Does Cape make any products that could be sold in the United
23 States?

24 MR POLAK: "could be"? I object to the question.

25 MR WALKER: You can answer it.

26 MR POLAK: Do you know how to answer that one?

27 A It is an impossible question to answer.

28 MR WALKER: Is it impossible because you don't understand the

1 question or you would just rather not answer it?

2 A It is impossible because it is a question of such astonishing
3 generality that it is impossible to give a specific answer
4 to it.

5 Q Is that because you don't know what Cape makes or because you
6 don't know what might sell in the United States?

7 A I have a general appreciation of what Cape makes. I have
8 no knowledge of the economics which would enable them to be
9 sold competitively in the United States.

10 Q Do you know whether any subsidiary of Charter or any company
11 in which Charter has an investment is selling anything in
12 the United States?

13 A I have described to you this morning the three industrial
14 subsidiaries of Charter which to my knowledge attempt to sell
15 their products in the United States. I also know that
16 Anderson Strathclyde, in which Charter had an investment
17 interest and now has a larger investment interest, also
18 attempts to sell its products in the United States. I have
19 no knowledge beyond that.

20 Q Did you participate in the decision to increase Charter's
21 holdings in Anderson Strathclyde?

22 A Yes, I did.

23 Q Which way did you vote on the decision?

24 A We don't reach decisions by voting.

25 Q Which way did you incline?

26 A I, as the chief executive of Charter, recommended to the
27 Charter board both that we should make an offer for the
28 outstanding equity of the company beyond the investment interest

1 that we had already made.

2 Q Was your recommendation based in any part upon your opinion
3 that Anderson Strathclyde could continue to sell the types
4 of products that it had been selling in the American market?

5 A My recommendation was based entirely on the fact that one
6 of my responsibilities is to attempt to select growth
7 industries in which Charter may invest, and we had spent a
8 very long period of time, several years, in investigating the
9 economics of the coal mining equipment industry and in
10 increasing our investment in that industry, and that is why
11 I recommended to the Charter board that we should further
12 increase our investment in that particular industry, because
13 I believed it had extremely good long term growth prospects.

14 Q Did you think that some of the sales that Anderson Strathclyde
15 might make would be in the American market?

16 A I hoped it would be possible that it would be able to sell
17 its products in the American market, although I knew from
18 our investigation it was a most competitive market and not one
19 of Anderson Strathclyde's traditional markets which it has
20 served successfully in the past.

21 Q Are you aware of the fact that Cape used to sell products in
22 the American market?

23 A I have become aware of the fact that it sold products
24 in the American market entirely through this litigation.
25 I do not mean this specific case; I mean the general
26 litigation in the United States. Prior to that I had no
27 knowledge whatsoever that it sold asbestos in the United States,
28 or indeed anywhere else.

1 Q Have you become aware that for example in the past Cape used
2 to promote the sale of its products in the United States?

3 A No, I haven't.

4 Q You have never read the annual reports that describe the
5 efforts of Cape to promote the sale of asbestos in the
6 United States?

7 A You will have to be specific about the annual reports.

8 (A short recess was taken)

9 Q The 1947 annual report of The Cape Asbestos Co. Ltd. includes
10 this language: "You will I think be interested to know
11 something of the contribution which this group makes to the
12 export trade which is of such importance at the present time.
13 In the case of crude asbestos 77% of our total sales were
14 exported and a very large proportion of this went to the USA".
15 Does that sound to you as if The Cape Asbestos Co. Ltd.
16 was selling products into the United States as of the time it
17 published its 1947 annual report?

18 A In 1947, Mr Walker, I was 12.

19 Q What did that have to do with my question?

20 A I have never seen a 1947 set of accounts of The Cape Asbestos
21 Co. Ltd.

22 Q Have you found The Cape Asbestos Co. Ltd. annual reports to be
23 full of falsehoods?

24 A That is an assumption, I think. I have never found them to
25 be full of falsehoods, but I have never seen the 1947 accounts.

26 Q Have you ever found anything in a Cape Asbestos annual report
27 to be false?

28 A I have no memory of ever finding a false statement in the Cape

1 Asbestos annual report and accounts.

2 Q Do you repose trust in the management of Cape Asbestos,
3 now known as Cape Industries?

4 A As a non-executive member of the board, I have complete
5 confidence in the management of Cape Industries.

6 Q Would this statement by the management of Cape Asbestos
7 Company in 1947 as contained in its published annual report
8 be some evidence to you that Cape was selling products into
9 the United States in 1947?

10 A It would be absolutely no evidence to me except as a general
11 statement of what was happening in 1947, which I am sure
12 was entirely carefully looked into by the management at that
13 time; but my knowledge can only extend to the management as
14 I have experienced it as a non-executive director from 1980
15 to 1983.

16 Q And you just don't know what Cape was doing before 1980;
17 is that correct?

18 A I have already described to you that as the finance director
19 of Charter and an employee of Charter, because Cape was one
20 of many Charter investments, I had some knowledge of specific
21 transactions in relation to Cape since I became a member of
22 Charter's staff. Prior to that I have no knowledge whatsoever
23 of anything that happened in relation to Cape.

24 Perhaps I could just add, Mr Walker - it may help to
25 set the thing in context - when I was the finance director
26 Charter had, and still does have, an enormous range of
27 investment interests, ranging from tiny fractions of 1% to
28 28% to 67% to 100%, and therefore each day and every day I

1 would see many facets relating to one or ten or twenty or
2 thirty affairs connected with those investments.

3 Q When you were engaged in the preparation of the annual report
4 to be distributed to the shareholders of Charter in 1975 part
5 of the information that you incorporated into that annual report
6 was information taken from the 1975 Cape Industries annual
7 report to its shareholders. Is that correct?

8 A I was not engaged in the preparation of Charter's accounts.
9 I was responsible for the supervision of the work done by the
10 accounts department under the leadership of the chief
11 accountant. I think I have already told you that to the best
12 of my knowledge - I can't be specific as to the exact year but
13 I believe 1975, because I recall that was the first year in
14 which I had this responsibility, would be the first year in
15 which such entry appeared, if indeed it appeared in Cape
16 accounts in that year.

17 Q Am I correct that in 1975 you were in charge of preparing
18 certain items that appeared in the 1975 Charter annual report?

19 A You are correct only to the extent that as the finance director
20 I was responsible for the financial figures and the presentation
21 of the financial information in the Charter annual report to
22 its shareholders.

23 Q Did you take at face value the items appearing in the Cape
24 Industries annual report as to Cape Industries, or did you
25 conduct your own independent audit as to the financial affairs
26 of Cape Industries as you prepared the 1975 Charter annual
27 report?

28 A Charter does not conduct an independent audit into the affairs

1 of Cape or any equipment company. Those companies have their
2 own management who are responsible for preparing the accounts
3 they have their own auditors who are responsible for the
4 statutory duties of auditing the accounts. In the case of
5 Cape the auditors are an entirely separate firm from the two
6 firms who were then Charter's auditors. All that would have
7 happened would be that our accounts department would take the
8 published figures of Cape and correctly consolidate them into
9 Charter's accounts, seeking any additional information to
10 pursue the consolidation that was necessary, and Charter's
11 two firms of auditors might have conducted what is called
12 a peer review with the auditors of Cape Industries Ltd.

13 Q Do you recall that there were figures in the 1975 Cape
14 Industries annual report which for whatever reason were
15 inaccurate or unacceptable for use for those purposes which
16 you made of them?

17 A I can recall no such unacceptable items.

18 Q The 1975 Cape Industries annual report has as one of its
19 pages a page labelled "Principal subsidiary companies", and
20 that page is divided into three columns. The left hand column
21 is labelled a particular division, the center column is labelled
22 "Country of incorporation/Principal country of occupation",
23 and the far right hand column is labelled "Principal activities".
24 Under the division labelled "Mining division" in the left
25 hand column appear these words: "North American Asbestos
26 Corporation, Chicago". In the center column, which was
27 labelled "Country of incorporation/Principal country of
28 operation", appear the symbols "USA". Then in the right hand

1 column, which you will remember was labelled "Principal
2 activities", appear the words "Sale of crude and processed
3 asbestos fiber".

4 Do you interpret that information, which I will place
5 in front of you now, contained in the 1975 annual report
6 to be an indication that Cape Asbestos or Cape Industries,
7 whatever it was named as of that time, was selling products
8 into the United States through or in addition to North
9 American Asbestos Corporation?

10 MR POLAK: Objection. I don't want the witness to interpret
11 a document which he was not involved with, and, No.2, one
12 does not interpret a document. A document speaks for itself,
13 and you know that very well.

14 MR WALKER: What is your answer, Mr Clarke?

15 A The document says "North American Asbestos Corporation,
16 Chicago, USA. Country of incorporation. Principal activities
17 Sale of crude and processed asbestos fiber". That is what
18 I understand it to say.

19 Q What do you interpret that to mean?

20 MR POLAK: Objection. The document speaks for itself. He was
21 not involved in the preparation of that document.

22 MR WALKER: What is your answer, Mr Clarke?

23 A I was not involved, as Mr Polak says. I am quite unable to
24 interpret it. I can read it, and it says exactly what it says.
25 It speaks for itself. Would you like me to read it out again?

26 Q What does it say?

27 A "North American Asbestos Corporation, Chicago", under the
28 heading "Mining Division"; "Country of incorporation/Principal

1 country of operation: USA. Principal activities: Sale
2 of crude and processed asbestos fiber".

3 Q Have you just read from a portion of the 1975 Cape annual
4 report?

5 A Let us just check that it is the 1975 annual report. That is
6 what it says it is.

7 Q Based upon what you just read from the 1975 annual report of
8 Cape, and bearing in mind you have never found anything
9 false in a Cape annual report, do you infer from that that
10 as of 1975 Cape was engaged in the sale of products into the
11 United States?

12 MR POLAK: Objection. The document speaks for itself. Mr Clarke
13 was not involved. We are not involved in inferences; we are
14 involved in facts.

15 MR WALKER: Do you need any more time, Mr Clarke?

16 A No, I have got plenty of time.

17 Q I just wondered if you were able to come up with your answer
18 yet.

19 MR POLAK: I objected to the answer, and you know very well that
20 he had twice read it and he was not able to infer anything
21 other than is written, and I objected to asking about
22 inferences anyway.

23 MR WALKER: When you are ready, I am, Mr Clarke, but naturally
24 I don't want to hurry you.

25 A We have got all the time in the world.

26 MR POLAK: Were you able to infer anything from that other than
27 what was written there in that 1975 annual report?

28 A No, I was not.

1 MR POLAK: What was your next question, please?

2 MR WALKER: If after a period of waiting you find that you are
3 not able to answer that question, let me know, Mr Clarke,
4 otherwise feel free to take as long as it takes you to
5 answer the question.

6 A I am perfectly able to answer the question.

7 Q Would you do so, please?

8 A Yes. I can infer nothing other than the written words.

9 But you please carry on. We have all got plenty of time.

10 I am entirely at your disposal, so.....

11 Q As you read the 1975 Cape annual report were you able to
12 determine what the gross income was of Cape?

13 A I haven't read the 1975 annual report other than as of today
14 the item that you have just referred to and any other items
15 you may have prior referred to.

16 Q Was that something you put in the 1975 Charter annual report?

17 MR POLAK: I am sorry?

18 A I don't quite understand what you are saying.

19 MR WALKER: Did you place in the 1975 Charter annual report,
20 either by itself or lumped in with some other figures, the
21 amount shown in the 1975 Cape annual report as to the gross
22 sales of Cape in 1975?

23 A The financial figures of Cape for 1975 would have been
24 consolidated into the Charter financial figures disclosed
25 in the annual report for 1975. If you have an annual report
26 available I will be able to tell you whether at that time
27 the disclosure of the figure of turnover also took place,
28 but without verifying it I cannot tell you.

1 Q The figure of what?

2 A Annual turnover.

3 Q As you read the Cape 1975 annual report were you able to
4 determine the fixed assets of Cape as of the end of 1975?

5 A Mr Walker, you seem to be under a misapprehension, so let
6 me just try and correct it for the sake of clarity. I have
7 read the 1970 report today in respect of a number of items
8 which you have drawn to my attention.

9 MR POLAK: The 1975 report.

10 A The 1975 report. In terms of the financial figures, they
11 are and will have been incorporated into the Charter annual
12 figures. That does not require me to read the Cape 1975
13 annual report.

14 MR WALKER: Where did you get the figures that became the part
15 of the Charter annual report that reflected the Cape activity?

16 A The figures would have been supplied to the Charter chief
17 accountant, who would have incorporated the financial figures
18 into the Charter annual financial statement.

19 Q Would he do so under your direction?

20 A He would do so under my supervision. It would not be a
21 direction, because he is well aware of the rules of consolidating
22 company accounts.

23 Q Were you likewise well aware as to how this could be done?

24 A Am I aware how a set of consolidated accounts is produced?
25 Yes, I am.

26 Q I had in mind the question I asked.

27 A Well, your question, I am afraid, was lamentably unclear.
28 Perhaps you would like to rephrase it.

1 Q In 1975, which you have said is the first year that you were
2 responsible for the preparation of the annual report of
3 Charter, did you have the ability to take from the Cape
4 annual report the information that was needed for
5 incorporation into the Charter annual report?

6 A I am afraid you have got your facts wrong again. To the best
7 of my recollection, 1975 was the first year in which I was
8 responsible for producing the Charter annual financial state-
9 ments. That is not the entire content of the annual report.
10 Secondly, I did not, as you are already aware, specifically
11 as an individual produce those consolidated financial
12 statements. They were produced by the chief accountant, who
13 reported to me. Does that answer your question so that you
14 are clear as to the procedure? If not, please clarify it
15 further, and I will do my best to help you.

16 Q In 1975 did you have the ability to look at the financial
17 statements of Cape?

18 A You will have to define "ability".

19 Q If you are unfamiliar with that word, it is probably not
20 possible, given this stage in your life and your motivation
21 adverse to my interest, that I could define it for you. We
22 will just have to try a different word.

23 A If you wish to be discourteous, that is your privilege, Mr
24 Walker, but "ability" can be interpreted in the English
25 language as to facility, which means knowledge, or professional
26 skill, which is acquired knowledge, or natural intelligence,
27 which is inherent knowledge. If you will be good enough to
28 define which you mean, I will do my best to answer.

1 Q In 1975 did you have the professional skill that would have
2 enabled you to take from the financial statement of Cape
3 Industries Ltd. that information which was necessary for
4 incorporation into the Charter financial statement for 1975
5 or financial reports for 1975?

6 A By professional qualification, yes. By actual practical
7 experience in recent years, no, because I have not been a
8 practical bookkeeper. Perhaps again just to
9 try to clarify and to help you, if it meant in terms of
10 seeing that there were competent staff within Charter for the
11 preparation of the annual financial statement, I would say Yes.

12 Q Is Strathclyde trying to sell its products in the American
13 market?

14 A I think you mean Anderson Strathclyde. Would you mind if we
15 called it that?

16 Q I will be glad to ask the question fully. Is Anderson
17 Strathclyde PLC, including its subsidiaries, currently
18 engaged in the promotion and sale of its products within the
19 United States?

20 MR POLAK: To your knowledge.

21 A To my knowledge it does try to do so. I have no idea as to
22 what scale.

23 MR WALKER: Is Johnson Matthey Public Limited Company and/or
24 its subsidiaries currently promoting and selling its products
25 in the United States?

26 A Through its subsidiaries it does so, yes, to my general
27 knowledge. I can't be specific as to the products.

28 Q Is Pandrol International Ltd. and/or its subsidiaries

1 currently promoting and selling products in the United States

2 A Through its subsidiaries it is currently attempting to sell
3 its products and services in the United States, yes.

4 Q Are Perard Torque Tension Ltd. and/or its subsidiaries
5 currently promoting and selling products in the United States?

6 A To the best of my knowledge, yes.

7 Q Are Alexander Shand Holdings Ltd. and/or its subsidiaries
8 currently engaged in mining within the United States --
9 mining and the sale of mined ore in the United States?

10 A No.

11 Q Is Alexander Shand Holdings Ltd. or its subsidiaries
12 currently mining in the United States?

13 A Alexander Shand, through a subsidiary, is currently engaged
14 in open-cast contracting in the United States. In other
15 words, it has a contract to extract. It does not mine in the
16 conventional sense, nor does it sell.

17 Q Is Anmercosa Sales Ltd. and/or its subsidiaries currently
18 promoting or selling wolfram within the United States?

19 A Anmercosa Sales acts as an agent for the products of other
20 mines, and in the course of its business would seek to sell
21 product on behalf of its principals within the United States.

22 Q What word did you use before "United States"? Did you say
23 "including in" or what?

24 MR POLAK: Mr Clark, would you read back the answer, please?

25 (The Reporter read the last answer). "principals"; is that
26 the word you didn't catch?

27 MR WALKER: No; I didn't catch the word "within".

28 Q Is Cape Industries Ltd. and/or its subsidiaries currently

1 promoting or selling products within the United States?

2 A Not to my knowledge.

3 Q Do you have any information as to why Anderson Strathclyde PLC
4 or its subsidiaries, whatever it was you first said was in
5 fact promoting and selling products in the United States,
6 is or are engaged in the promotion and sale of products in the
7 United States, but Cape Industries and/or its subsidiaries
8 are not so engaged?

9 MR POLAK: Objection. That question is so convoluted I can't
10 understand it. Can you understand it?

11 A I can't understand it. Perhaps Mr Walker would help us.

12 MR WALKER: Anderson Strathclyde PLC is a corporation the
13 majority interest of which is owned by Charter; is that
14 correct?

15 A Yes, although that is a very recent occurrence, as you may
16 be aware.

17 Q Cape Industries PLC is a corporation the majority interest
18 of which is owned by Charter; is that correct?

19 A That is correct.

20 Q Am I correct that Anderson Strathclyde PLC, either itself or
21 through a wholly owned subsidiary or through a subsidiary
22 of a wholly owned subsidiary or through some further
23 corporate descendant, is engaged or are engaged in the
24 promotion and sale of products within the United States?

25 A That is quite correct, yes.

26 Q Is it true that Cape Industries PLC and its subsidiaries
27 are not engaged in the sale of products within the United
28 States?

1 A To my knowledge they are not engaged, if I have interpreted
2 your double negative correctly.

3 Q You are the managing director, which means you are the chief
4 executive officer of Charter, the majority shareholder of
5 each of these two corporations; is that correct?

6 A I am actually chief executive, which is a title within this
7 country.

8 Q You are the chief executive officer of the majority
9 shareholder of each of these corporations and all of their
10 corporate descendants; is that correct?

11 A I am the chief executive officer, if I may use your
12 nomenclature, or in ours the chief executive, of Charter
13 Consolidated, which holds investments in the companies that
14 you have described. I am not an executive officer of any
15 of those companies.

16 Q And the holding that Charter has is a majority interest in
17 each; is that correct?

18 A It is indeed.

19 Q Do you know why the one subsidiary called Anderson Strathclyde
20 and/or its corporate descendants are engaged in the sale and
21 promotion of products in the United States and why Cape
22 Industries and its corporate descendants are not so engaged?

23 A I can help you here, yes. I am delighted to. It is very
24 simple. Anderson Strathclyde - one of the reasons we purchased
25 our interest originally in the company and the larger interest
26 we have struggled to obtain - makes a product which within the
27 world markets is an absolute market leader, and it has only one
28 or two significant rivals in those world markets, one in Germany

1 and one in the United States. It therefore has a tremendous
2 technical and product quality which is universal wherever
3 coal is mined by the long wall method. Cape, on the other
4 hand, makes relatively mundane building products which can
5 be made in virtually any industrialized country in the
6 world and which of their very bulk don't lend themselves to
7 economic transportation to sell in markets which are far
8 distant. It is as simple as that.

9 Q So the reason there is that Anderson Strathclyde, although it
10 manufactures its product outside -- is it correct that it
11 manufactures its products outside the United States, or
12 does it manufacture them within the United States?

13 A I believe it manufactures also within the United States.
14 I can't tell you the exact degree to which it manufactures
15 in the United States, but very often these are assemblies
16 of very complicated machines.

17 Q Does it manufacture all of the products that it sells in
18 the United States within the United States?

19 A I do not know.

20 Q This stuff tends to be heavy, iron and steel, in content; isn't
21 that true?

22 A They are certainly very heavy engineering fabrications, yes.
23 But at the same time they also contain extremely complex and
24 highly sophisticated hydraulic and electronic controls.

25 Q Alexander Shand Holdings Ltd. mines coal in the United States?
26 Alexander Shand Holdings Ltd. and/or its subsidiaries mine
27 coal in the United States. Is that correct?

28 A No, I am sorry, I must not get you too much entangled in the

1 technicalities of our business, but Alexander Shand, through
2 its subsidiary, is engaged in open-cast coal contracting in
3 the United States.

4 Q What is that?

5 A That means that it uses its skills to accept contracts
6 whereby it undertakes to extract coal from somebody else's
7 ground in return for a price.

8 Q Do you call the extraction of coal from ground mining?

9 A In relation to this particular activity, we call it open-cast
10 coal contracting, because Alexander Shand, in this case through
11 its subsidiary, is not the equity owner of the ground mined.
12 In other words, it has no title to the coal that is extracted.
13 It is performing a service on behalf of its customer or client
14 or principal.

15 Q Would it be correct to refer to what Alexander Shand Holdings
16 does in the United States as "mining"?

17 A It depends how precise you are. In very loose terms it is
18 mining. If you asked our Coal Board here what Alexander Shand
19 does for it - and it is one of the two or three largest
20 contractors to the Coal Board here for open-cast coal mining -
21 they would say "Oh, Shand is one of our open-cast coal
22 contractors". So you must forgive me if I use the precise
23 definitions of our business.

24 Q If this staff who works for you at Charter saw fit to describe
25 Alexander Shand Holdings Ltd. as being engaged in "coal mining
26 and civil engineering" in the 1982 Charter annual report, would
27 you take offence at that labelling?

28 A No, not at all. I merely tried to give it a greater degree

1 of definition to assist you.

2 Q Are there others engaged in coal mining in the United States
3 in addition to these subsidiaries of Alexander Shand?

4 A When you say "others".....?

5 Q Are Alexander Shand's subsidiaries the only companies engaged
6 in coal mining in the United States?

7 A I think in the United States there are probably several
8 thousand coal miners, but if I I can interpret your meaning
9 as companies within the Charter ----

10 MR POLAK: No, you can't interpret his question. If you don't
11 understand it, you must say "I don't understand it".

12 A I am sorry. You are very kind. I am indebted to you.
13 Perhaps Mr Walker would be good enough to rephrase his question.

14 MR WALKER: Does any entity mine coal in the United States in
15 addition to the subsidiaries of Alexander Shand?

16 A Would you define "entity" for me?

17 Q Do you have a concept of what the word "entity" means?

18 A Mr Walker, let me try and help you. If you would be good
19 enough to phrase your question to refer to Charter, then I
20 will be very happy to answer it in terms of my knowledge.
21 If you use "entity" I am very happy to give you a recital
22 of every open-cast coal mining company that I know within the
23 United States. There are several thousand, and it could take
24 us a very long time.

25 Q Do you remember my question?

26 A If you could actually pose a clear and explicit question, I will
27 be able to remember it. Please try. I am very willing to
28 help, but I can't answer general questions.

1 Q Would you read that question back to me, please, slowly?

2 (The Reporter read the question at line 17 on page 149).

3 A I have never studied philosophy, much to my regret.

4 MR POLAK: Now you're not going to study law either.

5 A But you may be able to help me on this.

6 MR WALKER: Mr Clarke, you asked me to define "entity", and I
7 responded by trying to see if you had a concept of "entity",
8 and if you did that may well be satisfactory for the question
9 I tried to ask you when you were so puzzled about the word
10 "entity". Can we first determine if you have a concept of
11 what is meant by the word "entity"? For example, have you ever
12 used the word?

13 A In my understanding of the English language "entity" would
14 mean a thing or being.

15 Q That definition is very acceptable for the question I am
16 going to ask you. Are there any entities engaged in the
17 mining of coal in the United States in addition to the
18 subsidiaries of Alexander Shand Holdings?

19 A The answer to your question is that there are many entities
20 in the United States engaged in the open-cast contract coal
21 mining business.

22 Q Does anyone sell wolfram to the United States in addition to
23 whatever parts of Beralt Tin & Wolfram Ltd. and/or its
24 subsidiaries and whatever parts of Anmercosa Sales Ltd. and/or
25 its subsidiaries are engaged in the sale of wolfram to the
26 United States?

27 A Well, there aren't as many wolfram producers in the world as
28 there are open-cast coal miners in the United States, but

1 there are a significant number of wolfram mines. I have no
2 specific knowledge of any of them which sell directly or
3 indirectly wolfram to the United States, and I can only help
4 you in relation to what Beralt Tin & Wolfram or Anmercosa
5 Sales, or indeed any activity for which Charter Consolidated
6 Services has responsibility in terms of selling wolfram to
7 the United States or in the United States.

8 Q Did you just say that there are no entities outside of the
9 Beralt Tin & Wolfram Ltd. descendants and the Anmercosa Sales
10 Ltd. descendants that are engaged in the sale of wolfram to the
11 United States?

12 A No, I didn't say that. I think I said -----

13 Q Are there such others, then?

14 A Again, you must define your question, because you are asking
15 an encyclopaedic question. Perhaps you would be good enough
16 to phrase it specifically.

17 Q Anmercosa Sales Ltd. and/or its subsidiaries sell wolfram
18 mined by Beralt Tin & Wolfram Ltd. and/or its subsidiaries;
19 is that correct?

20 A That is correct.

21 Q Are there entities, defined as you defined it here this
22 afternoon, engaged in the sale of wolfram to the United
23 States that are not descendants of Anmercosa or Beralt?

24 A I have no specific knowledge of any entity which sells wolfram
25 to the United States beyond the ones that I am capable of
26 covering, namely Anmercosa Sales Ltd. on behalf of its
27 principal and Beralt Tin & Wolfram Limitada in Portugal.

28 Q When did Cape Industries Ltd. last sell products into the

1 United States?

2 A I don't know.

3 Q For how long have you known that Cape -- you know now that
4 Cape is not engaged in the sale of products to the United
5 States; is that correct?

6 A You are asking again a double negative. Would you forgive me
7 and put the question in a positive way so I am clear about it?

8 Q Is Cape selling products to the United States today?

9 A No, not to my knowledge.

10 Q What is your knowledge as to how long it has been the state
11 of affairs that Cape is not selling products to the United
12 States?

13 A I have no knowledge beyond knowing that it now does not.

14 Q It may have stopped yesterday or it may have stopped ten years
15 ago so far as you know; is that correct?

16 A I can only respond to you in terms of my knowledge since I have
17 been a director on the Cape board. So far as my knowledge
18 extends to the affairs of Cape, let me say I have no knowledge
19 within Cape of how its products are sold and to whom they
20 are sold and in what countries they are sold beyond knowing
21 that the majority of its business is conducted in the United
22 Kingdom; but within that knowledge I cannot tell you if
23 products are sold to the United States. All I can tell you
24 is that I have no knowledge of Cape selling any products
25 to the United States since I have been a non-executive
26 director of Cape.

27 Q I thought we had established that you knew that Cape products
28 weren't being sold to the United States. Is it an accurate

1 statement of your knowledge that Cape products could be --
2 that Cape could be engaged in the sale of products to the
3 United States and it is just that you don't know about it?

4 A It would be perfectly possible for Cape to be selling products
5 in the United States. I have no knowledge of Cape selling
6 any products in the United States. If I can just go back,
7 I think you are wrong in your assumption that we established
8 that. What I told you is that to my knowledge Charter, other
9 than through the subsidiaries that I had identified, did not
10 sell in the United States.

11 Q So whatever the characteristics of Cape's products, it is
12 possible, given your knowledge, that Cape could still be
13 selling to the United States; is that correct?

14 A It is possible, yes.

15 MR POLAK: Anything is possible. Could we ask questions going
16 to knowledge, please? It is 5.30 in the evening.

17 MR WALKER: Sure you can. Did you want to do so now?

18 MR POLAK: No. I want you to finish your examination.

19 MR WALKER: Was Stopford-Sackville ever the executive director
20 of finance of Charter?

21 A Yes, he was.

22 Q During what period?

23 A Approximately to my knowledge from 1970 to 1975 when I
24 succeeded him, I think. To be absolutely accurate I would
25 obviously need to verify that.

26 Q Did he ever resume the post after you went to Africa?

27 A My knowledge is that Mr B.W. Pain took the responsibility for
28 accounting and Mr Stopford-Sackville would have taken the

1 responsibility for investment.

2 Q Have you ever met an American by the name of Charles G. Morgan?

3 A Could you repeat that name?

4 Q Charles G. Morgan.

5 A No, I haven't.

6 Q Have you ever heard that name, Charles G. Morgan, in
7 connection with North American Asbestos Corporation, Continental
8 Products or Associated Mineral Corp.?

9 A No, I haven't.

10 Q Do you have any knowledge whatsoever as to how Cape sold
11 asbestos in the United States after the dissolution of North
12 American Asbestos Corporation?

13 MR POLAK: Objection as to the assumption in the question, but
14 you can answer it if you wish.

15 A I have no knowledge at any time of how Cape sold asbestos in
16 any country.

17 MR WALKER: Do you, in the course of your life's activities,
18 receive information as to the affairs or activities of
19 subsidiaries of Cape in addition to receiving a copy of the
20 publicly available annual report of Cape?

21 A I receive the information in relation to the activities of
22 Cape which is presented to each of the regular board meetings.

23 Q How do you get that?

24 A It comes in the form of the board papers which are issued to
25 every member of the board.

26 Q Is that provided you before or after or during a particular
27 board meeting?

28 A It is normally circulated by the Secretary of the company to

1 the board members two or three days before the date of the
2 meeting.

3 Q Are you permitted to retain those materials?

4 A Yes, I am.

5 Q And do you?

6 A Yes, I do.

7 Q Do you still have under your control those materials provided
8 you by Cape as a result of your being a member of the board
9 of Cape?

10 A I have the latest copies. I cannot inform you when my
11 secretary will have thinned down the file to remove earlier
12 material.

13 Q You may still have all of it or you may have less than all of
14 it; is that correct?

15 A That is a double negative again. Please would you be specific?

16 Q Do you have any information which would indicate that your
17 secretary has thrown away any of the materials provided you as
18 a director of Cape?

19 A I have no current knowledge of what, if any, materials
20 since I became a director of Cape which I received in the
21 capacity of being a director will have been eliminated from
22 my file in relation to Cape and my membership of the board.

23 Q Do you know a solicitor by the name of Ralph Albert George
24 Wise?

25 A I don't know a Mr Wise. What did you say his Christian names
26 were, again?

27 Q Ralph Albert George.

28 A Not to my recollection or knowledge.

1 Q He claims to office at 3 London Wall Buildings in the City
2 of London.

3 A I have no knowledge of Mr Wise.

4 Q Do you know a man by the name of O-s-t-e-r-l-o-h?

5 A No, I do not.

6 Q Or the name of Max E-h-r-b-a-r?

7 A Can you say it or spell it again, please?

8 Q The first name is Max, and the last name is E-h-r-b-a-r,
9 all one word.

10 A I don't have any knowledge of him.

11 Q And a person whose first name is R-e-n-e, middle name Walter,
12 last name Gerber?

13 A I don't know Mr Gerber, no.

14 Q Do you know Peter Trenton?

15 A No.

16 Q Do you know John Muier - M-u-i-e-r?

17 A John Muir - M-u-i-r?

18 Q M-u-i-e-r.

19 A M-u-i-e-r? No, I don't.

20 Q Do you know John M-u-e-r?

21 A I don't.

22 Q Do you know Richard Wareham - W-a-r-e-h-a-m?

23 A W-a-r-e-h-a-m?

24 Q Yes, Sir.

25 A No, I don't.

26 Q Do you know of a company called Brakegate Ltd.?

27 A No, I do not.

28 Q Do you know of a company called Special Shipping?

1 A I am sorry, there was a car passing.

2 Q The first word is Special, the second word is Shipping, and the
3 third or more words would be -- the third word is Inc, the
4 abbreviation for Incorporated.

5 A I do not.

6 MR WALKER: Counsel, where are we on the provision of the
7 affidavit as to the completeness of the document production?

8 MR POLAK: We will have to get that for you.

9 MR WALKER: That means we don't have it today?

10 MR POLAK: No.

11 MR WALKER: It means we do have it today?

12 MR POLAK: No, we don't have it today.

13 MR WALKER: Have you decided yet as to whether or not Mr Clarke
14 will be any part of the affidavit?

15 MR POLAK: I have not determined yet who has made the search,
16 so I can't tell you. We have been locked up in depositions
17 every day during the office hours.

18 MR WALKER: Mr Clarke, have you spent any time in the direction
19 of or the actual search for the documents requested to be
20 produced by the plaintiff from Charter?

21 A No, I have not.

22 Q Do you know who has been engaged in that?

23 A No, I do not.

24 Q Did you wish to change your answer?

25 A I don't wish to change my answer at all, but for the sake of
26 completeness all I would be aware of is that it would be
27 within the general responsibility of Mr Howard. That was all
28 I wished to make clear.

1 Q Is that an assumption that that is a person who might do it
2 or did you in fact see or hear him in some portion of it?

3 A No, there is no assumption. It is a matter of fact that
4 within the personnel of Charter he has taken the responsibility
5 for the supervision of this particular matter.

6 Q So you know that as to this particular task he has done some
7 portion of it?

8 A No, I do not know that. All I know is that he is responsible
9 within Charter for this general matter. I have no knowledge
10 of any specific content within that general responsibility.

11 Q Do the materials provided you as a Cape board member include
12 any financial statements for any of its subsidiaries?

13 A The monthly reports include financial statements, and those
14 statements would on a one line basis include information
15 relevant to the main subsidiaries.

16 Q Can you give me an example?

17 A Yes, I will be very happy to do so. If one took Cape Insulation
18 (Ireland) as an example of a subsidiary, there would be a line
19 in the statement of turnover and profit showing the results
20 of Cape Insulation (Ireland) Ltd.

21 Q Is this true for all the subsidiaries or just some of them?

22 A It is not true for all of the subsidiaries; it is just true
23 for the main operating groups, and it tends to be very much
24 a matter of where those rest rather than any specific company.

25 Q Do you receive any quarterly or annual financial statement
26 for any of the subsidiaries in addition to this one line entry
27 on the monthly reports?

28 A I receive no individual statements for any of the subsidiaries.

1 I receive only monthly reports and then with the half yearly
2 and yearly accounts the supporting schedules.

3 Q Are those supporting schedules -- strike that. Do the
4 supporting schedules include financial reports related only
5 to a specific subsidiary?

6 A They don't include the separate financial reports for each
7 of the subsidiaries. They are normally back-up and supplementary
8 information to explain what may be a total entry in the overall
9 financial statement.

10 Q Do you recall there being any monthly line entries or any
11 supplemental or back-up materials on Cape Asbestos South
12 Africa Proprietary Ltd.?

13 A Not since my knowledge as a member of the Cape board.

14 Q The same question as to Cape Investments Holdings (Pty) Ltd.

15 A I have no recollection of that information in relation to
16 that company.

17 Q The same question as to any subsidiary by any name that is doing
18 business in South Africa?

19 A In terms of the monthly financial statements that are
20 reported to the board there is one line which deals with a
21 company I think whose acronym is CAPIL Products Ltd., which
22 is a manufacturing business, I understand, in South Africa.

23 Q Anything in addition to that?

24 A I think not.

25 MR WALKER: Until we resolve the disputes created by my questions
26 and your direction to Mr Clarke not to answer, that is all
27 the questions I have.

28 MR POLAK: My memory is different from yours. I don't believe

1 I instructed him not to answer any time today.

2 MR WALKER: I don't intend to hash out any differences between
3 our memories.

4 (A short recess was taken)

5 CROSS EXAMINATION by MR POLAK

6 Q Mr Clarke, you mentioned during the questioning by Mr Walker
7 that Mr Higham is paid something by a Cape subsidiary
8 which you mentioned as a director's fee, and that is deducted
9 from the amount of salary paid to him by Charter; is that
10 correct?

11 A That is correct.

12 Q Could you please tell me whether there is any other payment
13 made by Cape Industries or any of its subsidiaries for the
14 work that Mr Higham does for Cape?

15 A There is no other payment to my knowledge of any payment made
16 by Cape or its subsidiaries to Mr Higham for the work done
17 by him for Cape.

18 Q Is there any amount which you, Charter, pay to Mr Higham
19 charged to the account of Cape?

20 A No amount that we pay to Mr Higham is charged to the account
21 of Cape, but Charter Consolidated Services does make a charge
22 to Cape for the proportion roughly of time which Mr Higham
23 spends on Cape affairs, and that is meant to compensate
24 Charter for the proportion of the total cost of employing
25 Mr Higham that he spends on Cape affairs.

26 Q My notes may be wrong, but in one instance I have an
27 indication that the only Cape employee on secondment to
28 Charter was Mr Higham, and another time my notes indicate

1 that you said there were three or four. Which is correct?

2 A There is only one employee of Cape who is on secondment to
3 Charter. The reference to three or four were those other
4 individuals employed by Charter who are on secondment from
5 other companies.

6 Q We talked a great deal about secondment between Charter and
7 Cape and Charter and Anglo American.....

8 (Off the record telephone call)

9 MR POLAK: Could you read whatever is partially already on the
10 record? (The Reporter read the unfinished question above).

11 Q Comma; could you please tell us how common or uncommon
12 the practice of secondment is generally or in the mining
13 industry?

14 A I can only speak with any real knowledge of the mining
15 industry. To my knowledge it is a very common practice
16 in that industry, not only between a mining finance house,
17 as they are called, and its immediate managed companies, but
18 even on a friendly basis to help out with some particular
19 problem of which there may be a unique skill.

20 Q You had said earlier that you were on approximately twelve
21 public companies, that is you were a member of the board of
22 directors of approximately twelve public companies, and
23 approximately forty or so Charter wholly owned subsidiaries.
24 Could you please tell us whether each of those forty wholly
25 owned subsidiaries of Charter pays you a director's fee?

26 A By no means all of those subsidiaries do. Indeed the rule
27 would normally be it would be the exception rather than the
28 general that I would; but many companies, particularly those

1 three public companies which merged to form Charter, would
2 have statutory articles - bye-laws as you would say in the
3 United States - which require the payment of a director's fee,
4 and in those we would still continue to observe those bye-laws;
5 the companies would pay the fees; but the general rule within
6 the wholly owned 100% subsidiaries managed within Holborn
7 Viaduct would not be to pay the director's fee.

8 Q Mr Walker commented this morning that it appears that Charter
9 had more subsidiaries than Babe Ruth had hit home runs,
10 and I don't want you to list all the subsidiaries because we
11 can get them out of the annual report; but could you tell
12 me generally why a holding company such as yours does business
13 through subsidiaries, what the reason for that is?

14 A There are a whole complexity of reasons, and again I would like
15 to go back to the definition of subsidiaries that I started
16 with in reply to Mr Walker. The 100% owned investment
17 subsidiaries or the service company are there for entirely
18 practical reasons, in some cases determined by history. Let
19 me give you an example. If one is undertaking exploration
20 work in Spain it is a requirement to have a Spanish company,
21 and therefore it is essential to form a Spanish subsidiary
22 to hold that particular exploration activity. The service
23 company speaks for itself. It is a very common practice
24 indeed in the United Kingdom for large parent and subsidiary
25 companies to operate a simple service company which is
26 really to bring all the day-to-day costs of running the
27 head office together under one simple heading. Parts of the
28 reasons I have already explained come from history. If we

1 inherit, when Charter the holding company is formed, a company
2 like Central Mining Finance, which has a unique tax history,
3 the very complexity of the British tax system demands that
4 it remains in existence because its tax status would cause
5 very large costs indeed to Charter if it was changed.

6 In relation to some of the investment subsidiaries,
7 they may be essentially to designate the responsibility of
8 one particular investment manager so that his results can
9 be very clearly identified. If we have an investment manager
10 who is responsible for United Kingdom industrial shares
11 we want to be able to measure his effectiveness as an
12 investment manager. The medium of a company is a very easy
13 way of doing it. So there are a whole number of reasons, all
14 of which are really valid business reasons.

15 Let me go on to the next group, the wholly or partly
16 owned industrial or mining companies. These have entirely
17 separate managements, and again because they are responsible
18 for the day-to-day operational management of the business
19 their responsibility has to be clearly defined. Their
20 authority is very great. There is a very great deal of
21 autonomy given to those industrial managers. We in Charter
22 are essentially an investment organization, and we have to
23 have highly competent managements in the wholly owned industrial
24 companies, and therefore they have to have quite clearly
25 designated responsibility.

26 Now in turn below them there may be special product
27 groups or special activities, as we have seen. Let us take
28 an entirely neutral example: Alexander Shand. This is a

1 company which is engaged in open-cast coal contracting in
2 the United Kingdom, in civil engineering in Saudi Arabia and
3 the Middle East, where again it is required to form separate
4 local subsidiaries, in cement board manufacturing in Malaysia,
5 in open-cast coal contracting in the United States on a small
6 scale, in certain manufacturing operations in the United
7 Kingdom; in each case it is necessary to give the managers
8 of those operations - and this is in the view of the
9 Alexander Shand board, not my view, because these are
10 autonomous managements - clear-cut responsibility and status
11 to manage the segment of the business for which they are
12 responsible. Like it or not, these give rise to relatively
13 complex corporate structures, but for entirely valid and
14 profoundly important business reasons.

15 The same goes for the mining companies. They have to
16 have managements responsible for the operations of the mine
17 that are located at the mine and are responsible for its
18 performance. I hope that makes it clear enough to you.

19 Q It does. You said when you were listing certain subsidiaries
20 of Charter as to whether or not they were doing business in
21 the United States that Pandrol International was doing business
22 that is on the railway fasteners. My question to you is:
23 Is it Pandrol International Ltd. that is doing business in
24 the United States, or is it doing it through a subsidiary?

25 A Through a subsidiary.

26 Q Is that subsidiary Pandrol Inc.?

27 A That is correct. It also does business in the United States
28 through Speno International, which is a company which is

1 50% owned by an entirely independent third party, 50% (to the
2 best of my recollection) owned by Pandrol Inc. Pandrol itself
3 does not do business in the United States.

4 Q When you say "Pandrol itself", Pandrol International?

5 A Pandrol International Ltd., the United Kingdom registered
6 company.

7 Q Could you tell us, please, what contracting business is
8 which you have mentioned earlier as having been part of the
9 business acquired by Cape in 1975?

10 A Contracting is, certainly in accordance with my general
11 knowledge of the Cape business from the board, the installation
12 of insulation materials in complex industrial plants, in
13 North Sea oil rigs, in power stations, in chemical plants,
14 and the insulation contracting is taking glass fiber sections,
15 mineral wool sections and no doubt other insulating materials,
16 those are only two that I can think of, and essentially
17 wrapping them round the very complex pipework in this type
18 of process plant to protect against heat loss or to insulate
19 against external heat or cold. That is the basis of the
20 business.

21 Q To your knowledge, does it involve asbestos?

22 A To my knowledge - and I have only a general knowledge - it
23 very clearly doesn't involve asbestos.

24 Q Do you know the numbers of the members of the board of
25 directors of Johnson Matthey?

26 A I don't know the exact number, but I think (you must forgive
27 me for guessing, but to give you an approximate guide)
28 fifteen.

1 Q Do you know how many members of that approximately fifteen are
2 representatives of Charter?

3 A Oh, yes, I do know. Two.

4 Q Do you know our approximate - that is Charter's approximate -
5 holding of Johnson Matthey?

6 A 28.8%, I think; it may be 28.4%, but certainly approximately
7 28 to 29%.

8 Q You were asked a series of questions about certain
9 subsidiaries doing business in the United States. You were
10 asked about Anderson Strathclyde, Johnson Matthey, Pandrol,
11 Perard Torque Tension, Alexander Shand, Anmercosa and Cape.
12 My question to you is: To your knowledge does any one of
13 those entities - or, if I missed one, any of the entities
14 that Mr Walker asked you about - do business in Illinois, by
15 either selling products or from mining activities or any other
16 way?

17 A To my knowledge, none.

18 Q You talked about making investments being the business of
19 the holding company, Charter Consolidated PLC. Could you
20 please tell us how Charter arrives at a decision in making an
21 investment?

22 A I will try and do so. It is a complex business, because we
23 have such a very large range of investments; but in terms
24 of the main more sizable of those investments our business is
25 to attempt to look and to find and to acquire investment
26 interests in businesses - not necessarily companies but in
27 businesses - which we believe have above-average long term
28 growth; and our responsibility is to take the money that

1 the shareholders have entrusted to us or which we have
2 borrowed centrally and to seek and find and acquire
3 investments showing those characteristics. Our business is
4 not to supply management to the companies in which we invest,
5 with the very limited exception of the special mining skills
6 that we have, and occasionally - possibly frequently - the
7 basic financial advice that we can give and the provision of
8 finance which we certainly give to the wholly owned industrial
9 subsidiaries. But we are essentially investors trying to
10 find good long term growth industries and to secure an
11 investment participation in that growth.

12 Q Does Charter have any interest in employing people to start
13 businesses and manage them?

14 A The only interest it would have would be to search for
15 and find mineral deposits. It has no history that I am aware
16 of of employing anybody to as it were establish a manufacturing
17 or allied industry.

18 Q Would you have the manpower to manage businesses, that is
19 industrial complexes?

20 A No, we do not have the manpower. It is a very deliberate act
21 of policy. We do not have the central manpower to
22 manage those businesses. Our responsibility is to seek and
23 hope and indeed attempt to verify that the businesses have
24 their own extremely competent and therefore autonomous
25 management. Perhaps just to add something, if I may, there
26 which will make it clearer, it was the need to have a better
27 degree of perception in relation to the investment in industrial
28 companies that led me to seek to obtain the services of

1 Geoffrey Higham to look after this particular section of
2 Charter's investment business.

3 Q How do you define your role, then, when you are a
4 representative of Charter on the board of, let's say, Cape?

5 A It is very important that you use the word "representative"
6 and "delegate", because we have to be extremely careful
7 to be clear as to the function that we are occupying when we
8 sit on the board of a company. The English company law rules
9 are very clear indeed about the responsibility of a director:
10 to serve only the interests of the company on whose board
11 he sits; and there are very serious obligations indeed,
12 of which I and all of my colleagues are aware, that we must
13 observe that responsibility when we go to sit on the board
14 of a partly owned subsidiary or an associated company or a
15 pure investment company, and therefore we have to be very
16 careful that we have a central function which is to monitor
17 the investments of Charter. We have a separate function and
18 capacity to go and sit as a non-executive director on the
19 board of another company and effectively give that company such
20 wisdom as we have in the guidance of its affairs. We cannot,
21 in that capacity, seek to further the special interest of
22 Charter, and if we do we become subject to very serious
23 sanctions indeed in this country.

24 Q I have no further questions. Mr Walker?

25 REDIRECT EXAMINATION by MR WALKER

26 Q Mr Clarke, would you accept from me that what is known as
27 contract units or contract divisions do just what you say
28 they do, but that they have always been involved with asbestos?

1 A I am sorry, I am not quite clear. You used the term
2 "contract divisions". Could you define that, please?

3 Q Just a moment ago Mr Polak asked you: "Mr Clarke, would you
4 explain what is meant by a contract unit or a contract
5 division?", and you said "Yes, I will. This is what it is",
6 and you proceeded to explain it.

7 A I think what -----

8 Q Do you remember that?

9 A The question he asked me was: "What do you understand the
10 business of Cape Contracts to be?", and I described as best
11 I can what I understand the business of Cape Contracts to be.

12 Q O.K. Then after you had done that he said "Does that involve
13 asbestos?", and you said "Not to my knowledge", or something
14 of that nature; is that correct?

15 A Correct.

16 Q Do you have any information -- strike that. I say that
17 contract units such as that of Cape Contracts and including the
18 business of Cape Contracts has always involved the use of
19 asbestos. Do you have any information which would indicate
20 my statement is not true?

21 A I can only speak in relation to my knowledge of the business
22 of Cape Contracts, since I have had some insight into that
23 business as a member of the Cape board. To my knowledge
24 during that period Cape Contracts does not use asbestos
25 in supplying the insulation service which is the foundation
26 of its business.

27 Q Are the employees -- strike that. Are the workers who do the
28 work of Cape Contracts currently being exposed to asbestos

1 fiber, whether it is from the application of new materials,
2 the removal of old materials or both?

3 A May we take your question in its separate parts? To my knowledge
4 in the installation of new materials the materials used are
5 not based on asbestos. In response to your second question,
6 which relates to the removal of old materials, to my knowledge
7 there are buildings in this country where insulation in the
8 past has been using asbestos materials and where I know from
9 general knowledge and not from knowledge acquired under my
10 directorship of Cape that very careful precautions had to be
11 taken in the removal of those materials.

12 So you have asked me two entirely separate questions.
13 One is the current business, to which I responded to Mr Polak,
14 and you have been good enough to remind me that there is a
15 separate part of the business, or there is a separate activity
16 involving the removal of old materials. I do not know and have
17 no knowledge that Cape Contracts is in fact involved in the
18 removal of old materials, and the business as I have described
19 it is based on the knowledge that I do have, which primarily
20 relates to the installation of new materials.

21 Q Are you familiar with the incidence, if any, of asbestos-related
22 disease among those people who have done the work of Cape
23 Contracts over the history of time?

24 A I am not familiar with that.

25 Q Is it of interest to you?

26 MR POLAK: Objection as to the form and the relevance to the
27 jurisdictional issue that we are involved in.

28 MR WALKER: You may answer.

1 A Your question is too uncertain in its content for me to
2 answer.

3 Q Where do you receive mail as a director of Cape -- strike that.
4 Where do you prefer to receive mail as a director of Cape?

5 A I do not receive mail as a director of Cape.

6 Q No-one has ever written you in your capacity as a director of
7 Cape?

8 A The only communication that I can recall having received in my
9 capacity as a director of Cape is the circulation of board
10 papers in advance of the meeting.

11 Q And where is that delivered to you?

12 A That was delivered to my office in 40 Holborn Viaduct.

13 Q Does any lawyer represent you in your capacity as a director
14 of Cape?

15 A Not to my knowledge, no lawyer specifically represents me
16 in any capacity other than my own personal defense.

17 Q Which of the subsidiaries, sub-subsidiaries and so forth of
18 Charter are currently advertizing for the sale, installation
19 or service of asbestos or asbestos-containing products in
20 the yellow pages of the London phone directory?

21 A I have no knowledge in relation to any Charter subsidiary or
22 sub-subsidiary of any advertizing of any products in any
23 arena. That is the responsibility of the management of the
24 relevant subsidiary.

25 Q Well, without regard to whose responsibility it is, you
26 just don't know; is that correct?

27 A I don't know.

28 MR POLAK: Thank you, Mr Walker.

1 I, Walter H. Clark, of 24 Chancery Lane, London,
2 WC2A 1LS, England, a Member of the Institute of Shorthand
3 Writers, hereby certify that the foregoing deposition is a true
4 and correct record of all questions asked and answers made of the
5 said witness.

6
7 *W.H. Clark*

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

W.H. Clark

SUMMARY OF DEPOSITION OF JOHN NEIL CLARKE
Thacker v. UNR Industries
Taken April 21, 1983

SKALC
DISCOVERY
FILE COPY

Page Summary

In 1969, deponent began working for Charter Consolidated Services. In 1976, deponent was put on secondment which is a procedure whereby an employee is loaned to another company to fill a particular post. He remained an employee of Charter Consolidated Services and a director of Charter but he was seconded out to Anglo American Corporation of South Africa where he worked in Johannesburg.

6 The directors' fees which deponent receives from sitting on the board of other companies, goes to Charter Consolidated Services. He does receive one directors' fee in his personal capacity which is from the Anglo American Corporation of South Africa. Said fee he retains personally. During his secondment to Anglo American Corporation of South Africa, he continued to receive a small retaining payment from Charter Consolidated because he remained a director of that company but his prime source of income was from Anglo American Corporation.

7 The chairman of the Anglo American Corporation, Mr. H.F. Oppenheimer, the deputy chairman, Mr. Gavin Relly and another member of the executive committee, Mr. Ogilvie Thompson, requested deponent to accept the secondment. At this time, the Chief Executive Officer of Charter was M.V. Hosmeyer, position which he held for Anglo American was that of finance director which was held by a Mr. E.P. Gush previous to deponent fulfilling that position.

8 Deponent's title position at Charter before he went to Anglo American was executive director responsible for finance. When he returned to Charter, his title was managing director. Presently, the executive director responsible for finances, Frances Howard.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
9	Deponent was an executive director which is a member of the executive committee responsible for finance for Anglo American.
10	Anglo American also has offices in the same building in which Charter Consolidated Services has offices, namely 40 Holburn. This arrangement arises from the fact that Charter Consolidated Services provides a range of services to Anglo American and other South African companies. Deponent and Mr. Richardson are the only two people that have offices at 40 Holburn who are paid by Anglo American Corporation.
12	Anglo American provides services to a wide range of mining and industrial companies in the same way that the major mining finance houses of South Africa provide services to their industrial and mining investments.
13	Charter Consolidated Services provides services to some corporations in which Charter does not own stock. These corporations are referred to as client companies.
14	Deponent is presently a member of the board of Cape Industrial and first joined said board in early 1980. He is not on the board of any of its subsidiaries and has never been. When deponent became managing director of Charter in 1979, Cape was Charter's largest industrial subsidiary company and deponent had relatively little knowledge of its business. He thought, as chief executive of Charter, that he should know and understand the business as best he could, so he talked to the chairman of Cape.
15	And, the chairman of Cape suggested that deponent should join the board of Cape as a nonexecutive director. The person whom deponent spoke to was Geoffrey Highan. John Richardson and Frances Howard were Charter people on the board of Cape at this time. Highan was a nonexecutive director of Charter in 1980 and is currently an executive director of Charter and employed by Charter Consolidated Services and on a contract of secondment from Cape Industries.
19	During Highan's secondment to Charter, his payment will be determined by taking into account certain directors' fees which he receives from other companies.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
22	In April 1983, Higham's secondment to Charter was renewed for another three years.
28	In regard to March 1982, the profit of Charter, before taxation, was 59,000,000 pounds. The approximate contribution of Cape to that total profit would have been a little over 7,000,000 pounds.
29	In terms of capital values, Anderson Strathclyde, Johnson Matthey, the Malaysian Mining Corp., the Minerals and Resources Corp. and until recently the Rio Tinto Zinc Corp. would all be far larger in capital values than the investment in Cape Industries. In terms of investment income, i.e. contributions to the income statements, the contributions from Johnson Matthey, Malaysian Mining Corp. and the Rio Tinto Zinc Corp. would be larger than the dividends derived from Cape. In terms of gross income, Anderson Strathclyde, Johnson Matthey and Alexander Shand Holdings would be significantly larger than the contribution from Cape.
30	As far as deponent knows, Higham is the first employee that has been on secondment to Charter and as far as he knows, no employee has ever gone to Charter from Cape under secondment.
33	Deponent is presently on the board of Minorco. His fees from being on the board are assigned to Charter Consolidated Services. He is presently on the board of approximately 12 public limited companies and possibly on the board of 40 or 50 companies that would be wholly owned investment subsidiaries of the Charter group.
34	Deponent keeps his directors' fees from Anglo American because it is a personal appointment and he is not representing Charter on the board. In addition, he keeps his fees from profit corporations in England to which he is only personally connected. None of these are clients to Charter.
43	Deponent was aware, before he went to South Africa, that Charter held a majority interest in Cape. He was also aware that Cape had a mine or mines in South Africa and a manufacturing plant in South Africa, but he was not aware of the corporate structure of Cape at that time.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

Page **Summary**

- 44 Deponent did not play any role in the negotiations that led to the sale of the Cape interests in South Africa, however, he did receive a courtesy call from Geoffrey Higham and Stevenson in Johannesburg whereby he was informed that these two men were hopeful of selling Cape's mining interest and that deponent had no knowledge of the negotiations or the terms of the sale.
- 45 Deponent has only heard of NAAC through this litigation.
- 50 A document which was filed with the Registrar of Companies upon the sale of Cape's mining interests in South Africa reads as follows "As part of the sales a mining division of Cape Industry Ltd. 29th June 1979 the company disposed of its investment in Associated Mineral Corporation AG." Deponent states that he has no knowledge of Associated Mineral Corporation. Attorney Walker puts forward his beliefs that for some reason Cape has taken the position that any information about Associated Mineral Corp. should be kept secret as none of the people he had to depose during his time in England would admit to any knowledge of said corporation. Again, deponent states that he does not know of any policy on Cape to keep information secret. Does he have any knowledge about said corporation.
- 52 Deponent states that the only time which he could imagine Cape keeping anything secret from the public would be if there were some sort of formula or a procedure which had ~~their~~ economic value which could be used by their competitors.
- 54 As far as Associated Mineral Corp. goes, deponent has no idea whether said corporation ownership by Cape included ownership of various formulas or procedures. He has absolutely no knowledge about the company.
- 62 Mr. J.B. Clesby is on secondment to Charter from Anglo American Corporation of South Africa. He is a consulting mining engineer. I.R.M. Chaston is a consultant metallurgist who also is on secondment to Charter from the Anglo American Corporation of South Africa. Third person is J. Tanton consulting engineer on secondment from a gold mine in South Africa.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
64	The time when Clesby was seconded to Charter was at a time when Anglo American had a direct investment in Charter Consolidated. Charter, in its turn, had direct investments in mines, therefore, it was reasonable for Anglo American to further its investment in Charter by making available in response to a request from Charter a highly skilled technical mining consultant. Clesby continues to be employed by Charter at this time.
65	The reason for this is that Anglo American has a direct investment in Minorco and Minorco in turn has a direct investment interest in Charter.
66	Anglo American is free to remove Mr. Clesby from Charter's employment.
68	When Charter came into existence in 1965, it did not have its own skilled technical staff so it was logical for them to look to their largest single shareholder for Anglo American Corporation to seek assistance in obtaining technical services is why there was much seconding from Anglo American to Charter. Conversely, Charter has a significant investment interest in the Malaysian Mining Corp. of seconded example a consulting engineer by the name of Kieron Forestal to said mining corp.
69	At the present, there are about 20 employees of Charter which are seconded out. i.e., geologist mine planter called Hebblethwaite was seconded to Beral, Tinn and Wolfrem in Portugal. Peter Burnell is seconded to Brazil to Anglo American Corporation of Brazil.
70	The reasons why secondmen would be used rather than just there being one employment and beginning another is that for example Charter might not need the specific technical training of an employee at the time whereas another company would but Charter would need that person again in the future. Another reason is that people are allowed to broaden their experiences by working in other countries but have the opportunity again to come back to England where there home is. Other reasons might include the continuation of pension rights which would be interrupted if employments were continuously started and stopped.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

Page Summary

Malaysia Mining is owned by Charter and the Malaysian government. The Malaysian government owns the majority of the stock. The way in which Charter seconded out some of its employees to Malaysian Mining is that Charter sits on the board and requested the board to seek these highly skilled mining personnel.

73 Deponent is on the board of the Central Mining and Investment Corp. as a director. Central Mining and Finance Corp. is a pure investment, i.e. subsidiary of Charter and administered within 40 Holborn Viaduct.

75 Deponent is on the board of the Central Mining Finance.

76 The other members of that board would be John Richardson, Frances Howard, Anthony Owston who are also on the executive committee of Charter. There are also two other members of the board of Central Mining Finance who are full time employees of Charter Consolidated Services but are not directors of Charter.

77 Central Mining Finance owns shares of Cape Industries Ltd.

79 To deponent's knowledge, there ^{are} ~~is~~ two companies ^{within} with the Charter group which own shares in Cape. By Charter group, he refers to Charter and its wholly owned investment subsidiaries.

80 The reason that some of the shares held by Charter are held by Central Mining Finance and other shares are held by Charter Consolidated Investments Ltd. Mainly due to historical reasons and the time at which the shares would have been acquired. Additionally, tax liability in the complex tax laws in England are another reason.

82 The only reason that the Cape holdings are not consolidated into one investment subsidiary is for tax purposes. Plus consolidation would have no influence on voting power or control and would violate no oral or written contract. It would violate no internal guidelines of Charter.

89 Anglo American Corp. pays their employees directly as opposed to Charter, which pays through Charter

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
	Consolidated Services. The directors of Charter Consolidated Services are deponent, John Richardson, <u>R.D.</u> McVean, E.S. Booth, R.J. Armatige and a couple of others who he can't remember. Charter itself does no business in the U.S.
90	The ~~Charter~~ ^{following} subsidiaries of Charter PLC do business in the U.S. Pandra International which is primarily involved in the manufacture and sale of railway fastenings.
91	Alexander Shand through the subsidiary of said corporation and is engaged in open cast ~~coal~~ ^{coral} contract mining. Perard Torque Pension is a mining equipment manufacturer which attempts to sell its products in the U.S. Heatrae/Sadia is involved in the manufacture and sale of heating, ventilation and re Fridgeration products and has a license for one or two products which were obtained by the U.S.
92	Deponent makes a distinction between what he calls subsidiary companies and associate companies. Subsidiary companies include those like South ~~Cross~~ ^{Croftley} ~~Croftley~~ or Beralt Tin and Wolfram which he states are entirely separate and have their own management and location apart from 40 ~~Holborn~~ ^{Viaducts} . The associate companies are those in which Charter has 20% or more shareholdings and a membership <u>on</u> the board.
93	The following is a list of the board members of Minorco. J. Oglivie Thompson, is a chairman. G.W.H.R. Relly, E.P. Gush, H.R. Slack, H.R. Fraser, C.E. Ritchie, F. Rohatyn, H.J. Schreiber, R.F. Richards, deponent himself, Julio Bozzano.
94	Deponent is the only member of the Charter executive committee who is on the Minorco board. Oglivie Thompson and Relly are also nonexecutive directors of Charter.
94	In 1980, Charter underwrote a Cape's rights issue.
96	In the mid-70's, Cape acquired Newalls Insulation for which Cape gave Turner & Newall shares and Charter bought said shares from T&N.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
97	The business acquired in 1980 was a manufacturing business which was also acquired from T&N.
98	The 1980 and mid-1970's rights issues which were used to purchase companies from T&N are the only examples of any businesses ever purchased from T&N which deponent is aware of. The 1980 acquisition was of a manufacturing facility that made glass fiber insulation.
100	Cape Asbestos or Cape Industries, whichever name, depending on the time frame, is the only Cape companies capable of issuing shares since it is the public quoted company and those are the only shares which have a market value.
102	When the decision was made by Cape, Charter, T&N to make this deal, i.e. Cape to purchase Newall's Insulation Co., T&N to receive in exchange for said company Cape stocks and for Charter to purchase said Cape stocks from T&N, no other Cape shareholders were so informed. Charter was the only Cape shareholder which had any knowledge of the sale activity.
103	Through this sale, Charter significantly increased its shares of Cape stock. Deponent is aware of a company called Cape Contracts Ltd. but has no knowledge as to whether Newall's Insulation Co. was plugged into the scheme of things under Cape Contracts.
106	The chief accountant of Cape is J.L. Sparks.
107	Deponent does not recall which corporate subsidiary the shares acquired through the sale of Newall's Insulation Co. will put. If the transaction occurred today, they would have been put in Charter Consolidated Investments. Also, if the transaction took place today, the cash which bought the shares would come from the central cash resources of Charter and its wholly owned investment companies managed within 40 of the holeborn ^{Holeborn} Viaduct. There is only one bank account for Charter and these investment companies which is used ^{to} day to day management of these companies and not for any other part of Charter. The company which deals with the day to day management of cash is Charter Consolidated Finance Ltd.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
108	Charter Consolidated Finance is responsible for making sure that enough funds are available for salaries that are paid by Charter Consolidated Services.
110	Charter Consolidated Services would obtain said funds from Charter Consolidated Finance, i.e. the central cash resource.
115	When Charter Consolidated Finance lends money to Central Mining Finance or Charter Consolidated Investments, they do not charge interest rates. This is to be compared with the situation of a wholly owned industrial subsidiary with its own independent management which may either deposit funds with Charter Consolidated Finance or take a loan from said finance company in which case an arms length rate of interest is applied.
116	In England, each company is obliged to file its own separate return and is taxed separately on its own income.
117	Central Mining Finance is labeled as a trading company and therefore every profit that it makes is taxable at 52%. Charter Consolidated Investments is an investment holding company for tax purposes and the gains it makes on its investments are effectively taxed at 30%.
120	The normal practice in the U.K. for public companies when they have a rights issue is to arrange for the issue to be underwritten. The purpose of underwriting is to ensure that the company receives the cash for the full issue of shares even though all the shareholders in the company do not take them up. The outcome is that if all the shareholders do not wish to take up the shares, but the rights have a small value, the underwriters have to make arrangements to cope with the shareholders who have not taken up their shares and the underwriters would sell the shares in the open market having themselves provided the purchase price for the shares. The small benefit of selling the rights is in past those shareholders who are entitled to subscribe to the rights issue but have chosen not to do so.
125	Deponent states that to his knowledge Charter has never <i>dealt</i> in asbestos. By <i>dealt</i> with, he meant Charter never sold or mined asbestos.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
126	Deponent first learned of the health hazards of asbestos in 1979 when he became managing director of Charter. He learned of this health hazard through the reports he received from his colleagues.
127	As far as Charter is concerned, deponent first learned about litigation in 1979. As far as Cape is concerned, he was aware prior to 1979 that former employees of Cape were suing in the U.K. but he had no knowledge of any litigation beyond that at that time. He first learned that the employees of Cape were filing claims against Cape in the mid-70's.
129	In Cape's accounts, there is a special item specifically for the compensation for industrial disease.
129	These accounts would be found in the published version of Charter Consolidated accounts.
131	To the deponent's knowledge, Cape is not doing anything to promote the sales of its products in the U.S.
132-133	Deponent, as a chief executive of Charter, recommended to the Charter board that their investment in Anderson Strathclyde be increased because he believed that coal mining equipment industry is an extremely good long-term growth prospect. In making this decision, deponent had hoped that Anderson Strathclyde would be able to sell products in the American market although it was an extremely competitive market and not one of Anderson Strathclyde's traditional markets. Deponent has become aware that Cape sold products in the American market solely through asbestos litigation. Prior to that time, he had no knowledge whatsoever that it sold asbestos in the U.S.
137	Cape has its own accounts and auditors who are responsible for the statutory duties of auditing Cape's accounts. What would happen is that <u>Charter's</u> accounts department would take the published figures of Cape and correctly consolidate them into Charter's accounts. In other words, Charter does not do their own audit merely incorporate the figures which Cape provides to them.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

<u>Page</u>	<u>Summary</u>
138	In Cape Asbestos' 1975 annual report, it says North American Asbestos Corporation, Chicago USA principle activities sale of crude and process asbestos fiber.
143	Both Anderson Strathclyde and Johnson Matthey engaged in the promotion and sale of their products within the U.S.
144	Pandrol, Perard Torque Tension Ltd., Alexander Shand Holdings and Anmercosa Sales all sell products or otherwise have activities within the U.S.
148	Alexander Shand Co. is engaged in open cast <u>Coal</u> contracting in the U.S.
152	Deponent states that he has no knowledge within Cape of how its products are sold and to whom they are sold and what countries they are sold beyond knowing that the majority of its business is conducted in the U.K. and cannot say whether products are sold to the U.S.
	NOTE: It appears that he is saying something different than previous when he said that he knew that Cape products were not being sold in the U.S. Now he is saying he has no knowledge as to whether they are sold there or not.
153	It is possible, given deponent's knowledge, that Cape could still be selling to the U.S.
160	Cross-examination by Mr. Polak
161	To deponent's knowledge, secondment is a very common practice in the mining industry.
165	The business of Cape is installation of insulation materials in industrial plants and North Sea oil rigs, and power stations, and chemical plants. Said activities very clearly does not involve asbestos.
126	Charter does not have the man power to manage the businesses that are within the Charter group. Leaving the management to the subsidiaries was a deliberate act of policy on the part of Charter. Charter wants to keep the management of the subsidiaries as autonomous as possible.

SUMMARY OF DEPOSITION OF JOHN NEIL CLARK
Thacker v. UNR Industries
Taken April 21, 1983

Page **Summary**

170 Redirect by Mr. Walker. As far as deponent is aware, Cape Contracts is not involved in the removal of old asbestos materials. The business which Cape Contracts is involved in has primarily to do with the installation of new materials. These new materials are not based on asbestos.

Exhibit G

1066

Exhibit "19" Annexed to Affidavit of Fishbein.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
(Middlesex County)
Docket No. L-37243-79

IN THE MATTER OF
ASBESTOS LITIGATION
VENUED IN MIDDLESEX COUNTY

MANVILLE PLANTWORK CASES ONLY

Middlesex County Courthouse
New Brunswick, New Jersey
January 13, 1987

B E F O R E: HONORABLE JOHN E. KEEFE, J.S.C.

A P P E A R A N C E S:

Wilentz, Goldman & Spitzer, Esqs.,
By: Frank M. Cuiffani, Esq.,
Attorneys for the plaintiffs

Shearman & Sterling, Esqs.,
By: Werner L. Polak, Esq.,
-and-

Mary Ann Jacoby, Esq.,
Attorneys for Charter Consolidated, FLC

Stanley Grabon, C.S.R.
Official Court Reporter

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

another witness. I will let you decide that.

MR. POLAK: We're on schedule. The only thing is that it is highly likely if we don't have the witness today, that we will carry on into Thursday. And so if you would like to have Mr. Howard go forward until five.

THE COURT: Okay.

MR. POLAK: We might be able to assure ourselves to try to avoid Thursday afternoon.

THE COURT: Fine.

FRANCIS JOHN ADRIAN HOWARD, sworn,

DIRECT EXAMINATION BY MR. POLAK:

Q. Mr. Howard, where do you live?

A. I live at 26 Chesson Road, London, England.

Q. What is your present position?

A. I'm an executive director of Charter Consolidated, PLC.

Q. And how long have you been an executive director of Charter?

COMPUTER AIDED TRANSCRIPT

Howard-direct

1068

220

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. Since 1979.

2 Q. And what is your function as an
3 executive director?

4 A. I attend the board and executive committee
5 meetings of Charter Consolidated, and have
6 responsibility for six departments.

7 Q. What are your responsibilities as a
8 head of whatever division?

9 A. Well, those departments constitute the
10 finance division, and they comprise the finance
11 department, which looks after evaluations of
12 projects and corporate financial planning. The
13 accounts department, which keeps the books of the
14 company and which prepares the consolidated
15 accounts for publication. The secretarial
16 department, which looks after the corporate
17 formalities and corporate compliance, and also
18 looks after the same matters for clients. The
19 financial control department, which monitors the
20 financial performance of our operating subsidiary
21 companies. The investment department, which
22 manages investment portfolios belonging to
23 subsidiaries of Charter Consolidated. And I think
24 there's one other. There was six.

25 Q. Well, we'll come to it.

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. I'm sorry.

2 Q. How long have you been a member of
3 the board of directors?

4 A. For -- since 1978, January of 1978.

5 Q. Would you briefly describe your
6 education?

7 A. I am a chartered accountant, and I have a
8 degree in commerce.

9 Q. When did you obtain your degree in
10 commerce?

11 A. In 1956.

12 Q. When did you become a chartered
13 accountant?

14 A. In 1961.

15 Q. How long have you been an employee of
16 Charter?

17 A. For eleven years. Since 1975.

18 Q. And what were your responsibilities
19 at Charter when you began to work at Charter in
20 1975?

21 A. I was manager of the finance -- well, what
22 was then the finance division, which was in fact
23 three departments; the finance department, or what
24 was then called corporate financial services, the
25 financial control department, which was then

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 called industrial liaison department, and the
2 investment department, sections of which I have
3 already described.

4 Q. How long did you remain in that
5 position?

6 A. Until 1979, when I became an executive
7 director.

8 Q. Did you take on any additional
9 responsibilities when you became the executive
10 director?

11 A. Well, apart from those of an executive
12 director, as a member of the committee I took on
13 other responsibilities subsequently on retirement
14 of other directors for the accounts department,
15 the secretarial department, and the treasury,
16 which was the sixth department which I had
17 forgotten when I was giving my earlier
18 responsibilities.

19 Q. And what does the treasury department
20 do?

21 A. The treasury looks after the Charter
22 Consolidated cash position, currency management,
23 and arranges loans for Charter Consolidated.

24 Q. Are you familiar with the company
25 called Cape Industries, PLC?

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A Yes. I was a director of it for some
2 years.

3 Q. And when did you first hear of Cape?

4 A. First heard of it when I joined Charter
5 Consolidated in 1975, or soon thereafter.

6 Q. And what did you learn about Cape at
7 that time?

8 A. I learned that it was, that Charter had an
9 interest in Cape, a shareholding interest in Cape,
10 and in fact it was a subsidiary, and that it was a
11 long standing company formed some, I think in the
12 last century, in fact, an industrial holding
13 company. And that was about it, I suppose.

14 Q. Did you learn anything else later
15 about the business of Cape?

16 A. Yes, I did. Over a period. It was engaged
17 in the manufacture of building materials,
18 manufacture of friction materials. It had
19 subsidiaries involved in mining of asbestos fiber,
20 and in the, in insulation contracting, and in the
21 distribution of automotive products.

22 Q. In 1975, or at around that time when
23 you first started with Charter, what was your
24 personal involvement with Cape?

25 A. Well, it was very little. People

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 responsible to me used to prepare short briefs on,
2 based on board papers that had been received by
3 Charter's nominees to Cape's board, briefs which
4 were given to those nominees prior to board
5 meetings, and I would review those briefs, and I
6 would also routinely review the financial
7 condition of Cape.

8 I would look at its financial
9 statements and its profits and cash flow and
10 balance sheet to make sure that it was in a sound
11 condition. This was something that I would do for
12 all the companies in which Charter had an
13 interest.

14 Q. Did there come a time when you became
15 a member of the board of Cape?

16 A Yes, I did. In May 1977.

17 Q. And how long did you remain a
18 director of Cape?

19 A. Until last month.

20 Q. When you became a member of the Cape
21 board, were there any other Charter nominees?

22 A Yes, there were. That was Mr. Stopford
23 Sackville and Mr. John Richardson.

24 Q. And what were their titles with
25 Charter?

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. They were both executive directors.

2 Q. How many members has Cape board had
3 during your tenure?

4 A. Well, for many years there were, I would
5 say, from nine to twelve or thirteen directors.
6 More recently, that is to say, in the last couple
7 of years, perhaps six or seven. In the last two
8 years the business has been much more narrowly
9 focused than it was.

10 Q. What has been the composition of the
11 Cape board prior to the last two years?

12 A. There were typically two or three nominees
13 of Charter, and two or three other outside
14 directors, and the remainder were executives of
15 Cape itself.

16 Q. How many nominees from Charter sit on
17 Cape's board today?

18 A. I believe since I resigned last month there
19 is one.

20 Q. And how do you prepare for board
21 meetings?

22 A. I review the agenda and the papers
23 circulated to members of the board prior to the
24 meeting, some couple of days before the meeting,
25 and review the brief prepared by the finance

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
1 department, based on those papers, and consider
2 any issues that are going to come up in the
3 meeting based on that agenda.

4 Q. Do you generally meet with other
5 nominees of the board before the meeting?

6 A. No. There were times when we used to
7 travel across to the meetings together and we
8 might chat about the matters coming up for
9 discussion on our way across, but we never met
10 formally to discuss Cape agenda.

11 Q. Specifically with Cape, were any of
12 the issues on the Cape board agenda paper which
13 you received a few days earlier, were they ever
14 discussed at the Charter executive committee
15 meeting before the Cape board?

16 A. Certainly not in my time.

17 Q. What about if I asked the same
18 question with respect to the Charter board?

19 A. No.

20 Q. In your time have the amounts of
21 Cape's dividends been discussed at Charter
22 executive committee meetings before they were
23 declared by the Cape board?

24 A. No, never.

25 Q. Where did the Cape board meet during

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 your time?

2 A. At, until 1985, at 114 Park Street in the
3 is West End of London, and since that time in
4 Hatford, some miles north of London, where they
5 now have their head offices.

6 Q. How many times did the Cape board
7 meet?

8 A. It meets about -- well, I think that it's
9 every month, except August. About twelve or
10 eleven times a year.

11 Q. How long was the usual Cape board
12 meeting?

13 A. Perhaps two hours.

14 Q. And could you tell us who ran the
15 Cape board meetings?

16 A. Well, the chairman of the meeting conducted
17 it.

18 Q. And who proposed the items to be
19 discussed at the Cape board meeting?

20 A. Well, the agenda would be drawn up by the
21 management of Cape.

22 Q. And could you give us a rundown,
23 please, of what occurred usually at a Cape board
24 meeting while you were there?

25 A. Typically there were routine reports that

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 were presented to the board on the financial
2 condition, on the operating results of the various
3 subsidiary companies, some financial ratios about
4 the business.

5 And then there would be reports on
6 business conditions from the executive directors
7 of Cape that were responsible for these
8 businesses, reports of capital expenditure. There
9 was a personnel report on industrial relations
10 matters, and vacancy at senior levels, et cetera,
11 number of employees, and perhaps one or two other
12 administrative reports from time to time.

13 And then there were matters for
14 decision. There were -- which would include any
15 major projects, major acquisitions, major
16 disposals, the twice a yearly declaration of a
17 dividend, and the publication of a report to
18 shareholders both at the half year and the end of
19 the year.

20 Those were the main items for -- of
21 course, capital issues, issues of shares, that
22 would of course be decided by the board.

23 Q. And who recommended the dividends
24 declared by Cape?

25 A. The management.

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Q. Did you ever disagree with the
2 dividend recommended by Cape's management?

3 A. Not that I can recollect, no. There would
4 have been discussion from time to time at the
5 meeting among the directors as to what the
6 dividend should be.

7 Q. Do you remember any nominee of
8 Charter opposing the recommendation by Cape with
9 respect to the dividend?

10 A. No.

11 Q. Did you ever hear somebody express a
12 Charter view about the dividend at Cape?

13 A. No, certainly not.

14 Q. Did anyone at Charter instruct you to
15 oppose a dividend recommendation?

16 A. No.

17 Q. That's of Cape.

18 A. No.

19 Q. Were appointments to Cape's
20 management approved by the Cape board?

21 A. No. On appointments to Cape's board itself
22 and appointments--very rarely, but appointments of
23 the managing director, senior appointments of the
24 Cape management would be reported to the board in
25 a personnel report, but not decided by the board.

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Q. Were management reports at subsidiary
2 level approved by Cape?

3 A. No.

4 Q. Was there ever a business
5 relationship between Charter and Cape?

6 A. No, there isn't. They're two quite
7 different companies. Charter is an investment and
8 finance and banking company, whereas Cape is an
9 industrial group, and really there was no basis
10 for business relationship.

11 Q. What relationship have you observed
12 between Charter and Cape over the years?

13 A. Well, Charter has held the position of
14 being the majority shareholder with nominees on
15 its board. And as a consequence of that, Charter
16 has had to consolidate Cape's financial statements
17 into its own every half year. And that is really
18 it. Investment relationship.

19 Q. Does Cape have a nominee on the
20 Charter's board of directors?

21 A. There -- the chairman of Cape has, was
22 invited to join the board of Charter, I believe.

23 Q. Mr. Dent?

24 A. Mr. Dent. In the early seventies, and
25 continued on the board of Charter until, until he

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 stepped down from the chairmanship, and -- well,
2 that actually is the end of the occasion.

3 Q. Do you remember when that was?

4 A. In 1979, I believe.

5 Q. Was he an executive or non executive.
6 on the board of Charter?

7 A. He was a non executive director.

8 Q. And do you remember the board
9 membership of Charter, the number of members of
10 the board Charter had let's say in the seventies
11 when you got on to the board?

12 A. It was twelve members then, twelve or
13 fourteen.

14 Q. Does Charter provide any services for
15 Cape?

16 A. Yes, it provided one or two administrative
17 services.

18 Q. What were they?

19 A. Well, Charter, until 1984, provided share
20 registration services to about a hundred clients,
21 in other words, operating the register of
22 shareholders for these clients, and Cape was one
23 of those, until 1984, when Charter gave up that,
24 that service.

25 And for a time I think Charter

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 provided computer services to one of Cape's
2 subsidiaries, I think it was Trist Draper. Again,
3 Charter had numerous clients for computer services
4 based on its computer in Ashford, and Trist Draper
5 was one of them. In those cases, of course, for a
6 fee, or charges related to usage.

7 Q. Has Cape ever provided a service to
8 Charter?

9 A No.

10 Q. What relationship if any was there
11 between Charter and the operating subsidiaries of
12 Cape?

13 A. None that I know of.

14 Q. What financial assistance, if any,
15 did Charter ever give to Cape?

16 A. None. Well, I mean, except as a
17 shareholder, of course, when Cape had rights
18 issue. Charter would typically subscribe its
19 proportion of the shares being offered to
20 shareholders, and in fact I think on two occasions
21 acted in the capacity of underwriter, which is
22 something which Charter does as part of its
23 financial business, and in the case of Cape it has
24 underwritten I think two of its user shares for a
25 commission. So that would be the extent of its

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 support.

2 Q. Other than as a shareholder and
3 accepting its share of rights issue, were there
4 ever any loans to Cape by Charter?

5 A. No.

6 Q. Guarantees of loan or anything of
7 that sort?

8 A. No.

9 Q. During your time at Charter, has
10 anyone employed by Charter ever been an officer of
11 Cape, an executive of Cape?

12 A. No.

13 Q. Do you know whether anyone at Charter
14 ever assumed managerial responsibility for any
15 operations of Cape?

16 A. No, they haven't.

17 Q. Has Charter ever performed any
18 administrative services of Cape other than the two
19 that you mentioned earlier, the registration and
20 its computer services?

21 A. No, sir, it hasn't. Cape's always had its
22 own fully fledged head office. It's a public
23 company.

24 Q. To your knowledge, have Charter and
25 Cape ever maintained bank accounts in common?

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. No, they haven't.

2 Q. Have they ever had the same auditors?

3 A. No, sir, they don't. Cape uses Pext
4 Marwick Mitchell, and Charter uses Coopers &
5 Lybrand.

6 Q. What about stockbrokers?

7 A. Cape used William de Broe and Charter used
8 Rowe & Pitman.

9 Q. And merchant bankers?

10 A. No. Cape used Kleinwort Benson and Charter
11 used Hambros Bank.

12 Q. And did they issue separate financial
13 reports to its shareholders?

14 A. Yes.

15 Q. During your time at Charter, has
16 anyone employed by Cape ever been transferred to
17 work for Charter?

18 A. No, they haven't.

19 Q. How about the reverse, from Charter
20 to work for Cape?

21 A. No, not that either.

22 Q. Has Charter ever provided any
23 financial assistance to a subsidiary of Cape?

24 A. No, it hasn't.

25 Q. During your time at Charter, has

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Charter and any subsidiary of Cape had any
2 directors in common?

3 A. Not unless Mr. Dent was a director of some
4 of those subsidiaries. He's the only person that
5 could have provided that link.

6 Q. Have there ever been any common bank
7 accounts between Charter and any subsidiary of
8 Cape?

9 A. No, there haven't.

10 Q. Has any Cape subsidiary shared
11 offices with Charter or any Charter subsidiary?

12 A. No, it hasn't.

13 Q. During your time at Charter, have any
14 of Cape's subsidiaries' books and records been
15 maintained at Charter?

16 A. No, they haven't.

17 Q. Has anyone employed by Charter
18 participated in decisions by Cape or its
19 subsidiaries concerning the advertising or sale of
20 any products of Cape or a Cape subsidiary?

21 A. No.

22 Q. Has anyone employed by Charter
23 participated to your knowledge in decisions by
24 Cape or its subsidiaries concerning the hiring or
25 firing of employees?

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. No, they haven't.

2 Q. Has anyone employed by Charter to
3 your knowledge participated in decisions by Cape
4 or its subsidiaries concerning the mining or
5 marketing of asbestos fibers?

6 A. No, sir, they haven't.

7 Q. How many times have you visited Cape,
8 aside from attending Cape board meetings?

9 A. I think I probably visited the head office
10 of Cape on three or four occasions in connection
11 with share issues that they might have been
12 proposing, in other words in connection with
13 either the underwriting or with Charter's
14 commitment to subscribe. And I've visited three
15 or four of Cape's plants over the nine years that
16 I was a director to familiarize myself in my
17 capacity as director with those operations.

18 Q. Did there come a time when you became
19 aware that Cape was involved in asbestos related
20 litigation in the United States?

21 A. Yes.

22 Q. And when was that?

23 A. Well, I think it was soon after I became a
24 director in 1977 that I became aware that Cape was
25 involved both in the U. K. in compensation to

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 present and past employees of Cape, and in the
2 U.S. there was a particular case being tried at
3 the time--settled, in fact. The Tyler case.

4 Q. Do you remember where that case was
5 pending?

6 A Yes, it was the Tyler case in Texas.

7 Q. What did you learn about that United
8 States lawsuit in Tyler, Texas?

9 A. Well--

10 Q. And how did you learn about it?

11 A. - Well, I learned about it at the board
12 meetings of Cape. There were -- it was reported
13 in the fall of 1977 or perhaps in the summer that
14 there was pressure from the court to settle the
15 case, and that many of the other defendants were
16 considering settlement. I believe that Cape had,
17 just prior to that time, lost a jurisdiction
18 motion and, therefore, was faced with the decision
19 as to whether or not to participate in the
20 settlement. I believe it was a case involving the
21 plant workers, some four hundred plant workers in
22 Tyler, Texas.

23 THE COURT: Suppose we stop at this
24 point. You may step down, sir. We'll resume
25 tomorrow morning at 9:00. If you would like, you

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 can leave your files, boxes, and so forth in the
2 courtroom. We'll make sure that the courtroom is
3 locked as soon as everyone vacates it.

4 MR. POLAK: Thank you very much,

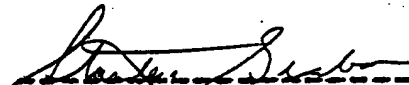
5 MR. CUIPPANI: Very good.
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

C-E-R-T-I-F-I-C-A-T-E

I, STANLEY GRABON, C.S.R. #X100377,
an Official Court Reporter of the State of
New Jersey do hereby acknowledge that the
foregoing is a true and accurate transcript
of my stenographic notes of the within
proceedings to the best of my ability.


STANLEY GRABON, C.S.R.
OFFICIAL COURT REPORTER

COMPUTER AIDED TRANSCRIPT

1088

Exhibit "19" Annexed to Affidavit of Fishbein.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
(Middlesex County)
Docket No. L-37243-79

IN THE MATTER OF
ASBESTOS LITIGATION
VENUED IN MIDDLESEX COUNTY

MANVILLE PLANTWORK CASES ONLY

Middlesex County Courthouse
New Brunswick, New Jersey
January 14, 1987

B E F O R E: HONORABLE JOHN E. KEEFE, J.S.C.

A P P E A R A N C E S:

Wilentz, Goldman & Spitzer, Esqs.,
By: Frank M. Cuiffani, Esq.,
Attorneys for the plaintiffs

Shearman & Sterling, Esqs.,
By: Werner L. Polak, Esq.,
-and-

Mary Ann Jacoby, Esq.,
Attorneys for Charter Cosolidated, PLC

Stanley Grabon, C.S.R.
Official Court Reporter

COMPUTER AIDED TRANSCRIPT

1089

2

Exhibit "19" Annexed to Affidavit of Fishbein.
(January 14, 1987.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

THE COURT: Mr. Howard, would you
return to the witness stand, please.

FRANCIS JOHN ADRIAN HOWARD, resumes the stand,
DIRECT EXAMINATION BY MR. POLAK (continuing):

Q. Mr. Howard, we left off yesterday as
you were describing what you learned about the
Texas lawsuit. Could you again start by telling
us what you learned and how you learned about the
Texas lawsuit?

A. Well, I learned about it at meetings of the
Cape board, and that there was this case in Tyler,
Texas, which, in which Cape was, NAAC was a
defendant, I think, a subsidiary of Cape, as well
as many others, and that there was a move towards
settlement of this case amongst the various
defendants and the plaintiffs. And that in fact
agreement on the settlement was reached during the
fall of 1977.

I believe that, apart from the other
defendants, the Cape subsidiary, NAAC, had
contributed to the settlement, as well as its
insurance company, and that Cape itself had made a
contribution.

Q. Do you remember the size of the Cape

COMPUTER AIDED TRANSCRIPT

Howard-direct

1090

3

Exhibit "19" Annexed to Affidavit of Fishbein.
contribution?

A. I believe it was a million dollars or a million pounds. I forget which. And as I said yesterday, I think it was a case involving some four hundred plant workers in a plant in Tyler, Texas.

Q. Do you know who made the decision to settle on behalf of Cape?

A. The Cape management had taken advice in the United States from its, from Cape's legal representatives here, and took a decision based on that advice.

Q. Did you have anything to do with the settlement at Cape with the Texas lawsuit?

A. No. It was something that was reported -- the settlement, itself, when it was reached was reported to the board some time in 1977.

Q. To your knowledge, did any of the other Charter nominees to the Cape board have anything to do with the settlement?

A. No, they didn't.

Q. Did Charter have anything to do with the settlement?

A. No, nothing at all.

Q. Did there come a time when you became

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 aware that Cape did not intend to defend U.S.
2 litigation respecting asbestos?

3 A Yes. Yes, I did become aware of that.

4 Q. And how did you become aware of that?

5 A. Well, again, it was a meeting of the board
6 of Cape, and the management reported -- this
7 followed, I think, the Tyler settlement, or more
8 or less at that time. And the Cape management had
9 taken advice in the U. K. regarding its position,
10 and that advice was that, to the effect that Cape
11 wouldn't be held liable in the U. K. for the
12 employees of other manufacturers or persons and,
13 therefore -- and that if Cape didn't appear, then
14 any judgment against it would not be enforceable
15 in the U. K..

16 And the management took the view that
17 given that Cape had a responsibility toward its
18 own employees in the U. K., didn't have any
19 employees in the U.S., that it should not appear
20 to defend itself in the U.S. because it couldn't
21 hold itself responsible for the employees of
22 other, other employers.

23 And that advice and decision was
24 reported, as I say, about the same time as the
25 Tyler, Texas final settlement was reported to the

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 board.

2 Q. Did you have anything to do with the
3 decision of Cape or its subsidiaries not to defend
4 U.S. litigation?

5 A. No, I didn't.

6 Q. To your knowledge did any of the
7 nominees of Charter on the Cape board have
8 anything to do with that decision?

9 A. Not to my knowledge, no.

10 Q. To your knowledge did Charter have
11 anything to do with that decision?

12 A. No, nothing at all.

13 Q. Are you familiar with a company
14 called North American Asbestos Corporation?

15 A Yes.

16 Q. And what if anything did you learn
17 about North America Asbestos Corporation, which by
18 the way we'll sometimes call NAAC for short?

19 A. Well, NAAC was a subsidiary of Cape, which
20 I learned about through the -- first learned about
21 it through the discussion about the Tyler case.
22 And it was a defendant in this case, as I
23 indicated a little earlier, participated in the
24 settlement of it. I knew that generally it was
25 involved or had been involved in the marketing of

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 asbestos fiber in the United States. That was
2 really all I knew about it.

3 Q. Did there come a time when you
4 learned that NAAC was or was going to be wound up?

5 A Yes.

6 Q. And how did you learn about that?

7 A. Well, again, it was about the same time,
8 and we were told that at a board meeting meeting
9 that the NAAC's settlement had absorbed all but, I
10 think the figure was half a million pounds or
11 something of that nature, of its assets. That it
12 was expected that litigation and legal expenses,
13 settlements and legal expenses would have absorbed
14 that, those assets, so that NAAC was really not
15 going to be able to continue in operation as a
16 consequence, and I think there was also some
17 rearrangement going on at the time in the way
18 fiber was to be marketed, but, in any event, as I
19 understood it, it was going to be cleaned out, as
20 it were, and, therefore, it was being put into
21 liquidation.

22 Q. Was the board of Cape asked to
23 approve the dissolution or winding up of NAAC?

24 A. As I recall it, we were simply told that
25 this was the intention.

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Q. Did you have anything to do with the
2 decision to dissolve NAAC?

3 A No.

4 Q. Did any of the other nominees of
5 Charter, to your knowledge, on the board of Cape,
6 have anything to do with the decision to dissolve
7 NAAC?

8 A. No, they didn't.

9 Q. Did Charter have anything to do with
10 the decision to dissolve NAAC?

11 A No, it didn't.

12 Q. Was any Charter employee ever on the
13 board of NAAC, to your knowledge?

14 A. No, they weren't.

15 Q. Was any Charter employee ever an
16 employee of NAAC, to your knowledge?

17 A. No, none was.

18 Q. Are you familiar with a company
19 called Associated Minerals Corp.?

20 A. I've only heard of it in the course of this
21 litigation.

22 Q. But not prior to these litigations,
23 what we call the asbestos litigation involving
24 Charter in the United States?

25 A. No, not prior to that. Only in connection

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
with the litigation.

Q. Are you familiar with a company
called Continental Products Corp.?

A. Again, that name only came to me in the
course of this litigation.

Q. To your knowledge, has anyone from
Charter ever been involved with either of these
companies or the creation of either of these
companies?

A. Not to my knowledge. And certainly nobody
was involved in the creation of them. I would
have known about that.

Q. Did there come a time when you
learned that Cape proposed to sell its mining
subsidiaries?

A. Yes.

Q. And when did you learn about that and
how did you become aware of it?

A. That was something that was discussed over
quite a long period of time. I think beginning in
1977.

Q. And what was the discussion?

A. Well, it was the--it was suggested to the
board, I think, that it would be desirable to
either take in a partner into, in other words, a

Exhibit "19" Annexed to Affidavit of Fishbein.

1 fellow shareholder into the South African
2 companies, or to sell them altogether. And the
3 then managing director, Mr. Higham, espoused his
4 view, and that general view was adopted, I think,
5 by the board. And there were attempts made to
6 find a partner or a buyer, which I think fell
7 afoul of exchange control problems at first
8 attempt in 1977.

9 The policy, however, remained and, as
10 I recollect, early in 1979 Mr. Higham reported
11 that, in fact, he had interested a company called
12 Transvaal Consolidated Land and Exploration in
13 purchasing the mining companies in toto, and the
14 board--I mean the policy was continued, and
15 negotiations then proceeded, and a transaction was
16 actually closed in June 1979.

17 Q. What were you -- what were you told
18 about the actual sale, if anything?

19 A. You mean the terms of the sale?

20 Q. Yes. Um-hum.

21 A. Well, I think there was a summary of the
22 terms which -- the basic terms, the price was
23 probably mentioned to us over a period of that
24 negotiation, but as I recall, before it was
25 finally closed a summary of the terms was

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
1 circulated to members of the board. I remember
2 seeing that somewhere.

3 Q. Did you become aware of the reasons
4 for this sale, other than you have stated? Were
5 there any additional reasons that were made known
6 to you?

7 A. Well, the basic reasons were that, as I
8 recall it, that over the years the Cape
9 manufacturing subsidiaries had become less and
10 less dependent on the use of fiber. They were
11 using substitutes for asbestos fiber, and their
12 business had changed, and that there was a general
13 move towards substitution for asbestos fiber and,
14 therefore, the outlook for sales of fiber was
15 poor. And that, coupled with the size of the
16 commitment to these companies, which was very
17 large in relation to the Cape group, which was
18 therefore a considerable exposure in the unsettled
19 South African context, led to the recommendation,
20 as I recall it, that Cape should sell these mines.

21 Q. Is TCL, the purchaser, affiliated
22 with Charter, to your knowledge?

23 A. No, it's not. There was a time, I think up
24 until 1972, when Charter owned a small minority
25 shareholding in TCL, but it was sold, as I

Exhibit "19" Annexed to Affidavit of Fishbein.

1 remember -- as I remember reading, in 1972, about
2 seven years before that.

3 Q. Do you know whether TCL was in any
4 way affiliated with Cape?

5 A. No, it wasn't, except to the extent that
6 the mine, the mining subsidiaries in South Africa
7 were mining land over which I think TCL had
8 royalty rights. It was a business association of
9 that sort.

10 Q. And do you know anything about an
11 indemnity which was included in the agreement by
12 Cape to TLC concerning U.S. litigation?

13 A Yes, I remember it.

14 Q. And what did you learn about that
15 indemnity?

16 A. Well, TCL asked for an indemnity because
17 TCL was not involved in asbestos related
18 litigation, whereas Cape and some of its
19 subsidiaries were, and TCL therefore asked to be
20 indemnified against, against claims. And I
21 believe it was agreed that TCL should be
22 indemnified against existing claims and against
23 any claims commenced in about a three year period
24 thereafter, providing that TCL did nothing to
25 disrupt the stance taken by Cape and its

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
subsidiaries in relation to litigation.

Q. Did you have anything to do with the
decision to sell the mining subsidiaries?

A. Well, as a member of the board, yes,
because the sale was approved by the board,
although, as a matter of fact, I wasn't present at
the final meeting which agreed to the final terms,
but it was something which the board had endorsed
over a period of time, as I have described.

I was involved in that sense.

Q. What about in the negotiations?

A. No, not at all.

Q. Do you know whether Charter had
anything to do with respect to the sale of the
mining subsidiaries to TCL?

A. No, they didn't have anything, any
involvement.

Q. Do you know whether the executive
committee of Charter or the board of Charter
considered or approved the indemnity agreement
prior to the sale?

A. No, it didn't.

Q. Do you know whether Charter in any
way had anything to do with the negotiation of the
indemnity provision?

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. No, Charter didn't.

2 Q. I now show you what has been
3 premarked as Charter exhibit W-47. I ask you
4 whether you can identify that document?

5 A Yes. This is a compilation of memoranda
6 prepared by the central financial services
7 department for--to brief Charter's nominees on
8 Cape's board during the period 1964 to 1972. The
9 compilation was prepared under my supervision for
10 the purposes of this litigation.

11 Q. I now show you what is Charter's W-48
12 and ask you if you can identify that document?

13 A. Yes, this is, again, a compilation prepared
14 under my supervision or direction of excerpts, all
15 excerpts from the minutes of the executive
16 committee of Charter that refer to Cape Asbestos
17 or Cape Industries or any of its subsidiaries
18 during the period from 1966 to 1972.

19 Q. I now show you what has been marked
20 as Charter W-49. I ask you whether you can
21 identify that document?

22 A. Yes, this is similarly a compilation of
23 excerpts from the minutes of the board of
24 directors of Charter Consolidated, where those
25 minutes referred in any way to Cape or any of its

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
subsidiaries.

Q. For the period of time --

A. I'm sorry, for the period, I think from
when Charter commenced business, until 1972.

MR. POLAK: Your Honor, you may
wonder why we're limiting the production from '64
or '65 to '72 with respect to these three
documents. The history of it is that initially
Charter was involved in the litigation in
Pittsburgh, Pennsylvania, called the Barber
action, and the factory concerned, the plant that
was concerned in the Barber action was created in
'64 and terminated in '72. Therefore, we produced
all documents from '64 to '72 at that point.

All of the production that Charter
made in that litigation was absorbed by an order
of Judge Shapiro in Philadelphia into what is
known as the Cook action. In addition, in the
Cook action, because there were different exposure
years, we produced all of the documents relating
to the decision to default by Cape, the decision
to dissolve NAAC, and the decision to sell the
mining subsidiaries by Cape.

Then all of that discovery, that is
both the Barber and the Cook discovery was brought

COMPUTER AIDED TRANSCRIPT

1 Exhibit "19" Annexed to Affidavit of Fishbein.
2 into the Craig case, which is in Philadelphia,
3 and additional discovery was taken there, and all
4 of that discovery is absorbed now in this action.
5 But we did not update the minutes, and that's why
6 the minutes are still back to '64 to '72.

7 I have no further questions of the
8 witness.

9 THE COURT: Cross-examine, please.

10
11 CROSS EXAMINATION BY MR. CUIFFANI:

12 Q. Mr. Howard, I would like to ask you
13 some questions about the sale of the mines to TCL.
14 There's no question that prior to the sale being
15 consumated, contracts being signed, terms of the
16 sale were discussed by Charter, correct?

17 A. Not to my knowledge.

18 Q. Let me direct your attention to a
19 document which has been identified as C-101 and
20 was utilized in connection with the examination of
21 Mr. Stopford Sackville. And I just have my copy
22 with my notes on it.

23 MR. POLAK: I'll get some.

24 MR. CUIFFANI: Thank you.

25 Q. I now show you C-101. C-101 appears

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Q. Now, regardless of whether you were
2 involved in the negotiations, you were on the
3 board that ultimately approved the sale with this
4 condition to TCL, correct?

5 A Yes.

6 Q. And isn't it your understanding that
7 it was Cape who suggested that a condition of its
8 indemnity would be that TCL not come into the
9 United States and defend any claims that had been
10 asserted, correct?

11 A. Yes. I think that would be my
12 understanding.

13 Q. And, in fact, it's your understanding
14 of the indemnity that if TCL did come into the
15 United States to defend claims against Cape, that
16 the indemnity would no longer be effective,
17 correct?

18 A. That is correct.

19 Q. Just a few questions regarding the
20 Tyler case and the settlement of the Tyler case,
21 the dissolution of NAAC, and the decision by Cape
22 not to defend any more claims asserted against it
23 in the United States. All three of those subjects
24 were discussed, were they not, on November 1,
25 1977, at a Cape board meeting?

Exhibit "19" Annexed to Affidavit of Fishbein.

1 A. They were, they were all reported at that
2 meeting, anyway.

3 Q. Well, you were at the meeting, as
4 well as Mr. Stopford Sackville, and Mr.
5 Richardson, correct?

6 A Yes.

7 Q. And the three of you gentlemen were
8 associated with Charter at that point in time,
9 correct?

10 A. I don't know what you mean by associated.
11 We were all employed by Charter.

12 Q. Employed by Charter. And as a member
13 of the board of directors of Cape, is it a fair
14 statement that when a topic was brought to the
15 attention of the board, you, as a member of the
16 board of directors, were free to comment, as you
17 saw fit, on what was brought before the board?

18 A Yes.

19 Q. There wasn't any mandate from anyone
20 at that board that if you wanted to say something
21 on a particular subject that you could not,
22 correct?

23 A. No, certainly not.

24 Q. So if you had a particular view to
25 express, you could have expressed it, if you so

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
1 chose, correct?

2 A Yes.

3 Q. And with respect to the Tyler suit,
4 the minutes, as we went over yesterday, of that
5 particular meeting, indicates that it was reported
6 to the board that the Tyler suit was going to be
7 settled, correct?

8 A. That's right.

9 Q. And did you or Mr. Stopford
10 Sackville, or Mr. Richardson, have anything to say
11 about that?

12 A. I don't recall that I did. I listened to
13 the explanation of events, and I don't think -- I
14 don't recall having any comment to make.

15 Q. And your silence constituted your
16 approval, did it not?

17 A. I don't think we were being asked to
18 approve it. I think it was something that had
19 already happened and was being reported to us.

20 Q. Mr. Howard, if you had disagreed with
21 what was being done by management at that point in
22 time, you would have said something, wouldn't you?

23 A. Had I disagreed I would have said
24 something, but it wouldn't have been of any moment
25 at that point. It was after the event.

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Q. You agreed then with the settlement?

2 A. No, that's not what I said at all. I said
3 that I had no comment to make on it.

4 Q. Wouldn't you have expressed your
5 disagreement if you disagreed with the decision to
6 settle?

7 A. Well, that's hypothetical, because it
8 wasn't the position, in any event. It was after
9 the event.

10 Q. Well, let's talk about the other two
11 things that were discussed because as we discussed
12 yesterday, whoever prepared the minutes noted that
13 those two items, namely the wind up of the affairs
14 of NAAC and the decision not to defend claims
15 against Cape in the United States was proposed,
16 and was it your recollection that a proposal was
17 made at the board meeting on November 1, 1977?

18 A. No, it isn't. It's my recollection that
19 that was management's intention, and the board was
20 being informed about it.

21 Q. But that was not something that had
22 been accomplished, correct?

23 A. Which are we talking about now?

24 Q. Either of the two decisions, the wind
25 up of the affairs of NAAC and the decision not to

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 defend the claims. Management didn't say we wound
2 up the affairs of NAAC?

3 A That's correct. They were, they were, as I
4 said a little earlier, they were reported as the
5 intention.

6 Q. A plan?

7 A. A plan, if you like.

8 Q. A proposal?

9 A. No, it was an intention. I really read it
10 and recollect it, it was an intention.

11 Q. When these minutes came up for
12 approval at the next board meeting, did you tell
13 whoever had recorded the minutes that you felt
14 that it was inaccurate to indicate that this was a
15 proposal which had been made to the board?

16 A. I don't think that it reads as if it was a
17 proposal made to the board. I think that it reads
18 that it was an intention. It was what the
19 management proposed to do.

20 Q. Okay. Now, was there discussion on
21 that?

22 A. On which?

23 Q. On either of the two decisions, or
24 intentions, rather.

25 A. I don't recall any.

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.

1 Q. And by your silence, you manifested
2 your agreement with those intentions, correct?

3 A. They both sounded perfectly reasonable
4 positions for management to take, and to me.

5 Q. Did Mr. Richardson have anything to
6 do about either of those two intentions?

7 A. I don't recall.

8 Q. Did Mr. Stopford Sackville?

9 A. I don't recall either.

10 MR. CUIFFANI: I have no further
11 questions.

12 THE COURT: Mr. Polak, anything
13 further?

14 MR. POLAK: Just one clarification on
15 something.

16
17 REDIRECT EXAMINATION BY MR. POLAK:

18 Q. You had answered a question on
19 cross-examination whether the report on the Tyler
20 suit, quote, was going to be, end quote, settled.
21 I believe you said yes to that question, but later
22 on you indicated that it was a fact that had been
23 completed. I just want to make sure. The Tyler
24 suit, in your view, had it been settled at the
25 time that it was reported to you in November, or

COMPUTER AIDED TRANSCRIPT

Exhibit "19" Annexed to Affidavit of Fishbein.
1 was it going to be settled?

2 A. No, sir, my recollection was that it had
3 been settled.

4 MR. POLAK: I have no further
5 questions.

6 THE COURT: Mr. Cuiffani?

7 MR. CUIFFANI: Nothing further.

8 THE COURT: You may step down. Thank
9 you, sir. Call your next witness, please.

10 MR. POLAK: Yes, your Honor. Mr.
11 Geoffrey Higham.

12
13
14
15
16 G E O F F R E Y A R T H U R H I G H A M,
17 sworn,

18 DIRECT EXAMINATION BY MR. POLAK:

19 Q. What is your address, Mr. Higham?

20 A. Beech Lodge, Burgesswood Road,
21 Beaconsfield, in the County of Buckinghamshire,
22 United Kingdom.

23 Q. How are you presently employed?

24 A. I'm an executive director of Charter
25 Consolidated.

COMPUTER AIDED TRANSCRIPT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
John A. Tibbs and Margaret B. Tibbs,	)	Civil Action No. 2023-CP-40-01759
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
3M Company, <i>et al.</i> ,	)	
	)	<u>NOTICE OF RELEASE OF CLAIMS</u>
Defendants.	)	
	)	
Cape PLC, individually and as successor	)	
in interest to Cape Asbestos Company	)	
Limited, by and through its duly	)	
appointed Receiver Peter D. Protopapas,	)	
	)	
Third-Party Plaintiff,	)	
	)	
vs.	)	
	)	
Anglo American PLC, <i>et al.</i> ,	)	
	)	
Third-Party Defendants.	)	

Without waiving any of their personal jurisdiction arguments, their appellate rights, their Rule 205-based arguments, other arguments previously presented, or any of the other protections afforded them by international courts in the United Kingdom and in France declaring the invalidity of the putative receivership, the Altrad Defendants respectfully file this Notice of Release to make the Court aware that Cape PLC and Cape Intermediate Holdings Limited (“CIHL”) have released any claims that they may have had with respect to the Altrad Defendants and certain other third-party defendants. A copy of that release has been provided to the Receiver, and it is attached as Exhibit A.

This release is consistent with not only the High Court’s ruling in November 2024, which held that the actual directors of these English and Jersey companies speak for these companies, but also with the South Carolina Supreme Court’s recent ruling in *Welch v. Advance Auto Parts, Inc.*, Op. No. 28284 (S.C. May 21, 2025).

Welch reversed in part the circuit court’s receivership order to the extent it encroached on Atlas Turner’s “business activities.” Op. at 18. The Supreme Court drove this point home to ensure no doubt that a receiver cannot have any “entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company.” *Id.*

But that is exactly what this third-party case purports to be: the Receiver stepping into the boardrooms of an English company and a Jersey company to file suit against numerous other foreign entities and one individual French citizen, allegedly in the name of the English and Jersey companies. As this Court knows, the actual directors of those companies have specifically disclaimed any authority for the Receiver to act or speak on their behalf.

Welch’s command that a receiver must stay out of the “boardroom” and out of a company’s “business activities” confirms the unlawfulness of both this receivership and the entire “third-party complaint.” Litigation decisions are quintessential “boardroom” decisions and “business activities.” *See, e.g., Freedman v. Redstone*, 753 F.3d 416, 424 (3d Cir. 2014) (“The decision whether to bring a lawsuit is a ‘decision concerning the management of the corporation and consequently is the responsibility of the directors.’” (quoting *Blasband v. Rales*, 971 F.2d 1034, 1048 (3d Cir. 1992))), *rev’d in relevant part by In re Cognizant Tech. Sols. Corp. Deriv. Litig.*, 101 F.4th 250 (3d Cir. 2024); *Muzek v. Eagle Mfg. of N. Am., Inc.*, Case No. 6:18-cv-199-REW-EBA, 2019 U.S. Dist. LEXIS 244216, at *5 (E.D. Ky. Oct. 23, 2019) (“Thus, directors rather than shareholders [or receivers] manage the business and affairs of a corporation. In other words, a

decision whether to bring a lawsuit, refrain from litigation on behalf of a corporation, or the appointment of an examiner is a decision concerning the management of a corporation.”); *cf. Protopapas v. Whittaker, Clark & Daniels, Inc.*, Case No. 23-4151 (ZNQ), 2024 U.S. Dist. LEXIS 97270, at *22 (D.N.J. May 31, 2024) (“The Court affirms the Bankruptcy Court’s opinion that under New Jersey state law, the text of the Receivership Order did not change the fact that WCD’s Board of Directors [and not the Receiver] held the power to file for bankruptcy and properly did so.”), *further appeal pending at* Case No. 24-2210 (3d Cir.).

Even the South Carolina General Assembly recognizes that a business operating only through its actual directors can make the decision to file suit. *See generally* S.C. Code Ann. § 33-2-102(1) (providing “sue and be sued, complain, and defend in its corporate name” as the very first “general power” of a South Carolina corporation); *id.* § 33-8-101 (providing that, with limited irrelevant exceptions, “all corporate powers must be exercised by or under the authority of, and the business and affairs of a corporation must be managed under the direction of, a board of directors”).

And because only the directors can make litigation decisions on behalf of Cape PLC or CIHL, they have executed a release of all claims against several of the purported third-party defendants to further ensure that this litigation isn’t misunderstood by any court, including this Court, as having even a hint of legitimacy.

To be clear, what the Receiver is asking this Court to do through his “third-party complaint” is to unlawfully “self-pierce” the corporate form and to artificially manufacture liability on behalf of, but also against, the very entity he claims to represent. His theory has already been directly presented to and directly rejected by both an English trial court and an English appellate court 35 years ago. *Adams v. Cape Industries plc* (1990) 1 Ch. 433 (CA). Filing a lawsuit in the name of

Cape PLC or CIHL that is designed to vacate decades-old English case law that protects them from and directly rebuts the specious allegations asserted by the Receiver is precisely the type of “boardroom” decision that only a company’s directors can make, and that *Welch* specifically forbids a receiver from attempting to make.

Here, the actual “boardrooms” of Cape PLC and CIHL have released all such claims against various third parties. That release aligns these entities consistent with *Adams*’s findings. The corporate authority to execute that release resides exclusively with these companies as a matter of English law; it was reinforced by Justice Mann’s ruling that the directors, not the Receiver, control these companies; and it has now been reaffirmed by *Welch*’s unambiguous prohibition against a receiver being involved in “business activities” or in the “boardroom.”¹

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
 S.C. Bar No. 74000
 todd.carroll@wbd-us.com
 Kevin A. Hall
 S.C. Bar No. 15063
 kevin.hall@wbd-us.com
 M. Elizabeth O’Neill
 S.C. Bar No. 104013
 elizabeth.oneill@wbd-us.com
 1221 Main Street, Suite 1600
 Columbia, SC 29201
 (803) 454-6504

*Attorneys for Mohed Altrad and Altrad
 Investment Authority SAS*

June 4, 2025

¹ Without waiving any of their arguments or objections, the Altrad Defendants adopt and incorporate by reference any additional arguments contained in submissions by the DeBeers Defendants or the Charter Defendants with respect to the Receiver’s “interim status report” and request for a trial date despite the stay mandated by the ACL bankruptcy proceedings.

From: [Jamie Leader](#)
To: pdp@rplegalgroup.com
Cc: [Olivia Gare](#)
Subject: Pre-Action Letter Regarding Declaratory and Injunctive Relief Contemplated Before the English Court [ENYOLAW-LIVE.FID63397]
Date: Monday, June 2, 2025 2:05:07 PM
Attachments: [envologo_2ee2fe48-4748-4a37-a7a4-41b76115f0e4.png](#)
[LBA to Protopapas 2 June 2025\(4814873.2\).pdf](#)
[Settlement Agreement - Draft Consent Order\(4823422.1\).docx](#)
[Cape, Altrad and Sparrows Settlement Agreement Dated - FINAL.pdf](#)
Importance: High

Dear Mr Protopapas,

Please see the attached letter and enclosures.

Yours faithfully,

Enyo Law LLP

Jamie Leader | Enyo Law LLP
Partner



1 Tudor Street, London, EC4Y 0AH

Tel: +44 (0) 20 3837 1670

Mob: +44 (0) 7968 452 166

www.enyolaw.com

Our Ref: JTL/ALT1.1
Your Ref:

2 June 2025

Peter D. Protopapas
Rikard & Protopapas, LLC
2110 N Beltline Blvd
Columbia SC 29204

Direct line: +44 (0)20 3837 1670
jamie.leader@enyolaw.com

BY EMAIL ONLY to pdp@rplegalgroup.com

Dear Mr Protopapas

Re: Pre-Action Letter Regarding Declaratory and Injunctive Relief Contemplated Before the English Court arising out of the Settlement Agreement dated 11 April 2025

Introduction

We are instructed by: Altrad Investment Authority SAS, Altrad UK Limited, Cape UK Holdings Newco Limited, Cape Industrial Services Group Limited, Cape Holdco Limited, Altrad Services Limited, and Mr Mohed Altrad (the “**Potential Claimants**”).

We are writing to inform you of the agreement that has been entered into on 11 April 2025 by parties including the Potential Claimants and Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (a company incorporated under the laws of Jersey, “**Cape Jersey**”, and together with CIHL, the “**Cape Parties**”) (the “**Settlement Agreement**”). A copy of the Settlement Agreement is enclosed with this letter (and we adopt the abbreviations in the Settlement Agreement in this letter).

The Settlement Agreement has been entered into by the Potential Claimants with CIHL, acting through its lawfully appointed directors who—as the English Court has already determined in its judgment and order of 22 November 2024—have the valid authority to act for and on behalf of CIHL. The directors of Cape Jersey have also authorised and entered into the Settlement Agreement as the lawfully appointed directors of Cape Jersey.

Pursuant to the Settlement Agreement, the Cape Parties have released any relevant claims (as identified below) that the Cape Parties might otherwise have against the Potential Claimants.

This includes the claims brought by you – purportedly in the name of and on behalf of the Cape Parties – in the Third-Party Complaint filed in the South Carolina Court on 30 June 2023; and any other claims in any other asbestos-related litigation in the US based upon the alleged liability of the Claimants for the acts or omissions of CIHL.

As a result, all Claims and Allegations (in each case, as defined in the Settlement Agreement) made against the Claimants relating to the Third-Party Complaint have been settled.

In these circumstances, we now invite you to acknowledge formally that all Claims and Allegations against our clients which arise out of and relate to the Third-Party Complaint have been settled.

We also invite you to undertake forthwith to take all necessary steps to procure the dismissal of and/or discontinue the Third-Party Complaint against our clients with immediate effect and on a full and final basis.

To this end we ask you to sign the terms of a draft order enclosed with this letter which can then be placed before the English Court as a consent order **"Consent Order"**). We request you return the signed draft Consent Order by 9am (London time) on Tuesday, 10 June 2025.

Factual Background

As you are aware, the Potential Claimants and the Cape Parties are each part of the Altrad Group of companies (the **"Altrad Group"**, of which Mr Mohed Altrad is the founder). Certain of the Potential Claimants and the Cape Parties are part of the Cape group of companies (the **"Cape Group"**) which is a subgroup within the Altrad Group.

As you know, the Cape Parties (or one of them) are named as defendants in two actions that have been brought in the South Carolina Court. Those actions are brought against various defendants for the alleged exposure of the respective plaintiffs to asbestos. They are (1) the **"Park Claim"** (which was initiated in June 2021 by Ms Park, and subsequently taken over by her son) and (2) the **"Tibbs Claim"** (which was brought in April 2023 by Mr and Mrs Tibbs).

In the Park Claim, the Summons and Complaint names "Cape plc" as a defendant—and an Amended Summons and Complaint has added CIHL as a defendant. In the Tibbs Claim, "Cape plc" is a named defendant (but CIHL is not a named defendant). Neither of the Cape Parties have participated in the Park Claim or in the Tibbs Claim.

On 16 March 2023, Toal J made an order to appoint you as a receiver (the **"Receivership Order"**). The Receivership Order states that you are appointed as a receiver of "Cape plc" (i.e. Cape Jersey), but following the order of Toal J on 6 December 2023 and certain comments made by you in filings in the South Carolina Court it is now understood that the Receivership Order was intended to have been made over CIHL alone.

On 30 June 2023, you issued third-party proceedings in the South Carolina Court within the Tibbs Claim – the Third-Party Complaint. You purported and continue to purport to bring those proceedings in the name of the *"third-party plaintiff" "Cape plc, individually and as successor in interest to Cape Asbestos Company Limited, by and through its duly appointed Receiver Peter D. Protopapas"*.

Our clients, the Potential Claimants, are among the defendants in the Third-Party Complaint; and the Third-Party Complaint makes a wide range of allegations against our clients (and others) all of which are denied by them.

The CIHL Declaratory Judgment and the CIHL Declaratory Order

In 2024 the Cape Parties applied to the English High Court for declaratory/injunctive relief, and proceedings were issued on 9 September 2024 in the Business List of the Chancery Division of the High Court of England and Wales (the **"English Court"**) with claim number BL-2024-001337 (the **"CIHL Declaratory Claim"**).

Following the trial of the 2024 Claim, Sir Anthony Mann (sitting in retirement as a judge of the High Court of England and Wales) ("**Mann J**") handed down a judgment on 22 November 2024 and made an order on the same date (the the "**CIHL Declaratory Judgment**" and the "**CIHL Declaratory Order**").

In the CIHL Declaratory Judgment, Mann J confirmed and concluded that questions of control or authority over a company must be determined under the law of the place of incorporation of that company (which, in the case of CIHL, would be England and Wales). Accordingly, an individual (or individuals) can only have control over or authority to act on behalf of or in the name of an English company – such as CIHL – if they have authority to do so that is valid and recognisable under English law.

In the CIHL Declaratory Judgment, Mann J held that the Receivership Order was not recognisable under English law and was of no effect in England (including inter alia because CIHL was not present in the state of South Carolina at the time when the Receivership Order was made, and further because CIHL has not submitted to the jurisdiction of the South Carolina Court).

As a result, Mann J found that the Receivership Order was of no effect in relation to CIHL (an English company) either in England and Wales or anywhere worldwide.

In the CIHL Declaratory Order, various declarations and orders were made against you; and that order was subsequently duly served on you. Materially, for present purposes, declarations were made against you in the following terms:

1. The Receivership Order is not recognised and has no legal effect in England and Wales and world-wide.
2. Mr Protopapas has and had no power or authority to act on behalf of CIHL in England and Wales or worldwide.
3. The rights and duties of the directors of CIHL remain unaffected by the appointment of Mr Protopapas as receiver of CIHL pursuant to the Receivership Order.
4. Mr Protopapas has and had no power or authority on behalf of CIHL to act for or to bind CIHL in the South Carolina Court in respect of Park Claim and the Tibbs Claim or in the 3P Complaint.

The CIHL Declaratory Order also contained certain related injunctions against you.

The Settlement Agreement

The parties to the Third-Party Complaint include the Potential Claimants and the Cape Parties.

Those parties have now chosen to settle any claims arising out of and related to the Third-Party Complaint according to the terms of the Settlement Agreement.

Amongst other things, the Settlement Agreement involves a release by the Cape Parties of all claims that they might have against the Potential Claimants for any acts or omissions such as are alleged in the Third-Party Complaint. This release was given by the Cape Parties in exchange for releases given by our clients and in exchange for agreement to other terms such as in relation to the dismissal of actions and related cooperation. Accordingly, the Settlement Agreement includes a settlement the Claims and Allegations made in and relating to the Third-Party Complaint.

As is clear from the terms of the Settlement Agreement, no acceptance or admission of any liability of our clients was made in relation to the Third-Complaint or otherwise (and in fact any such liability is expressly denied in the Settlement Agreement).

The Settlement Agreement is governed by English law and subject to the exclusive jurisdiction of the English courts. As a result, the Potential Claimants must bring any claim to confirm the Settlement Agreement before the English Court, which is clearly the proper and only forum that can determine such matters.

The draft Consent Order

In the light of the above, we ask you to sign the terms of the draft Consent Order enclosed with this letter which can then be placed before the English Court for approval. Please provide your consent by 9am (London time) on Tuesday, 10 June 2025.

If you do not consent to the terms of the draft Consent Order, or other suitable terms, then the Potential Claimants propose to commence proceedings in the English Court under Part 8 of the Civil Procedure Rules (“CPR”) for an order in the form of the draft Consent Order (the “**Contemplated Claim**”).

In this regard, the following declarations will be sought by the Potential Claimants from the English Court:

1. The directors of CIHL are the lawfully appointed directors of CIHL, who have the power and lawful authority to enter into the Settlement Agreement on behalf of CIHL and who have lawfully procured CIHL to enter into the Settlement Agreement.
2. The directors of Cape Jersey are the lawfully appointed directors of Cape Jersey, who have the power and lawful authority to enter into the Settlement Agreement on behalf of Cape Jersey and who have lawfully procured Cape Jersey to enter into the Settlement Agreement.
3. The Settlement Agreement has been entered into by lawfully authorised officers of the Potential Claimants and of and Cape Parties and is lawfully binding on the parties to it.
4. The terms and legal effect of the Settlement Agreement are that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Potential Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon the Potential Claimants’ alleged liability for the acts of the Cape Parties (all such claims together, being “**Settled Claims**”) and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making any such claims.
5. Pursuant to the terms of the Settlement Agreement, the Potential Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Potential Claimants arising out of or in relation to any of the Settled Claims.

Declarations 1 to 3 follow directly from the conclusions in the CIHL Declaratory Judgment and the CIHL Declaratory Order. As set out above, Mann J held not only that the Receivership Order is not recognised and is of no effect, but also that only the directors of CIHL (and not you) have the power and authority to act for and on behalf of CIHL. It necessarily follows that only the directors of CIHL (and not you) have the

power to bind CIHL to a contract such as the Settlement Agreement. The same conclusions follow directly as a matter of Jersey law (which for present purposes is equivalent to English law).

Declaration 4 is a declaration as to the effect and terms of the release and settlement agreed by the Cape Parties in the Settlement Agreement. This declaration follows the terms of the Settlement Agreement, and so it follows directly from declarations 1 to 3.

Declaration 5 is a declaration as to the consequences of the release and settlement in the Settlement Agreement. As all such claims against the Potential Claimants in the Third-Party Complaint have been validly released and settled by the Cape Parties, it necessarily follows that our clients have no liability under the Third-Party Complaint.

Further, the Potential Claimants will also seek two additional declarations to confirm the legal position in respect of CIHL for their benefit, namely that:

6. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).
7. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of the Cape Parties, including (but without prejudice to the generality of the foregoing) in any Settled Claim.

These declarations follow from (and, indeed, are within the terms of) those granted in the CIHL Declaratory Order.

Further, our clients will also seek an indemnity from you in the following terms:

8. Mr Protopapas is liable to indemnify the Potential Claimants for all loss and damage arising out of Mr Protopapas' pursuit of any Settled Claim purportedly undertaken in the name of and on behalf of CIHL.

As you have no authority to act for CIHL, it is only right that, if you continue to purport to act on behalf of CIHL in a manner which causes damage, you should be required to indemnify and hold harmless the Potential Claimants for this loss and damage.

Finally, our clients will also seek the following injunctions against you:

9. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint in the name of or on behalf of CIHL, other than as required by the paragraphs in this order.
10. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Potential Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Potential Claimants within 14 days of the date of this order.

These injunctions will be sought on a number of bases.

As in relation to the injunctions granted in the CIHL Declaratory Order, these injunctions follow from the fact that you are continuing to prosecute the Third-Party Complaint in the name of CIHL and purportedly on its behalf when in fact you have no recognisable authority over CIHL to do so.

Further, these injunctions can also be granted on the basis that our clients have rights (in contract, tort and equity) to prevent you from purporting to procure CIHL to continue to prosecute the Third-Party Complaint—which is contrary to CIHL’s obligations under the Settlement Agreement and which is also vexatious and oppressive against our clients in circumstances where the underlying claims have been settled.

In addition, our clients will also seek to recover their costs of and occasioned by the Contemplated Claim.

The position of the Cape Parties

As you will note from the draft Consent Order, if and to the extent necessary, it is anticipated that our clients would bring the Contemplated Claim against you as the First Defendant and also against the Cape Parties as the Second and Third Defendants.

As parties to the Settlement Agreement, it is not envisaged that the Cape Parties would object to the terms of the draft Consent Order. We shall be writing to their solicitors for their formal consent.

Agreement to Service out of the jurisdiction

If you do not consent to the draft Consent Order, it will be necessary to serve a claim form on you. Under the CPR, service on a party out of the jurisdiction normally requires the permission of the Court, if the party to be served does not consent to accept service either itself or by solicitors retained by it.

We therefore invite you to consent to service in respect of such a claim and of any further documents in the proceedings required to be on you:

1. Outside the jurisdiction of England and Wales by posting to your professional address at 2110 N Beltline Blvd, Columbia, South Carolina 29204, United States of America
2. By email at pdp@rplegalgroup.com, and/or
3. By service on any solicitors retained by you, such as Morgan, Lewis & Bockius UK LLP, (at Condor House, 5-10 St. Paul's Churchyard, London, EC4M 8AL) whom we understand you have previously retained.

If you do not provide consent to the Draft Consent Order, please provide consent to service of the claim either as above or in some other way that you prefer. Such consent is also required by 9am (London) on 10 June 2025.

If you do not provide this consent, it will be necessary for our clients to apply to the Court to serve the claim form on you out of the jurisdiction. We do not anticipate that this will cause any substantial delay to the progress of the claim, but it will increase our clients’ costs of the proceedings, and as noted above we anticipate that these costs will ultimately be recoverable from you.

Part 8 of the CPR

As suggested at paragraph 13.4(a) of the Business and Property Courts of England and Wales Chancery Guide 2022, we hereby notify you of our clients’ intention to bring the Contemplated Claim using the Part 8 procedure under the English Civil Procedure Rules. The Part 8 procedure is suitable as this matter does

not raise any substantial dispute of fact and indeed the only questions raised are questions of contractual construction and questions of law.

Further, in light of the need to deal with this matter as expeditiously and efficiently as possible, the Part 8 procedure is clearly appropriate.

Pre-Action Protocol

This letter is being sent to you in accordance with the Practice Direction on Pre-Action Conduct and Protocols (the “**Pre-Action PD**”) contained in the CPR. We note that, as envisaged at paragraph 13 of the Pre-Action PD, the present case is one where a response is required as soon as practicable and on urgent basis.

We refer you to paragraphs 13 to 16 of the Pre-Action PD which set out the Court’s powers to impose sanctions for failing to comply with its provisions. We strongly encourage you to read and consider these paragraphs, as well the Pre-Action PD more generally.

You already have the key documents on which we intend to rely to substantiate our clients’ claims.

Conclusions

We urge you not simply to ignore this letter. This will lead to a claim being issued without further notice to you, and this will only increase the costs which our clients will seek from you in due course (and which we expect that you will be ordered to pay).

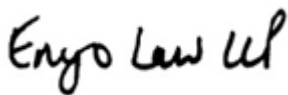
Accordingly, please indicate that you will consent to the terms of the draft Consent Order by 9am on 10 June 2025

For the avoidance of doubt, nothing in this letter is or should be construed as a waiver of any of the Potential Claimants’ rights which are reserved to the fullest extent possible.

Finally, nothing in this letter is intended to or amounts to a submission to the courts of the state of South Carolina.

We look forward to receiving your response.

Yours faithfully



Enyo Law LLP

Enclosures: The Settlement Agreement
Draft consent order

Claim No.: [REDACTED]

IN THE HIGH COURT OF JUSTICE
 BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
 BUSINESS LIST (ChD)

BEFORE [REDACTED]
 [date of this order]

BETWEEN:

(1) ALTRAD INVESTMENT AUTHORITY SAS
 (2) ALTRAD UK LIMITED
 (3) CAPE UK HOLDINGS NEWCO LIMITED
 (4) CAPE INDUSTRIAL SERVICES GROUP LIMITED
 (5) CAPE HOLDCO LIMITED
 (6) ALTRAD SERVICES LIMITED
 (7) MR MOHED ALTRAD

Claimants

and

(1) PETER D. PROTOPAPAS
 (2) CAPE INTERMEDIATE HOLDINGS LIMITED
 (3) CAPE PLC (a company incorporated under the laws of Jersey)

Defendants

DRAFT ORDER

UPON THE CLAIM brought by the Claimants against Cape Intermediate Holdings Limited (“**CIHL**”) and Cape plc (“**Cape Jersey**”, and together with CIHL, the “**Cape Parties**”) and Peter D Protopapas (“**Mr Protopapas**”) by a Part 8 claim form dated [xx] [xxxx] 2025

AND UPON the Court noting that, on 16 March 2023, the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland (the “**South Carolina Court**”) made an order appointing Mr Protopapas as a receiver over CIHL (the “**Receivership Order**”)

AND UPON Mr Protopapas having (purportedly in the name of CIHL) brought third party proceedings in the claim brought in the South Carolina Court by John A. Tibbs and Margaret B. Tibbs with claim number C/A No. 2023-CP-40-01759 by a summons and complaint first

issued on 30 June 2023 (the “**Third-Party Complaint**”, brought as third-party proceedings in the “**Tibbs Claim**”)

AND UPON the Cape Parties having brought a claim by a Part 8 claim form dated 6 September 2024 and with claim number BL-2024-001337 against Mr Protopapas

AND UPON the judgment and order of Sir Anthony Mann (sitting in retirement as a judge of the High Court) on 22 November 2024

AND UPON various parties, including the Claimants and the Cape Parties having entered into a settlement agreement dated 11 April 2025 (the “**Settlement Agreement**”)

AND UPON the Court noting that the Settlement Agreement contains a jurisdiction clause under which the Courts of England and Wales have exclusive jurisdiction in respect of any dispute or issue in any way arising from or relating to the Settlement Agreement

IT IS DECLARED THAT

1. The directors of CIHL are the lawfully appointed directors of CIHL, who have the power and lawful authority to enter into the Settlement Agreement on behalf of CIHL and who have lawfully procured CIHL to enter into the Settlement Agreement.
2. The directors of Cape Jersey are the lawfully appointed directors of Cape Jersey, who have the power and lawful authority to enter into the Settlement Agreement on behalf of Cape Jersey and who have lawfully procured Cape Jersey to enter into the Settlement Agreement.
3. The Settlement Agreement has been entered into by lawfully authorised officers of the Claimants and of Cape Parties and is lawfully binding on the parties to it.
4. The terms and legal effect of the Settlement Agreement are such that it releases and settles any claims (whether known or unknown) that the Cape Parties have against the Claimants related to or arising (i) from the claims and allegations made in the Tibbs Claim (including in the Third-Party Complaint made within it) and (ii) from any other claims made after the date of the Settlement Agreement in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon

the Claimants' alleged liability for the acts and/or omissions of CIHL (all such claims together, being "**Settled Claims**") (and for the avoidance of doubt it also releases and settles any judgments (and any claims based on or related to any judgments) obtained pursuant to the making any such claims).

5. Pursuant to the terms of the Settlement Agreement, the Claimants have no liability to the Cape Parties for any Settled Claims and the Cape Parties have no lawful claims against any of the Claimants arising out of or in relation to any Settled Claims.

AND IT IS DECLARED THAT

6. The powers and lawful authority of the directors of CIHL are unaffected by the Receivership Order (which is not recognised and has no legal effect in England and Wales and worldwide).
7. Mr Protopapas has and had no power or lawful authority to take any steps or acts for, on behalf of, or in the name of the Cape Parties, including (but without prejudice to the generality of the foregoing) in any Settled Claims.
8. Mr Protopapas is liable to indemnify the Claimants for all loss and damage arising out of Mr Protopapas' pursuit of any Settled Claims purportedly undertaken in the name of and on behalf of CIHL.

AND IT IS ORDERED THAT

9. Mr Protopapas be restrained from taking any further step in the Third-Party Complaint (or in relation to any proceedings, including but not limited to any Settled Claims) in the name of or on behalf of CIHL, other than as required by the paragraphs in this order.
10. Mr Protopapas shall forthwith take all and any steps to effect a final and with prejudice dismissal of the Third-Party Complaint against the Claimants with immediate effect and, in any event, Mr Protopapas is to have effected such a dismissal of the Third-Party Complaint against the Claimants within 14 days of the date of this order.

Costs

11. The Claimants' costs of and occasioned by this action be paid by Mr Protopapas.

Service of this order

This order shall be served by the Claimants on the Defendants.

The Court has provided a sealed copy of this order to the solicitors for the Claimants, Enyo Law LLP, One Tudor Street, London EC4Y 0AH (reference: JTL/ALT1.1)

AGREEMENT FOR FULL AND FINAL SETTLEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release ("Agreement") is entered into as of ^{11 April}~~March~~ 2025, by and between:

(1) Cape Intermediate Holdings Ltd (English company no. 00040203) ("CIHL") and Cape plc (Jersey company no. 108031) ("Cape plc") (collectively, the "Cape Parties").

(2) Mr Mohed Altrad ("Mr Altrad"), Altrad Investment Authority S.A.S. ("AIA"), Altrad Services Ltd. f/k/a Cape Industrial Services Ltd., Altrad UK Ltd., Cape Holdco Ltd., Cape Industrial Services Group Ltd., and Cape UK Holdings Newco Ltd. (collectively, the "Altrad Parties").

(3) Sparrows Offshore, LLC, Hawk Bidco US, Inc., and Arranco US, LLC (collectively, the "Sparrows Parties").

Each of the above signatories to this Agreement is hereinafter referred to as a "Party" and collectively, the "Parties."

RECITALS

(A) The Cape Asbestos Company Ltd was incorporated on 28 December 1893. Over the years, The Cape Asbestos Company Ltd has undergone various name changes, such as Cape Industries Ltd. (between 1 July 1974 and 12 November 1981); Cape Industries plc (12 November 1981 – 1 August 1989); Cape plc (1 August 1989 – 27 June 2011); Cape Intermediate Holdings plc (27 June 2011 – 19 December 2013); and finally Cape Intermediate Holdings Limited (i.e. CIHL) (19 December 2013 – present).

(B) Cape plc is a company incorporated in the Bailiwick of Jersey in 2011. It is currently an intermediate indirect parent company of CIHL.

(C) On June 4, 2021, Isabella Park sued for asbestos-related injuries in South Carolina in cause number 2021-CP-40-02727 ("the *Park claim*"). The Park claim was brought against multiple defendants, including CIHL and Cape plc as separately named defendants.

(D) On 16 March 2023, a receivership order was entered in the *Park claim* by the Court of Common Pleas for the Fifth Judicial Circuit of the State of South Carolina, County of Richland ("the South Carolina Court") purportedly appointing Mr. Peter Protopapas ("Mr. Protopapas") as a receiver over "Cape plc" (the "Receivership Order").

(E) On 5 April 2023, an asbestos lawsuit was brought in South Carolina by John A. Tibbs and Margaret B. Tibbs in cause number 2023-CP-40-01759 ("the *Tibbs claim*"). The suit was again brought against multiple defendants, including "Cape plc" (but not CIHL).

- (F) In the *Tibbs* claim, on 30 June 2023, the “Third-Party Complaint” was filed against a variety of defendants, including the Altrad Parties and the Sparrows Parties, by Mr. Protopapas. The Third-Party Complaint was and is stated to be brought by Mr Protopapas in the name of “Cape plc, individually and as successor in interest to Cape Asbestos Company Ltd.” (“Third-Party Plaintiff”).
- (G) On 6 December 2023, default judgment in the Third-Party Complaint was entered against a number of parties including all of the Altrad Parties except for Mr Altrad and AIA.
- (H) On 9 September 2024, the Cape Parties issued proceedings against Mr Protopapas in the High Court of England and Wales seeking declarations (and injunctive relief) on the basis that the rights and duties of the directors of CIHL remained unaffected by the appointment of Mr. Protopapas, that the Receivership Order was not recognised by the Courts of England and Wales or under the laws of England and Wales, and that the Receivership Order was of no legal effect in England and Wales and worldwide (“the CIHL Declaratory Claim”).
- (I) On 7 November 2024, a Stipulation of Dismissal without prejudice of the claims against the Sparrows Parties made by Mr Protopapas in the 3P Complaint in the *Tibbs* claim was filed on a joint basis by Mr Protopapas and the Sparrows Parties.
- (J) On 8 November 2024, Mr Protopapas filed a motion for summary judgment against certain of the defendants to the 3P Complaint in the *Tibbs* claim (which included Mr Altrad and AIA) with respect to claims for alleged “*successor liability and/or alter ego/veil piercing liability*”.
- (K) Between 12-14 November 2024, the trial of the CIHL Declaratory Claim took place before Mr Justice Mann (“Mann J”).
- (L) On 22 November 2024, the High Court of England and Wales issued a judgment and order in *Cape Intermediate Holdings Limited v. Protopapas* [2024] EWHC 2999 (“the CIHL Declaratory Judgment”), finding, among other things, that the rights and duties of the directors of CIHL remained unaffected by the appointment of Mr. Protopapas and that the Receivership Order was not recognised by the Courts of England and Wales or under the laws of England and Wales, and that the Receivership Order was of no legal effect in England and Wales and worldwide. Pursuant to the CIHL Declaratory Judgment, Mann J made the “CIHL Declaratory Order” granting declarations in CIHL’s favour and making injunctions against Mr Protopapas to that effect.
- (M) The Parties now wish to settle and resolve their outstanding differences, disputes, and claims, known or unknown, against one another in respect of or arising out of the *Park* claim, the *Tibbs* claim, or any existing asbestos-related personal injury claims (whether known or unknown) relating to the USA that may be made on the terms set out in this Agreement.

- (N) In this regard, the Cape Parties wish to compromise and release the Altrad Parties and Sparrows Parties from any actual or potential claims that might be made in the *Park* claim, the *Tibbs* claim, or in any existing asbestos-related personal injury claims relating to the USA (whether known or unknown) that has been or may be made by the Cape Parties against the Altrad Parties and Sparrows Parties and this release includes compromising any judgments in the *Tibbs* claim obtained in the name of the Cape Parties made against the Altrad Parties or Sparrows Parties (whether such judgments were validly obtained or not).
- (O) The Altrad Parties and the Sparrows Parties wish to compromise and release any actual or potential claims they may have against the Cape Parties, including but not limited to claims for contribution or indemnity, relating to liabilities in the *Park* claim, the *Tibbs* claim, or any asbestos-related personal injury claims relating to or arising in the USA (whether known or unknown) that may be made by the Altrad Parties and Sparrows Parties against the Cape Parties.
- (P) These releases include all claims made and any judgments obtained by or against the Parties in the *Tibbs* claim, as well as any claims the Altrad Parties and Sparrows Parties may have against Cape plc and CIHL related to the allegations in the Third-Party Complaint in the *Tibbs* claim.
- (Q) Nothing in this Agreement shall be construed to waive any claims or causes of action of the Parties that they have which have accrued or may accrue in the future against Mr. Protopapas personally or pursuant to his conduct as a purported receiver for issuing and pursuing the Third-Party Complaint in the name of CIHL or Cape Plc or for acting without authority and/or the consent of the directors of CIHL or Cape Plc.
- (R) By entering into this Agreement, no Party submits to, agrees to, or waives any defences it may have in respect to personal jurisdiction in South Carolina (or any other US state) and each Party maintains any and all personal jurisdiction defences.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the receipt and sufficiency of which each of the Parties acknowledges, the Parties hereby agree as follows:

OPERATIVE PROVISIONS

1.0 COMPROMISE

The Parties agree and acknowledge that this Agreement is the result of a compromise and shall not be construed as an admission by any Party of any liability, wrongdoing, or responsibility, on their part and on the part of their predecessors, successors, assigns,

agents, parents, subsidiaries, affiliates, officers, directors, or employees. Indeed, each of the Parties expressly deny any such liability, wrongdoing, or responsibility.

In this Agreement:

“Claims” include all existing charges, complaints, claims, grievances, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, penalties, fees, wages, expenses (including attorneys’ fees and costs actually incurred), and punitive damages, of any kind or nature whatsoever, whether in law or in equity, whether known or unknown to the Parties and including for the avoidance of doubt any judgments (and any claims based on or related to any judgments) obtained pursuant to the making of the same.

“Release” by a Party includes release and discharge on their own behalf, and on behalf of their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates and assigns.

“Releasing” a Party includes releasing and discharging them together with their predecessors, successors, direct and indirect parent companies, direct and indirect subsidiary companies, companies under common control with any of the foregoing, affiliates, and assigns.

The **“Allegations”** means both (i) the claims asserted in the *Tibbs* claim (including in the Third-Party Complaint made within it), and (ii) any claims made in the future in any asbestos-related personal injury claims that may be asserted in the USA based in part or in whole upon alleged liability for the acts of CIHL, and in either case including but not limited to the claim that each of the Parties is, or is a successor in interest to an entity that was, the alter ego of or part of a single business enterprise with CIHL and any claim based on the right to pierce the corporate veil of CIHL.

2.0 RELEASE OF CLAIMS

2.1 Release by the Cape Parties.

The Cape Parties release the Altrad Parties and Sparrows Parties, from all Claims that the Cape Parties have, or may have had, against the Altrad Parties and Sparrows Parties, for any acts or omissions related to or arising from Allegations. This Release does not apply to any breach of this Agreement.

As part of this Release, and for the avoidance of doubt and without derogating from the generality of the foregoing, the Cape Parties hereby acknowledge and declare that the Altrad Parties and Sparrows Parties have, and at no material time have had, any liability to the Cape Parties (whatsoever and howsoever arising) in respect of the Allegations and the Claims made in the Third-Party Complaint.

2.2 Release by the Altrad Parties and Sparrows Parties.

The Altrad Parties and Sparrows Parties release the Cape Parties from all Claims that the Altrad Parties and Sparrows Parties have, or may have had, against the Cape Parties for any acts or omissions related to or arising from the sale or distribution of asbestos in the United States, including but not limited to the Allegations. This Release does not apply to any breach of this Agreement.

3.0 DISMISSAL OF ACTIONS

- 3.1** The Parties agree that any Claims that are being released by this Agreement are released in full and final settlement of such Claims.
- 3.2** Any Party may file this Agreement in any court in which it is a party as evidence of the dismissal of a Claim.
- 3.3** Any Party to this Agreement may apply to any court for the dismissal of any proceedings in respect of which a Claim which has been released pursuant to this Agreement is made
- 3.4** No Party to this Agreement will object to the dismissal of proceedings in respect of which a Claim which has been released pursuant to this Agreement is made.
- 3.5** The Parties agree not assert a right to any Claim released by this Agreement and covenant that not to bring any proceedings in respect of a Claim that has been released by this Agreement.

4.0 RIGHT TO SETTLE: NO ASSIGNMENT OR TRANSFER OF CLAIMS

- 4.1** The Parties warrant that a person entering into this Agreement on behalf of each party has the authority of the board of directors of that Party to bind that Party and that the Party's execution of this Agreement is not in breach of any by-law, covenants, and/or other restrictions placed upon the Party by its memorandum or articles of association.
- 4.2** Each Party warrants that it has not transferred, assigned, or novated any right or authority to release, relinquish, settle and discharge the Claims released by that Party as set forth in the Release section of the Agreement any individual or entity who is not a party to this Agreement.
- 4.3** The Altrad Parties and Sparrows Parties acknowledge and warrant that they are aware of the Receivership Order and the CIHL Declaratory Judgment and that the Third-Party Complaint has been brought and pursued without the consent of the directors of CIHL and/or Cape plc.
- 4.4** The Altrad Parties and Sparrows Parties agree not to make any Claim against CIHL and/or Cape plc in respect of or arising out of the conduct of Mr. Protopapas in acting or purporting to act as the purported receiver of CIHL and/or Cape plc and their affiliates.

5 AGREEMENT TO COOPERATE

- 5.1 Each Party agrees to take any and all actions and to make, deliver, sign, and file any other documents and instruments necessary to carry out the terms, provisions, purpose, and intent of this Agreement.

6.0 ENTIRE AGREEMENT

- 6.1 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all prior negotiations and proposed agreements, written or oral concerning the subject matter contained in this Agreement.
- 6.2 Each Party expressly acknowledges, warrants, and represents that in executing the releases or entering into this Agreement, it is not relying upon any representation, promise, agreement, or warranty not contained in this Agreement.
- 6.3 In deciding to enter into this Agreement, each Party acknowledges and represents that it is relying solely on its own judgment and that it has read and understands the entire contents of this Agreement and releases in full, as well as the legal consequences of the Agreement and releases.

7.0 MODIFICATION

- 7.1 Any agreements, modifications, variations, or waivers to the terms of this Agreement must be made in a writing and signed by the Parties to be binding on the parties and are to be notified to each Party at their registered office within 7 days.

8.0 INTERPRETATION; SEVERABILITY; ENFORCEMENT

- 8.1 **Interpretation.** The headings within this Agreement are purely for convenience and are not to be used as an aid in interpretation.
- 8.2 **Severability.** Should any provision of this Agreement be declared or be determined to be illegal, invalid, void, or unenforceable under the laws of England and Wales, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal, invalid, void, or unenforceable part, term, or provision shall be deemed not to be a part of this Agreement, which shall continue in full force and effect.
- 8.3 **Enforcement.** Nothing in this Agreement shall be construed as, or constitute, a release of any Party's rights to enforce the terms of this Agreement.
- 8.4 The Parties acknowledge, agree and represent that they are of equal bargaining power.

9.0 **GOVERNING LAW AND JURISDICTION**

- 9.1 Governing Law.** This Agreement and all related documents including all exhibits attached hereto, and all matters arising out of or relating to this Agreement, whether sounding in contract, equity, tort, or statute or otherwise are governed by, and construed in accordance with the laws of England and Wales.
- 9.2 Jurisdiction.** Each Party irrevocably and unconditionally agrees that the courts of England and Wales have the sole and exclusive jurisdiction in respect of any dispute or issue in any way arising from or relating to the Agreement (including without prejudice to the generality of the foregoing and for the avoidance of doubt any issue or dispute as to the binding nature of the Agreement, the true construction of the Agreement, its terms and legal effect) and by this Agreement each Party hereby irrevocably and unconditionally submits to the sole and exclusive jurisdiction of the Courts of England and Wales

10.0 **RELIANCE ON OWN COUNSEL**

In entering into this Agreement, each Party acknowledges, represents and warrants that:

- 10.1** It has had the opportunity to seek and rely upon legal advice and that it has done so.
- 10.2** Other than as expressly set out in this Agreement, in entering into this Agreement, it has not relied on any oral or written representation, promise or agreement made by or with the other Party or any legal advisor, or other agent or representative of the other Party, including but not limited to any representation promise or agreement about the subject matter, basis, or effect of this Agreement.

11.0 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 11.1** The Parties do not intend that any term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the Parties.

12.0 **COUNTERPARTS AND COPIES**

- 12.1** This Agreement may be executed by the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures and signature pages sent by electronic mail shall be binding as though they are originals.

IN WITNESS THEREOF, and intending to be legally bound, each of the undersigned Parties hereto has caused this Agreement to be executed as of the date stated at the beginning of this Agreement.

Cape Intermediate Holdings Ltd

By: Ran Oren
Name: Ran Oren
Title: Director

Cape plc

By: John Walsh
Name: John Walsh
Title: Director

Mohed Altrad

By: Mohed Altrad
Name: Mohed Altrad
Title: _____

Altrad Investment Authority S.A.S.

By: Jan Vanderstraeten
Name: Jan Vanderstraeten representing Jagico BV
Title: CEO

Altrad Services Ltd. f/k/a Cape Industrial Services Ltd.

By: John Walsh
Name: John Walsh
Title: Director

Altrad UK Ltd.

By: John Walsh
Name: John walsh
Title: Director

Cape Holdco Ltd.

By: John Walsh
Name: John walsh
Title: Director

Cape Industrial Services Group Ltd.

By: John Walsh
Name: John walsh
Title: Director

Cape UK Holdings Newco Ltd.

By: John Walsh
Name: John walsh
Title: Director

Sparrows Offshore, LLC,

By: Adam Wood
Name: Adam wood
Title: Director

Hawk Bidco US, Inc.

By: Adam Wood
Name: Adam wood
Title: Director

Arranco US, LLC

By: Adam Wood
Name: Adam Wood
Title: Director

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

JOHN A. TIBBS and MARGARET B. TIBBS,

Plaintiffs,

C/A No. 2023-CP-40-01759

v.

In Re:

3M COMPANY *et al.*,

Asbestos Personal Injury Litigation
Coordinated Docket

Defendants.

**REPORT OF THE RECEIVER
RELATING TO THE FACTUAL
PREDICATE UNDERLYING THE CAPE
APPOINTMENT ORDER**

CAPE PLC, individually and as successor in
interest to CAPE ASBESTOS COMPANY
LIMITED, by and through its duly appointed
Receiver Peter D. Protopapas,

Third-Party Plaintiff,

v.

ANGLO AMERICAN PLC, individually and as
successor in interest to ANGLO AMERICAN
CORPORATION OF SOUTH AFRICA LTD., *et*
al.,

Third-Party Defendants.

Peter D. Protopapas, as Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd. ("Cape")), submits this Report on the Cape receivership. This Report addresses issues raised in a recent Order of the Supreme Court of South Carolina relating to the appointment

and powers of a receiver, and specifically the factual predicate for the appointment of a receiver in this matter.¹

The Supreme Court directed this Court to (1) “[e]nsure the receiver has been authorized to conduct its work by an order filed in the specific case as to which the work is to take place,” and (2) “[e]nsure that such an order is based on findings of fact sufficient under *Welch* to justify the order, and that the receiver's scope of authority is limited as set forth in *Welch*.”² In *Welch v. Advance Auto Parts, Inc.*, the Supreme Court addressed (1) the propriety of appointing a pre-judgment receiver over non-defunct companies under S.C. Code § 15-65-10(5); (2) the required factual basis for such an appointment order in those circumstances; and (3) limitations on the scope of the receiver's authority in such a situation based on the specific language in the appointment order at issue.³ The June 26 Order also directed this Court to provide a status report relating to the propriety of the appointment order in this receivership.⁴ As explained below, the appointment order in the Cape receivership aligns fully with the requirements of *Welch*.

A. *Welch* and its support for appointing a receiver over Cape

1. *Welch* upholds the appointment of this Court’s pre-judgment appointment of a Receiver over Atlas Turner’s insurance assets.

Welch involved the appointment of a receiver pre-judgment to marshal insurance assets of Atlas Turner, Inc. ("Atlas Turner"), a non-defunct, foreign corporation.⁵ Atlas Turner sold asbestos

¹ *Tibbs v 3M Company*, et al. Nos. 2024-001423, 2024-001499, 2024-00916, 2024-002114, 2024-002116, 2024-002117 and 2025-000052 (S.C. Order dated June 26, 2025) (hereinafter “June 26 Order”).

² *Id.*

³ No. 2023-001096, 2025 WL 1450573, at *9-12 (S.C. May 21, 2025)

⁴ See generally June 26 Order.

⁵ Before proceeding further, an important difference between the Atlas Turner receiver order, and the order here, warrants highlighting. The Atlas Turner appointment order was confined to appointing a Receiver to marshal Atlas Turner’s insurance assets, and the *Welch* opinion recognized that limitation on the Atlas receiver’s powers to marshal such assets. See Order on Plaintiffs’ Motion to Appoint A Receiver, *Welch v. 3M Co.*, No. 2022-CP-40-03834 at 6 (S.C. Ct.

containing spray and pipe insulation to a Greenville, South Carolina installer of asbestos insulation and to a North Carolina "wholesaler installer" that supplied South Carolina companies with these products.⁶ The *Welch* plaintiff was allegedly exposed to these types of Atlas Turner products at a facility in South Carolina and died from mesothelioma caused by his asbestos exposure.⁷

First, in *Welch*, the Supreme Court rejected Atlas Turner's claim that South Carolina had no jurisdiction over it because, as Atlas argued, Atlas never registered to do business in South Carolina, never had offices, employees, or agents in the state, and never had bank accounts or real property in the state.⁸ The Court determined that jurisdiction was proper because "[a]nyone entering and profiting from a business market in South Carolina that our laws and courts helped foster has fair warning that any wrongs he commits here will be subject to the remedies of those same courts."⁹ Based on Atlas' direct sales of its asbestos products to a South Carolina company,

Com. Pl. Jun. 21, 2023) (appointing the Receiver "with the power and authority [to] fully administer **all insurance assets** of Atlas Turner, Inc.," and specifying that the order "includes the right and obligation to **administer any insurance or indemnification assets of Atlas** as well as any claims related to the actions or failure to act of Atlas insurance carriers or other entities, including, but not limited to the officers, directors and/or shareholders of Atlas against which [] Atlas may have claims.") (emphasis added). The Cape receiver order includes no such limitation. *See* Order Appointing Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023) (appointing the Receiver "with the power and authority [to] fully administer **all assets of Cape**," and specifying that the order included, but was "**not limited to**" "the right and obligation to **administer any insurance assets of Cape** as well as any claims related to the actions or failure to act of Cape's insurance carriers.") (emphasis added) (hereinafter "Appointment Order (Cape)"). As addressed more fully below, this difference stems, in part, from the relative participation of these entities in U.S. asbestos litigation: because Atlas appeared in U.S. litigation, this Court found that it needed a receiver to determine the scope of insurance resources available to pay claims when Atlas was not forthcoming with such information. Cape, on the other hand, refused to participate whole cloth, which necessitated a broader appointment in light of facts known from the motion to appoint a receiver as to Cape's decades-old scheme of liability avoidance.

⁶ *Welch*, 2025 WL 1450573, at *6.

⁷ *Id.* at *1-2.

⁸ *Id.* at *3.

⁹ *Id.* at *6.

and also to a North Carolina company for use in South Carolina, the Court rejected Atlas' jurisdictional objection.¹⁰

Second, as for the appointment of a pre-judgment receiver over a viable company under S.C. Code § 15-65-10(5), the Supreme Court said that this "extreme" remedy should be employed in the "rarest" of cases – namely, cases reflecting "moral fraud – a conscious intent to defeat, delay, or hinder" creditors.¹¹ The Court characterized this "moral fraud" requirement in varied but consistent language:

where a defendant's conduct demonstrates it is fraudulently concealing or disposing of assets that may be responsive to a later judgment;

where the plaintiff has made a prima facie showing that the defendant intends to fraudulently avoid or defeat [a plaintiff's recovery];

[where a] manufacturer . . . disposes of large resources . . . and leaves his debts unpaid, and sets creditors at arm's length by refusing to give any account of his property or to take any interest in the satisfaction of their claims, the court is warranted in drawing the inference that there has been a fraudulent disposition of the property.¹²

Each characterization suggests that the sort of "moral fraud" that can justify appointing a pre-judgment receiver under S.C. Code § 15-65-10(5) involves willful efforts to avoid being called to account for a "later judgment."¹³

The Supreme Court found that Atlas Turner's conduct satisfied the "moral fraud" standard because: (1) Atlas sought to evade its responsibilities as a civil litigant by disregarding the court's discovery orders and employed a "corporate policy" of minimal defense and then incurring default judgments, and (2) Atlas represented to the court that it had no insurance assets relevant to the

¹⁰ *Id.* at *6, *12.

¹¹ *See id.* at *7; *Virginia-Carolina Chem. Co. v. Hunter*, 66 S.E. 177, 179 (S.C. 1909).

¹² *Id.* at *7-8 (citation omitted).

¹³ *Id.* at *7.

Welch plaintiff, yet sought to compromise certain insurance assets by removing them from the plaintiff's reach.¹⁴ The Supreme Court declined to “upset the trial court's discretionary decision” in appointing a pre-judgment receiver given that Atlas Turner engaged in moral fraud against the trial court, the state of South Carolina, and the *Welch* plaintiff.¹⁵

2. ***Cape easily meets the “moral fraud” standard set in Welch – the facts demonstrate Cape’s conduct was far more damaging and more morally culpable than Atlas Turner.***

Cape mined and distributed the most dangerous forms of asbestos in a manner far outstripping the damage done by Atlas Turner. Asbestos is a mineral that is mined from the ground.¹⁶ There are three commercial types of asbestos: chrysotile, amosite and crocidolite.¹⁷ Amosite and crocidolite—which are by far the most harmful to humans—were mined by Cape in South Africa.¹⁸ Asbestos fiber is typically processed at the mines and then sold to manufacturers of asbestos-containing products, such as pipe insulation and brake linings.¹⁹

Cape had a near monopoly on the global supply of amosite and crocidolite.²⁰ There were fewer than five principal asbestos mining companies world-wide, such as Cape.²¹ Unlike the small group of miners, the defendant in *Welch*—Atlas Turner—was one product manufacturer of many hundreds.²² Most of the manufacturers of asbestos-containing thermal insulation products in the

¹⁴ *Id.* at *9-12.

¹⁵ *Id.* at *8.

¹⁶ Ex. 1, Robert L. Virta, *Asbestos: Geology, Mineralogy, Mining, and Uses*, U.S. Geological Survey Open-File Rep. 02-149, at 5 (2002).

¹⁷ *See Id.*

¹⁸ Ex. 2, Jock McCulloch, *Surviving Blue Asbestos: Mining and Occupational Disease in South Africa* 115 (2002).

¹⁹ Ex. 1 at 13.

²⁰ Ex. 2.1, Jock McCulloch, *Asbestos Blues: Labour, Capital, Physicians & the State in South Africa* 27 (James Currey 2002).

²¹ *Id.* at 30.

²² *See, e.g.*, Ex. 3, “Asbestos Manufacturers,” The Mesothelioma Center (Nov. 14, 2024), <https://www.asbestos.com/companies/>.

United States filed for bankruptcy, and more than 60 of these companies established trusts to compensate asbestos victims.²³

Two points underlying this brief history are important to understanding a critical factual difference between Cape and Atlas Turner as asbestos companies. **First**, certain asbestos mining companies, like Cape, were the source of all the amosite and crocidolite asbestos fibers used in South Carolina and the rest of the United States.²⁴ Cape was the spigot through which hundreds of thousands of tons of asbestos flowed from its mines to almost 40 states, over 500 individual customers such as Johns-Manville Corp. and Pittsburgh Corning, and to 750 manufacturing plants.²⁵ Cape sold asbestos direct to customers in South Carolina, as well.²⁶ Cape was aware that its asbestos could ultimately expose people in any of the 50 states, regardless of where the products were manufactured.²⁷ Cape is therefore fundamentally different from Atlas Turner, which manufactured a product, spray limpet insulation, from the asbestos fiber it mined and sold that product to customers in the United States, including in South Carolina. **Second**, the conduct of Atlas Turner touched people who used or worked around its products. Cape is different—its

²³ Ex. 4, U.S. Gov’t Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts Highlights* (2011) (report noting that “about 100 companies have declared bankruptcy at least partially due to asbestos-related liability” and that “since 1988, 60 trusts have been established to pay claims”).

²⁴ Ex. 5, J.S. Harington & N.D. McGlashan, *South African Asbestos: Production, Exports, and Destinations*, 1959–1993, 33 AM. J. INDUS. MED. 321, 323 (1998) (reporting that in the early-1960s North America was a major recipient of South-African amosite and crocidolite exports); Ex. 6, Karen Selby, *Mesothelioma in South Africa*, ASBESTOS.COM (April 17, 2025), <https://www.asbestos.com/mesothelioma/south-africa/> (noting South Africa supplied 97 % of the world’s crocidolite and “practically all” amosite and that the mines were owned by companies including Cape Asbestos); *See also*, e.g., Ex. 7, North American Asbestos Corporation, *States Where Suits Have Been Filed and States We Shipped Asbestos To*; Ex. 8, North Am. Asbestos Corp., Customer List (Oct. 6, 1976).

²⁵ *See supra* note 24.

²⁶ Ex. 7; Ex. 8, NAAC Customer Lists; Ex. 9, NAAC Sales List.

²⁷ Ex. 10, Deposition of Richard Gaze at 26, *Yandle v. PPG Indus., Inc.*, No. TY-74-3-CA (E.D. Tex. June 4–5, 1975).

conduct touched every person who used or worked around *any asbestos-containing product* made by a multitude of manufacturers containing Cape asbestos—the evidence in this case will be that there are thousands of job sites in South Carolina where Cape asbestos was used in all manner of products made by scores of companies.²⁸

The scale of Cape's asbestos fiber sales into the U.S. market, its indifference to the harm these sales would cause in light of the scope of its unique, early knowledge of the health hazards of asbestos, and the ruthlessness of its campaign to avoid U.S. liability from the raw asbestos fibers it sold to be used in every state in this country—a campaign that continues to this day—provides the foundation for Cape's unparalleled moral fraud.

Specifically, Cape's moral fraud was the product of company policy—as was the case with Atlas Turner—but far more ruthless and deliberate in terms of concealing assets that could be answerable to asbestos claimants to whom Cape deemed it has no "moral responsibility," and more egregious than Atlas Turner's conduct in terms of its current and past disrespect for the South Carolina judicial system.²⁹ In short, Cape's conduct disrespecting the South Carolina judicial system exceeds that of Atlas Turner's.

- a. *Both Cape and Atlas Turner continued to sell asbestos products after they were aware of the health hazards of asbestos, but Cape knew more, and Cape went to greater lengths to hide its further sales.*

The *Welch* decision recognized that Atlas Turner continued to sell "pernicious products . . . for profit even after the lethal risk these products posed was known," and that when it was later sued by American workers, Atlas Turner claimed it would offend "traditional notions of fair play"

²⁸ Receiver for Cape PLC's Proposed Amended Third-Party Complaint, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. June 20, 2025).

²⁹ Ex. 11, Telex from A. Penna to S. Milwild (July 4, 1977).

and due process guarantees if the court were to exercise jurisdiction over the company.³⁰ Atlas Turner's knowledge of the dangers of asbestos exposure illuminated the scope of Atlas Turner's moral fraud, and is directly applicable to Cape, as well.³¹

Here, the evidence shows that Cape (1) knew very early that even small doses of asbestos could cause mesothelioma, and covered up that knowledge for decades; (2) affirmatively lied about the amosite's propensity to cause mesothelioma (it knew that it did, but said publicly and to its customers it did not); (3) threatened to economically ruin a South African village doctor who was caring for ten mesothelioma patients who worked at Cape asbestos mines if he did not remain quiet about the dangers of asbestos exposure, and (4) when faced with liability for flooding the market with its asbestos, closed its U.S. subsidiary and absconded back to England.³² And then, in a truly remarkable act of defiance and fraud on U.S. workers and the U.S. judicial system itself, Cape—which supposedly exited the U.S. domestic market for asbestos when it closed its Chicago sales subsidiary—hatched a scheme to continue to sell asbestos to customers in the United States through what it described as a camouflaged shell entity in Lichtenstein designed to disguise from "plaintiffs in future US asbestos litigation" (Cape's words) the fact that the company was still selling asbestos in this country.³³

³⁰ *Welch*, 2025 WL 1450573, at *8.

³¹ *Id.*

³² *See, e.g.*, Ex. 12, Memo from Gaze to Mendelle (July 24, 1964) (warning Cape personnel about asbestos hazards); Ex. 13, Letter from R. Cryor to R. Gaze (Nov. 20, 1969) (Cape controlling NAAC's customer relationships—showing Cape's domination of NAAC); Ex. 14, Memo to NAAC File re Liquidation of NAAC (April 7, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC).

³³ *See, e.g.*, Ex. 15, Memo from A. Sarabia to Meyer (Jan. 23, 1978) (detailing Cape's liability-avoidance scheme post-dissolution of NAAC); Ex. 14.

Plaintiffs' counsel described Cape's moral fraud in the *Park* case in its Motion to Appoint a Receiver citing publicly available documents from litigation against Cape in the 1970s and other Cape-associated entities.³⁴ These documents outline the moral fraud allegations against Cape:

1. Cape established in 1953 a "one-man" subsidiary in the United States—North American Asbestos Corporation ("NAAC")—to coordinate deliveries of Cape asbestos to US purchasers.
2. Cape dominated NAAC's decision making in all respects such that NAAC had no independent personality and was a mere division of Cape.
3. NAAC and Cape coordinated efforts to rebut publicly emerging information about the health dangers of asbestos exposure.
4. Cape, and later NAAC, refused to participate in litigation involving US asbestos plaintiffs because, according to Cape executives, Cape had no "moral responsibility" to US workers.
5. Cape's litigation avoidance strategy was based in part on legal advice from UK counsel and US counsel (Lord Bissell and Brooke, a Chicago firm, now Trout Pepperman Locke).
6. Cape's strategy was to sell asbestos to U.S. customers, despite its private knowledge of the dangers of asbestos exposure and then retreat to England where U.S. default judgments would not be enforced.
7. Cape set up a phantom company in Liechtenstein designed to camouflage its connection to Cape, but was in fact Cape, to continue to sell asbestos in the US after Cape closed NAAC and retreated to England.³⁵

³⁴ See generally Motion to Appoint Receiver, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 6, 2023).

³⁵ See generally *id.*

- b. *Atlas Turner refused to meaningfully respond to U.S. litigation, but Cape fully walked away from the United States – a moral fraud it continues to carry on in obstructing the Receiver in this case.*

Cape and Atlas Turner followed the same playbook.³⁶ **First, Atlas Turner:** As the court explained in *Welch*, Atlas Turner participated in U.S. litigation, but only to a degree.³⁷ Atlas had "long experience" as a defendant in asbestos litigation in the United States—and indeed, is still "participating" in cases such as *Welch*.³⁸ As further outlined in *Welch*, Atlas Turner first asserted that it was not subject to jurisdiction in U.S. courts.³⁹ When that strategy failed, Atlas objected to producing documents based on a Quebec "blocking statute" even after U.S. courts—including the United States Supreme Court—had uniformly ruled that the blocking statute lacked effect.⁴⁰ Then—still under the guise of “participating” in the *Welch* case—Atlas refused to produce a corporate witness because, it claimed, there was no such witness available.⁴¹ This Court and South Carolina Supreme Court rejected that strategy, too.⁴² Finally, when "that ploy fail[ed]," as the *Welch* court noted, Atlas Turner simply refused to abide by lawful court orders.⁴³ Atlas had other options, as the Supreme Court noted—it could have complied with the court's orders and raised disputed issues again at trial but it instead “acted as if a ruling against them granted it license to ignore its responsibilities. Such conduct has its consequences.”⁴⁴

After Cape settled an early Texas asbestos products liability case in 1977, Cape decided to refuse to participate *at all* in cases filed by U.S. plaintiffs and instead took default judgments based

³⁶ See *Welch*, 2025 WL 1450573, at *8.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at *3-9.

⁴⁰ *Id.* at *3-4.

⁴¹ *Id.* at *4, *8.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Welch*, 2025 WL 1450573, at *12.

on its bet that U.K. courts were unlikely to enforce an American default judgment.⁴⁵ While Atlas Turner went through the motions to suggest that it was participating in cases filed by U.S. plaintiffs, Cape walked off the litigation playing field altogether.⁴⁶ Cape first removed itself from U.S. litigation, and then soon after ordered the dissolution of its U.S. agent NAAC, thus removing NAAC from litigation, as well.⁴⁷

Importantly, Cape did *not* stop selling asbestos in the United States. Instead, it concocted a scheme to conceal its identity to U.S. litigants and continued selling the same South African asbestos fibers with the use of a Lichtenstein pass-through entity, Associated Minerals Corporation (“AMC”), to the same list of customers in the U.S. market. Anthony Penna, in-house counsel for Cape, referred to this scheme, which also included re-branding the entire NAAC operation as an independent entity under a new name, Continental Products Company (“CPC”), as only “a difference in form.”⁴⁸

⁴⁵ See, e.g., Ex. 15.1, Letter from A. Penna to M. Meyer (July 10, 1978) (detailing Cape’s default strategy).

⁴⁶ See *id.*

⁴⁷ The decision to liquidate NAAC occurred notwithstanding consistent years of record profits from Cape’s sale of asbestos fiber in the United States. See, e.g. Ex. 16, Charter, Annual Report (1976), at Cape_Receiver_00075720, Cape_Receiver_00075751-52 (reporting £10.2 million of operating profit “in spite of difficult trading conditions, with the “greatest increase” in improved profit “arising in the mining division, which raised total tonnage both mined and sold,” even despite “substantial price increases”); Ex. 17, Charter, Annual Report (1977), at Cape_Receiver_00075769,-75773 (reporting another “record year” from Cape with pre-tax profit of £14.2 million, with the “mining division again perform[ing] exceptionally well”).

⁴⁸ Ex. 18, Testimony of A. Penna, Mar. 14, 1988, at Cape_Receiver_00132247 (“It was a difference in form; and, as I have said, the Morgan company, new company, CPC, did carry on very much the same role that NAAC had carried on in trading terms.”); *id.* at Cape_Receiver_00132236 (“Our mining companies wished to continue selling asbestos in the United States, yes. . . . There needed to be an organization which could liaise with the customers.”), *id.* at Cape_Receiver_00132247 (“Certainly, Howard Tanner, the Sales Director of the South African mining companies was extremely keen to ensure that sales to America, that is there could be some continuation of sales to American customers.”).

Cape disguised this scheme even from NAAC's then-president, Charles Morgan, when Penna asked Morgan to consider opening CPC. While Cape averred that Morgan was well aware of the connection to Cape,⁴⁹ in reality, the true scheme was on a need-to-know basis, and Morgan did not need to know anything. He was simply Cape's U.S. puppet. Morgan testified that Penna "said he was the attorney representing Associated Minerals Corporation."⁵⁰ Morgan testified that he did not know that Penna was contacting him on behalf of Cape.⁵¹ He did not know who owned AMC, and no one had suggested to him that there was a relationship between Cape and it.⁵²

Once Morgan agreed to establish CPC, Cape's lawyers at the Lord Bissell firm in Chicago drew up the incorporation documents.⁵³ Rather than establishing a direct connection between the newly formed CPC and a Cape-named company, Penna spearheaded the creation of a Liechtenstein company, AMC, a seemingly unrelated entity, which was in truth an Oppenheimer subsidiary. As Penna described, "everyone was concerned whether they were mining companies or Cape Industries or any company that was a party to these sales should not by its actions put either the mining companies or Cape at risk."⁵⁴ "The Lichtenstein company was a separately

⁴⁹ *Id.* at Cape_Receiver_00132215 ("Q. And also the reason why you did not wish the new arrangements [related to Cape's involvement in setting up CPC] to become publicly known? A. Yes, I did. I think that it probably omitted one additional reason – that certainly Mr. Morgan in his new entity would not have wanted it to be disclosed that he was dealing with a company that was still related to Cape.").

⁵⁰ Ex. 19, Deposition of C. Morgan, Feb. 20, 1981, at Cape_Receiver_00096003.

⁵¹ *Id.* at Cape_Receiver_00096063-4 ("Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.").

⁵² *Id.* at Cape_Receiver_00096064 ("Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. Has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.").

⁵³ *Id.* Cape_Receiver_00095988 ("Q. Who drew the Articles of Incorporation? A. Mr. Max Meyer. At least I asked him to do this work for me. Who actually did the work I couldn't say.").

⁵⁴ Ex. 18 at Cape_Receiver_00132246.

constituted company but it certainly had no direct employees of its own. . . . It was primarily an invoicing company.”⁵⁵ Cape’s fingerprints were all over the deal. Confronted with evidence, Penna was forced to admit, “Yes, it seems to be contemplated that Cape Asbestos Fibres would subscribe the initial capital.”⁵⁶

Even before NAAC closed, Morgan reached out to customers to let them know of the formation of CPC, thereby ensuring a seamless sales transition between the companies.⁵⁷ To ensure the success of the new venture, Morgan testified that CPC received a \$12,000 check “[c]are from North American Asbestos” to start the company.⁵⁸

CPC’s offices were in the same building as NAAC had previously had its offices: “North American Asbestos was on the 29th floor and Continental Products Corporation took a lease on the 12th floor.”⁵⁹ All of the NAAC filing cabinets that had been on the 29th floor were moved to the 12th floor, and all of the NAAC employees—Joan Holtze, Jean Canzoneri, and Sue Purrington—moved with Morgan to CPC.⁶⁰ CPC also took over the NAAC employees’ pension plan.⁶¹ Joan Holtze testified that she sat at the same physical desk at CPC as she had when she

⁵⁵ *Id.* at Cape_Receiver_00132239-40.

⁵⁶ *Id.*

⁵⁷ Ex. 19 at Cape_Receiver_00096022. (“I advised them that North American Asbestos was being liquidated, it was no longer to be in the position to supply them with fiber, I had made a connection where I thought I could supply them with fiber, I would like their consideration very much.”); *id.* at Cape_Receiver_00096003, Cape_Receiver_00096063-4 (“Q. When Tony Penna contacted you on behalf of the Lichtenstein corporation you knew, did you not, in fact he was actually contacting you on behalf of Cape Asbestos? A. No, Sir, I did not know that.”); *id.* at Cape_Receiver_00096064 (“Q. Do you know who owns the Lichtenstein corporation? A. No, Sir. Q. Has anyone ever suggested to you that Cape Asbestos has some ownership in the Lichtenstein corporation, Associated Minerals Corp.? A. Definitely not. Q. has anyone ever suggested to you that any of the principals of Cape Asbestos had some interest in that Liechtenstein corporation? A. No, Sir.”).

⁵⁸ *Id.* at Cape_Receiver_00096000.

⁵⁹ *Id.* at Cape_Receiver_00095991.

⁶⁰ *Id.* at Cape_Receiver_00095992-3.

⁶¹ *Id.* at Cape_Receiver_00096066.

worked for NAAC.⁶² In this way, Cape hoped to escape liability, but continued selling asbestos fibers to virtually the same contact list using a shell game and companies in Liechtenstein and South Africa to conceal any connection between it and the United States.

If Atlas Turner's conduct in refusing to “follow the rules like any other litigant” while acting as a litigant having actually appeared in a South Carolina court was sufficiently offensive to the South Carolina Supreme Court to satisfy the “moral fraud” requirement to appoint a prejudgment receiver, then certainly Cape's conduct does as well. Cape makes no pretense at following the rules—it refuses to show up—to defend its scheme of selling asbestos fiber into South Carolina and other states through a shell offshore company.⁶³

Cape's plan has worked to date. U.S. plaintiffs pursued their default judgments in England and were rebuffed. The English court concluded, based on English law, that Cape had no “presence” in the United States, and therefore the defaults were not enforceable in England.⁶⁴

Cape's defiance of South Carolina courts continues to this day. The successor corporation to Cape is a third-party defendant in the above-captioned matter—Altrad Investment Authority S.A.S (“Altrad”), which purchased Cape in 2017—and Altrad has, as this court knows, absolutely refused to participate in discovery in this case.⁶⁵ Altrad has not produced a single document to the Receiver, and as a result, this court entered an order against Altrad for sanctions and other relief on May 23, 2024.⁶⁶ On November 22, 2024, Altrad subsidiaries Cape plc and Cape Intermediate Holdings Limited obtained an injunction against this Receiver individually and

⁶² Ex. 20, Deposition of J. Holtze, Apr. 12, 1979, at Cape_Receiver_00097838-9.

⁶³ See *supra* notes 47-57.

⁶⁴ See *generally Adams v Cape Industries plc*, (1990) 1 Ch 433 (CA).

⁶⁵ See Order Granting the Receiver for Cape PLC's Motion for Sanctions and Motion for Adverse Inference as to the Altrad and Charter Third-Party Defendants, *Tibbs v. 3M Co.*, No. 2023-CP-40-01759 (S.C. Ct. Com. Pl. May 23, 2024).

⁶⁶ See *generally id.*

in his personal capacity in the High Court of England and Wales.⁶⁷ The order purportedly enjoined the receiver from acting as receiver for Cape worldwide, including before this court.⁶⁸ This was done in direct violation of the *Barton* Doctrine and the explicit language in the receivership order that the receiver “may not be sued outside this court without obtaining the receiver's consent or an order of this court prior to doing so.”⁶⁹

The South Carolina Supreme Court characterized the U.K. Order as "shocking and indefensible.”⁷⁰ Altrad has repeatedly threatened the Receiver with personal financial penalties and criminal sanctions with one objective in mind—to stymie the judicial process *here in South Carolina* that exists to serve South Carolina claimants. Altrad's conduct is merely a continuation of Cape's refusing to participate in U.S. litigation despite knowing that is in fact subject to U.S. law. Altrad's conduct goes far beyond not participating in U.S. litigation to include leveling threats against the Receiver and anyone else who furthers the work of the receivership – including South Carolina courts – for fulfilling his court-appointed obligations.⁷¹

⁶⁷ See *Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

⁶⁸ See *id.*

⁶⁹ Order Appointing Receiver at 3, *Park v. Armstrong Int'l, Inc.*, No. 2021-CP-40-02727 (S.C. Ct. Com. Pl. Mar. 17, 2023).

⁷⁰ *Welch*, 2025 WL 1450573, at *10-12.

⁷¹ Altrad, through Cape Intermediate Holdings Limited, obtained an injunction against the Receiver in the High Court of England and Wales on November 22, 2024. The order includes a Penal Notice threatening criminal prosecution and imprisonment for anyone who knows of the order and fails to comply with it. See Penal Notice & Sealed Order (Nov. 22, 2024) (“IF YOU THE DEFENDANT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE YOUR ASSETS SEIZED. ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY ALSO BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.”) (all capitals in original) .

Having benefitted from a decades-long litigation avoidance scheme, Altrad's aggressive conduct to avoid potential U.S. liability in this case is no surprise. Altrad most recently demonstrated its zealous commitment to litigation avoidance above all else when its lawyers wrote to the Receiver threatening him against "taking any steps in respect of" a lawsuit that the Pittsburgh Corning Bankruptcy Trust filed against Cape in this Court, and alluding to potential criminal and monetary judgments against the receiver personally.⁷² Altrad's ability to continue to profit off of Cape's 1978 decision to leave the United States hangs in the balance in this litigation.

Further, Ran Oren, the sole director of Cape Intermediate Holdings Limited and the CEO of defendant Altrad Investment Authority S.A.S., threatened at least four insurance companies on Altrad letterhead against responding to a subpoena for insurance information issued *from this court and in these proceedings*.⁷³ Mr. Oren is even today participating directly in what the court in *Welch* characterized as a "conscious intent to defeat, delay, or hinder" creditors of Cape, albeit by threats and intimidation against both the receiver and other U.S. entities to whom discovery requests have been served as a routine practice of the South Carolina judicial process.⁷⁴

3. ***Welch* did not limit the ability of a court to appoint a receiver over a non-defunct entity in danger of insolvency under S.C. Code § 15-65-10(4)**

⁷² See Ex. 21, Letter from Signature Litigation to P. Protopapas (May 19, 2025).

⁷³ See, e.g., Ex. 22, Letter from R. Oren to Lloyd's (May 7, 2025).

⁷⁴ See *id.*; see also *Welch*, 2025 WL 1450573, at *7. Altrad does not limit its use of threats and intimidation to U.S. parties. Just a week ago, a report was issued by the U.K. All-Party Parliamentary Group (APPG) on Occupational Safety and Health relating to a request by an asbestos victims' support group for mesothelioma research funding by Altrad. The APPG was composed of Peers and Members of Parliament. The report notes that "Altrad is the ultimate parent company of Cape. It purchased Cape in 2017 and has benefitted substantially from the transaction." Ex. 23, APPG Report (2025) at 7. The report noted that, on numerous occasions, Altrad lawyers (representing the parent in claims against Cape) "threatened to report" claimants' attorneys to the Solicitors Regulations Authority for requesting or disclosing certain documents relating to Cape. See generally *id.* Mr. Oren's unfavorable conduct in dealing with the victims' support group features prominently in the APPG Report. See *id.* at 10.

This Court appointed the Receiver over Cape under both S.C. Code § 15-65-10(4) and (5). Section (4) provides in relevant part that a receiver may be appointed when a corporation is “in imminent danger of insolvency.” The publicly available information regarding Cape suggests that Cape Intermediate Holdings Limited (“CIHL”) – the historical entity that mined raw asbestos fibers in South Africa and sold those fibers directly to U.S. customers and through their U.S. company, NAAC – is in danger of insolvency for two reasons.

First, CIHL is in imminent danger of insolvency because it is a non-operating shell company in a corporate structure subject to the full control of an ultimate parent – Altrad Investment Authority S.A.S. – that could eliminate, shift, or move the company at any time. This means that even though CIHL appears to declare an annual dividend each year, those are the profits of another company that are being funneled up the corporate chain to Altrad, and those profits easily could be shielded from plaintiffs. This is how the system was designed.

CIHL is a UK-registered holding company with no employees, physical assets, customer contracts, or operational footprint.⁷⁵ It exists solely as a corporate shell.⁷⁶ Ran Oren, Altrad Investment Authority S.A.S.’s CEO, is the sole officer and director of CIHL.⁷⁷ CIHL acts as a pass-through entity for profits of four entities it wholly owns: Cape Insulation Ltd., Cape Industries Ltd., Cape Building Products Ltd., and Altrad Services Ltd.⁷⁸ Importantly, though, the three Cape

⁷⁵ Ex. 24, CIHL Annual Report 3, 12, 14 (2025) (“Cape Intermediate Holdings had no employees in the current or prior year.”); *id.* at 3 (“The Company is a non-trading holding company”).

⁷⁶ *See id.* at 13 (“the director was not remunerated for his services to the Company during the year. No director accrued retirement benefits . . . during the current or previous year. [CIHL] had no employees during the current or prior year.”).

⁷⁷ *Id.* at 8.

⁷⁸ *See id.* at 13; Ex. 25, Altrad Services Ltd. Annual Report 33 (2025); Ex. 26, Cape Insulation Ltd. Annual Report 9 (2025); Ex. 27, Cape Industries Ltd. Annual Report 9 (2025); Ex. 28, Cape Building Products Ltd. Annual Report 9 (2025).

entities – Cape Insulation Ltd., Cape Industries Ltd., and Cape Building Products Ltd. – are legacy Cape companies that generate no revenue.⁷⁹

Altrad Services Ltd., which became a CIHL subsidiary *after* Altrad purchased Cape in 2017, is the only operational entity in the CIHL structure. In 2024, for example, Altrad Services Ltd. declared a £ 24,769,000 dividend based on its operating profits for that year.⁸⁰ Because CIHL wholly owns Altrad Services Ltd., that full dividend went to CIHL. CIHL, in turn, did not hold any portion of the dividend itself, but instead declared the full £ 24,769,000 as a dividend to its shareholder.⁸¹ Because of this, it is unclear whether CIHL holds any funds at all at any given moment – let alone sufficient funds to pay a judgment in the *Park* claim.

This is further supported by the Altrad Group financial statements, which establish that CIHL has no money to pay asbestos claims other than a limited claim fund for asbestos claims of certain former Cape U.K. employees – funds that are untouchable for U.S. plaintiffs who sue CIHL for their asbestos-related diseases.

As previously mentioned, Altrad purchased Cape in 2017. Altrad publishes financial results are part of a “Group” filing of all entities related to Altrad. According to Altrad’s Interim Consolidated Financial Statements dated February 28, 2025, CIHL does not appear to maintain funds to pay any asbestos claims. Instead, Altrad reports only that “Management believes that, assuming no significant deterioration in business performance and no material change in legal precedence or judgments, the Group will be able to fund its subsidiary Cape Claims Services Limited to meet all claims to be settled under the Scheme of Arrangement settlement plan and the

⁷⁹ Ex. 26 at 3; Ex. 27 at 3; Ex. 28 at 3.

⁸⁰ See Ex. 25 at 9.

⁸¹ See Ex. 24 at 7 (declaring 24,769,000 as dividends received for 2024).

Group has sufficient funds to satisfy all other *UK claims* settled outside the Scheme of Arrangement.”⁸²

The Scheme of Arrangement to which Altrad refers is a 2006 court-ordered scheme for the payment of asbestos disease claims from former UK employees of certain Cape subsidiaries.⁸³ According to a 2022 annual report, Altrad Group had set aside £118 million to address certain *non-U.S.* historical claims relating to asbestos exposure, but also disclosed AIA’s letter of support of it as a going concern.⁸⁴ However, according to an April 2025 news article, “Altrad’s spokesperson told *The Times* it had never manufactured or sold asbestos but continues to support Cape’s compensation scheme, which has paid over £60m to former employees who developed cancer following asbestos exposure, with a further £70m set aside.”⁸⁵ This would mean Altrad only has £70m left to pay asbestos claims under the Scheme of Arrangement, and again, that is a restricted fund designed to pay certain UK claimants. A complete lack of clarity exists as to the actual amount of funds available to pay Cape claims as well as whether CIHL actually can access those funds. What is clear, though, is *none* of those funds are intended for U.S. plaintiffs.

CIHL is only funded for a limited period each year – theoretically the time between when Altrad Services pays its dividend and CIHL declares that money fully as a dividend to its parent - and even that structure is subject to change by Altrad at any time. Further, any funds earmarked

⁸² Ex. 29, Altrad Grp., Interim Consolidated Financial Statements at 32 (Feb. 28, 2025) (emphasis added).

⁸³ *See id.*

⁸⁴ Ex. 30, Altrad Services Limited Annual Report (2022), at Cape_Receiver_00248438 (“The Group continues to receive claims, from both individuals and insurance companies, in connection with historical alleged exposure to asbestos. Where claims are determined to have merit, the costs are provided for and claims are settled in the ordinary course, otherwise claims are defended.”).

⁸⁵ Ex. 31, *Former asbestos firm offers victims 3 m under gag clause*, Health & Safety Int’l, <https://www.healthandsafetyinternational.com/article/1913269/former-asbestos-firm-offers-victims-3m-gag-clause>

for payment of asbestos claims by any Cape-related structure are not within CIHL and are limited to certain *non-U.S.* claimants. This narrow definition of future claims, combined with the fact that CIHL is a non-operational holding company, establishes the danger of imminent insolvency for CIHL.

Second, since 1978, Cape has avoided liability to U.S. litigants by refusing to appear in U.S. courts. As demonstrated above, Cape has gone to great lengths to protect itself against these liabilities, including creating a fake offshore company. Faced with the possibility that U.S. litigants may now be able to access funds to pay future claims, and given that Cape is not a stand-alone company, but instead is a holding company within a large corporate structure, one should expect that Altrad will do anything to avoid its historical liabilities, including rendering the company fully insolvent. Indeed, Altrad already has informed the Receiver that it has entered into a “settlement agreement” with itself (between two Altrad entities) to release Mohed Altrad from any liabilities not only in *Park* and *Tibbs* but also in every other future U.S. personal injury action against any Cape entity.⁸⁶

4. ***The Cape receivership order is sufficiently narrow.***

The *Welch* case correctly notes that the Receivership order for the insurance assets of Atlas Turner “does not give the Receiver entry into the Atlas Turner boardroom or some vague right to ‘take over’ operation of the company.”⁸⁷ Nor does the receivership order in Cape.⁸⁸ The Receiver

⁸⁶ Ex. 32, Cape, Altrad, and Sparrows, Agreement for Full and Final Settlement and Release of Claims (2025).

⁸⁷ *Id.* at 12.

⁸⁸ *Id.*; see also Order Appointing Receiver, *Park v. Armstrong Int’l, Inc.*, No. 2021-CP-40-02727 at 1 (S.C. Ct. Com. Pl. Mar. 16, 2023).

has no such intention (as his course of conduct has reflected), nor is any boardroom “take over” necessary for the Receiver to fulfill his court-appointed obligations.⁸⁹

Cape Intermediate Holdings Ltd (“CIHL”) is the receivership entity.⁹⁰ CIHL is a U.K.-registered holding company with no employees, no physical assets, no customer contracts, and no operational footprint.⁹¹ Ran Oren is the sole officer and director of CIHL.⁹² The English High Court issued a worldwide injunction after Altrad's lawyers misled the court to believe that CIHL operates a live business in danger of being taken over by the receiver.⁹³ Any CIHL revenue-generating operations, staff, and contractual obligations reside in different concerns and, since the Receiver’s appointment have, and will continue to, function without disruption (or any action by the receiver affecting their operations).

Further, the Cape Appointment Order allows the Receiver only the powers to “fully administer all assets of Cape, accept service on behalf of Cape, engage counsel on behalf of Cape and take any and all steps necessary to protect the interests of Cape whatever they may be.”⁹⁴ The order included, but was not limited to “the right and obligation to administer any insurance assets of Cape as well as any claims related to the actions or failure to act of Cape’s insurance carriers.”⁹⁵

d. *The Cape receivership involves non-insurer entities as third-party defendants*

As this Court knows, the Receiver’s litigation in South Carolina ordinarily involves insurance companies, as the receiver is marshaling dormant insurance assets to respond to asbestos

⁸⁹ *See id.*

⁹⁰ *see generally* Appointment Order (Cape)

⁹¹ Ex. 24 at 3, 12, 14.

⁹² *Id.* at 8.

⁹³ *See generally Cape Intermediate Holdings Ltd. v. Protopapas*, [2024] EWHC 2999 (Ch) (Eng.).

⁹⁴ *See* Appointment Order (Cape).

⁹⁵ *Id.*

cases. Here, part of Cape's plan was to set up NAAC to be intentionally underinsured, as its insurance appears to have been exhausted about the time NAAC was dissolved in 1978.⁹⁶ Cape Asbestos—the entity that owned NAAC—did not provide for *any* insurance for claims by injured U.S. workers exposed to their asbestos, but it did purchase coverage for U.K. claimants exposed to its asbestos-containing products Cape sold in England.⁹⁷ Consistent with the appointment order,⁹⁸ the Receiver's litigation here does not involve insurance companies. Rather, the litigation involves other entities that hold the legacy liabilities for Cape, either companies that were directly involved in directing the sale of asbestos in the United States, or entities that are legal successors to those entities. If the successor entities ever participate in discovery, the Receiver anticipates exploring whether these companies may hold such insurance or other relevant assets to pay viable asbestos claims.

B. Summary of Key Evidence Supporting A Receiver over Cape.

The plaintiffs' motion to appoint a receiver included over 30 exhibits from Cape, NAAC, and their legal counsel, that address the factual allegations relating to Cape's premeditated liability avoidance scheme, including (1) its domination of the U.S. market for amosite, (2) its strategy to accept default judgments and then abscond to England, (3) its knowledge of, but rejection of, U.S. laws imposing liability for sale of defective products, and (4) its scheme to continue to profit from the U.S. market for asbestos via a puppet offshore entity in Lichtenstein. Since the appointment order in 2023, and despite many of the Cape-related entities' absolute refusal to participate in South

⁹⁶ See Ex. 33, Letter from Meyer to Gaze (June 29, 1977); *see also* Ex. 18.1, Opening Statement of North Am. Asbestos Corp., *Pacello v. Johns-Manville Sales Corp.*, No. 80-CV-0080-2 (Colo. Dist. Ct. Boulder Cnty. Nov. 24, 1982).

⁹⁷ Ex. 34, Deposition of Geoffrey Arthur Higham at 64-67, *Yandle v. PPG Indus., Inc.*, Nos. TY-74-3-CA & TY-74-13-CA (E.D. Tex. June 4, 1975).

⁹⁸ See, e.g., Appointment Order (Cape) at 1 (appointing the Receiver “with the power and authority [to] fully administer **all assets of Cape.**”) (emphasis added).

Carolina litigation proceedings, the Receiver has amassed a far broader collection of Cape documents from various sources here in the United States, and from England and Australia. The Receiver will now address, as succinctly as possible, the key evidence in the case based on the documents attached to the motion to appoint a receiver as well as certain additional materials collected later.

1. ***Cape obtains early knowledge of asbestos dangers from disease in its own manufacturing plants***

From the time that Cape started selling asbestos in the United States, it already had unique knowledge of the health hazards of asbestos as compared with any customer or consumer in the United States. Cape's own documents, combined with witness testimony, scientific data, and general historical knowledge, confirm this disturbing fact. Cape knew the asbestos it sold was dangerous while its customers usually did not.

In 1953, immediately before Cape opened its NAAC sales operation in Chicago,⁹⁹ Cape published an 85-page brochure describing the company's origin, organization and operations.¹⁰⁰ Cape diagrammed its operations in the brochure.¹⁰¹ Cape had four principal groups under its head London office: branch selling offices (NAAC joined this branch when Cape formed it later the same year), UK product manufacturing factories, miscellaneous "English subsidiary companies," and overseas subsidiary companies.¹⁰² Every one of these operations involved the exploitation of asbestos as a commercial raw material, from mining, to processing into finished products, to the

⁹⁹ Prior to 1953, Cape used an "agent" in New York City to assist in marketing to U.S. buyers. *See* Ex. 35, Letter from R. Dent to Lord Bissell (Sept. 18, 1953) ("We have recently discontinued our representation in America, which has hitherto been carried on in New York by Mr. A.W. Koehler, who runs a small selling agency, in which we were by far the largest of his principals.").

¹⁰⁰ Ex. 36, *Cape asbestos, the story of the Cape Asbestos Company Limited, 1893-1953*.

¹⁰¹ *Id.* at 50.

¹⁰² *See id.*

sale of the fiber overseas.¹⁰³ The "overseas" companies, according to the diagram, were the asbestos mining operations in South Africa.¹⁰⁴ Cape noted that it would dispatch executives from London to "control [] the whole of Cape's operations in that country," meaning, South Africa.¹⁰⁵

Cape Asbestos Company began advertising its asbestos for sale in the United States in 1920. It advertised mainly in *Asbestos Magazine*, which was a monthly trade journal published in Philadelphia, Pennsylvania, and circulated nationally from 1919 to 1983. Cape advertised in virtually every issue until 1978—almost 600 issues. At the same time Cape began selling asbestos to U.S. customers, it developed first-hand knowledge about the dangers of asbestos exposure. In the early 1900s, workers at its Barking Plant in London began developing asbestosis, a noncancerous but often fatal lung condition.¹⁰⁶

Among other products, Barking manufactured a pre-formed pipe and block insulation named "Caposite".¹⁰⁷ Anthony Mendelle (who was deposed in 1984) was the Plant Manager at Barking from 1960 to 1968, following his work as the Production Manager at the same plant from 1956 to 1960.¹⁰⁸ Mendelle saw first-hand the effects of asbestos exposure on plant workers—the plant had a "running total" of about 60 asbestosis cases a year, and more ominously, workers were also contracting mesothelioma, an incurable cancer of the lining of the lung that is usually fatal within a year of diagnosis.¹⁰⁹ Mendelle was instrumental in the closure of the Barking Plant

¹⁰³ *See generally id.*

¹⁰⁴ *See generally id.*

¹⁰⁵ *Id.* at 56.

¹⁰⁶ *Id.* at 50, 62; Ex. 37.1, Cape Inquests (1929-1938) (summaries of coroner inquests revealing early recognition of asbestos-related worker deaths at Cape's U.K. facilities.).

¹⁰⁷ Ex. 36 at 62.

¹⁰⁸ Ex. 37, Deposition of Anthony Mendelle at 3, *Smith v. Pittsburgh Corning Corp.*, Nos. GD81-20383 & GD81-20381 (Pa. Ct. Com. Pl. Allegheny Cnty. Nov. 13, 1984).

¹⁰⁹ *Id.* at 11.

because of the number of workers dying from exposures at the Plant.¹¹⁰ Mendelle testified that Caposite was a "major department" at Barking.¹¹¹ Caposite was made with 100% amosite asbestos.¹¹² Other operations used the two other types of asbestos, crocidolite and chrysotile.¹¹³

It is here that two principal antagonists enter the Cape story—Richard Gaze and Walter Smithers. Smithers was the Barking Plant doctor starting in 1956 and was still working for Cape as of 1984, when Mendelle was deposed.¹¹⁴ Richard Gaze worked at Barking from 1943 to 1963.¹¹⁵ Gaze rose to become the "Chief Scientist" at Cape and held senior management roles across the entire Cape asbestos operation.¹¹⁶ These included membership on the Board of Directors of numerous Cape asbestos subsidiaries.¹¹⁷ The minutes of a "special meeting of the board of directors of the North American Asbestos Corporation" held on April 7, 1970, note that "[t]he chairman reported that Dr. Richard Gaze of Cape Asbestos, Ltd will have direct responsibility on behalf of the parent company for the operations of North American Asbestos Corporation."¹¹⁸

Mendelle testified that Cape knew about asbestos and mesothelioma at Barking—because workers were dying of both asbestos-related diseases in the 1950s.¹¹⁹ Mendelle, Gaze and Smithers discussed mesothelioma and asbestosis at Barking, and that low exposures could cause mesothelioma.¹²⁰ Mendelle testified that "we knew there was an association" between amosite and

¹¹⁰ *Id.* at 48-49.

¹¹¹ *Id.* at 40.

¹¹² *Id.* at 37.

¹¹³ *Id.* at 41-42.

¹¹⁴ *Id.* at 5.

¹¹⁵ *Id.* at 7. The evidence in this case will place Gaze and Smithers squarely at the center of Cape's efforts to exploit asbestos for profit, to mislead others about the dangers of asbestos, and to hide what Cape actually knew about effects of asbestos exposure.

¹¹⁶ *Id.* at 6.

¹¹⁷ *Id.*

¹¹⁸ Ex. 38, NAAC Special Meeting Minutes (April 7, 1970).

¹¹⁹ Ex. 37 at 11-12.

¹²⁰ *Id.* at 11-12, 69.

mesothelioma well before a seminal article on asbestos disease was published in 1965 by Dr. Muriel Newhouse.¹²¹ Newhouse spent time at Barking, and much of her data for the article came from her time investigating disease at the plant.¹²² Mendelle said that he and Newhouse had numerous conversations about amosite as a cause of mesothelioma at Barking.¹²³ Mendelle was asked if workers in the Caposite operation—which used only amosite, as noted above—had developed mesothelioma, and he said “yes, many.”¹²⁴ Mendelle acknowledged that all three types of asbestos were used at Barking, and that the workers may have worked in departments other than the main Caposite operation.¹²⁵

Despite this knowledge, the evidence shows that Dr. Gaze repeatedly told Cape's customers that “it is a fact that not one authenticated case of mesothelioma has been associated with amosite anywhere in the world.”¹²⁶ This letter was passed on to the President of one of Cape's major amosite customers in the United States—Robert Buckley, of Pittsburgh Corning Corporation—and in his reply to Dr. Gaze, Mr. Buckley wrote: “. . . from your letter, I am assured that no customer's worker need be concerned about mesothelioma.”¹²⁷ In a memorandum to over twenty managers and sales personnel at Cape along with Dr. Gaze, the Cape Sales Director gave advice to the addressees of the memorandum “who are faced with questions on the possible dangers of to health involved in the use of asbestos based materials.”¹²⁸ The Sales Director mimicked exactly what Dr. Gaze wrote to Mr. Buckley at Pittsburgh Corning, noting first that Cape's Caposite line

¹²¹ *Id.* at 56-57; Ex. 39, Muriel L. Newhouse, *Asbestos in the Workplace and the Community*, 16 ANN. OCCUP. HYG. 97 (1973).

¹²² Ex. 37 at 58.

¹²³ *Id.* at 56-57.

¹²⁴ *Id.* at 66.

¹²⁵ *Id.* at 68.

¹²⁶ Ex. 40, Letter from Gaze to Cryor (March 22, 1966) (emphasis in original).

¹²⁷ Ex. 41, Letter from Buckley to Gaze (March 30, 1966).

¹²⁸ Ex. 42, Letter from Galloway (Aug 19, 1966).

of products made solely with amosite “are now our principal asbestos products,” the Sales Director then stated that “not one case of mesothelioma [has been] associated with amosite asbestos.”¹²⁹ Dr. Gaze later died from mesothelioma.

The Receiver will offer expert testimony on both Cape’s early knowledge and subsequent published scientific reports at the trial in the case. The totality of this evidence will demonstrate that Cape sat at the forefront of science when it came to the health hazards of asbestos, and not only chose to continue selling thousands of tons of raw asbestos fiber into the U.S. market, but also actively sought to obscure and delay the development of general medical and scientific knowledge in the name of profits. Cape knew of the health hazards of its product long before the medical and scientific community fully understood the risks, but Cape concealed this information.

2. ***Cape Suppressed a Report Involving its Mining Operations in South Africa that shows mesothelioma incidence from mining asbestos or living near asbestos mines.***

Cape had been mining asbestos in South Africa for over 50 years when it created NAAC. Scientists began seeing sporadic cases of the disease “mesothelioma” (also called “endothelioma” or “pleural sclerosis”) in the late 1940s and early 1950s. But it was a young pathologist from South Africa who first recognized the relationship between asbestos exposure and mesothelioma. Dr. Chris Wagner was appointed by the South African Government in 1954 as a research fellow to the Pneumoconiosis Research Unit (PRU) in Johannesburg. He took an interest in mesothelioma, visiting the Cape asbestos mines in South Africa, and then meeting with management officials at Cape and another asbestos mining company (Turner and Newell) in London where he was

¹²⁹ *Id.*

“assured . . . that I was following a line of research which seemed to them to be of little value, and that I would be advised to follow other lines of investigation.”¹³⁰

Dr. Wagner reported a series of 33 mesothelioma cases in South African mine workers, and in people living near the mines, at the 1959 Pneumoconiosis Conference in Johannesburg. The formal scientific paper was published in 1960.¹³¹ Wagner's investigation triggered the PRU to investigate mesothelioma at the South African asbestos mines.¹³² Cape and other mining companies partially financed the study, which meant the mining companies were copied on all reports and had input on designing study parameters.¹³³

The investigators saw troubling indications of disease soon after the study began.¹³⁴ An October 6, 1961 memorandum of the PRU noted that it discussed early results with the "asbestos industry"—Cape, and others—and that the results showed that the incidence of asbestosis amongst miners and the ordinary population was "alarmingly high," and further that the incidence of mesothelioma, “although perhaps not large in terms of actual numbers—is very high from an epidemiological point of view.”¹³⁵ On April 30, 1962, the PRU memorialized its findings, recording mesothelioma numbers that startled researchers: “[a]n alarmingly high number of cases with mesothelioma of the pleura has been discovered in people who live or have lived in the North Western Cape and that there is evidence to suggest that this condition is associated with an exposure to asbestos dust inhalation which again need not be industrial.”¹³⁶ In other words,

¹³⁰ Ex. 43, Letter from Christopher Wagner to Cape (November 30, 1994).

¹³¹ *Id.*; Ex. 44, Wagner, J.C., Sleggs, C.A., and Marchand, P, *Diffuse Pleural Mesothelioma and Asbestos Exposure in the North West Cape Province*, BR. J. IND. MED. 17:260-65 (1960).

¹³² Ex. 45, Memo from Gear re: Proposed Study of Mesothelioma in South Africa (Nov. 29, 1960).

¹³³ *Id.*

¹³⁴ Ex. 46, Letter from Naude to Diederichs (Oct. 6, 1961).

¹³⁵ *Id.*

¹³⁶ Ex. 47, PRU Preliminary Report (April 30, 1962).

mesothelioma occurred not only in miners, but also in the general population that lived near the asbestos mines.¹³⁷ The investigators revealed that they were aware of 90 cases of mesothelioma, but they theorized that more cases existed that the study failed to capture due to its methodology.¹³⁸

The preliminary results were equally alarming to Cape. Soon after Cape saw the October 1961 PRU results, it dispatched Dr. Smither to South Africa for an "investigation" even before the more detailed April 1962 report was circulated. The Receiver has located the 48-page report that Dr. Smither prepared for the company on his return from South Africa.¹³⁹ The report opens:

[a]s a result of a decision taken at a meeting between Dr. R Gaze, Dr. J McKeurtan and myself at Park Street, London, on 31st October 1961, I was sent by the company to South Africa. My terms of reference were to study all aspects of mesothelioma and asbestosis reported in South Africa on medical matters, and generally to learn as much as possible about conditions in the industry in that country.¹⁴⁰

The Smither report is notable for several conclusions, but a few stand out. Dr. Smither (a physician) recommended that, despite the "alarming" conclusions that the PRU researchers had come to:

[m]y recommendation would be that the company should not support any future wide ranging survey of the industry with a view to discovering either asbestosis or mesothelioma. The reason for this is that the company is well aware of the problem and has some idea of its extent.¹⁴¹

At that point, Cape's support for the PRU ended.¹⁴² Smither aligned with Dr. McKeurtan—the top executive over Cape's mining subsidiaries in South Africa—who was "vigorously attacking" the conclusions of the PRU researchers.¹⁴³

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Ex. 48, Smither, *Visit to South Africa* (August 1962).

¹⁴⁰ *Id.* at 2.

¹⁴¹ *Id.* at 34.

¹⁴² *See, e.g., id.*

¹⁴³ *Id.* at 35.

Another document the Receiver discovered shows the scope of Cape's assault on the PRU study. In a letter from L.G Walters, the Director of the PRU, to M. F. Baxter at the South Africa Council for Scientific and Industrial Research, Walters addresses a memorandum of the "asbestos producers committee."¹⁴⁴ Cape was a member of that committee.¹⁴⁵ Walters quotes from the "committee memorandum"¹⁴⁶ in which it critiques the PRU investigation: "The whole survey appears to have been undertaken with the underlying object of implicating crocidolite asbestos as being directly responsible for the comparatively rare tumor known as mesothelioma of the pleura."¹⁴⁷

Walters noted that Smither identified 10 additional cases of mesothelioma during his visit to the Cape Prieska mine during his visit.¹⁴⁸ Smither's 48-page report notes that a local doctor named "Van Rooyen" was caring for "10 cases among colored people of what he now calls the 'Prieska picture.'"¹⁴⁹ Smither advocated for removing the patients to Johannesburg for "investigation."¹⁵⁰ Dr. Smither's recommendation was not medical or altruistic. He wrote in his Report that:

the advantage from the standpoint of the company is that these cases will be treated as a group, will be removed from the area of the conflict, if one may call it that, and will be taken some hundreds of miles away.¹⁵¹

¹⁴⁴ Ex. 49, Letter from Walters to Baxter (July 19, 1962).

¹⁴⁵ *Id.* at 2 (the letter reveals Cape's membership by noting that the committee "recently brought their London Branch Medical Office (Dr. Smither) to this country to investigate the problem on their behalf.").

¹⁴⁶ The Receiver has been unable to locate this memorandum but hopes that it will become available if the third-party defendants comply with their discovery obligations at some point in the future.

¹⁴⁷ *Id.* at 2.

¹⁴⁸ *Id.*

¹⁴⁹ Ex. 48 at 11-12.

¹⁵⁰ *Id.*

¹⁵¹ *Id.* at 13.

Smither went on to note that this move would bring “less attention from the politicians.”¹⁵² Dr. Smither was covering up the health hazards of Cape’s asbestos by hiding Cape’s victims.

Dr. Matthys van Rooyen—the local Prieska doctor caring for 10 mesothelioma patients—was deposed in 1996.¹⁵³ He testified that Cape periodically dispatched “executives” and doctors (presumably, Smither) from London to visit asbestos mines in South Africa.¹⁵⁴ Dr. Van Rooyen testified that he tried to warn Cape about the dangers of asbestos exposure, but met a chilly response: “I experienced opposition[] . . . whenever we talked about asbestos as a danger, people saw us as dangers . . . we had a lot of opposition from these people. But very definitely, from the chief executives of Cape Blue Mines.”¹⁵⁵

Dr. Van Rooyen's interest in mesothelioma began in 1957 then he wrote an article discussing two mesothelioma cases for the *South African Medical Journal*, explicitly attributing them to Prieska’s blue-asbestos dust.¹⁵⁶ He then screened the community—miners and civilians alike—by taking thousands of chest X-rays and even persuaded the Pneumoconiosis Bureau to dispatch a mobile radiography unit to Cape’s Prieska mine.¹⁵⁷ Determined to force action, he armed South African parliamentary member A.H. Stander with data and a speech describing Cape’s mill as “spraying asbestos fiber” over the town, thus placing the issue before Parliament.¹⁵⁸ These uncompromising interventions—and the frank discussions he had with Cape managers—made him a “pest,” as Dr. Van Rooyen described the situation, in Cape’s eyes.¹⁵⁹

¹⁵² *Id.*

¹⁵³ Ex. 50, Deposition of Dr. Matthys van Rooyen, *In re Asbestos Personal Injury Cases, Arrington Lead*, No. 93-9-114 (Ms. Cir. Ct. Jones County, 1996).

¹⁵⁴ *Id.* at 135.

¹⁵⁵ *Id.* at 116.

¹⁵⁶ *Id.* at 24.

¹⁵⁷ *Id.* at 38, 63.

¹⁵⁸ *Id.* at 11-12, 30.

¹⁵⁹ *Id.* at 40, 57.

Cape retaliated against Dr. Van Rooyen. According to Van Rooyen's sworn deposition testimony, Cape threatened his livelihood:

Q: Was there any discussion about other doctors coming to Prieska?

A: That was one of the threats used very regularly. Now, why do I call it a threat? If you live in an area where you have a population of 16,000, there are two doctors there. They are still fit, and they can work hard. They do work. And if you take away a quarter or more of their practice by introducing a doctor or more in that area, you can definitely break them. And that is -- so that threat was used to me, personally, on more than one occasion. I don't accept it nicely, and I still don't.

Q: Did you have occasion to specifically have a conversation with one of the Cape executives regarding the effect of this discussion would have on the company?

A: Yes. . . . I remember distinctly that this was treated in a very superficial way. And the chap . . . he said that with our directors in London earning a million a year, do you think they would listen to you?¹⁶⁰

The final PRU report was published 1964 but it was not circulated outside of the PRU and the mining companies.¹⁶¹ For reasons unknown, but perhaps to protect powerful industrial mining and economic interests in South Africa, the final report also said little about mesothelioma. Whatever the reason for this extremely limited circulation, Cape had copies of the final report and the preliminary reports, but never mentioned them publicly, and certainly never breathed a word of it to its U.S. customers. In fact, Cape disseminated exactly the opposite story. While it is true that the PRU was aware of what the mesothelioma survey revealed, and did not publicize the results, the PRU also was not in the business of selling raw asbestos for profit around the world. Cape certainly was. The PRU report was not discovered for 20 years until an enterprising journalist researching the Cape story for a documentary located it in an archive in South Africa.

¹⁶⁰ *Id.* at 41.

¹⁶¹ Ex. 49.

Dr. Smither returned from South Africa on June 30, 1962.¹⁶² Less than two weeks later, on July 12, 1962, Drs. Smither and Gaze attended a meeting in London of the Asbestosis Research Council (ARC).¹⁶³ The ARC was an industry group founded by Cape and another mining and asbestos products company, Turner & Newell.¹⁶⁴ The ARC sponsored research into asbestos disease and had a hand in shaping final reports given its funding of the studies.¹⁶⁵ Scientists and physicians from Queen's College in Cambridge, Reading University, and Cambridge University, and some industry representatives attended the July 12 meeting.¹⁶⁶ The Receiver has located the 6-page detailed memorandum reporting the detailed minutes of the meeting.¹⁶⁷ As this group met to discuss asbestos disease, Dr. Smither and Dr. Gaze remained silent and reported nothing about the PRU study, nor even that Dr. Smither just returned from a three-week trip to South Africa to investigate mesothelioma in the mines.¹⁶⁸

3. ***Cape Orchestrates its exit plan from the U.S. Judicial System with the cooperation of Lord Bissell (now, Troutman Pepper Locke), a Chicago-based Law firm***¹⁶⁹

In 1953, Cape approached Lord Bissell & Kadyk, a Chicago law firm, to form a U.S. subsidiary named North American Asbestos Corporation (“NAAC,” as noted above) in Chicago.¹⁷⁰ Max Meyer, a young partner at Lord Bissell, agreed to the representation.¹⁷¹ Max Meyer

¹⁶² Ex. 48 at 42.

¹⁶³ Ex. 51, ARC-19th meeting (July 12, 1962).

¹⁶⁴ See generally Ex. 52, Geoffrey Tweedale, *Science or Public Relations? The Inside Story of the Asbestosis Research Council, 1957–1990*, 38 AM. J. INDUS. MED. (2000).

¹⁶⁵ *Id.* at 723-29.

¹⁶⁶ Ex. 51.

¹⁶⁷ *Id.*

¹⁶⁸ See generally *id.*

¹⁶⁹ Although the successor entities have refused to participate in discovery in this case, the Receiver was able to obtain the historical materials used in the following section from an archive at the University of Strathclyde in Glasgow, Scotland.

¹⁷⁰ Ex. 52.1, Letter from R. Dent to Lord Bissell & Kadyk (Sept. 18, 1953).

¹⁷¹ Ex. 53, Letter from Lord Bissell & Kadyk to Cape (Sept. 29, 1953).

represented Cape until after NAAC dissolved in 1978.¹⁷² He was on the Board of Directors from 1953—1978 and served as the trustee in NAAC's dissolution.¹⁷³ Meyer attended virtually every Board meeting and was the principal point of contact between the parent company Cape Asbestos in London, and NAAC.¹⁷⁴

Meyer drafted all of the NAAC board minutes, according to Joan Holtze, the Corporate Secretary who joined NAAC in 1953 (and remained there until NAAC dissolved).¹⁷⁵ Meyer's board minutes recorded Holtze as attending meetings in person as "Assistant Company Secretary,"¹⁷⁶ but in 1980, Ms. Holtze testified she *never* attended any Board Meeting.¹⁷⁷ The Receiver has searched the NAAC documents for some explanation as to why Meyer falsified the NAAC board minutes, but has found none. If the third-party defendants participate in discovery, this question may be answered.

NAAC was a small operation staffed by the President, who was the client liaison, and a few secretaries. Cape consistently described NAAC as a "one-man" operation.¹⁷⁸ Meyer, from his office at Lord Bissell, was involved in all decisions both small¹⁷⁹ and large.¹⁸⁰ Gerry Morgan, the

¹⁷² See, e.g., Ex. 54, NAAC Meeting Minutes (1971); Ex. 55, NAAC Meeting Minutes (Nov. 1971); Ex. 56 NAAC Meeting Minutes (1972); Ex. 57, NAAC Meeting Minutes (1973); Ex. 58, NAAC Meeting Minutes (1974); Ex. 59, NAAC Meeting Minutes (1975); Ex. 60, NAAC Meeting Minutes (1976); Ex. 61, NAAC Meeting Minutes (1977).

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ Ex. 62, Deposition of Joan Holtze at 15:12–16:8, *Barber v. Pittsburgh Corning Corp.*, No. GD 79-21544 (Pa. Ct. Com. Pl. Nov. 7, 1980).

¹⁷⁶ See Exs. 54-61.

¹⁷⁷ *Id.*

¹⁷⁸ Ex. 63, Deposition of Charles G. Morgan at 33, *Johnson v. North American Asbestos Corporation*, No. 75-L-1006 (May 27, 1975).

¹⁷⁹ Ex. 64, Letter from R. Gaze to M. Meyer (July 20, 1971) (correspondence regarding NAAC computerizing their systems).

¹⁸⁰ Ex. 65, Deposition of Charles G. Morgan, *Wolfe v. Johns-Manville Corporation*, No. 81-1272 (May 19, 1982) (Meyer unilaterally dictated the dividend NAAC declared to Cape, without the NAAC president's input).

President of NAAC from 1970—1978, testified that his influence on the Board or as a company decision-maker was “certainly nil” and that the Cape member of the Board (Richard Gaze) and Meyer would meet beforehand to “have their discussions.”¹⁸¹

The Lord Bissell lawyer Meyer was also involved in the early efforts by Cape to change the identity of NAAC to avoid exposure to asbestos litigation. On June 25, 1976, the General Counsel of Cape wrote Meyer, “[a]s briefly discussed in Chicago[,] . . . it may be advisable to change the identity of NAAC to limit its and Cape's exposure to future U.S. litigation.”¹⁸² A month later, Meyer received a memorandum from a Lord Bissell associate examining the use of an entity in Canada to sell asbestos into the United States, and the extent to which that entity would be immune to lawsuits from U.S. asbestos plaintiffs.¹⁸³ In October, Lord Bissell (presumably Meyer as he was the point of contact) sent Cape a lengthy letter on options for liquidating NAAC but continuing to serve the U.S. asbestos market from another location outside of the United States.¹⁸⁴

On June 3, 1977, Cape’s General Counsel (Anthony Penna) sent a telex to Meyer at Lord Bissell asking Meyer to confirm that, “in the opinion of the company's American legal advisors: the amounts claimed [in U.S. asbestos cases against Cape] are highly speculative and conjectural and have only a tenuous basis in law and fact,” referring to an insert in the parent company annual report.¹⁸⁵ Penna asked Meyer to confirm that this language, used in a prior report, was still Lord Bissell’s position.¹⁸⁶ Then, on July 5, 1977, Penna sent Lord Bissell a telex that, given Texas awards in asbestos cases, Cape should withdraw from the Texas litigation because:

¹⁸¹ *Id.*

¹⁸² Ex. 66, Letter from A. Penna to M. Meyer (June 25, 1975).

¹⁸³ Ex. 67, Memo from A. Sarabia to M. Meyer (July 25, 1975).

¹⁸⁴ Ex. 68, Letter to A. Penna re Limiting NAAC and Cape's Exposure to US Litigation (Oct. 3, 1975).

¹⁸⁵ Ex. 69, Letter from A. Penna to M. Meyer (June 3, 1977).

¹⁸⁶ *Id.*

we cannot foresee any court . . . enforcing a judgment which would have enormous financial . . . repercussions, when we really cannot be said to have a moral responsibility and are simply victims of the US product liability cult.¹⁸⁷

This marked the end of Cape's participation in all U.S. lawsuits, including this one.¹⁸⁸

On October 26, 1977, Meyer's Lord Bissell law partner Steve Milwid wrote Penna and identified all the pending cases against Cape, including numerous cases in South Carolina.¹⁸⁹ Milwid sent another letter to Penna the same day identifying NAAC's limited products liability insurance coverage.¹⁹⁰ A few days later, on November 1, 1977, Cape's Board of Directors authorized Cape's "withdrawal" from U.S. litigation on the bet that no U.K. court would enforce a U.S. default judgment in England.¹⁹¹

On January 23, 1978, a Lord Bissell lawyer sent Meyer a memorandum outlining Cape's scheme to continue selling asbestos into the United States through a Liechtenstein entity—owned by Cape—and through a reconstituted NAAC (but now re-named "Continental Products Corporation (CPC)").¹⁹² CPC was in the same building as NAAC, used the same office furniture, and had the same employees including the then-president of NAAC, Gerry Morgan.¹⁹³ Cape financed the entire scheme.¹⁹⁴

¹⁸⁷ Ex. 70, Telex from A. Penna to S. Milwid (July 4, 1977).

¹⁸⁸ *See id.*; *See also* Ex. 71, Letter from A. Penna to S. Milwid (Feb. 24, 1978) ("As you know our policy now is not to defend any asbestosis proceedings brought against us in the United States and in view of the fact that there is a likelihood that this will result in large default judgments being awarded against us . . . it would be extremely unwise for Cape to contemplate any further substantial acquisition in the United States . . .).

¹⁸⁹ Ex. 72, Letter from S. Milwid to A. Penna re: Pending Cases (Oct. 26, 1977).

¹⁹⁰ Ex. 73, Letter from S. Milwid to A. Penna re: NAAC Products Liability Coverage (Oct. 26, 1977).

¹⁹¹ Ex. 74, Cape's Board Meeting Minutes (Nov. 1, 1977).

¹⁹² Ex. 15.

¹⁹³ *Id.*

¹⁹⁴ *See id.*

A.R. Sarabia wrote a memorandum contained in the Lord Bissell client file to memorialize the new sales arrangements for the sale of Cape asbestos to the United States from Lichtenstein through CPC.¹⁹⁵ On June 26, 1978, Meyer wrote Penna advising that the Cape Mines would be protected from default judgments with the Lichtenstein “between them and any operations in the United States.”¹⁹⁶ Penna described the Liechtenstein company—which had no employees and was just an invoicing entity, as being camouflaged to disguise from “plaintiffs in future U.S. asbestos litigation” (Cape's words) the fact that the company was still selling asbestos in this country. On July 29, 1980, Mr Meyer wrote Richard Gaze at Cape advising on a variety of issues, but in closing Meyer wrote on Lord Bissell letterhead: “My deposition was taken last Thursday in the four Bloomington cases. I guess the main thing that came out was that I know nothing or that I can’t remember anything.”¹⁹⁷

Cape understood that the law in the United States attached liability to manufacturers and sellers of dangerous products. Geoffrey Higham, Managing Director of Cape, testified in 1996 that “we didn’t like the rules, we didn’t think it was a reasonable burden to place upon a supplier of material [like Cape] that he should control how the material was used.”¹⁹⁸ And in a Press Release relating to a U.S. documentary about Cape's unflattering conduct involving its sales of asbestos to the Unarco Company in Bloomington Illinois, Cape noted that, in contrast to the law in the United States:

¹⁹⁵ Ex. 75, Memo to NAAC File re Liquidation of NAAC (April 7, 1978).

¹⁹⁶ Ex. 76, Letter from M. Meyer to A. Penna (June 26, 1978). Meyer was in the thick of the plan to create CPC and in fact formed the corporation, according to Gerry Morgan, the President of NAAC at the time. *See* Ex. 65. In a memo dated Dec 19, 1983, a Lord Bissell Partner inquired of Meyer about his formation of CPC in 1978 but noted that there were no billing records at LBB relating to this work; Ex. 77, Letter from Ingersoll to Meyer (Dec. 19, 1983).

¹⁹⁷ Ex. 78, Letter from M. Meyer to R. Gaze (July 29, 1980).

¹⁹⁸ Ex. 79, Deposition of Geoffrey Higham (excerpt), *In re Asbestos Pers. Injury Cases, Arrington Lead*, No. 93-9-114 (Miss. Cir. Ct. Jones Cnty., 2d Jud. Dist. Oct. 24, 1996).

[the] generally accepted legal principles throughout the world [are that] the direct employer, which in this instance would have been Unarco, should carry the immediate responsibility for the safety of its workforce. **Cape does not, however, accept responsibility towards employees of an independent organization over whose working conditions it had no control**¹⁹⁹

The Lord Bissell lawyers also knew what the law was in the United States, yet it enabled Cape in all of its schemes to sell asbestos in the United States, and they specifically designed and implemented its plan to create phantom entities to continue selling asbestos in the United States after Cape fled the jurisdiction.²⁰⁰

There is not a single document the Receiver has located in which a Lord Bissell lawyer advises Cape that the law in the United States imposes liability on the supplier of defective products and that Cape does not get to choose—as it seemed to think it could—whether that law applies to Cape, regardless of whether Cape "accepted responsibility" for its actions.²⁰¹ A supplier is free to avoid doing business in a jurisdiction whose laws it disagrees with; however, there is no evidence that Lord Bissell ever informed Cape that there was an appropriate way to do this—avoiding the sale of products in that jurisdiction—and a wrong way, too, as here: enabling Cape in its efforts to create a sham entity to specifically shield American asbestos plaintiffs from reaching Cape assets.

CONCLUSION

For the foregoing reasons, this Court's appointment over Cape fits squarely within the South Carolina Supreme Court order in *Welch*. As to the South Carolina Supreme Court's request for findings of fact to support the appointment of a receiver over Cape, in addition to the substantial evidence presented in the Motion to Appoint a Receiver over Cape, the Receiver has marshalled

¹⁹⁹ Ex. 80, Cape Statement to Granada TV (July 6, 1982) (emphasis added).

²⁰⁰ See, e.g., Ex. 81, Telex from A. Penna to S. Milwid (Aug. 7, 1984).

²⁰¹ See Ex. 80.

significant additional records (without the ability to conduct discovery as the South Carolina Rules of Civil Procedure envision) that even more fully demonstrate the depth of the moral fraud at issue in this case.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

By: /s/ John T. Lay, Jr.

John T. Lay, Jr., SC Bar No. 64526
 Lindsay A. Joyner, SC Bar No. 77437
 Olesya V. Bracey, SC Bar No. 101409
 Eleanor L. Jones, SC Bar No. 104678
 1201 Main Street, Suite 1200
 PO Box 7368 (29202)
 Columbia, SC 29201
 jlay@gwblawfirm.com
 ljoyner@gwblawfirm.com
 obracey@gwblawfirm.com
 ejones@gwblawfirm.com
 (803) 779-1833

Jonathan M. Robinson
 SMITH | ROBINSON, LLC
 2530 Devine Street, Third Floor
 Columbia, SC 29205
 jon@smithrobinsonlaw.com
 (803) 254-5445

Troy S. Brown
 Dana E. Becker
 MORGAN, LEWIS & BOCKIUS LLP
 1701 Market Street
 Philadelphia, PA 19103
 troy.brown@morganlewis.com
 dana.becker@morganlewis.com
 (215) 963-5000

Brady Edwards (*pro hac vice forthcoming*)
 Lauren McCulloch Semlinger
 MORGAN, LEWIS & BOCKIUS LLP

1000 Louisiana St., Suite 4000
Houston, TX 77002
brady.edwards@morganlewis.com
lauren.semmlinger@morganlewis.com
(713) 890-5467

Paul A. Scrudato
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
paul.scrudato@morganlewis.com
(212) 309-6000

Attorneys for Third-Party Plaintiff Peter D. Protopapas, in his capacity as the Court-appointed Receiver (the "Receiver") for Cape PLC, now known as Cape Intermediate Holdings Ltd., as successor in interest to Cape Industries Ltd. (f/k/a Cape Asbestos Company Ltd.)

July 11, 2025
Columbia, South Carolina

EXHIBIT 1



U.S. DEPARTMENT OF THE INTERIOR

U.S. GEOLOGICAL SURVEY

Asbestos: Geology, Mineralogy, Mining, and Uses

by

Robert L. Virta¹

Open-File Report 02-149

Prepared in cooperation with Kirk-Othmer Encyclopedia of Chemical Technology, Online Edition, Wylie-Interscience, a division of John Wiley & Sons, Inc., New York, NY

This report is preliminary and has not been reviewed for conformity with U.S. Geological Survey editorial standards (or with the North American Stratigraphic Code). Any use of trade, product, or firm names is for descriptive purposes only and does not imply endorsement by the U.S. Government.

¹Reston, VA

Abstract	4
1. Introduction	5
2. History	5
3. Geology and Fiber Morphology	5
3.1 Chrysotile	6
3.2 Amphiboles	6
4. Crystal Structure of Asbestos Fibers	7
4.1 Chrysotile	7
4.2 Amphiboles	7
5. Properties of Asbestos Fibers	8
5.1 Fiber Length Distribution	8
5.2 Physico-chemical Properties	8
Thermal Behavior	8
Tensile Strength	9
Asbestos Fibers in Aqueous Media	9
Other Bulk Physical Properties	9
5.3 Surface Properties	10
Surface Area	10
Surface Charge in Aqueous Media	10
Adsorption and Surface Chemical Grafting	10
6. Analytical Methods and Identification of Asbestos Fibers	10
6.1 Microscopic Methods	10
6.2 Instrumental Methods for Bulk Samples	10
7. Production	11
8. Mining and Milling Technologies	11
9. Fiber Classification and Standard Testing Methods	12
9.1 Dry Classification Method	12
9.2 Wet Classification Method	12
9.3 Other Fiber Evaluation Methods	12
10. Industrial Applications	13
11. Alternative Industrial Fibers and Materials	13
12. Health and Safety	14
13. Regulation	14
Bibliography	15
Table 1. Asbestos Fiber Production	17
Table 2. Geological Occurrence of Asbestos Fibers	17
Table 3. Elemental Analysis of Asbestos Fibers	18
Table 4. Physical and Chemical Properties of Asbestos Fibers	19
Table 5. World Production of Asbestos by Principal Producing Countries, 1920-2000 ^{ab} , tons	20

1. INTRODUCTION

Asbestos is a generic term referring to six types of naturally occurring mineral fibers that are or have been commercially exploited. These fibers belong to two mineral groups: serpentines and amphiboles. The serpentine group contains a single asbestiform variety: chrysotile. There are five asbestiform varieties of amphiboles: anthophyllite asbestos, grunerite asbestos (amosite), riebeckite asbestos (crocidolite), tremolite asbestos, and actinolite asbestos. Usually, the term asbestos is applied only to those varieties that have been commercially exploited (1, 2). That does not preclude the occurrence of other asbestos-like minerals, however. Magnesioriebeckite with an asbestiform habit was mined in Bolivia and potassian winchite with an asbestiform habit was found in western Texas. Additionally, richterite asbestos has been synthesized in the laboratory (3).

The asbestos varieties share several properties: (1) they occur as bundles of fibers that can be easily separated from the host matrix or cleaved into thinner fibers (1, 4); (2) the fibers exhibit high tensile strengths (1); (3) they show high length:diameter (aspect) ratios, with a minimum of 20 and up to 1000 (1, 4); (4) they are sufficiently flexible to be spun; and (5) macroscopically, they resemble organic fibers such as cellulose (2, 4). Since asbestos fibers are all silicates, they exhibit several other common properties, such as incombustibility, thermal stability, resistance to biodegradation, chemical inertia toward most chemicals, and low electrical conductivity. The usual definition of asbestos fiber excludes numerous other fibrous minerals that may possess an asbestiform habit but do not exhibit all of the properties of asbestos. A few examples of these fibrous minerals are sepiolite, erionite (rod-like and fibrous habits), and nemolite. Other minerals also may occasionally crystallize with a fibrous habit (3, 4).

The mineralogical designations of the various asbestos fibers, their most common alternative designations, and the main sources of these fibers are reported in Table 1. The fractional breakdown of the recent world production of the various fiber types shows that the industrial applications of asbestos fibers have now shifted almost exclusively to chrysotile. Amosite and crocidolite are no longer being mined although some probably is still being sold from stock. Current use of amosite and crocidolite is estimated to be less than a few hundred metric tons annually. Actinolite asbestos, anthophyllite asbestos, and tremolite asbestos may be still mined in small amounts for local use; production probably is less than 100 metric tons annually.

2. HISTORY

Early uses of asbestos exploited the reinforcement and thermal properties of asbestos fibers. The first recorded application can be traced to Finland (approximately 2500 B.C.), where anthophyllite from a local deposit was used to reinforce clay utensils and pottery (5). Numerous early references also can be found describing the use of asbestos fibers for the fabrication of lamp wicks and crematory clothing. Other applications of asbestos fibers in heat- or flame-resistant materials have been sporadically reported. At the end of the seventeenth century, Peter the Great of Russia initiated the fabrication of asbestos paper, using chrysotile fibers extracted from deposits in the Ural Mountains. The use of asbestos fibers on a true industrial scale began in Italy early in the nineteenth century with the development of asbestos textiles (4, 6). By the end of the nineteenth century, significant asbestos deposits had been identified throughout the world and their exploitation had begun in Canada (1878), South Africa (1893, 1908-1916), and the USSR (1885) (7).

From the beginning of the 20th century, the demand for asbestos fibers grew in a spectacular fashion for numerous applications, in particular for thermal insulation (8). The development of the Hatschek machine in 1900 for the continuous fabrication of sheets from an asbestos-cement composite also opened an important field of industrial application for asbestos fibers as did the development of the automobile industry for asbestos brakes, clutches, and gaskets.

World War II supported the growth of asbestos fiber production for military applications, typically in thermal insulation and fire protection. Such applications were later extended into residential or industrial constructions for several decades following the war.

During the late 1960s and 1970s, the finding of health problems associated with long-term heavy exposure to airborne asbestos fibers led to a large reduction in the use of asbestos fibers. In most of the current applications, asbestos fibers are contained within a matrix, typically cement or organic resins.

The world production of asbestos fibers reached a maximum in 1977 of 4.8×10^6 tons, decreasing to 1.9×10^6 tons in 2000. The major producing countries of chrysotile asbestos are Russia (39%), Canada (18%), China (14%), Brazil (9%), Kazakhstan (7%), and Zimbabwe (6%). In 2000, active mining operations of asbestos fibers are found in 21 countries (9).

3. GEOLOGY AND FIBER MORPHOLOGY

The genesis of asbestos fibers as mineral deposits required certain conditions with regard to chemical composition, nucleation, and fiber growth; such conditions must have prevailed over a period sufficiently long and perturbation-free to allow a continuous growth of the silicate chains into fibrous structures (10). Some of the important geological or mineralogical features of the industrially significant asbestos fibers are summarized in Table 2. More emphasis is given to chrysotile in the following section owing to its total dominance in the industry over the years.

Only three varieties of amphibole fibers will be discussed because: (1) crocidolite and amosite were the only amphiboles with significant industrial uses in recent years; (2) tremolite, although having essentially no industrial application, may be found as a contaminant in other fibers or in other industrial minerals (e.g., chrysotile and talc).

EXHIBIT 2

Article

Surviving blue asbestos: mining and occupational disease in South Africa and Australia

Jock McCulloch

jock.mcculloch@rmit.edu.au

Abstract

Australia and South Africa are the only countries to have mined crocidolite or blue asbestos. Crocidolite was mined in the Northern Cape for one hundred years and at Wittenoom in Western Australia from 1944 until 1966. Mining has left a pandemic of asbestos disease in the Northern Cape and although production levels were modest Wittenoom has become the site of Australia's worst occupational health disaster. The labour regimes in South Africa and Australia were very different, yet the rates of asbestos disease among miners and their families were probably similar. The hazards facing miners arose from the nature of the labour process, the technologies of production, the rapacity of employers, and the limitations of state regulation.

Introduction

The global asbestos industry was born on the mines of northern Italy in the final decades of the nineteenth century. By 1920 mines in Canada, South Africa, and Southern Rhodesia, were supplying fibre for the manufacture of a range of products in Western Europe and North America. In what was an early twentieth century example of vertical integration the larger companies such as Turner & Newall (UK), Gefco (UK and South Africa), Eternit (Switzerland) and Johns-Manville (USA) operated mines, usually in the developing world, and factories in the metropolises. Manufacturers promoted asbestos as a wonder mineral which enhanced the quality, longevity and safety of any product into which it was incorporated. The industry was so successful that by 1950 asbestos had become an essential ingredient in the commodities around which post-war prosperity was built. Unfortunately asbestos has also proven to be an efficient carcinogen.

Asbestos causes three major diseases: asbestosis, lung cancer, and mesothelioma, a primary cancer of the lining of the lung or the abdominal cavity.¹ Asbestosis is a dose related occupational disease usually confined to the workplace. On average it takes five or more years of heavy exposure to produce the disease which is progressive and untreatable. The lung cancer associated with asbestos is indistinguishable from the cancer suffered by cigarette smokers and is just as lethal. Like asbestosis the disease is dose related. In contrast mesothelioma can result from trivial exposure which means the risk of injury crosses the boundary which usually distinguishes occupational from environmental hazards. Each of the three diseases caused a crisis for the industry: asbestosis in the 1930s, lung cancer in the 1940s, and mesothelioma after 1960. The industry was able to survive each of those episodes without being forced radically to improve conditions in the workplace or entirely lose its markets. It was a remarkable achievement due largely to the industry's success in influencing medical discovery (see Castleman 1996, Tweedale 2000, Johnston and McIvor 2000, McCulloch 2002). Julian Peto (1999) has estimated that in the UK asbestos will have killed around 250,000 men and women between 1995 and 2029. In addition to the burden of disease the costs of litigation especially in the US and Australia have been staggering.

The mines of South Africa produced all three commercial varieties of asbestos, namely chrysotile (white), crocidolite (blue) and amosite (brown) which were marketed in more than 50 countries.⁴ Chrysotile, or white asbestos was also mined in Canada, which supplied more than half of the world's needs, and in Swaziland and Zimbabwe where a single company, African Associated Mines, still operates mines at Zvishavane and Mashava. At its peak asbestos represented only three per cent of the value of South Africa's minerals industry. South Africa was, however, the major producer of blue asbestos accounting for 97 per cent of global output. The rest came from a mine at Wittenoom in Western Australia which operated from 1944 until 1966. The mines were hazardous and despite their diverse locations, the risks of occupational disease in Australia and South Africa were probably similar. The discovery of the asbestos disease mesothelioma by JC Wagner in the Northern Cape in 1959 led to the closure of Wittenoom mine in Australia six years later. South Africa continued to mine and export crocidolite until 1996.

The tide of litigation which began in the US in the late 1970s saw the major North American companies take refuge in bankruptcy. Litigation soon began

in Australia where a significant number of cases are settled each year. Wittenoom miners and their families have the highest known incidence of mesothelioma in the world and 40 years after the mine's closure the threat from environmental pollution is so high that the state government is presently seeking to relocate the town's 17 remaining residents.

The hidden costs of mining in Southern Africa have until recently been paid for by labour. That historical pattern was ruptured in March 2003 when two class actions involving thousands of former South African miners against the mining companies Cape plc and Gencor (Gefco) were settled out of court in London and Pretoria. After six years of legal argument Cape plc agreed to pay 7.5 million pounds in compensation to 7,500 workers and Gencor/Gefco agreed to set up a trust fund for its workers, worth R448 million (37.5 million pounds) (*The Guardian* (London) March 14, 2003 – 'Black workers to receive 45 million asbestos settlement'). The Gencor case is the first action of its kind in South Africa for occupational disease contracted in the mining industry. The Cape plc case is the first time South African miners have succeeded in a common law action against a parent company outside South Africa.³

Asbestos miners faced many of the same problems as miners elsewhere including low rates of pay, dangerous conditions, and intractable management. There were also technical factors which made asbestos mining particularly dangerous. The methods of extracting asbestos ore have varied from open cut to depth mining but the aim of processing fibre is always the same, namely to preserve the mineral's physical properties. For that reason asbestos is milled dry. After arriving at a mill ore is fed into primary crushers, then crushed and sorted. The ore is then crushed again, and the fibre lifted off by suction. The further into the milling process the more dust is generated. The most hazardous jobs at Thetford (Canada), Penge (South Africa), Wittenoom (Australia), and Shabanie (Zimbabwe) were in the bagging rooms where fibre was pressed, often by hand, into hessian sacks. Between a third and a half of mill hands developed asbestosis (see Slade 1930).

Wittenoom and South Africa's mines had many things in common. The landscapes and climates are similar as are the histories of the national and regional economies which have been driven by minerals. The fibre, the host ore and the problems of milling were almost identical. The mines competed in the same markets, and their owners benefited from a similar lack of state regulation. In both cases the mines were staffed with a migrant and racialised

labour force. The rates of occupational and environmental disease were probably much the same in both places; as was labour's lack of knowledge about the risks of exposure. The mills at Wittenoom and the Northern Cape were almost the perfect environments to produce asbestos disease and almost the perfect setting for hiding it. The major difference between the two sites is that one industry lasted for over a century while the other survived for barely 20 years.

A comparative history of asbestos mining in South Africa and Australia raises many questions. Why did the industry operate such hazardous mines, why did labour put up with the conditions of work and why did state authorities not regulate the workplace? Why did Wittenoom close in 1966 yet South Africa continue to mine and export blue asbestos until 1996? To answer those questions it is necessary to examine the labour process, the emergence of medical knowledge, the role of government and regulatory authorities, and the technologies of production.

The South African mines

The blue asbestos fields of the Northern Cape stretch over 250 miles from just south of Prieska on the Orange River to the Botswana border. The Pietersburg fields in the Limpopo Province are less extensive and the seams that contain amosite and crocidolite are sparse, except at Penge where they can be several feet thick. The first crocidolite mines opened near Prieska in 1893 and Msauli, the last of South Africa's chrysotile mines, which lies near the Swazi border, closed in 2002.

The industry was dominated by the British firms Cape Asbestos Pty, Turner & Newall (T&N), and the Griqualand Exploration and Finance Company Limited (Gefco). Eternit, a Swiss firm, also operated mines in the Northern Cape and asbestos cement factories in Johannesburg and Cape Town. The initial demand for South African asbestos was erratic and the Great Depression saw the UK and US markets collapse. Recovery was slow, and it was not until World War Two that the industry's position improved. Crocidolite and amosite, which are known as amphiboles, were the preferred lagging on ships and with the outbreak of war asbestos became a strategic material. By the end of the war Cape Asbestos had a dozen small mines over an area stretching from Prieska to Kuruman. Cape's success in the post-war era can be gauged by the rise in its capital base. In 1938 the company had assets of 589,000 pounds; by 1945 that had doubled. Six years later Cape was worth in excess of 4,000,000 pounds. The industry was vertically integrated

but the major companies derived the bulk of their profits from mining rather than manufacture. In 1957 T&N recorded a net profit of nearly six million pounds, of which over half came from its Southern African mines (*Turner & Newall Annual Report 30 September 1957*). The sale of fibre was just as important to Johns-Manville and as production levels at its Quebec mines rose so too did the amount of asbestos it sold, at a handsome profit, to competitors (*Johns-Manville Corporation Annual Report 1951*).

In South Africa mining methods varied from place to place. At some sites, cross-cut adits or small shafts were driven into hillsides. At others, there were incline shafts. Occasionally, open-cast methods were used. The mineral lay close to the surface and during the tributer period which lasted until around 1950, the basic labour unit was the family. Using simple tools men dug fibre from surface deposits, which was then hand processed or cobbled by women, while children sorted the fibre into lengths and stuffed it into bags. The fibre was then sold to company stores.

The host ore in South Africa and at Wittenoom is so abrasive that milling often accounted for more than half the cost of production (Stander and La Grange 1963). The ore tore holes in ducting, damaged machinery and filled the mills with dust. To reduce the amount of host ore entering the mills the mining companies used women to produce cobs and teams of sorters to remove the host rock. The Blackridge mine in the northern Cape produced feed for the mill at Prieska which was between 80-85 per cent pure fibre so that virtually no banded ironstone entered the crushers. Those methods saved the machinery and they also produced a higher quality product.⁴

Asbestos was blended at Prieska from 1927. The mill was the town's largest building and it was also the major employer. Schalk Lubbe, who worked for Cape Asbestos, remembers that during the 1950s dust was visible as it came out of the mill chimneys. In summer Lubbe and his family often slept outside to escape the heat and in the mornings their bedding would be saturated with fibre.⁵

The mines were in poor regions where there was little employment. There were few opportunities for women to earn money and still meet their family obligations. White households paid low wages for domestics. For black and Coloured women fortunate enough to find such work it meant long periods of separation from their children. Asbestos provided one of the few avenues through which families could generate sufficient income to survive yet avoid the calamity of migrant labour. Cobbing was done in the open air and at a pace dictated by the workers themselves. Families could divide their time between

asbestos, food production and seasonal fruit picking. Women comprised around half of the labour force. Their employment was usually in contravention of the various Mines Acts, which from 1911 specifically forbade women working in dusty or dangerous occupations. Employers told the women who cobbled asbestos nothing of the dangers they faced.

Mining began at Penge on the Pietersburg fields in 1914. The majority of claims were held by small companies which relied upon tributers to provide them with cobs. At adits high up on the mountain sides, women cobbled the ore by hand which was taken to the mills by donkeys or overhead rope ways. Tributers exercised little control over their workers and in contravention of the Mines Acts the use of explosives was left to black miners (De Wet 1949). On the smaller mines there were no compounds, medical care or rations and employment records were poorly kept (Labuschagne 1951). The mines were isolated and no inspector could arrive unannounced. When inspectors from the Department of Mines or Health were due tributers would slow down their mills and use water to reduce the dust. When they left the mills were put back into full operation and the clouds of dust returned.⁶ In 1940 at Cape's Penge mine, which was one of the few to use heavy machinery, a quarter of the work force were males under 16 years of age. They were usually employed as sorters or to sweep the mills.⁷ By 1949, there were as many as 14,000 labourers on the Pietersburg fields (De Wet 1949).

In 1947 a survey of conditions in the Northern Cape was conducted for the Department of Native Affairs by OT Jannasch. It was a time of transition between tributing and industrial mining. Jannasch noted that for almost 50 years Cape Asbestos had used a contract system of labour (Jannasch 1947:8). Local non-Europeans mined or extracted asbestos as best they could; when a mine got too deep or dangerous they simply moved to another site. That form of labour appealed to workers because it enabled them to avoid the kinds of disciplines imposed on gold and diamond mines. 'The relationship of employer and employee was non-existent', Jannasch wrote, 'so that the Company during this period could largely be regarded as a receiving and distribution depot, and were not mining in the strict sense of the word' (Jannasch 1947:9). Jannasch said nothing about occupational health.

The tributer system offered the mining companies a number of advantages. In an unstable marketplace, tributing reduced the commercial risk. When the price fell or the market contracted, Cape and Gefco stopped buying fibre. Miners were paid piece rates and so the costs of 'dead mining' were borne

by labour. The system required only a small permanent staff of supervisors who checked the fibre grade and issued stores, thereby further reducing the costs of production. Most important of all, the informality of tributing meant that miners and their families fell outside the provisions of the Mines Acts. As a consequence, Cape Asbestos and its competitors avoided having to provide compounds, rations or medical care.

After 1950, the exhaustion of surface deposits and the increased demand for asbestos saw a gradual shift to industrial mining. The bigger companies sank deep shafts, built new mills, introduced wage labour, and constructed compounds. Industrial mining also saw a dramatic rise in production. Between 1950 and 1960 the value of South African output almost trebled (DoM 1961:40, 1960 *Report*). By 1960, the mines were employing 1,000 white and more than 20,000 black and Coloured workers. Production reached almost 200,000 tons per annum, of which half came from the northern Cape. Each year in the period from 1950 until 1976 Cape Asbestos, like its competitor T&N, returned an annual dividend to its shareholders in excess of 20 per cent. South African production peaked at 379,000 tons in 1977, but thereafter fell (Snyman 1988).⁸ South African producers, like the Department of Mines, dismissed medical evidence about the dangers of asbestos, and blamed Canadian and Russian interests for seeking to have their chrysotile take over the markets vacated by amosite and crocidolite. Cape Asbestos sold its mines in 1979 to Gefco which continued to export crocidolite to dwindling markets in the Middle East and North Africa until 1996.

The labour intensive methods used during the tributer period were carried over into industrial mining. There was a severe drought around Kuruman in 1975 when Veronica Thokomelo began working at Coretsi mine. Many of the women from her village of Ga-Mopedi were employed at Reries, Merencor, or Coretsi. A bus took them to work each morning at 05:00. Prior to employment there was an x-ray for tuberculosis but neither Veronica Thokomelo nor her fellow workers were told that asbestos is dangerous.⁹ At Coretsi there were three conveyor belts with different sized stones which the women would sort.¹⁰ Water sprays helped them to distinguish between the fibre and the host rock and also reduced the dust. It was hard work as the heavy rocks had to be removed quickly as the ore passed into the mills. The women had no gloves and the sharp fibres got into their hands forming asbestos corns. They were not allowed to talk while working and there was no sick pay. Children also worked at the mines after school and in the holidays.

Miners also took fibre home on their clothes. William Nakaphala worked at a mine near Mathabatha, on the Pietersburg fields, during the 1970s. At the end of each shift he would be covered in fibre. As he later recalled: 'If you cannot wash (there were no showers at work) that night you go to bed just like that and the blanket will do the washing. Then you wake up in the morning looking better because all the fibre has been trapped in the blanket' (Nakhapala 1998:37). When Marianne Felix visited the Pietersburg fields in the 1980s she found 19 tailings dumps in the villages of Mafefe, some of which extended to the banks of the Mohlapiitse River (Felix 1997). Women washed fibre-impregnated clothes in the river, the main source of drinking water for those living downstream. Women mixed tailing with mud to plaster the walls of their homes and the floors of courtyards. Tailings were also preferred to river sand in making house bricks. Children used the tailings dumps as play areas. In addition to unemployed miners Cape Asbestos and Gefco left behind un-reclaimed mine sites which continue to expose local communities to airborne fibre.

Wittenoom: creating a mine

Wittenoom lies in the heart of the Pilbara, in Western Australia (WA) a thousand miles north-east of Perth. The region is one of the hottest in Australia with summer temperatures often in excess of 40 degrees Celsius. Asbestos mining began in the Pilbara in 1908 with individual tributers gouging ore from surface outcrops and processing fibre by hand. In 1930 Lang Hancock, who later became a leading figure in WA's minerals industry, discovered blue asbestos at Wittenoom Gorge but it was a further eight years before he began to mine the deposit. From 1938 Hancock and a partner, Albert Wright, worked the site paying individual miners for the fibre they recovered. The output was so small that Hancock made more money from shipping supplies in back freight from the coast (McCulloch 1986:70). The situation changed when the Colonial Sugar Refining Company (CSR) approached Hancock and Wright about the mine's development.

The Colonial Sugar Refining Company was founded in 1885 on the Queensland sugar industry. The company also had plantations in Fiji where it employed indentured labour from India. In 1936 CSR established a pilot plant for fabricating wallboards from bagasse, the residue from sugar processing. Although the venture was unsuccessful, CSR remained committed to diversification and in 1941 it established a plaster mill at Concord, in Sydney. The investment at Wittenoom was intended to provide

fibre for CSR's plants. As a result of negotiations in 1943, CSR purchased five per cent of the Wittenoom lease, and formed Australian Blue Asbestos (ABA). For the next five years Hancock and Wright managed the operation, while CSR provided finance. When Hancock and Wright sold their share in 1949, the company became a fully-owned subsidiary of CSR. From that date until its closure in 1966, Wittenoom was the largest asbestos mine in Australia, producing blue fibre for both the domestic and export markets.

Mining at Wittenoom began slowly and during 1944 its output was valued at less than \$A20,000 (WAP 1944). In that year a boarding-house was erected, a site cleared for the homes of future miners and a road from the town to the mine was built by the Main Roads Board. Throughout the war years Australian industry had difficulty in securing materials and finance but in the case of Wittenoom government backing was granted immediately (Joosten Trial 1979:374 – evidence Keith Brown). The national government was anxious that Australia should become self-sufficient in fibre as a safeguard against a failure in supplies from overseas. It also hoped that the mine's development would help populate an isolated region seen as vulnerable to Australia's northern neighbours. The WA government rightfully believed that Wittenoom possessed one of the largest crocidolite deposits in the world and it hoped that asbestos would provide much the same stimulus which gold had given the regional economy 50 years earlier (*The West Australian* April 17, 1945, 'Asbestos: world production').¹¹ Wittenoom never lived up to those expectations. It was unable to produce fibre competitively against imports from South Africa and the mine recorded losses for most years of its operation. At its closure in 1966 Wittenoom had accumulated debts of \$A2.5 million (Layman 1984).

The mine was isolated and transport and maintenance costs were particularly high. Mining held little appeal to the small number of Aboriginal workers in the Pilbara who in any case preferred employment on cattle stations where women could also find work as domestic labour. To attract workers from Perth required generous wages which in turn impacted upon the mine's profitability. There were also technical problems at Wittenoom which were never resolved. The extremely hard host ore and the narrow seams meant that the yields per ton were as low as 8 per cent (Shepherd 1951).

To guarantee the mine's success the state government provided amenities for the town and subsidised freight from the shipping depot at Port Samson (Telfer 1946). As the mine continued to struggle CSR applied for further assistance and, in September 1947, the state agreed to construct a fuel depot,

and extend the subsidy. Those arrangements followed a request from CSR to the then Prime Minister, Chifley, and to the State Premier, McLarty, both of whom were involved directly in negotiations (DoM 1947). The commitments by state and federal authorities made it difficult for the Departments of Mines or Public Health to suggest that Wittenoom should be closed because it was unsafe.

The mine was mechanised except at the rock face where the drives were too cramped to allow the use of heavy machinery. The broken ore was fed by a conveyor belt to the adjacent mill. The first or Old Mill which was put together from scrap had three stories. The primary level contained the picking belt, where a team of six men hand sorted the material.¹² The ore then moved to a crusher, where some fibre was separated, with the main process of dividing the fibre taking place at the third and lowest level. Once extracted the asbestos was packed into 100 lb bags and dispatched in grades according to length. The packing of the longest grades was done manually with workers pressing asbestos into bags with wooden paddles. Those employed directly below the conveyor belt were showered with fibre which fell on them constantly from above. The production target in 1945 was 1,000 tons. That was raised to 4,000 in 1953 and peaked at 15,000 tons in 1962 (Joosten Trial 1979:326 – George King, former deputy manager CSR). With every increase in output, the dust levels rose.

The host ore was so abrasive that after as little as two hours holes would appear in ducting, thereby spreading dust throughout the mill (Joosten Trial 1979:250 – evidence Allan Osborne). The holes were bound with rubber patching or hessian to allow work to continue, with major repairs being carried out at weekends. Spare parts often had to come from Sydney, which meant repairs could take months to complete. The CSR board had close contacts with mining companies in South Africa and George King, a deputy general manager with ABA, was sent to the Northern Cape on a number of fact-finding tours. He found that ABA had nothing to learn from the Cape mines (Joosten Trial 1979:328 – evidence George King). According to ABA's managing director Keith Brown: 'The South African methods of milling blue asbestos ore were not directly applicable at Wittenoom because in South Africa a good deal of preparation of the ore is carried out by hand by natives'. Miners in South Africa were paid only 45/- per week while the base rate at Wittenoom was 30 pounds (Joosten Trial 1979:54 – evidence Keith Brown). The South African labour system could not be duplicated in Australia.

Labour

Almost half of the 6,950 men and women who worked at Wittenoom were Europeans. Migrant labour was the key to Australia's post war industrial development and in that sense the miners who came from Britain, Yugoslavia, Italy and Germany were typical of their generation. The strategy of ABA was to retain a permanent core of managers, foremen, shift bosses and skilled workers supplemented by a pool of around 200 wage and contract labourers who stayed at the mine for brief periods (Cappelletto and Merler 2003). The elite were generally Anglo-Australians and the lower strata was comprised of immigrants. Miners at the ore face received the highest wages while jobs in the mill attracted lower pay. The lowest paid work of all, the loading of hessian bags onto trucks, was done by Aborigines. Under WA law they received rations of tea, sugar and tobacco rather than wages. The median period of employment was four months and 60 per cent of men stayed for less than seven (Cappelletto and Merler 2003). The high labour turnover is understandable given the severity of the work conditions, the cost of living and the town's isolation. Unfortunately, because the symptoms of asbestosis would not show up for some years (and lung cancer or mesothelioma for more than 20 years) it meant that new miners did not learn about the risks of occupational disease from the men they replaced.

The economic goal of most migrants was to save enough money to buy a house or a farm and their attitude to work conditions was framed in terms of that ambition. Working at the mine was just something they did to get a start in life (Merler et al 1999). The heavy gambling at Wittenoom meant that it was not such an easy goal to achieve.

Frederick Harpell was living in a village in the north of Italy when he saw an advertisement for jobs in a hydro-electric scheme in Australia.¹³ In his village alone, 27 young men signed on for what seemed an opportunity to travel and make good money. On reaching Darwin some men were offered work in Tasmania and the others went to Wittenoom. Harpell recalls that on arriving at the mine many of the men were shocked by the heat and isolation. One group telegraphed the Italian Consulate in Perth demanding repatriation.¹⁴ Most stayed under a scheme whereby their wives and children were to join them after 12 months' service. The conditions were harsh and the language barrier made life more difficult. Initially Harpell left, after only a brief period, to work in timber mills in New South Wales. But the pay was never as good as at Wittenoom so he returned to the mine. When the weekly wage in a Perth factory was around seven or eight pounds, Harpell could

earn seven pounds a day working a double shift at Wittenoom.

The cost of living in such an isolated town was high and for many of the miners and their families wages were insufficient to allow them to save. In 1959 a four-gallon drum of kerosene cost 25/-, and miners had no choice but to pay the price demanded at the company store.¹⁵ A bottle of beer which cost 3/- in Perth sold for four times that amount at the Wittenoom Hotel. Meat was also expensive as were vegetables. For a time, some of the men formed a syndicate shipping beer and other supplies from the coast, but the company soon put an end to the practice which threatened its monopoly.¹⁶

The patronage enjoyed by ABA was such that most of the housing was built at public expense by the State Housing Commission. An agreement reached in 1959 between ABA and the Commission saw the company take responsibility for the management and maintenance of all domestic dwellings (DNW nd:67). The local Anglican priest, Father HD Middleton, questioned the agreement whereby the Commission used ABA as its agent and miners lived in 'tied cottages' (DNW nd:63). At the least that arrangement increased the company's hold over the work force. Not only did ABA control employment, transport, and basic services such as electricity and water, but from 1959 it had a monopoly over housing.

Dust and disease in South Africa

It was not until after World War Two that the problem of dust in South African mines appeared with any regularity in official correspondence. As part of the first survey of the Pietersburg fields by the Silicosis Medical Bureau in 1949, Dr Gert Schepers visited Penge. He found the mills polluted and children working in clouds of fibre (Schepers 1965). Cape Asbestos which ran Penge, was British-owned and therefore, in Schepers' view, should have been aware of the dangers of asbestosis. From 1931 Cape's metropolitan factories had been subject to the British Asbestos regulations. Schepers' report had no effect, and a Department of Health survey of Penge from November 1955 found widespread disease.¹⁷

The shift to industrial mining saw the introduction of pneumatic drills which increased output but also created clouds of dust. By the early 1950s work conditions were so hazardous that miners were contracting asbestosis after less than six months employment (Peacock 1952). The men and women who worked in the industry went unprotected by mining legislation. Until 1956, the mining companies were successful in arguing that their employment fell outside of the various Mines and Masters and Servants Acts (McCulloch

2002:120-32). In the absence of medical records or dust readings we can only guess at the rates of asbestosis. The attitude of the mining companies toward their employees can be gauged by the regular outbreaks of scurvy and pellagra at Cape mines during which a number of men and women died (McCulloch 2002:105-12). To prevent asbestos disease would have been far more expensive.

There were some improvements in work conditions during the 1960s as Cape and Gefco invested in dust extraction equipment. But the first major improvements in health standards only came with the emergence of black trade unions in the 1980s when the industry was already in its twilight. Even so the mills remained hazardous and subsequent research has confirmed that mine workers continued to contract asbestosis until the mines closed (Botha 1986).

From the 1920s it was common knowledge in the northern Cape that if a man or woman got water on the lung they would soon die. What the communities had identified was a key symptom of mesothelioma, which went undiagnosed until the late 1950s (Marchand 1991). At Prieska many families have suffered for generations from asbestos disease. The incidence of asbestosis was masked by a number of factors. Prior to the 1960s, the mines were infrequently visited by Department of Mine or Health officers and few records were kept of employees. Half of the workforce was female yet women were often omitted from departmental labour returns (McCulloch 2003). On the Pietersburg fields only one in five workers was a local man or woman, and no checks were made of the fate of migrant labour. Finally, the practice of sacking workers the moment they became ill removed the most obvious cases from the gaze of the Department of Health. Over a period of 30 years a few dedicated officers from the Departments of Mines, Native Affairs and Health protested at the dust in the mills, the outbreaks of scurvy, the lack of rations and medical care and the housing provided for miners and their families. But senior officers in the Department of Mines sided with employers.

Dust and disease at Wittenoom

Work conditions at Wittenoom were always hazardous but the combination of poor ventilation and increased production levels proved fatal (McNulty 1968a:451). In the period from 1943 until 1953 output rose from a few hundred to more than 4,000 tons per annum. With the rise in production the dust outside the mill became so thick that the flying doctor, Dr Eric Saint, found the pollution an aid to navigation. As Dr James McNulty recalled: 'He used

to fly in and see the blue dust from the mine and mill. He used to joke about it and say that the local airline used to glue this on the landscape as a homing sign for the township'.¹⁸ The story may be apocryphal, but it is consistent with the testimony of former miners.

The poor ventilation in the mill in part arose from the use of the major access tunnel as the primary airway (Major 1968:470). All traffic, including the conveyer belt, passed down that tunnel and, although water sprays were placed at various points near the belt, they made little difference. Dust from the mill also tended to enter the mine through the main air duct (Major 1968:472). According to Cecil Broadhurst, the general manager of CSR's mineral fibre division, most of the milling problems were due to the constant enlarging of the plant to fill higher production quotas (Joosten Trial 1979:444 – evidence Cecil Broadhurst). Dr JC McNulty attributed the dust in the mine and mill to ABA's lack of expertise.¹⁹ The company tended to draw senior personnel directly from the sugar industry. Those men had no experience in running a mine and they would have seen few career prospects in becoming expert in CSR's asbestos division.

Surprisingly, the Department of Mines annual reports contain no criticism of ABA. In fact those reports consistently praise the company for its attempts to make the mine safe. As early as 1945 the Department of Mines was aware of the dust in the mill but attributed the problem to war-time conditions (DoM 1945:18). The annual report for 1950 noted that ABA was 'cooperating to the fullest extent with the department in attacking all ventilation problems' (DoM 1950:17). Ten years later with no improvement the department commented: 'The company is making every effort to effectively control dust in both mine and the mill' (DoM 1961:33).

The Department's attitude is not difficult to explain. Wittenoom had the support of state and national governments who were keen for it to succeed. The Department lacked trained officers, reliable instrumentation and even transport, which made the regulation of outlying mines difficult (DoM 1946:9). As a matter of courtesy, inspectors usually gave ABA a month's notice of impending visits so that accommodation at the hotel could be arranged. Former miners recall that the manager would deliberately slow down the mill to reduce the dust whenever inspectors were present.²⁰

Besides the technical problems in suppressing dust there were political barriers to identifying and then reducing the risks of occupational disease. Responsibility for monitoring conditions at Wittenoom was shared between the Departments of Public Health and Mines. Expertise about health and

hygiene lay with Public Health, but authority for the regulation of Wittenoom rested with Mines. That Department had powers of inspection, but little expertise, and the Department of Public Health had knowledge about disease but no authority (McNulty 1968b:466). John Fainchney, an inspector of mines, visited Wittenoom regularly during the 1950s to take dust samples. Like his colleagues, Fainchney was unaware of UK asbestos legislation from 1931. He was not even aware of the existence of the disease asbestosis (Joosten Trial 1979:106-9 – evidence John Fainchney). The Commissioner for Public Health was better informed and after high dust readings were taken in October 1951 he wrote to the Under Secretary of Mines: ‘Asbestos produces more rapid fibrosis of the lung than silicosis and is more liable to superimpose infection. It is therefore apparent on the data submitted that conditions are far from satisfactory and in the interests of the health of the workers, this department must investigate the matter further and press for immediate improvement of supervision and working conditions at Wittenoom’.²¹ The Department of Mines did not welcome what it saw as outside interference.

Knowledge and risk

Facilities for conducting medical research in Australia were modest but in the case of pneumoconiosis that lack of capacity was offset by the economic importance of mining. By 1925, the New South Wales Coal Board was well versed in the dangers of coal and silica dust and measures for preventing lung disease had been introduced on the gold fields at Kalgoorlie. The Department of Mines in Perth was familiar with the literature on miner’s phthisis three decades before Wittenoom opened.

Until 1953 CSR did not employ physicians at any of its plants and it was left to local managers to acquire whatever information was necessary to ensure the safety of employees (Joosten Trial 1979:371 – evidence George King). Dr Gordon Oxer who worked at Wittenoom during the early 1960s was the only physician in an area of thousands of square miles. Although he was not an ABA employee, his salary was guaranteed in an agreement between ABA and the Department of Public Health.²² Dr Oxer’s independence was further compromised by the arrangement under which the company collected fees directly from his patients, with the costs being deducted from the miner’s wages. It is not surprising that Oxer had no input into occupational health.²³

None of the miners I interviewed during the course of this research were

aware of the risk of asbestosis during their period of employment. That minority with mining experience knew about silicosis, but most feared tuberculosis which they thought could be contracted from the dust (see Cappelletto and Merler 2003). The high labour turnover meant there was no collective memory for miners to draw upon in assessing the risks they faced. A generation at Wittenoom spanned barely six months which was sufficient time for men to develop asbestosis but not sufficient time for the symptoms to become visible. The circulation of knowledge on site was further hampered by the language barrier which divided the community into various ethnic groups. The most obvious explanation for the compliance of labour lay in the rigid relationship between employees and management. Wittenoom was a company town and miners and their families lived in houses constructed for the company's benefit with rentals collected by company officers; electricity and water were provided by ABA, which also ran the only store where food and other basic supplies could be bought. Most of the miners were indebted to ABA and they could not leave without the company's permission. Any workman who objected to the conditions faced dismissal. Many of ABA's employees were making high wages at a time when jobs were scarce which further discouraged them from criticising work practices.

In contrast to their South African counterparts, the miners at Wittenoom had the right to trade union representation. Most of the workforce was covered by the Australian Workers Union (AWU). In 1948 Charlie Oliver, an AWU official, approached the Mines Department about work conditions (*The Kalgoorlie Miner* May 13, 1948). Oliver's complaint resulted in a successful wage claim, and a promise from ABA to improve conditions. The award introduced a dust allowance which gave the men a higher hourly pay rate as compensation for the dust.²⁴ The Board accepted that dust was unavoidable and the allowance was re-negotiated several times. In 1956 the Board mandated an hourly rate for those employed in the mill and its surrounds. A year later the AWU went to the Board once more to have the dust allowance increased from 1/6 to 2/- per hour for men in the mill and workshop.²⁵

Controlling knowledge

The turning point for the global industry came in February 1959 when a young pathologist named Dr JC Wagner from the Pneumoconiosis Research Unit (PRU) gave a paper at a Johannesburg conference. Wagner had identified a pandemic of mesothelioma in the Northern Cape which he

attributed to asbestos (Wagner 1960:373-81). The disease, he argued, could result from trivial exposure thereby crossing the barrier usually separating occupational from environmental injuries. Wagner's discovery could not have come at a worse time for the mining companies. Industrial mining had begun in earnest, the markets for asbestos were strong and evidence of asbestosis among miners had recently been acknowledged by the Department of Mines.

Within three months the Government Mining Engineer asked the PRU to coordinate a survey of mesothelioma in the Northern Cape.²⁶ After some discussion it was agreed that the project would be funded by the asbestos industry, and supported by a small grant from the South African Cancer Association (PRU 1962:2). The PRU survey was carried out between November 1960 and February 1962. By April an interim report showed an alarmingly high incidence of mesothelioma and evidence that the disease was associated with asbestos (PRU 1962:3-4). Pollution in the mining towns was so bad that residents were contracting asbestosis from environmental exposure. The PRU survey confirmed Wagner's finding thereby confronting the mining industry with a choice: it could either try to make the mines safe, shut them down, or suppress knowledge about disease. Having chosen the last of these options, the South African Asbestos Producers Advisory Committee (SAAPAC) stopped all funding thereby bringing the field work to an abrupt halt (PRU 1963). The interim report was suppressed. The director of the PRU, Dr IG Walters, later remarked that the Survey had been ended because of the industry's concern that it would be unable to recruit labour to its mines (Walters 1964). Dr Wagner left South Africa six months later to pursue a career in the UK in part because of the pressure put on him by the mining industry and the Department of Mines.²⁷ Drs Jennifer Tallent and Bill Harrison, who 15 years later did research at the PRU into mesothelioma among those same mining communities, were never told about the Survey. It was as if it had never existed.²⁸ So complete was the secrecy surrounding mesothelioma that Guy Wilson and Jacoba Schnyders, who during the 1960 and 1970s held middle management positions with Cape Asbestos, were unaware of the existence of the disease until more than a decade after the Survey had been completed.²⁹ That knowledge was even further removed from the men, women and children who worked on the mines.

The Survey results were known to the secretaries of the Departments of Mines, Treasury, and Trade and the matter was discussed at Cabinet level

in 1962.³⁰ In its internal correspondence, the Department of Mines recognised that any form of exposure to asbestos was ‘extremely dangerous’ for those who worked on mines, and or lived near mills. It also acknowledged that in parts of the Northern Cape, a large percentage of the population was suffering from asbestos related disease.³¹ The correspondence suggests that the Department’s main concern was to protect the industry. It was aware that the discovery of mesothelioma had already damaged overseas markets for South African fibre and it feared that further bad publicity would destroy the demand for crocidolite. The Department of Mines threw its weight behind the industry and made no attempt to inform asbestos miners about the risks they faced.

The hazard at Wittenoom

Recognition of the hazard at Wittenoom emerged between 1957 and 1962 largely through the efforts of a physician named James McNulty. In 1957, Dr McNulty, a Belfast trained physician, was appointed as a mines medical officer with the Department of Public Health, at Kalgoorlie. Before emigrating to Australia, McNulty had worked with coal miners in the UK, and he was familiar with pneumoconiosis. Kalgoorlie is 400 miles east of Perth and the centre of WA’s gold mining industry. Kalgoorlie was also the centre of a state-wide monitoring programme designed to eradicate tuberculosis. A mobile unit based at Kalgoorlie Hospital travelled the state, x-raying miners. The technicians would send x-rays back to Kalgoorlie for McNulty to read. In early 1958 McNulty was advised that following surgery in Perth, a Wittenoom miner was found to have asbestosis. Coincidentally, the mobile unit had recently visited Wittenoom and sent McNulty the x-rays. They revealed a further five cases.³² The result was disturbing for such a small workforce and the five cases were mentioned during debate in state parliament. The latency period for asbestosis at Wittenoom appeared shorter than elsewhere, and the symptoms more severe. McNulty immediately read the literature on asbestos disease.

In December 1959, a former Wittenoom miner named Joseph Sawyer died from mesothelioma. Soon after McNulty read JC Wagner’s study of mesothelioma. In an article published in 1962, McNulty concluded that the short period of Sawyer’s employment confirmed that mesothelioma could arise from transitory exposure. The brief latency period between exposure and diagnosis was also consistent with the comparatively brief periods of employment which were producing asbestosis at Wittenoom. McNulty

concluded: 'The experience in Western Australia confirms that blue asbestos is a very harmful and lethal fibre' (McNulty 1962). McNulty sent a copy of his paper to CSR's board.³³

McNulty was convinced there was a serious hazard at Wittenoom and he tried a variety of avenues to change the work practices.³⁴ Initially he raised the issue with his own Department and then with the Department of Mines. When that failed McNulty appealed to ABA's management but it had no effect. He then wrote to CSR's consultant physician in Sydney Dr Rennie. Rennie was president of the Australian College of Physicians and had access to CSR's board but he refused to intervene. He wrote to the leading researchers including Selikoff (US), Wagner (UK), Mancuso (USA), and Sluis Cremer (South Africa) seeking information about environmental exposure to use as leverage. McNulty then approached the shire council over the use of tailings at the Wittenoom school. It finally took McNulty six years to persuade CSR to close the mine. The company's decision was in large part based on the mine's lack of profitability.

In South Africa the industry was able to survive by gaining control of the research process. The Department allowed the SAAPAC representation on key committees at the PRU/NCOH. From that position it monitored research proposals, and eventually established a right of veto over publications (McCulloch 2005a). The industry questioned every advance in knowledge thereby creating doubt and with it a counter-position which could be used as a reference point. The SAAPAC was able to stifle medical discovery to such an extent that in the 1980s scientific committees in Johannesburg were still debating whether or not asbestos is a carcinogen. That in turn rendered South African science irrelevant on the international stage. The industry also developed techniques for dealing with individual critics. The SAAPAC would seek to exhaust researchers by bogging them down in lengthy correspondence and intimidating those in public employment by making accusations of unprofessional conduct to their superiors. That method was used against Ian Webster who was the director of the NCOH during the 1970s and his successor Professor JAC Davies. It was also used against researchers at the University of Cape Town (McCulloch 2005a). No fiction was unthinkable and in addressing a national audience the industry linked criticism of asbestos to wider political agendas. In particular the SAAPAC, abetted by the Department of Mines, spun the fantasy that anti-South African sentiment over apartheid lay behind the opposition to South Africa's crocidolite (Hart 1988).

The reasons why

There were a number of factors that determined the work conditions in South Africa. There were few white miners and no trade unions, to act as a brake on foreign-owned companies. The mining regions were poor and isolated, and in the absence of legislative restraint, British companies chose not to apply the knowledge about the risk of airborne fibre already gained in their metropolitan factories. The failure of regulatory authorities in South Africa to reduce dust levels sealed the fate of miners and those who lived in mining communities. The issue of occupational and community health in the Northern Cape only emerged after 1995 through the actions of community groups such as the Concerned People Against Asbestos (McCulloch 2005b). That in turn suggests that a shift in national political structures was necessary to bring about a recognition of the disease burden. Even so change has been slow and it was not until June 2004 that the Minister for Energy and the Environment announced a ban on asbestos products (*The Cape Times* June 22, 2004 – ‘Asbestos products to become illegal, says Van Schalkwyk’). While the ban is to be phased in over a five year period it has caused some anxiety in Zimbabwe where chrysotile exports are the mainstay of a crumbling economy. South Africa has been an important customer at times consuming 40 per cent of Zimbabwe’s annual production for roofing of low-cost houses, brake linings and clutch pads for heavy vehicles (Mukumbira 2006, also *International Ban Asbestos Secretariat* November 18, 2006 – ‘Asbestos bans in Jordan and South Africa’).

The determination of state and federal governments that Wittenoom succeed contributed to the hazardous work practices in WA. So too did the high costs of production which discouraged CSR from investing in dust suppression and ruled out the labour intensive sorting of ore used in South Africa which inadvertently reduced dust emissions. Trade unions took little interest in occupational safety while migrant labour prevented the emergence of an oral tradition about lung disease. James McNulty believes the tragedy occurred in a kind of moral vacuum. There was no real malevolence at CSR’s head office and work conditions at Wittenoom were consistent with what was happening on the Kalgoorlie gold mines.³⁵ The senior personnel in ABA and their families who lived on site suffered as much as anyone from mesothelioma. CSR’s failure to make money from mining ensured its withdrawal from asbestos manufacture. That was the principal reason for the mine’s closure in 1966. The 1970s and 1980s saw a sharp rise in the incidence of disease among the Wittenoom miners and their families which is not

expected to peak until 2023, when the 8,000 children who lived at the mine reach middle age.

For more than three decades South African miners were rarely if ever mentioned in the multi-million dollar cases involving US workers or consumers injured by South African amphiboles. That invisibility changed with the Cape Plc and Gencor settlement in 2003. South African mining communities have moved to centre-stage in what may prove to be a turning-point in the history of occupational health in Southern Africa. As well as bringing relief to plaintiffs, those settlements raise the possibility that in future parent companies operating in the region will have to conform to those standards of occupational safety that apply at home. Where they fail to do so employers may be held responsible for the behaviour of their subsidiaries.

Since Wittenoom's closure CSR has paid out in excess of \$A600 million in damages and compensation in Australia. Over the next 20 years that figure will continue to rise. Yet like the US conglomerate Johns-Manville to which it sold crocidolite, CSR has survived. In March 2003 CSR employed over 5,000 people in Australia, Asia, New Zealand and the US. The company, which nowadays processes sugar and sells asbestos-free building products, enjoys annual sales of over \$A2 billion (CSR 2003).

Seventy years ago George Orwell commented that coal miners in Britain toiled underground so that civilised people could be warm. Coal miners did hazardous work for low wages and many of them developed lung disease. The asbestos story was arguably worse than that of coal: asbestos mining impacted adversely upon community health; the benefits it offered to consumers were specious; and the profits the mines delivered to investors were tainted by the damage that they wrought on labour, insurance companies and even the state.

Notes

1. In addition to those three primary diseases, asbestos has been implicated in a variety of other disorders including cancer of the liver, brain and mammary glands.
2. The six types of asbestos are chrysotile, crocidolite, amosite, anthophyllite, tremolite and actinolite, but only the first three have been mined on a large scale. Crocidolite and amosite belong to the group known as the amphiboles.
3. See summary Gencor Settlement between The Claimants, Gencor and Ntuli, Noble and Spoor, Johannesburg March 13, 2003.
4. Interview with Schalk Lubbe, Springbok, South Africa, Tuesday, December 14, 1999.

5. Schalk Lubbe, interview.
6. Interview with Roy Baragawanath, Pietersburg, Friday, December 3, 1999.
7. 'Letter from E.W.Lowe, Acting Director of Native Labour to Secretary for Native Affairs, Pretoria, 19/10/1940' *Department of Native Affairs NTS 2217 408/280*.
8. The Department of Mines attributed the fall to the activities of 'the international anti-asbestos movement which had singled out South African amosite and crocidolite', the fibres which made up 70 per cent of exports (see DoM 1978:7).
9. Interview with Veronica Thokomelo, Olivia Kiet, Grace Tehetsho and Nameco Toto at Ga-Mopedi Community Centre, Ga-Mopedi, Northern Cape, June 16, 2003.
10. Veronica Thokomelo interview.
11. Wittenoom fibre and South African amosite were interchangeable in terms of their quality but not in regard to cost. In the mid 1950s crocidolite from Wittenoom cost 144 pounds per ton as against amosite at 55 pounds. South African crocidolite cost 120 pounds (see Adamson 1954:132).
12. The Wittenoom Gorge mill operated for 13 years from 1944 until 1957; from 1956 there was a brief period when the two mills, the Old Mill and the new plant, were run simultaneously.
13. Interview with Frederick Harmpell, Perth, October 3, 1984.
14. Frederick Harmpell, interview.
15. Interview with Dennis Flowers and David Nobbs, Perth, October 5, 1984.
16. Interview with Dennis Flowers, Perth, October 5, 1984.
17. 'Letter from the Head of the Health Department, Pietersburg to the Secretary of Health, Pretoria, 24/11/1955' *NTS 2258 695/280(2)*. Battye Library, Perth.
18. Interview with Dr James McNulty, Floreat, Perth, April 9, 2004.
19. Dr James McNulty interview.
20. Interview with Vincent Kemp and Dennis Flowers, Perth, October 10, 1984.
21. 'Letter from L. Henzell, Commissioner for Public Health, to Under Secretary of Mines, 26 October 1951'. Document 8 exhibit 7 (*Joosten Trial* 1979).
22. 'Memo Under Secretary of Public Health, 6 August 1963' *Department of Public Health file no. 5593/62, acc. no. 1540*.
23. Dr James McNulty interview.
24. Award: AWU (Blue Asbestos Works) No. 20/1945, *Western Australian Industrial Gazette*, 1950, vol. 27, pp.47-54. Battye Library, Perth.
25. See Award Engineering (Blue Asbestos) No.2 of 1953 Mining Blue Asbestos – AWU *West Australian Industrial Gazette*, quarter ending March 31, 1957, vol.37. Battye Library, Perth.

26. Interview with Prof. Ian Webster, Braamfontein, Johannesburg, December 4, 1997.
27. Interview with Dr Chris Wagner, Weymouth, Dorset March 22, 1998.
28. Interviews with Dr Bill Harrison, Killara, Sydney, October 15, 1999 and Dr Jennifer Tallent, Fish Hoek, South Africa, December 16, 1999.
29. Interview with Guy Wilson, Johannesburg, July 5, 1999 and interview by Engela Venter with Willemmina Jacoba Schnyders, Bloemfontein, April 7, 1999.
30. See Memo from Secretary for Mines, Pretoria to the Secretary for the Treasury, Pretoria, July 4, 1963, 'Research in connection with prevention of asbestosis and mesothelioma and the prevention and control of dust in and by asbestos mines and asbestos mills' *TES Vol. 930B F5/389*.
31. See Memo from Secretary for Mines, as in fn 30.
32. Statement of Dr James Columba McNulty November 25, 1993, Perth, in the presence of JG Mengler, Solicitor, p27.
33. Dr James McNulty, interview.
34. Dr James McNulty, interview.
35. Dr James McNulty interview.

References

- Adamson, JT (1954) Testimony before the *Tariff Board Inquiry re Asbestos Fibre*, Commonwealth of Australia, June 2, 1954, official transcript.
- Botha, JL (1986) 'Excess mortality from stomach cancer, lung cancer and asbestosis and/or mesothelioma in crocidolite mining districts in South Africa', *American Journal of Epidemiology* 123(1).
- Cappelletto, F and E Merler (2003) 'Perceptions of health hazards in the narratives of Italian migrant workers at an Australian asbestos mine (1943-1966)', *Social Science and Medicine* 56.
- Castleman, B (1996) *Asbestos: medical and legal aspects*. New Jersey: Aspen Law and Business Books.
- De Wet, JS (1949) 'Survey of the conditions on the asbestos fields, districts of Pietersburg and Letaba, November 7-19, 1949, Labourer Officer, Krugersdorp 8/1/21949', *NTS 2258 695/280 volume 1*.
- CSR (Colonial Sugar Refining Company) (2003) *CSR Annual Report 2003*.
- DNW (Department of the North West) (nd) *Department of the North West file no. 35/59*. Battye Library, Perth.
- DoM (Department of Mines) (various years) *Annual Report Department of Mines*. Pretoria: Government Printing & Stationary Office.

- DoM (1947) 'Letter from Secretary of Department to Mr. Powell acting Director of ABA, 8 September 1947', *Department of Mines file no. 789/45*. Battye Library, Perth.
- Felix, MA (1997) 'Environmental asbestos and respiratory disease in South Africa', unpublished PhD thesis, University of the Witwatersrand.
- Hart, P (1988) 'Asbestos in South Africa', *Journal of the South African Institute of Mining and Metallurgy*, June.
- Jannasch, OT (1947) 'Report for Secretary for Labour 21/10/1947' NTS 7684 212/332.
- Johnston, R and A McIvor (2000) *Lethal Work: a history of the asbestos tragedy in Scotland*. East Linton: Tuckwell Press.
- Joosten Trial (1979) *Joan Joosten and Midalco Pty, Ltd*, transcripts, evidence before the Supreme Court of Western Australia, No 1052 of 1979.
- Labuschagne, L (1951) 'Monthly report: Inspector of Native Labourers, Pietersburg: November 1951, 5/12/1951' NTS 2258 695/280 volume 1.
- Layman, Lenore (1984) 'Health at Wittenoom, 1943-1966", paper presented to the ANZSERCH/APHA Conference, University of Adelaide, May 20-24.
- Major, G (1968) 'Asbestos dust exposure', in *First Australian Pneumoconiosis Conference Proceedings*, University of Sydney, February 12-14.
- Marchand, Paul E (1991) 'The discovery of mesothelioma in the Northwestern Cape Province in the Republic of South Africa', *American Journal of Industrial Medicine* 19.
- McCulloch, Jock (1986) *Asbestos: its human cost*. St Lucia: University of Queensland Press.
- (2002) *Asbestos Blues: capital, physicians and the state in South Africa*. Bloomington: Indiana University Press.
- (2003) 'Women mining asbestos in South Africa, 1893-1980', *The Journal of Southern African Studies* 29(2).
- (2005a) 'Asbestos, lies and the state: occupational disease and South African science', in *African Studies* 64(2).
- (2005b) 'Beating the odds: the quest for justice by South African asbestos mining communities', *The Review of African Political Economy* 32(103).
- McNulty JC (1962) 'Malignant pleural mesothelioma in an asbestos worker', *Medical Journal of Australia* 2.
- (1968a) 'Asbestos mining, Wittenoom, Western Australia', in *First Australasian Pneumoconiosis Conference Proceedings*, University of Sydney, February 12-14.

- (1968b) 'Prevalence of respiratory symptoms in the Western Australian gold miner compared with coal miners', in *First Australasian Pneumoconiosis Conference Proceedings*, University of Sydney, February 12-14.
- Merler, E, M Ercolanelli, N de Klerk, HG Lund, AW Musk and F Cappelletto (1999) 'On the Italian migrants to Australia who worked at the crocidolite mine at Wittenoom Gorge, Western Australia', in A Griec, S Iavicoli, and G Berlinguer (eds). *Contributions to the History of Occupational and Environmental Prevention*. Amsterdam: Elsevier Science BV.
- Mukumbira, R (2006) 'Zimbabwe fighting asbestos ban'. November 8. http://www.mineweb.net/african_renaissance/393447.htm.
- Nakaphala, W (1998) 'Northern Province', in *Final Proceedings, National Asbestos Summit*, November 24-26, 1998, Esselen Park, Johannesburg. The National Parliamentary Portfolio Committee on Environment and Tourism.
- Peacock, GB (1952) 'Report on health conditions at asbestos mines', Dr GB Peacock, Assistant Health Officer, Pietersburg, June, NTS 2258 695/280, volume 1.
- Peto, J (1999) 'The European mesothelioma epidemic', *British Journal of Cancer* 79.
- PRU (Pneumoconiosis Research Unit) (1962) 'Report on the Progress of Mesothelioma Survey as at 30 April 1962', Pneumoconiosis Research Unit, South African Council for Scientific and Industrial Research, unpublished. *NCOH Papers*.
- PRU (1963) *Pneumoconiosis Research Unit Annual Report for the year ending 31 March 1963*, South African Council for Scientific and Industrial Research, Johannesburg.
- Schepers, GWH (1965) 'Asbestosis in South Africa: certain geological and environmental considerations', *Annals of the New York Academy of Sciences* 32.
- Shepherd, WWF (1951) 'Report of Mr WWF Shepherd on Visit to Australia 28 April 1951 to 6 June 1951', *Turner & Newall Papers* 104/1080-1101, Manchester Metropolitan University.
- Slade, GF (1930) 'The incidence of respiratory disability in workers employed in asbestos mining with special reference to the type of disability caused by the inhalation of asbestos dust', unpublished MD thesis, University of the Witwatersrand.
- Snyman, PHR (1988) 'Safety and health in the northern blue asbestos belt', *Historia* 33.
- Stander, E and JJ la Grange (1963) *Asbestos*. Pretoria: The Government Printer.

- Telfer, AH (1946) 'Letter from AH Telfer, Under Secretary of Mines to the WA Manager CSR, 8 October 1946', *Department of Mines file* no. 789/45. State Archives, Battye Library, Perth.
- Tweeddale, Geoff (2000) *Magic Mineral to Killer Dust: Turner & Newall and the asbestos hazard*. Oxford: Oxford University Press.
- Wagner JC (1960) 'Some pathological aspects of asbestosis', in AJ Orenstein (ed) *Proceedings of the Pneumoconiosis Conference*, held at the University of the Witwatersrand, Johannesburg, February 9-24, 1959.
- Walters, IG (1964) 'Covering letter from Dr IG Walters, 1964', Director of the PRU, 23 June, in *Field Survey in the North West Cape and at Penge in the Transvaal, (Asbestosis and Mesothelioma) 1964*. Pneumoconiosis Research Unit, Report No 1/64 South African Council for Scientific and Industrial Research Johannesburg. *NCOH Papers*.
- WAP (Western Australia Parliament) (1944) *Minutes and Votes and Proceedings of the Western Australian Parliament*, 1st Session of the 18th Parliament, July 27 – December 15, 1944, vol 2, 11.

EXHIBIT 2.1

consumers. In 1953 the *Asbestos Facts Book* listed 40 uses for raw asbestos, 16 for yarn, 29 for cloth, 17 for paper, 14 for mill board, 11 for cement sheets, and 10 for composition boards. By 1967 Johns-Manville brochures needed five pages just to name the company's products.⁸

With the exception of cigarettes asbestos is the most common carcinogen to which people living in developed countries have been exposed. During the twentieth century most households in OECD states incorporated some asbestos-based product into their daily lives. Asbestos is present in cement sheeting, pipes and moulded products. It is found in numerous friction materials such as brake linings, where asbestos comprised between 10 and 90 per cent of brake shoes. Asbestos fibre has been used commonly in vinyl floor materials and in textiles designed to resist heat, fire and cold. It was used in fire curtains, conveyor belts, screens and wicks, and in some insulating ropes. During the 1920s one British company sold mattresses filled with crocidolite with the promise that their customers could with safety smoke in bed. Asbestos has been incorporated into rubber and plastic products, in adhesives and cements, and paints and sealants. Some of its more exotic uses include cigarette filters, gas masks, gloves, filters for rice, salt, beer and fruit juice, dish towels, dental amalgam, banknotes, piano felts, domestic ovens and ironing boards, berets, aprons, carpets, table mats and tampons. The US Postal Service used it for mail bags; physicians used asbestos for surgical thread, and toothpaste was fortified with fibre. In *The Wizard of Oz* the burning broomstick of the Wicked Witch of the West was made from asbestos. The artificial snow in *Citizen Kane* was probably chrysotile. For a time it was used in the manufacture of children's dolls and play-dough. Asbestos was also a common ingredient in talcum powders, where it found its way into condoms. During the 1950s asbestos achieved a kind of vogue. The London Colosseum sought to attract patrons by advertising the woven asbestos curtain that shielded the audience from the threat of a fire back-stage. Patrons were probably no more anxious about the fibre flaking from that curtain than they were of the chipped asbestos stove mat found in so many kitchens. During the twentieth century sufficient asbestos cement pipe was used in the US to circle the earth eight times and still run to the moon and back.⁹

Amphibole asbestos was mined in South Africa in the Northern Cape and the north-eastern Transvaal until 1996. The major mining companies were British-owned, operating through South African subsidiaries. The industry quickly became a global enterprise, and companies such as Cape Asbestos, and Turner & Newall (T&N) exported fibre to numerous countries including Italy, Germany, France, India, Japan, Czechoslovakia, Australia, the US and the Netherlands. South African asbestos followed the route of other products from tropical countries to the industrial world. As with sugar, tobacco, tea and coffee, consumers rarely wondered where asbestos came from or how it was produced. An apocryphal story from the

⁸ Lee and Selikoff, 'Historical Background to the Asbestos Problem', p. 303.

⁹ James Allenman and Brooke T. Mossman, 'Asbestos Revisited', *Scientific American*, July 1997, p. 56. R. p. 4701

$\frac{3}{4}$ of an inch, and spinnable grades accounted for only 20 per cent of output.⁴⁴ The price of fibre varied dramatically according to grade: fibres over $1\frac{1}{4}$ inches, or D grade, brought £85 per ton; B grade, between $\frac{7}{8}$ inch and $1\frac{1}{4}$ inches, £70 per ton; SS (shorts), under $\frac{1}{8}$ inch, was worth only £7.⁴⁵ The long fibres were delicate and fleecy, and were ideal for spinning. Machinery damaged the longer fibres, and so it had to be processed by hand. That work was done by exclusively by women.

After processing the fibre was put into 112 lb bags and carted to the railheads at Kimberley, Draghoender, Prieska or Douglas.⁴⁶ The average monthly output for Cape Asbestos mines during 1929 was about 150 tons of which Westerberg accounted for around one-quarter. That fibre went to Cape factories in Turin, Laval in France, Barking in London and Bergedorf near Hamburg.⁴⁷ By 1930 there were 104 sites in the Northern Cape where fibre had been processed, but only 12 underground mines.⁴⁸

Hall identified a number of advantages of the system. As miners were paid for what they produced, there was very little dead mining; more correctly, the costs of dead mining were borne by the individual miners. In the Cape blasting could be done by Coloured workers so there was only a small staff of white men to check the grade, issue stores and supervise. That further reduced the costs of production. Hall also noted a number of disadvantages. Tributors exercised little control over their workers, who enjoyed a degree of freedom that would never have been unthinkable on gold or diamond mines. The piece-rate system encouraged illegitimate mining on adjacent properties as families followed the richest seams. Hall doubted the system was in the best interests of the industry. He omitted to mention that mining was the work of the poor; it was done by those who had no land or cattle.

Much the same methods of production were used throughout the fields. The rock was hand-cobbed, and the short fibres sieved by simple machinery. Hall noted that some progress had been made in introducing a uniform grading scheme. Dominion, for example, had established a mill at Kuruman where fibre was graded before being bagged. The shorter grades went to the central mill in cobs, which were about the size of an egg. The mills used crushers, sorting tables and heavy rollers.⁴⁹

The Great Depression saw a fall in demand from which the industry only fully recovered with the outbreak of World War Two. In 1932, in part as the result of competition from Russian fibre, Dominion closed its mines. Cape cut back production at Koegas and then closed Pomfret.⁵⁰ Within 18 months the only mines still operating in the Northern Cape were the Buxton limestone quarry at Taung and the asbestos mine at Koegas. The depression was accompanied by a drought that forced many white farmers

⁴⁴ *Ibid.*, pp. 86–7.

⁴⁵ See Table 17, 'Prices of Crocidolite, f.o.r. Draghoender', in *ibid.*, p. 89.

⁴⁶ *Ibid.*, p. 90.

⁴⁷ *Ibid.*, p. 87.

⁴⁸ Wagner, 'Pathology of Asbestosis', p. 21.

⁴⁹ Hall, *Asbestos*, p. 105.

⁵⁰ Hocking, *Kaia and Cocopans*, p. 69.

EXHIBIT 3

Asbestos Manufacturers



Scientifically Reviewed By: Diana Zuckerman, Ph.D. | Written by: Daniel King | Last Update: 11/14/2024 | 9 Min Read

Expert Verified

Major suppliers of asbestos-containing products include Johns-Manville, National Gypsum Company and Armstrong World Industries. Many companies involved in manufacturing and chemical refining also relied heavily on asbestos at their facilities.

[Find a Top Mesothelioma Attorney](#) >

EXCLUSIVE CONTENT

Carla Fasolo: What are your thoughts on asbestos companies?

▼ [Table of Contents](#) [[Show](#)]

[Asbestos Industry](#)

[History of Asbestos Manufacturing](#)

[Asbestos Litigation](#)

[FAQ](#)

Rise of the Asbestos Industry

Since the late 1800s, American firms, including Johns-Manville, grew rich by mining, manufacturing and selling asbestos products.

A century later, company documents revealed that Johns-Manville and many other companies knew asbestos was deadly. They went to great lengths to hide this from

workers and consumers. The reasons for not disclosing it: The asbestos industry put profits above public health.

EXCLUSIVE CONTENT

Samuel Meirowitz: What types of claims can be filed on behalf of mesothelioma patients and loved ones?

In the 1950s and 1960s, U.S. industries widely used [asbestos](#) materials. These included shipbuilding, construction, power generation and heavy manufacturing.

In the 1970s, a surge in personal injury claims led to the bankruptcy of many asbestos manufacturers. To manage the overwhelming legal claims, they set up trust funds to protect themselves from future lawsuits.

Over 50 countries, including those in the European Union, have banned or limited asbestos because of health concerns. Similarly, the U.S. implemented strict regulations in the 1970s.

Companies That Manufactured Asbestos Products

- [A.B.B. Lummus Global Inc.](#)
- [Babcock & Wilcox](#)
- [AC & S](#)
- [Barretts Minerals](#)

Show More

Based on Your Reading:

Get Your Free Mesothelioma Guide

Request Yours Today



Find a Top Mesothelioma Doctor

Find Your Doctor



Access Help Paying for Treatment

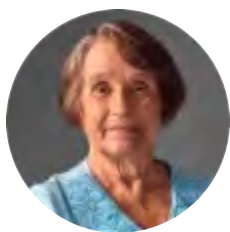
Get Help Now



History of Asbestos Manufacturing

Asbestos mining has been around for thousands of years. But it took off during the Industrial Revolution of the 1800s. The mineral's resistance to heat, chemicals, and electricity made it highly sought after for various industrial uses.

Manufacturers initially added asbestos insulation to steam engines, pipes and locomotives. Its use later spread to boilers, gaskets, cement, roofing and brake pads.



Carla Fasolo  Verified Asbestos.com Survivor
R. p. 4706

Mesothelioma Survivor Exposed to Asbestos Products in Boiler Room

It started with me going down to the Oneida County Courthouse in Utica, New York, with

my dad. I would go down there with him, and it was very dusty in the boiler room. There would be chunks of gray, fibrous stuff down there. I didn't know what it was, but I'd pick it up and play with it.

Carla Fasolo  Verified Asbestos.com Survivor

[Read Survivor Story](#) >

Asbestos Companies Valued Profit over Safety

By the early 20th century, some asbestos companies knew their main product was injuring people. But they chose not to improve safety or use an alternative mineral. Instead, they ignored information that could hurt their business and reputation.

Records reveal that Johns-Manville leaders were aware of asbestos risks as early as 1934. Around that time, the company conducted secret studies on asbestos exposure. However, they hid the harmful results. This led to an asbestos cover-up that lasted for decades.

Mesothelioma survivor Ron Green worked at a company owned by Johns-Manville in the 1960s. "It was not something I worried about, but it stayed in the back of my mind, so I wasn't caught totally off guard with the diagnosis," Green said. "It just took 48 years before the effects finally showed up."

In addition to Johns-Manville, other top asbestos makers include:

- Owens Corning/Fibreboard Corp.
- Raybestos-Manhattan Co.
- National Gypsum Corporation
- W.R. Grace & Co.

- Celotex Corp.

Asbestos use jumped during World War II because of military contracts. The U.S. government mandated asbestos insulation in Navy and Coast Guard ships. Decades after the war, hundreds of asbestos companies grew and prospered by incorporating asbestos in thousands of [industrial and household products](#).

Products



Goodyear Asbestos Gasket

At its height, asbestos was found in about 3,000 products. It was mainly used for insulation in construction, shipbuilding and manufacturing.

Asbestos was used in many materials, such as ceiling tiles, joint compounds, cement, drywall, and roofing. Today, these products can still release toxic fibers during renovations or demolitions.

Asbestos has been made into rope, cloth and clothing. [Shipyard workers](#) installing asbestos insulation often wore gloves and aprons with asbestos.

The automotive industry still uses asbestos in many parts. For example, gaskets and brake pads, which need to handle high temperatures and friction, may contain asbestos.

Industries & Occupations



Several dust-covered Johns-Manville workers handling friable asbestos magnesia pipe insulation.

The World Health Organization reports that 125 million people globally have been [exposed to asbestos](#) at work. The [most dangerous jobs](#) are in mining and processing asbestos. These activities release large amounts of toxic fibers into the air.

Construction also carries high exposure risks. In the U.S., drywall and insulation workers were often exposed to asbestos. Likewise, carpenters and others at the same site faced similar risks.

During World War II, shipyard workers were exposed to a lot of asbestos. Asbestos insulation was standard on ships, and tight spaces made it risky to install. Pipefitters, boiler workers, and electricians working on Navy ships also faced similar dangers.

Downfall of US Asbestos Industry

By the 1960s, scientists had enough proof of asbestos's dangers. In 1964, Dr. Irving Selikoff's study showed a clear link between asbestos and cancer.

The research found many insulation workers died from mesothelioma, lung cancer and asbestosis between 1943 to 1962. Insulation workers also died from stomach and colorectal cancers.

More medical evidence supported Selikoff's findings. As a result, America's asbestos industry declined.

The U.S. Environmental Protection Agency took a tough stance in 1970 with the Clean Air Act. It introduced the National Emission Standards for Hazardous Air Pollutants. These standards set strict limits on asbestos and other harmful air pollutants.

New rules impacted companies that milled, sprayed or disposed of asbestos. By the late 1970s, many began to eliminate asbestos from their products.



Did You Know?

AC & S said it would stop using friable asbestos in 1974. But bankruptcy documents revealed it may have used it for another decade.

Asbestos Manufacturing Today

Despite global bans on asbestos, the mining and production continue. Russia, China, Kazakhstan and other countries still extract and sell this toxic mineral.

According to a 2011 inventory of more than 60,000 asbestos-laden products, approximately 600 companies and suppliers operated worldwide that year.

The U.S. Geological Survey asserts that U.S. asbestos use has fallen 99.9% since 1973. On March 2024, the Biden administration finalized a ban of chrysotile asbestos. The ban allows companies 12 years to phase out the use of the material during the manufacturing process. This new ban also doesn't apply to all [types of asbestos](#).

Chrysotile asbestos is still found in some textiles, cement and brake pads. In 2018, the U.S. chloralkali industry imported 750 tons for making chlorine.

The U.S. Environmental Protection Agency completed a risk assessment of current asbestos uses in the U.S. in 2019. The agency is currently working to propose and finalize actions to address risks.

Access Lung Cancer Compensation

Get help paying for treatment and other expenses by accessing trust funds, grants and other options.

[Access Funds Now](#)



Asbestos Litigation

Over the last 50 years, a vast number of lawsuits about asbestos have emerged. These lawsuits have put companies connected to asbestos at risk. By 2002, around 730,000

individuals had filed claims related to asbestos. They targeted more than 8,400 companies. In 2020, there were 3,685 asbestos lawsuits, a drop of 11% from 2019, according to a [2021 KCIC review](#). Most cases involved mesothelioma (1,827), followed by asbestos-related lung cancer (1,484).



Did You Know?

In 1963, Crown Cork & Seal acquired Mundet Cork. It inherited over \$700 million in asbestos liabilities.

Some asbestos lawsuits lead to big payouts, especially for [mesothelioma settlements](#). Courts order companies to pay when they are found liable. This covers medical bills, lost wages, loss of companionship and pain. A [mesothelioma lawyer](#) can help patients claim compensation, including from trust funds.

Courts often demand punitive damages from companies to discourage future wrongdoing

EXCLUSIVE CONTENT

Daniel Wasserberg: How do payments from bankruptcy trusts benefit mesothelioma patients

Common Questions About Asbestos Companies

Who made asbestos products?

Asbestos has been used since ancient times. In 1858, Johns-Manville started making fire-resistant roofing with it. Other American companies also began mining, manufacturing and selling asbestos-containing products in the late 1800s.

Is asbestos still manufactured?

What countries have not banned asbestos?

Can asbestos companies be held accountable for asbestos exposure?

What companies remove asbestos?

Recommended Reading

[Products Containing Asbestos](#) >

[Jobs with Asbestos Risk](#) >

[Asbestos Cancers](#) >

[Mesothelioma Symptoms](#) >

[Asbestos Trust Funds](#) >

[Patient Resources](#) >



Get Free Recipes for Mesothelioma Patients

Get your free nutrition guide with expert tips and recipes for mesothelioma patients.

[Request Your Guide >](#)



Get Compensation You Deserve

Connect with a top-rated asbestos attorney to explore your compensation options.

[Find an Attorney >](#)



The Nation's Top Mesothelioma Guide

Learn about your diagnosis, top doctors and how to pay for treatment in our free guide.

[Get Yours Free >](#)

 **Sources (14)**  **History**

Share This Article:

WHY TRUST ASBESTOS.COM?

Written By:



Daniel King

Asbestos Expert and Writer | (877) 370-3170 | dking@asbestos.com

Edited By:



Walter Pacheco

Managing Editor

Daniel King is an investigative writer with an interest in veterans issues, mesothelioma research and environmental topics. He has been featured in publications and broadcasts including WGBH, a PBS member station.

- Expertise in veteran asbestos exposure and asbestos products
- Certificates in Health Literacy from the CDC
- Graduated from University of Central Florida (Ph.D.), Nova Southeastern University (M.A., B.A.)
- Member of National Association of Science Writers

Scientifically Reviewed

By:



Diana Zuckerman,
Ph.D.

Health Policy
Researcher & Expert
Reviewer

Article Contributors:



Samuel
Meirowitz

Lawyer and
Legal
Reviewer



Daniel
Wasserberg

Lawyer and
Legal
Reviewer

Did this article help you?

Yes

No

Address

1 S. Orange Ave., Suite 301,
Orlando, FL 32801

Connect with us

Navigation

[Mesothelioma](#)

[About](#)

[Finding Treatment](#)

[Contact Us](#)

[Help For Veterans](#)

[News](#)

[Legal Options](#)

[Press](#)

[Asbestos Exposure](#)

[Editorial Guidelines](#)

[Lawyers Near You](#)

Monthly Newsletter

Stay up-to-date on treatment, research, clinical trials, doctors and survivors

[Sign Up Now](#) >

The information on this website is proprietary and protected. It is not a substitute for professional medical advice, diagnosis or treatment. Any unauthorized or illegal use, copying or dissemination will be prosecuted. Please read our [privacy policy](#) and [terms of service](#) for more information about our website.

This website and its content may be deemed attorney advertising. Prior results do not predict a similar outcome.



The Mesothelioma Center's claim as the most trusted resource is based on our more than 150 5-star
R. p. 4716

Google and BBB reviews. Our organization also helps more than half of all mesothelioma patients annually diagnosed.

[Our Privacy Policy](#)

[Terms Of Service](#)

[Data Request](#)

[Limit My Sensitive Information](#)

Asbestos.com
Brought to you by The Mesothelioma Center



©2025 by Asbestos.com and The Mesothelioma Center. All rights reserved. | Last Modified November 14, 2024

EXHIBIT 4

GAO

Report to the Chairman, Committee on
the Judiciary, House of Representatives

September 2011

ASBESTOS INJURY COMPENSATION

The Role and Administration of Asbestos Trusts

ELECTRONICALLY FILED - 2025 Jul 11 11:14 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

U.S. Government Accountability Office

GAO

YEARS

1921-2011

ACCOUNTABILITY ★ INTEGRITY ★ RELIABILITY



Highlights of [GAO-11-819](#), a report to the Chairman, Committee on the Judiciary, House of Representatives

Why GAO Did This Study

Asbestos litigation arose out of millions of Americans' lengthy occupational exposure to asbestos which is linked to malignant and nonmalignant diseases. To date, about 100 companies have declared bankruptcy at least partially due to asbestos-related liability. In accordance with Chapter 11 and § 524(g) of the federal bankruptcy code, a company may transfer its liabilities and certain assets to an asbestos personal injury trust, which is then responsible for compensating present and future claimants. Since 1988, 60 trusts have been established to pay claims with about \$37 billion in total assets.

GAO was asked to examine asbestos trusts set up pursuant to § 524(g). This report addresses: (1) How much asbestos trusts have paid in claims and how trusts are administered, (2) How trust claim and payment information is made available to outside parties, and (3) Stakeholder—plaintiff and defense attorneys, trust officials, and other interested parties—views on whether more trust and claimant information should be made available to outside parties and efforts to change the trust system and processes. GAO analyzed trust agreements for 44 of 60 trusts and trust distribution procedures for 52 of 60 trusts, as well as financial reports for 47 of 60 trusts for 2009 and 2010. GAO also interviewed U.S. Bankruptcy Court judges and the trustees, general counsels, or directors from 11 trusts.

View [GAO-11-819](#) or key components. For more information, contact William O. Jenkins, Jr., at (202) 512-8757 or jenkinswo@gao.gov.

September 2011

ASBESTOS INJURY COMPENSATION

The Role and Administration of Asbestos Trusts

What GAO Found

From 1988 through 2010, GAO's analysis of available trust payment data show that trusts have paid about 3.3 million claims valued at about \$17.5 billion and that each trust has trust distribution procedures (TDP) that govern its administration and establish the process for assessing and paying claims. Typically, TDPs include sections related to the intake and evaluation of claims, payment processes, and audit programs. Claims that meet the TDP's criteria for a particular disease are paid in the amount specified in the TDP.

Most asbestos trusts we reviewed publish for public review annual financial reports and generally include total number of claims received and paid. Other information in the possession of a trust, such as an individual's exposure to asbestos, is generally not available to outside parties but may be obtained, for example, in the course of litigation pursuant to a court-ordered subpoena. The 44 trust agreements GAO reviewed all required that trusts submit annual financial reports to the U.S. Bankruptcy Court of jurisdiction. Although TDPs typically provide that the trusts will make claim and payment information available to claimants and other parties, each trust ultimately determines what information it will make available. Of the 47 trust annual financial reports for 2009 and 2010 that GAO reviewed, all included the total amount of payments made and most included the total number of claims received and paid. One trust's financial report contained claimant names and amounts paid to these individuals. Of the 52 trust TDPs GAO reviewed, 33 (64 percent) included sections related to protecting the confidentiality of claimants' information and these sections often state that the trusts will only disclose information to outside parties with permission of the claimant or in response to a valid subpoena.

Views differ on whether more trust and claimant information should be made available and there have been efforts to change the trust system. Plaintiff attorneys and trusts oppose proposals that would require additional disclosure of claimant information, such as amounts paid to individual claimants, stating that such information is available to the defense through subpoenas and that disclosure otherwise could compromise the confidentiality of claimants' private information. Defense attorneys support additional disclosure, stating that such information could be used to offset asbestos defendants' settlements in court and reduce fraudulent claims. In recent years, there have been various proposals to require additional disclosure of claimant information. One of these proposals was recently brought before the Judicial Conference of the United States, the primary policy making body of the U.S. courts.

In commenting on a draft copy of this report, the Department of Justice and the Administrative Office of the U.S. Courts provided technical clarifications, which GAO incorporated where appropriate.

Contents

Letter		1
	Background	6
	Asbestos Trusts Have Paid at Least \$17 Billion in Claims and Are Administered in Accordance with Trust Distribution Procedures	16
	Most Asbestos Trusts Publish Annual Financial Reports Whose Details Vary; Parties May Obtain Other Information through Requests or Subpoenas	24
	Views Differ on Whether Additional Claimant Information Should Be Made Available; Recent Efforts to Change the Trust System	29
	Agency Comments and Our Evaluation	34
Appendix I	Select Federal Legislative Proposals Addressing Compensation for Asbestos-Related Harms or Death	35
Appendix II	GAO Contact and Staff Acknowledgments	40
Table		
	Table 1: Information Found in Trusts' 2009 and 2010 Annual Reports Obtained and Reviewed by GAO	25
Figures		
	Figure 1: Asbestos Mineral and Examples of Products That Contained Asbestos	7
	Figure 2: Timeline of Events Surrounding the Establishment of Asbestos Trusts	10
	Figure 3: Chapter 11 Bankruptcy Process through Which Asbestos Bankruptcy Trusts Are Created	12
	Figure 4: Overview of the U.S. Bankruptcy System	14
	Figure 5: Asbestos Trust Claim Process	19
	Figure 6: Key Actors Involved In the Asbestos Bankruptcy Trust Payment Process	22

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.



United States Government Accountability Office
Washington, DC 20548

ELECTRONICALLY FILED - 2025 Jul 11 11:14 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4001759

September 23, 2011

The Honorable Lamar Smith
Chairman
Committee on the Judiciary
House of Representatives

Dear Chairman Smith:

Asbestos litigation has been the longest-running mass tort litigation in U.S. history and arose out of millions of Americans' lengthy and widespread occupational exposure to asbestos, which has been linked to malignant and nonmalignant diseases.¹ Asbestos is a term used to describe naturally occurring silicate minerals that had wide industrial, commercial, and household usage in the United States during the 20th century because of its flame-retardant and insulating properties. Even with U.S. asbestos consumption peaking in 1973 and dropping over the next 3 decades, estimates of the number of individuals exposed to asbestos in the U.S. range from approximately 27 million to 100 million.

Asbestos-related diseases have a relatively long latency period, meaning it usually takes decades from the time of exposure to asbestos or asbestos-containing products and the date of medical diagnosis of asbestos-related disease or asbestos-related death. As early as 1900, asbestos was recognized as a cause of occupational disease—namely asbestosis, a nonmalignant respiratory disease characterized by scarring of the lung tissue that may progress to impairment and death. By 1960, the connection between asbestos and mesothelioma—a cancer of the lining of the lungs, chest, or abdomen that typically causes death within 1 or 2 years of diagnosis—was established.² Mesothelioma was not

¹A tort is a civil wrong that results in an injury or harm and that is recognized by law as grounds for a lawsuit by the injured party; a mass tort is one that injures many people. The primary aim of tort law has been described as providing relief for the damages incurred and deterring others from committing the same harms. For purposes of this report, "malignant diseases" refer to those involving mesothelioma, lung cancer or other cancer while "nonmalignant diseases" refer to asbestosis and pleural diseases.

²Mesothelioma is a cancer of the mesothelium, a protective membrane that covers the internal organs. Mesothelioma is the most severe disease category recognized by asbestos trusts.

recorded as a separate cause-of-death category on death certificates until 1999 and is not recorded as a cause of death in all states or municipalities. Although lung cancer is reported as a cause of death, lung cancer caused by asbestos is not differentiated from other forms of lung cancer. In addition to potentially increasing the risk of mesothelioma, asbestos exposure has been linked to lung cancer and may be associated with other non-respiratory cancers, according to the Centers for Disease Control and Prevention and the National Cancer Institute at the National Institutes of Health. As a result of an incomplete history of asbestos-related diseases and because of the long latency period of these diseases, it is difficult to estimate the future trends of these diseases. Although estimating the number of past and future mesothelioma incidence is difficult, experts believe that the mesothelioma epidemic is receding with the peak number of incidence per year reaching approximately 2,500 in the United States in the early 2000s.³

To date, approximately 100 companies have declared bankruptcy at least partially due to asbestos-related liability. The large and unpredictable asbestos-related liability due to the number of individuals exposed and the number of asbestos related lawsuits filed in the tort system are factors that may contribute to the decision by companies facing asbestos-related liability to file for bankruptcy. Generally, filing for bankruptcy halts civil lawsuits and other actions against the debtor company (the company filing for bankruptcy) for the duration of the bankruptcy process.⁴ For those companies seeking to reorganize pursuant to Chapter 11 of the federal bankruptcy code, 11 U.S.C. § 524(g) affords the debtor company an opportunity to channel (by way of a channeling injunction) all future asbestos-related liabilities to an asbestos personal injury trust established as part of the company's reorganization and in accordance with § 524(g)⁵ Pursuant to § 524(g), the asbestos personal injury trust assumes the debtor company's asbestos-related liabilities while assets of

³RAND Corporation, *Asbestos Litigation*, RAND Institute for Civil Justice, MG-162 (2005) and Bertram Price and Adam Ware, *Mesothelioma Trends in the United States: An Update Based on Surveillance, Epidemiology, and End Results Data for 1973 and 2003*, volume 159, number 2 (2004).

⁴See 11 U.S.C. § 362.

⁵See 11 U.S.C. §§ 1101-46 (Chapter 11, Reorganization); 11 U.S.C. § 524(g) (allowing for the issuance of an injunction against future claims of liability for asbestos-related injuries against the debtor company if the confirmed plan for reorganization establishes a trust that assumes the liabilities of the debtor).

the debtor company are transferred to the asbestos trust for investment and management. The trusts then pay present and future asbestos-related claims, thus relieving the reorganized company of all present and future asbestos-related liabilities. Postbankruptcy, the trusts implement a nonadversarial administrative process—independent of the court system—to review claimants' occupational and medical histories before awarding compensation. The trusts operate without judicial or federal government oversight, but generally provide annual financial reports to the U.S. bankruptcy court of jurisdiction in accordance with provisions set forth in each trust's trust agreements (the instruments that establish a trust).

In the last decade, with the number of asbestos-related bankruptcies increasing, the number of asbestos personal injury trusts increased from 16 trusts with a combined total of \$4.2 billion in assets in 2000 to 60 with a combined total of over \$36.8 billion in assets in 2011. In addition to companies that have reorganized through the bankruptcy process, there are other solvent companies that remain vulnerable to asbestos-related lawsuits as defendants in the tort system. These companies, as well as their insurance carriers whose policies are often responsible for paying amounts awarded by settlement or verdict to asbestos victims, are interested in amounts paid to individuals by trusts because these amounts may be used to offset the amounts owed to prevailing plaintiffs by solvent companies.

In this overall context, you asked us to conduct a review of asbestos trusts set up in accordance with Chapter 11 and § 524(g) of the federal bankruptcy code. Specifically, this report addresses:

1. How much asbestos bankruptcy trusts have paid in claims and how those trusts are administered,
2. How trust claim and payment information is made available to outside parties, and
3. Stakeholder—plaintiff and defense attorneys, trust officials, and other interested parties—views on whether more trust and claimant information should be made available to outside parties and recent efforts to change the current trust system and processes.

To conduct our work, we obtained and analyzed publicly available documents related to asbestos trusts. To find these documents, we searched individual trust websites and the Public Access to Court

Electronic Records (PACER) database.⁶ We obtained and analyzed trust agreements (TA) for 44 of the 60 trusts as well as trust distribution procedures (TDP) for 52 of 60 trusts established from 1988 to 2011 to determine how these trusts are structured and operated, and how they assess and pay asbestos claims. We also reviewed TDPs and TAs to determine trusts' policies for sharing information with, or making information available to, outside parties. We obtained and analyzed 47 of 56 annual financial reports for 2009 and 47 of 58 annual financial reports for 2010 that trusts submitted to U.S. bankruptcy courts and were available through PACER to determine the total number of claims paid by these trusts and the amounts paid out in claims. However, the reports we obtained for some trusts did not include the number of claims paid. Therefore, we were not able to determine the total number and value of claims paid for all of the trusts for which we obtained documentation.⁷

In addition, we interviewed trust officials, including trustees, general counsels, and executive directors representing 11 of the 60 asbestos bankruptcy trusts to discuss how these trusts operate and how they assess and pay claims, and to obtain their views on the availability of trust-related information to outside parties. We selected 8 of the 11 trusts with which we conducted interviews because they were the largest, each with initial assets in of \$2 billion or more. In total, these 8 trusts had over \$18 billion in initial assets (about half of the total initial assets for the 60 trusts). We selected the remaining 3 trusts randomly from the remaining trusts with initial assets of less than \$2 billion to understand the operations of selected smaller trusts and to include their perspectives. Although the results of the interviews are not generalizable to all 60 trusts, they provided explanations of trust documents and insights into trust administration and operations.

⁶PACER is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and the PACER Case Locator via the Internet.

⁷We did not obtain 9 trusts' 2009 annual financial reports and 11 trusts' 2010 annual financial reports. These annual financial reports may not be readily available because trusts' may file reports under seal to the Bankruptcy Court to protect the interests and competitiveness of the reorganized company and, thus, are not publicly available, according to U.S. Bankruptcy Court judges we interviewed. Four of the trusts did not have 2009 annual reports because the trusts were newly established or were established in 2010 or 2011 and, thus, the trust population in 2009 totaled 56. Two of these trusts also did not have 2010 annual reports available because the trusts were newly established or were established in 2011 and, thus, the trust population in 2010 totaled 58.

We also interviewed officials from the Administrative Office of the U.S. Courts, the Department of Justice's U.S. Trustees Program, and the Federal Judicial Center. We also interviewed four U.S. Bankruptcy Court judges referred to us by the Administrative Office of the U.S. Courts because of the judges' experience in presiding over asbestos-related bankruptcy cases to discuss the role that the federal government, including the courts, plays in the establishment, administration, and oversight of asbestos trusts. In addition, we discussed these officials' views on the extent to which trust and claimant information is made available to outside parties. We interviewed two professors of law, who have published and are well-known experts in the areas of asbestos litigation and bankruptcy trusts, and two researchers. We learned of these academic experts through our literature searches and discussions with court officials and others. In addition, we interviewed representatives from two associations for both plaintiff and defense attorneys to discuss their constituents' views on the availability of individual claimant information and the extent to which trust information is available. We learned of these attorneys through our discussions with academic experts and others. While the results of these interviews are not generalizable to all parties involved in the establishment and administration of trusts, they provided insight into the views of these various parties. In addition, we observed a conference on asbestos bankruptcy proceedings and trust operations which included expert panel discussions led by plaintiff and defense attorneys, researchers, and bankruptcy judges on emerging trends and the discovery of trust and claimant information.⁸ We used information from a 2010 RAND Corporation study to determine the number of claims and amounts paid by trusts prior to 2009 and to understand trust operations and claimant compensation processes.⁹ We also drew upon information from a 2011 RAND Corporation study to describe the varying positions on trusts providing claimant information beyond what is presently available in annual reports and through the judicial system.¹⁰

⁸Discovery" may be described as the pretrial phase of a lawsuit during which the relevant parties seek production of information that relates to the litigation or that may be reasonably calculated to lead to the discovery of admissible evidence. Rules of practice and procedure generally govern the scope of discovery within each jurisdiction. See, e.g., Fed. R. Civ. P. 26.

⁹ RAND Corporation, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, RAND Institute for Civil Justice, TR-872-ICJ (2010).

¹⁰RAND Corporation, *Asbestos Bankruptcy Trusts and Tort Compensation*, RAND Institute for Civil Justice, MG-1104 (2011).

We determined that the scope and methodology of the RAND reports were sufficient for us to rely on their results. We also reviewed various applicable legislative and other proposals, as well as other actions intended to change the current asbestos trust and compensation systems and require additional disclosure of claimant information.

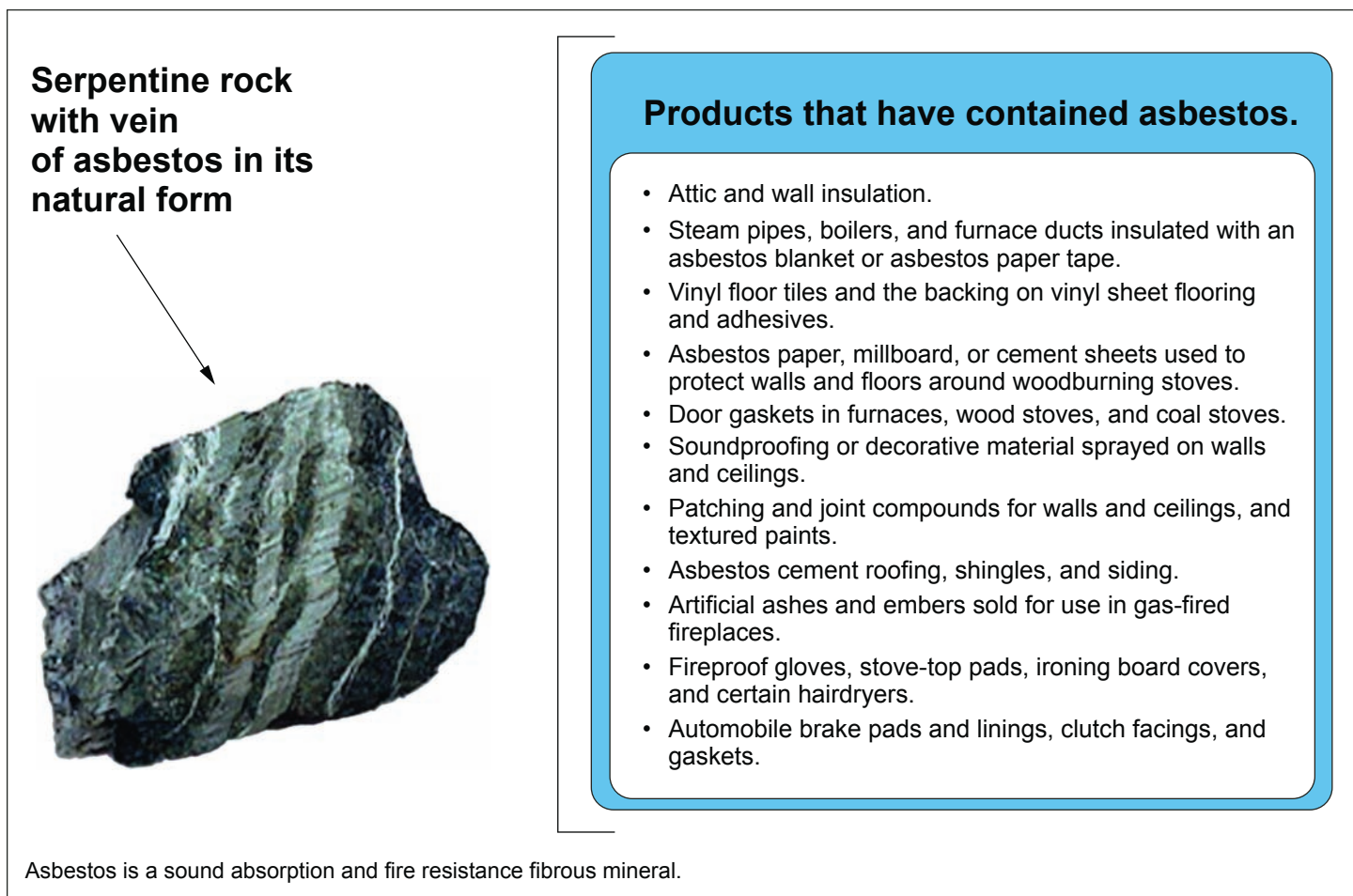
We conducted this performance audit from October 2010 through September 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

History of Asbestos Use and Litigation

Asbestos is a naturally occurring silicate mineral that was widely used in the United States in the 20th century for industrial, commercial, and residential purposes primarily for its flame-retardant and insulating properties. Examples of products containing asbestos included roofing shingles, ceiling and floor tiles, paper and cement products, and friction products such as automobile clutch, brake and transmission parts. Figure 1 below provides an illustrative example of asbestos and some of the products in which asbestos was used.

Figure 1: Asbestos Mineral and Examples of Products That Contained Asbestos



Source: Environmental Protection Agency.

As asbestos became increasingly linked as the cause of certain diseases, plaintiffs began bringing asbestos-related personal injury claims against asbestos product manufacturers as well as purchasers of asbestos products, insurers, and businesses that used asbestos or asbestos-containing products. With the Occupational Safety and Health Act (OSHA) of 1970, the federal government imposed regulations governing workplace safety including standards related to reducing occupational

asbestos exposure.¹¹ In 1973, the U.S. Court of Appeals for the Fifth Circuit issued the first appellate opinion upholding a product-liability judgment against a manufacturer of asbestos-containing products in *Borel v. Fibreboard*, finding that the asbestos manufacturers were liable to workers injured as a result of exposure to their asbestos-containing products.¹² In the course of the first successful personal injury lawsuits against asbestos manufacturers, plaintiffs' attorneys introduced evidence that these manufacturers had known but concealed information about the dangers of asbestos exposure or that such dangers were reasonably foreseeable.

Section 524(g) and the Establishment of Personal Injury Trusts

Asbestos personal injury trusts, established in accordance with the federal bankruptcy code, implement compensation plans that, in general, recognize and protect the interests of present and future claimants, prioritize more seriously ill claimants, and establish processes for resolving disputes between the claimants and the trusts. A 1994 amendment to § 524 of the federal bankruptcy code in effect codified an approach for addressing a debtor company's asbestos-related liabilities while eliminating the possibility of that company being found liable for future asbestos-related personal injury claims.¹³ Pursuant to § 524(g) debtor companies that face asbestos-related liability and file for bankruptcy under Chapter 11 may establish an asbestos personal injury trust that, by way of a channeling injunction, assumes the asbestos-related liabilities of the debtor company that will compensate present and future asbestos claimants. Filing for bankruptcy halts all civil lawsuits and

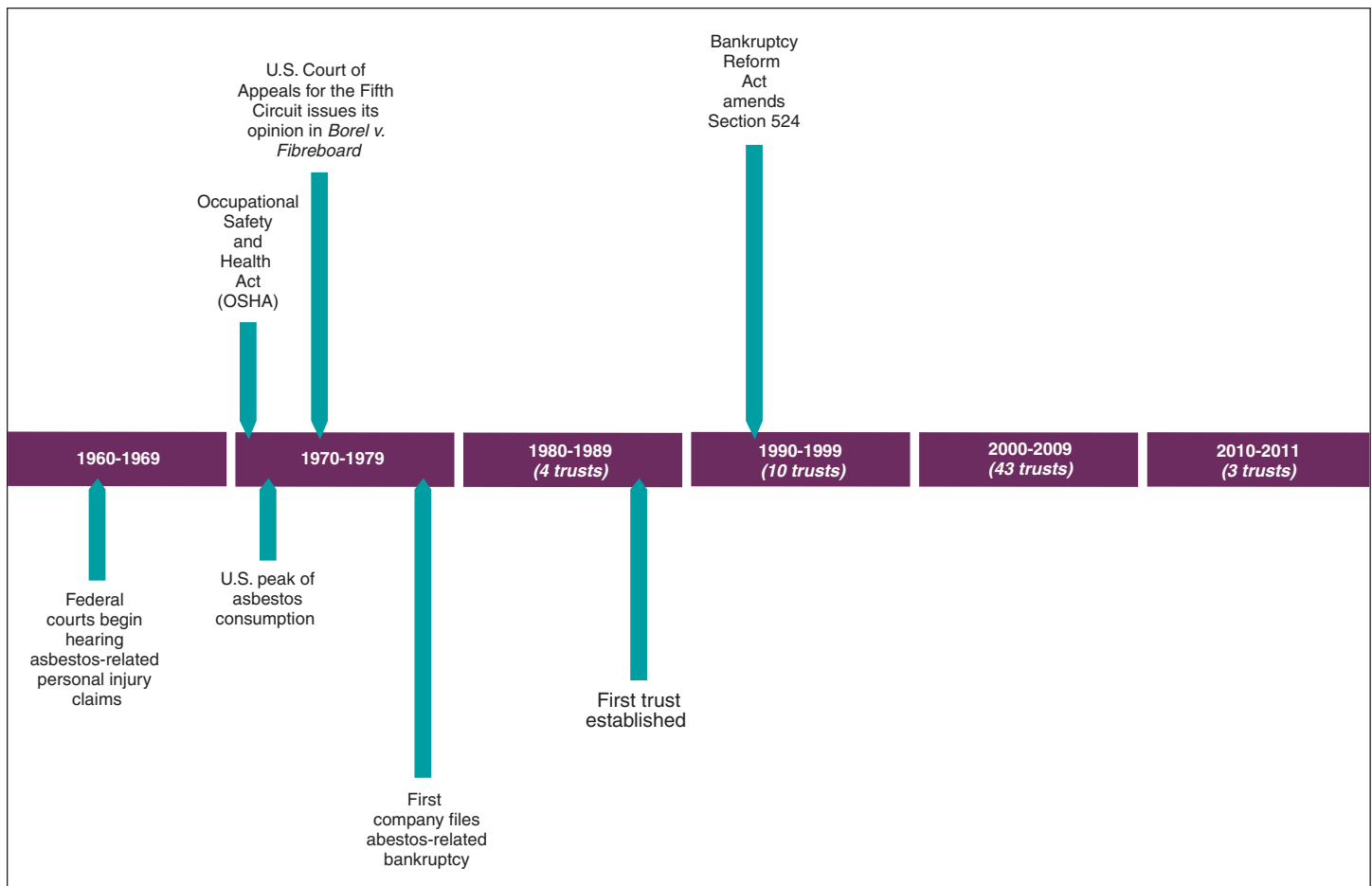
¹¹See, e.g., 29 C.F.R. §§ 1910.1001 (addressing occupational exposure to asbestos in all industries covered by OSHA, except as otherwise provided); 1915.1001 (regulating asbestos exposure in shipyard employment work); and 1926.1101 (regulating asbestos exposure in construction work).

¹²*Borel v. Fibreboard Paper Products Corp.*, 493 F.2d 1076 (5th Cir. 1973).

¹³See Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 111, 108 Stat. 4106, 4113-17. More specifically, the 1994 amendment adding subsection (g) to § 524, in effect, codified the approach utilized in the Johns-Manville Corporation's bankruptcy. In that case, Johns-Manville filed for bankruptcy under Chapter 11 and, in accordance with its confirmed plan of reorganization, the company's asbestos-related liabilities were channeled to the Manville Personal Injury Settlement Trust by way of a court-imposed injunction, thus becoming the first asbestos trust responsible for processing and paying present and future asbestos personal injury claims. Linger concerns as to whether the injunction issued as part of this plan could withstand all challenges underscored the 1994 amendment modeled after this approach.

other actions against the debtor company for the duration of the bankruptcy process and establishing an asbestos personal injury trust as part of the company's reorganization and in accordance with § 524(g) bankruptcy affords the debtor company an opportunity to transfer all future asbestos-related liabilities to the trust, thereby limiting the debtor company's asbestos-related liabilities.¹⁴ The goal of the trusts is to compensate present and future claimants, equitably and outside the court system, by managing the debtor company's assets assumed by the trust as part of the bankruptcy reorganization. Figure 2 provides a timeline of events surrounding the establishment of asbestos trusts.

¹⁴See 11 U.S.C. § 362 (providing for a stay of actions commenced against a debtor); 11 U.S.C. §§ 1101-46 (Chapter 11, Reorganization); and 11 U.S.C. § 524(g) (allowing for the issuance of an injunction against future claims of liability for asbestos-related injuries against the debtor company if the confirmed plan for reorganization establishes a trust that assumes the liabilities of the debtor).

Figure 2: Timeline of Events Surrounding the Establishment of Asbestos Trusts

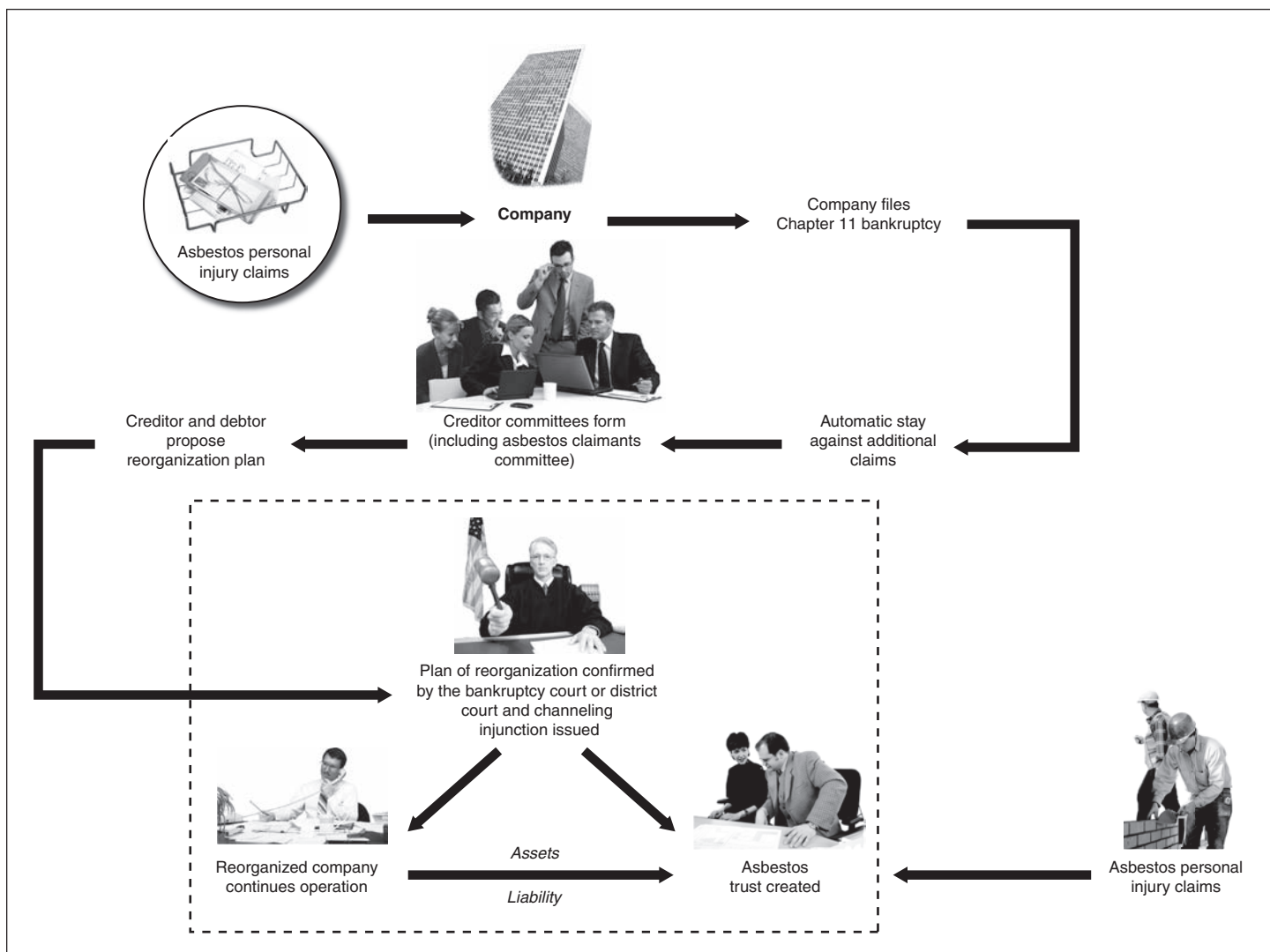
Source: GAO analysis.

To resolve their asbestos liabilities while at the same time continuing with general business operations, companies may seek to reorganize their debts by filing for bankruptcy under Chapter 11 and in accordance with § 524(g) of the federal bankruptcy code. In accordance with these provisions, a debtor company, creditors (that is, parties with claims against the debtor, including asbestos claimants), and as appropriate, other interested parties, such as insurance companies that may have issued liability insurance policies to the debtor company, will develop and propose a plan of reorganization. The plan will provide for the establishment of an asbestos personal injury trust to assume the asbestos-related liabilities of the debtor company and compensate present and future claimants for harm caused by exposure to asbestos.

The plan of reorganization must then be confirmed by the U.S. Bankruptcy Court and affirmed by the U.S. District Court of jurisdiction.¹⁵ Once the reorganization plan is confirmed and the trust established, all asbestos personal injury claims originally intended for the debtor company must go through the trust. See figure 3 for the Chapter 11 bankruptcy process through which asbestos bankruptcy trusts are created.

¹⁵ In some instances the U.S. District Court, and not the Bankruptcy Court, may confirm a plan of reorganization.

Figure 3: Chapter 11 Bankruptcy Process through Which Asbestos Bankruptcy Trusts Are Created



Sources: GAO analysis of U.S. Bankruptcy Code; and Art Explosion (photos).

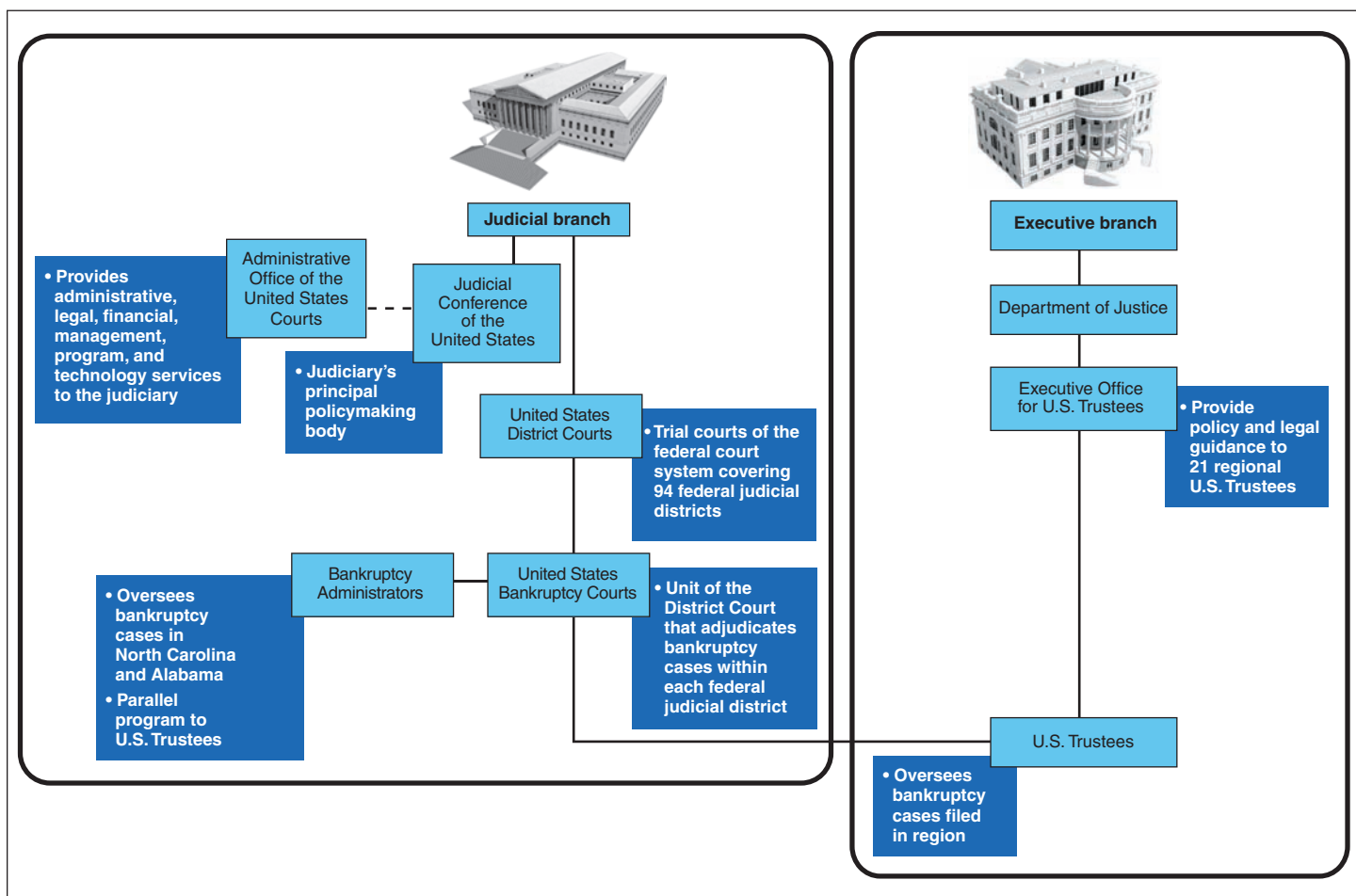
When a company files a petition for bankruptcy under Chapter 11 with the U.S. bankruptcy court of appropriate jurisdiction, that court will preside over the debtor company's reorganization. Concurrently, United States Trustees or, where applicable, Bankruptcy Administrators, have

responsibility for supervising or overseeing the administration of bankruptcy cases.¹⁶ Although the role of the U.S. Trustees will vary depending on the circumstances of a petition, in general, they will monitor the debtor company's business operations, including a review of monthly operating reports or other financial information and the debtor company's progress in filing and confirming its reorganization plan. When a plan of reorganization involves a debtor company facing asbestos-related liability and provides for the establishment of a trust in accordance with § 524(g), the U.S. Trustees will generally ensure compliance with applicable provisions of the federal bankruptcy code but will not focus on issues specific to the operations of the trust, such as provisions negotiated by the debtor company, asbestos claimants, other creditors, and interested parties.

After the reorganization plan is filed with the bankruptcy court, the bankruptcy judge verifies that it complies with Chapter 11 of the bankruptcy code. If the plan involves the establishment of an asbestos personal injury trust, the bankruptcy court and U.S. District Court will also ensure compliance with § 524(g) before confirming, or affirming confirmation of the debtor company's plan of reorganization and issuing the channeling injunction. Upon confirmation of the reorganization plan, the role of the bankruptcy courts and U.S. Trustees is significantly reduced, in particular, with respect to an asbestos personal injury trust established pursuant to the plan. Postconfirmation, neither the courts nor the U.S. Trustees have any specific statutory or other requirements to oversee a trust's administration. The bankruptcy court, however, ordinarily maintains limited postconfirmation jurisdiction over the trust, including receipt of annual financial reports filed by a trust, which are usually filed with the court in accordance with a trust's reorganization plan or trust agreement. See figure 4 for an overview of the U.S. bankruptcy system.

¹⁶The U.S. Trustee Program, a component of the Department of Justice, administers bankruptcy cases in 88 of the 94 judicial districts in 48 states. Bankruptcy Administrators, part of the Administrative Office for U.S. Courts, operate in the remaining 6 districts, located in Alabama and North Carolina. For purposes of this report, references to the U.S. Trustees include both the U.S. Trustees and the Bankruptcy Administrators.

Figure 4: Overview of the U.S. Bankruptcy System



Source: GAO analysis; clipart photo Flickr.

Organization and Administration of Trusts

For a debtor company to obtain the benefit of § 524(g) of the bankruptcy code the trust established as part of the company's plan for reorganization must operate through mechanisms that provide a reasonable assurance that the trust will increase in value, and be in a financial position to pay present and future demands that involve similar claims in substantially the same manner.¹⁷ As part of the bankruptcy

¹⁷See 11 U.S.C. § 524(g)(2)(B)(ii)(V).

reorganization process, the creditors and the debtor establish the trust's administrative functions, amounts of compensation claimants may receive, and processes that determine whether a claimant is entitled to compensation. These are established and described in a trust's TA and TDP. The TA is the instrument that creates a trust and that describes the trust's purpose, acknowledges the transfer and acceptance of assets from the debtor company in exchange for assuming the debtor's liability, and describes key actors in the trust's administration. The TDP contains the processes that govern the review, valuing, and payment of asbestos-related personal injury claims.¹⁸ Among other things, the TDP coordinates claim processing, assigns payment values for various asbestos-related diseases, sets medical criteria for the different diseases, prescribes procedures for reviewing the claims, and establishes a dispute resolution process. These provisions function to ensure that all claimants, both current and future, receive equitable compensation for their asbestos-related injuries.

The asbestos trusts are privately managed and are generally comprised of at least one or more trustees, a trust advisory committee (TAC), and a future claimants' representative (FCR). Trustees manage the daily operations of the trusts, including managing the trusts' investments, hiring and supervising support staff and advisers, filing taxes, and submitting annual reports to the bankruptcy court, as required by the trusts' TA. The trustees are to manage the trust for the sole benefit of the present and future claimant beneficiaries, who are represented by the TAC and the FCR, respectively. The TAC, a group established by the TA, and the FCR, a position statutorily required by § 524(g), both advise the trustees on and must generally consent to significant changes in trust administration and the implementation of the TDP.¹⁹

Although 60 companies subject to asbestos-related liabilities have filed for bankruptcy under Chapter 11 and established asbestos bankruptcy trusts in accordance with § 524(g), asbestos claimants can also seek compensation from potentially liable solvent companies (that is, a company that has not declared bankruptcy) through the tort system. In

¹⁸Some trusts refer to these as the Claims Resolution Procedures.

¹⁹11 U.S.C. § 524(g)(4)(B)(i) (requiring the court to appoint a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands against the debtor company for asbestos-related injuries).

such instances, trust compensation as well as a claimant's occupational exposure and medical evidence submitted to trusts may be taken into consideration. RAND's Institute for Civil Justice released a report in August 2011 addressing the potential effects of asbestos bankruptcy trusts on compensation in the tort system²⁰ At issue in the report is how the tort system takes into consideration compensation paid by trusts and the time at which a plaintiff must disclose trust submissions, focusing on selected states' practices and liability regimes. The report also examines how the establishment of the trusts potentially affects total plaintiff compensation and payments by the solvent defendants.

Asbestos Trusts Have Paid at Least \$17 Billion in Claims and Are Administered in Accordance with Trust Distribution Procedures

Asbestos Bankruptcy Trust Payments

Since the establishment of the first trust in 1988 through 2010, available data indicate that asbestos trusts have paid about 3.3 million claims valued at about \$17.5 billion. Trusts typically report the number of claims paid and the value of these claims in annual reports submitted to the bankruptcy court, which are generally available to the public. In 2010, the RAND Corporation reported that from 1988 through 2008, trusts paid about 2.4 million claims totaling \$10.9 billion with about 575,000 claims totaling \$3.3 billion in 2008.²¹ We reviewed available 2009 and 2010 annual financial reports and found that these trusts paid approximately 443,000 additional claims totaling \$3.6 billion in 2009 and approximately

²⁰RAND Corporation, *Asbestos Bankruptcy Trusts and Tort Compensation*, RAND Institute for Civil Justice, MG-1104 (2011).

²¹RAND Corporation, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts*, RAND Institute for Civil Justice, TR-872-ICJ (2010).

461,000 more claims totaling \$3 billion in 2010. The number and value of claims paid presented above provides a conservative estimate of total trust payments since 1988. RAND Corporation reported that its data provide the lower bounds because data on the number and value of claims paid are incomplete for some trusts' payments prior to 2006. Although we were able to collect 47 (84 percent) of the 56 trusts' annual reports for 2009 and 47 (81 percent) of the 58 trusts' annual reports for 2010, some trusts' annual reports may not be publicly or readily available. Four of the trusts did not have 2009 annual reports because the trusts were newly established or were established in 2010 or 2011. Two of these trusts also did not have 2010 annual reports available because the trusts were newly established or were established in 2011. In addition, annual reports may have been filed under seal with the Bankruptcy Court for reasons deemed appropriate by the court, according to U.S. Bankruptcy Court judges we interviewed.

Asbestos Trusts Assess and Pay Claims in Accordance with Trust Distribution Procedures

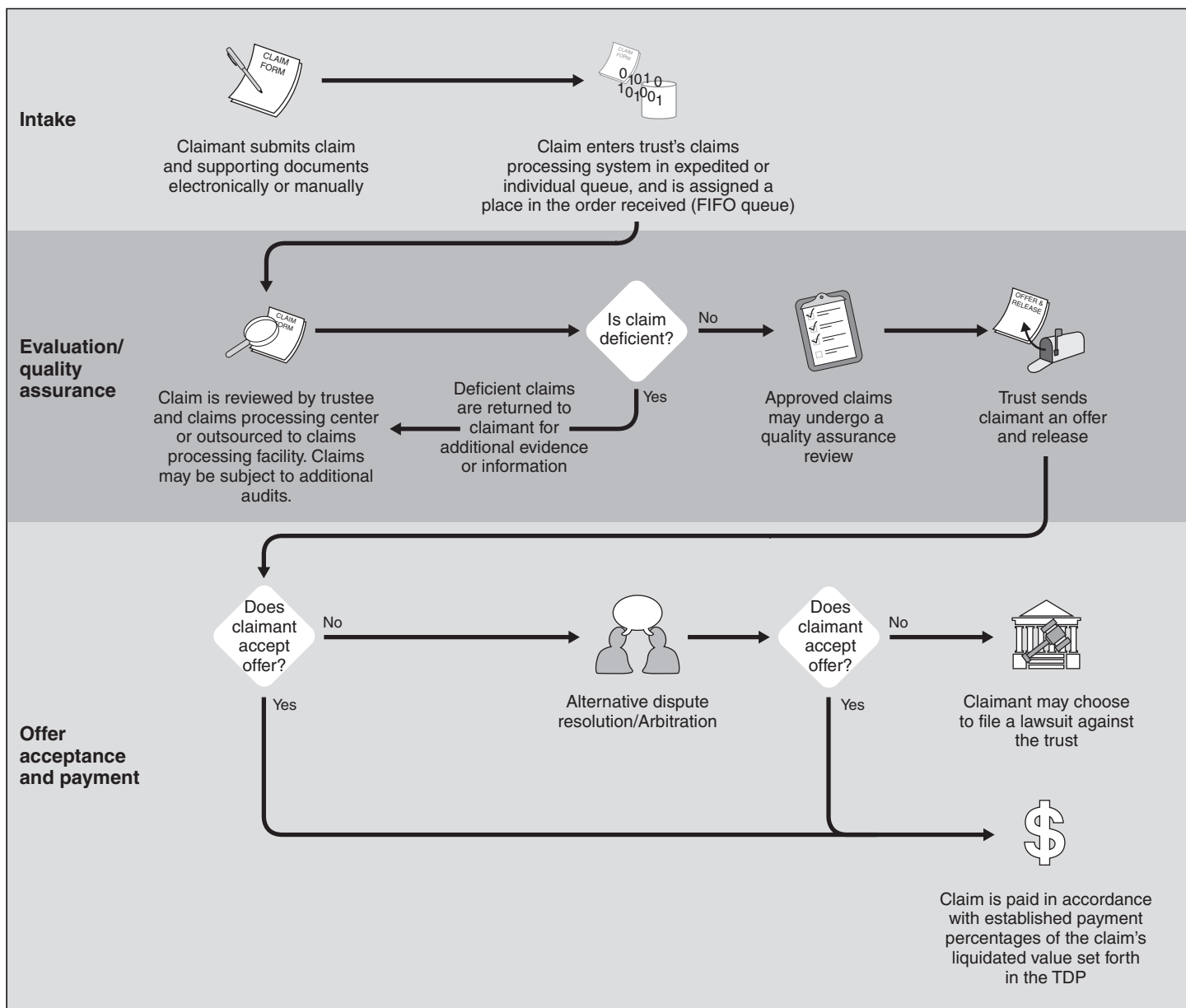
Each asbestos trust has a TDP that governs the administration of the trust and establishes the process for assessing and paying claims. Claims that meet the criteria documented in the TDP are paid as a percentage of the scheduled value specified in the TDP as discussed below. TDPs may also include a claim payment ratio provision that specifies the amount of payments that the trust may allocate for the most serious claims (malignancies, serious asbestosis) versus the less serious claims each year. Such provisions serve to prioritize the more serious claims to ensure that less serious claims do not absorb the bulk of available assets each year simply because there are more of them.²² The ratio is different in each trust, but trusts may allocate 80 percent or more of their available assets to the more serious claims.

Trusts typically offer claimants two options for claim review, either expedited review or individual review. Under expedited review, claims that meet the medical and exposure criteria for the alleged disease (referred to as the disease level) are to be assigned a scheduled value for the disease. The trusts seek to achieve relative equity among claimants by establishing these scheduled values. A claim that meets the criteria

²²TDP's will also generally provide for a limit on the amount of payments a trust will make each year, referred to as the "maximum annual payment." In the event payment of a claim would cause a trust to exceed the maximum annual payment threshold, that claim shall generally be carried over into the next year.

documented in the TDP typically includes a completed claim form with documented evidence of exposure to asbestos products. Such evidence of exposure may consist of the claimant's work history, Social Security records, invoices, employer records, or deposition testimony of the claimant or coworkers taken in asbestos litigation. The claimant, or attorney acting on the claimant's behalf, also submits medical reports or records sufficient to support a diagnosis for the specific disease being claimed or, if applicable, a copy of a death certificate.²³ As an alternative to expedited review, individual review provides a claimant the opportunity to receive individual consideration of his or her medical condition and of the claim's value. Some categories of disease may be compensated only through individual review (i.e., lung cancer without underlying asbestosis). In the individual review process, the trust may be able to take into account factors relevant to the individual claimant (dependants, pain and suffering, for example) and factors relevant to the litigation posture of the claim were it to have been pursued in the tort system (such as the jurisdiction and the track record of the law firm representing the claimant). Payment for an individual review claim can be higher or lower than a claim in the expedited process. In general, under either expedited or individual review process, claims are paid according to a first-in, first-out (FIFO) rule, processing each claim based on the date the claim was filed. Based on our review of 52 of 60 TDPs and our interviews with officials from 11 trusts, the process for assessing and paying claims typically follows the process shown in figure 5.

²³Claims may be filed on behalf of deceased claimants.

Figure 5: Asbestos Trust Claim Process

Source: GAO analysis of asbestos trust claim process.

Intake of claims. Based on our review of 52 of 60 TDPs and interviews with 11 trusts, claims and supporting documents are filed electronically or manually. Upon review of a claim and supporting documents, the trust's claim processing facility begins the review process in accordance with the method selected by the claimant. A claimant chooses the expedited or individual review process, both of which are separately processed through the FIFO queue. Two to 3 percent of claims are processed through the individual review process, while most claims flow through the expedited claims queue. Claims processed through the expedited review claims queue are paid the scheduled values for disease level as set forth in the TDP.

A claimant may elect to have a claim undergo the individual review process for purposes of determining whether the liquidated value exceeds the TDP's scheduled value, or if the claim does not meet the presumptive medical criteria for any of the disease levels in the TDP. A claimant can demonstrate exposure to an asbestos-related product in a variety of ways. For example, an asbestos claimant diagnosed with mesothelioma or asbestos lung cancer and who is receiving chemotherapy could be a male age 60 or older who has worked for construction companies at numerous work sites and shipyards where he was exposed to various asbestos-containing products for an extended period of time. This claimant files claims with several trusts where the now reorganized companies' products or operations are identified at those specific work sites. For occupational exposure evidence, the claimant may provide a trust with Social Security records in support of the claim to document where the claimant was employed at the time of exposure. The record may indicate that the claimant was employed by a specific company that was known to have used asbestos products; however, there may not be a direct link between the claimant's exposure to the product at the company. Under these circumstances, trusts may solicit work histories from the claimant's company in support of the claim. However, it is possible that accurate work records may not exist due to, for example, the passing of a substantial amount of time between exposure and the date a claim is filed, and the trust, therefore, may have to rely on depositions from other parties or even professional judgment that considers all available information.

Evaluation of claims. The process for evaluating claims varies across trusts. Seven of the eight large trusts we interviewed told us they rely on claims processing companies to assess claims against the criteria outlined in the trusts' TDPs. Officials we interviewed at 9 of the 11 trusts said they have internal claims reviewers to determine whether the claimant's medical and exposure evidence satisfies the requirements

outlined in the TDP. If a trust has any concerns about a claim, the trust may request the claimant provide additional documentation, such as other independent medical records. Officials we interviewed at 5 of the 11 trusts told us they also track public information and court filings to determine if questions are raised in the tort system about the authenticity of information and claims filed by a particular lawyer or claimant. In cases where questions are raised about the validity of claims from particular individuals, trusts officials stated that they will further inspect such claims.

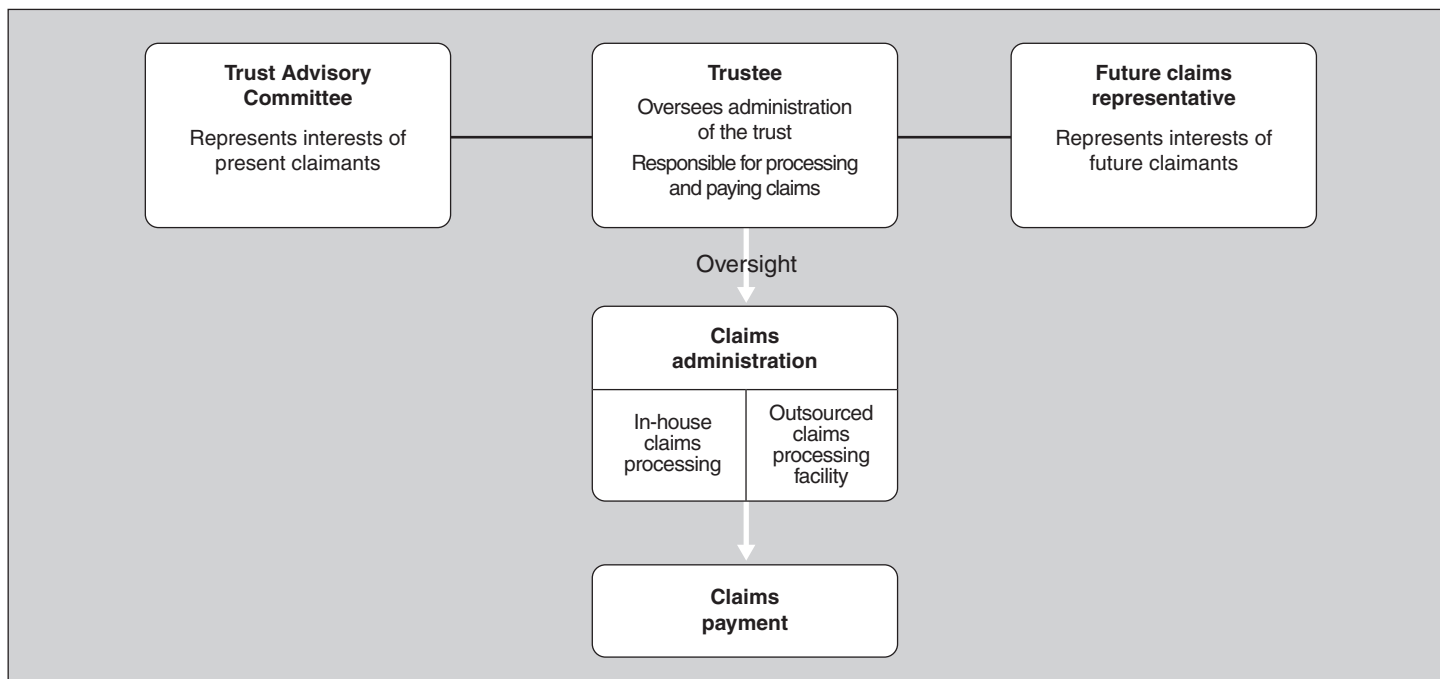
Payment process. If a trust determines that a claim meets the criteria documented in the TDP, the trust is to make the claimant an offer based on a percentage of the scheduled disease value specified in the TDP.²⁴ Most trusts cannot pay the full value of a claim and still maintain sufficient assets to compensate all present and future claimants. As a result, trusts determine a payment percentage, a fraction of the full value that can be paid to present claimants and still maintain sufficient assets for future claims. Payment percentages vary across trusts and TDPs we reviewed specify a range of payment percentages from 1.1 percent to 100 percent for certain diseases, such as mesothelioma or asbestosis. The median payment percentage across trusts is 25 percent, according to the 2010 RAND Corporation study.²⁵ Periodically, trustees will calculate what the trust can afford to pay based on the assets it has on hand, and what those assets are expected to earn in the future. For example, a trust with a scheduled disease value of \$100,000 for a specific disease type, such as mesothelioma or asbestosis, that applies a payment percentage of 44 percent would pay a claimant \$44,000. In arriving at a payment percentage, the trustees, the TAC, and FCR review the trust's claim statistics and compare those to the original forecasts made of the volume and value of claims at the time the trust was created. The trustees review the payment schedule periodically and may adjust it, up or down, based on what assets are available to meet a trust's present and future

²⁴The payment percentage is a percentage applied to the value that a trust assigns to a disease to determine the amount that will be actually paid to the claimant. Payment percentages are initially set during trust formation but may be changed by the trustee or trustees with the consent of the trust advisory committee and the future claimants' representative. Payment percentages are used as a means to preserve trust assets to pay future unknown claims.

²⁵RAND Corporation, Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts, RAND Institute for Civil Justice, TR-872-ICJ (2010).

liabilities.²⁶ The TAC and FCR must generally consent to any changes that are made to the payment percentage. If the claimant accepts the trusts' offer, the claim is paid. If the claimant rejects the offer, the claimant may enter into alternate dispute resolution, as set forth in the TDP. If the issue is not resolved through alternate dispute resolution, the claimant may file a lawsuit in the tort system against the trust in an appropriate court of jurisdiction regarding the amount of compensation offered by the trust.

Figure 6: Key Actors Involved In the Asbestos Bankruptcy Trust Payment Process



Source: GAO analysis of asbestos trust claim process.

Quality Assurance and Audit programs. Fifty (98 percent) of the 52 TDPs we reviewed contained a provision requiring that the trusts conduct a claims audit program. These TDPs provide that the trustees, with the consent of the TAC and FCR may develop methods for auditing the

²⁶If the payment percentage is increased, the trust will generally make supplemental payments to all claimants who previously liquidated their claims against the trust and received payments based on a lower payment percentage, as set forth in each trust's TDP.

reliability of medical evidence. While trust processes vary, officials we interviewed at all 11 of the trusts stated that they incorporate quality assurance measures into their intake, evaluation, and payment processes. For example, officials we interviewed at 2 of the 11 trusts said they reviewed random and targeted samples of processed claims to ensure claims were valid and supported. These trusts told us that these audits include reviews of supporting medical and work history documentation to determine if they are valid and accurate. For example, one trust stated that if they identified claims by multiple individuals with the same birth date and same disease filed by the same law firm, this would likely trigger follow-up procedures to ensure that these individuals actually exist. Another trust we contacted reported conducting an external audit with claims selected randomly to identify claims that required further review for potential fraudulent activities. The objective of the audit was to ensure that appropriate amounts of money were paid to the proper claimants and medical documentation was valid. As part of the audit, a sample of x-rays was sent to an independent doctor who evaluated the x-rays to determine whether the disease existed based on the evidence submitted to the trust. According to the trust, any irregularities identified by the audit were addressed and all of the randomly selected claims were supported by sufficient medical and exposure evidence and found to be processed and paid in accordance with trust procedures.

According to the officials we interviewed at all 11 trusts we selected, each trust is committed to ensuring that no fraudulent claims are paid by the trust, which aligns with their goals of preserving assets for future claimants. Although the possibility exists that a claimant could file the same medical evidence and altered work histories with different trusts, each trust's focus is to ensure that each claim meets the criteria defined in its TDP, meaning the claimant has met the requisite medical and exposure histories to the satisfaction of the trustees. Of the trust officials that we interviewed that conducted audits, none indicated that these audits had identified cases of fraud.

Most Asbestos Trusts Publish Annual Financial Reports Whose Details Vary; Parties May Obtain Other Information through Requests or Subpoenas

Trusts' Annual Financial Reports

All of the 44 TAs that we reviewed require that trusts submit annual financial reports to the U.S. Bankruptcy Court of jurisdiction. For example, one trust requires that the "Trustees shall cause to be prepared and filed with the Bankruptcy Court a report containing a summary regarding the number and type of claims disposed of during the period covered by the financial statements." The TDP, which contains the processes that govern claim filing and payment, typically requires that the trust make information available to claimants and other interested parties on the number and value of claims that have been resolved. For example, one trust's TDP requires that the trust "make available to claimants and other interested parties, the number of claims by disease levels that have been resolved indicating the amounts of the awards and the averages of the awards by jurisdiction."

Each of the 47 trust annual financial reports for 2009 and 2010 that we obtained and reviewed included the total amount of payments made by the trusts and most included the total number of claims received and paid. Table 1 provides a summary of information presented in these 2009 and 2010 annual reports.

Table 1: Information Found in Trusts' 2009 and 2010 Annual Reports Obtained and Reviewed by GAO

	2009 Annual reports	2010 Annual reports
Number of reports obtained and reviewed	47 (of 56 trusts)	47 (of 58 trusts)
Reports including claims received	37	35
Minimum claims received by a trust ^a	0	0
Maximum claims received by a trust	Over 800,000	Over 160,000
Total claims received by trusts	1.6 million	1.3 million
Reports including claims paid	42	42
Minimum claims paid by a trust	0	0
Maximum claims paid by a trust	Over 79,000	Over 83,000
Total claims paid	443,000	461,000
Reports including value of claims paid	47	47
Minimum value of claims paid by a trust	0	0
Maximum value of claims paid by a trust	Over \$800 million	Over \$650 million
Total value of claims paid by trusts	\$3.6 billion	\$2.9 billion

Source: GAO analysis of available trusts' annual reports.

^aAccording to the annual reports for those trusts that reported 0 claims received and 0 claims paid, the trusts did not accept claims because the trusts are in the process of organizing (if newly established), have pending litigation, have no funds available to pay claims, or have pending assets in the form of unliquidated insurance assets.

Of the annual reports we reviewed, one trust reported information on the amount paid to each individual and listed these individuals' names. According to officials from this trust, they included individual's names to reduce the number of external requests for claimant payment information and, therefore, reduce the trust's operating expenses associated with addressing such requests.

Trusts that submitted annual reports for 2009 and 2010 may summarize claims paid according to whether the claim is for a malignant or nonmalignant disease, by the state (or country) from which the claim was filed, or by whether the claim was a prebankruptcy filing or filed after the trust's establishment. The annual reports may also include information about the trusts' other activities, including names of trust administrators, records of administrator meetings, changes in the payment percentage, and updates on resolved and ongoing litigation involving the trust or the debtor companies' insurers.

Trust Information May Also Be Obtained through Requests or Subpoenas in Some Cases

Outside of the TAs, TDPs, and publicly available annual financial reports, additional information related to trusts or claimants may be obtained through direct requests to the trust or by way of court-ordered subpoenas. When asbestos-related litigation makes its way into the tort system, such as when a party brings suit against a solvent company, the court may require that a claimant or trust share information about an individual's exposure to asbestos, work history, or other evidence submitted to the trusts either at its own initiative or at the request of one of the parties through discovery. Discovery is the pretrial phase of a lawsuit during which the parties seek production of information related to the litigation or that may be "reasonably calculated to lead to admissible evidence."²⁷ In asbestos cases, exposure and work history may be sought as evidence in determining a particular defendant's liability for the exposure or a plaintiff's exposure history, among other things. While discovery is governed in each jurisdiction by judicially adopted or statutorily mandated rules (for example, discovery in federal civil matters is generally governed by Rule 26 of the Federal Rules of Civil Procedure), discovery is generally limited to nonprivileged materials and matters relevant to the subject involved in the case. Typically, materials and information disclosed in the course of settlement negotiations is recognized as not discoverable. Sixty-five percent of the trust distribution procedures that we reviewed specifically state that claimant information submitted to the trust for purposes of obtaining compensation is confidential and should be treated as a settlement negotiation. Depositions, requests for document production and review, and subpoenas are the commonly used techniques to compel production of discoverable material. Judges may require that a claimant or trust disclose trust claim forms during the discovery phase, which may include statements of work history, asbestos exposure, and medical diagnosis, for claims previously submitted to trusts.

Whether claim forms and payments should be discoverable has been a subject of dispute during the discovery phase of asbestos-related litigation. The disagreement centers around whether claim forms and the subsequent claim evaluation fall under the privileged material exemptions to general discovery rules. Similar to the Federal Rules of Civil Procedure, state civil procedure rules generally protect the confidentiality of settlement negotiations, and settlement agreements are generally not admissible into evidence at trial. The trusts and claimant representatives

²⁷See, e.g., Fed R. Civil P. 26(b)(1).

have argued that trusts should be treated as any other settling party while defendant solvent companies and insurers have argued that the trusts' claims processing is nonadversarial and, therefore, should not be treated as a settlement negotiation or agreement.

Within the tort system, if a claim proceeds to trial and results in a verdict for the claimant, the liability of each defendant is established in accordance with applicable state law.²⁸ The court, however, may adjust any amounts awarded by way of a verdict to account for compensation that the claimant has already received from trusts or through settlements with other parties. Efforts to offset amounts awarded by verdict with an amount received from trusts constitute a method for managing contributions from multiple defendants and accounting for other sources of compensation related to the harm deemed to have been inflicted. State courts generally require that the liable defendant (or defendants) be given credit for compensation the plaintiff has already received (for example, as a claimant to a trust), which may have the effect of reducing the amount a plaintiff will receive from a particular defendant. In such instances, a court will generally require, if it had not done so earlier in the proceedings, that the plaintiff disclose any compensation actually received for the harm, including payments from trusts. However, if a plaintiff had not filed any claims with trusts prior to or during the trial, then there would be no claims information available to potentially offset an amount awarded by verdict. Following a verdict, a prevailing plaintiff would generally not be precluded from subsequently filing claims for compensation to those trusts to which the harm is attributable. In addition, a solvent company found liable for damages in the court system could file an indirect claim with a trust seeking compensation for that trust's (or, the debtor company's) contribution to the underlying harm suffered by the plaintiff.²⁹

²⁸For example, in a state that applies a "joint and several liability" standard for awarding damages, each party found liable to a plaintiff is individually responsible for the entire amount awarded, but may have a right of contribution and indemnity from nonpaying parties. In a state that applies a "several liability" standard, a party found liable is only responsible for its share of the damages, as determined in trial. The 2011 RAND study on asbestos bankruptcy trust and tort compensation discusses the liability regimes of California, Illinois, New York, Pennsylvania, Texas, and West Virginia.

²⁹In general, an indirect claimant is one who seeks reimbursement or compensation from a trust because it has compensated a potential claimant of the trust in another forum. Examples of indirect claimants include insurance providers, solvent companies, and other trusts.

Asbestos trusts typically protect the confidentiality of claimants' submissions to the trust in accordance with the trust's TDP, unless specifically given permission by the claimant or subpoenaed by a court of jurisdiction. Thirty-three (65 percent) of the 52 TDPs we reviewed included sections related to protecting the confidentiality of claimants' information and these sections often state that the trusts will only disclose information to outside parties with permission of the claimant or in response to a valid subpoena. For example, one trust's TDP states that the trust "will preserve the confidentiality of such claimant submissions, and shall disclose the contents thereof only, with the permission of the holder... to such other persons as authorized by the holder... or in response to a valid subpoena." However, of the 52 TDPs that we reviewed, 18 did not include a confidentiality statement.

According to trust officials with whom we spoke, if served with a subpoena requesting disclosure of an individual claimant's information, the trust may consider whether the subpoena is valid before identifying whether or not the subpoenaed claim or information exists. For example, the trust may consider whether the court issuing the subpoena has jurisdiction. If the claim or information exists, the trust notifies the claimant (or his or her representative) of the subpoena and the claimant (or his or her representative) may file an objection or motion to quash (or void) the subpoena. If no objection or motion to quash the subpoena is filed, the trust will generally produce the subpoenaed information or claim file but may exclude any confidential settlement, payment, or nonpertinent medical information. According to trust officials we interviewed, subpoenas typically request disclosure of an individual claimant's information for use during either the pre-trial discovery or post-trial setoff processes. However, in other circumstances, solvent companies, debtor companies that are attempting to reorganize under Chapter 11, or insurance carriers may attempt to have a trust's entire claimant database subpoenaed. In such instances, the breadth of such a demand for disclosure may prompt a trust to challenge the subpoena.

Views Differ on Whether Additional Claimant Information Should Be Made Available; Recent Efforts to Change the Trust System

Stakeholder Views

Stakeholders, including plaintiff and defense attorneys, trustees, and other interested parties expressed differing views on the extent to which additional individual claimant information should be made available to outside parties. Those who oppose additional disclosure of individual claimant information note that parties in the tort system are not required to disclose settlement negotiation or agreement information outside of the subpoena process. For example, during the expert panel discussions at a conference on asbestos bankruptcy proceedings and trust operations, three plaintiff attorneys stated that all potentially relevant information about an individual's exposure to asbestos, work history, or other evidence submitted to the trusts may be available through the pretrial discovery process, during which time a subpoena may have been used to obtain the information. The three plaintiff attorneys who gave presentations at the conference and who we interviewed emphasized that the trusts are analogous to any other settling party and related negotiations and payments are privileged. Also, as part of its 2011 study, RAND Corporation interviewed 11 asbestos plaintiff attorneys, 20 defense attorneys, and 6 trust officials and asked them their views of the disclosure of individuals' personal information submitted to trusts.³⁰ The plaintiff attorneys interviewed in the RAND study stated that all of the potentially relevant information in the trusts' possession is available to the defense through pretrial discovery and emphasized that the trusts are analogous to any other settling party and related negotiations and payments are privileged.

³⁰ RAND Corporation, *Asbestos Bankruptcy Trusts and Tort Compensation*, RAND Institute for Civil Justice, MG-1104 (2011).

Moreover, officials we interviewed from all 11 trusts and the trust attorneys that RAND Corporation interviewed emphasized that trusts are bound to keep the claim forms and settlement amounts with individual claimants confidential for two primary reasons.³¹ First, the TDPs generally require the confidentiality of claimant information and, second, trust attorneys and trust officials maintain that requests for information impose substantial costs. Such costs may include the legal fees associated with their duty to preserve the confidentiality of claim forms as well as the costs of finding, producing, and reviewing the information sought in a valid discovery request. According to officials for 2 of the 11 trusts whom we interviewed, paying these costs would deplete trust assets, which exist solely for the purpose of compensating asbestos claimants. For example, officials for one of the trusts we interviewed said the trust incurred \$1 million in attorneys' fees over a request to disclose every document on every claimant, as the trust attorneys had to review each document to delete confidential information not germane to the subpoena.

In contrast to the plaintiffs' attorneys and trust officials, an association representing the business community's views that we interviewed, along with three defense attorneys who were presenters at the conference on asbestos bankruptcy proceedings and trust operations, and the defense attorneys that RAND Corporation interviewed, stated that more claimant information should be available. For example, defense attorneys have argued that trust submission forms, which could include claimant medical history and asbestos exposure and payment information, should be made available because the increase of information on claimant filings and compensation may decrease the asbestos-related litigation burden on the remaining solvent defendants by demonstrating that the trusts have increased claimants' overall compensation beyond the amount justified in relation to the harm caused. These defense attorneys also argue that a lack of transparency could enable plaintiffs to file contradictory claims to different trusts while also pursuing recovery through the tort system.³²

³¹One of the 11 trusts discloses a list of individual claimant information along with disease category, amounts, and corresponding date of payments in its annual report.

³²See, e.g., *Kananian v. Lorillard Tobacco Company*, No. CV 442750 (Ohio Cuyahoga County Com. Pl. Jan. 18, 2007) (concluding that attorneys representing a mesothelioma victim's estate simultaneously filed claims with numerous asbestos trusts that contradicted similar claims made in the tort system thereby precluding them from practicing before the court but not dismissing the lawsuit as the court found neither the plaintiff's estate nor its current counsel culpable).

One of the two researchers and one of the two law professors with whom we spoke also expressed a need to increase transparency out of similar concerns for claimants' misrepresenting their exposure histories to trusts or in the tort system.

Recent Proposals and Actions Related to Asbestos Trusts and the Disclosure of Claimant Information

In recent years, there have been various proposals to address the disclosure of claimant information in the possession of trusts and the means for compensating persons with conditions attributed to asbestos exposure. One proposal, made by an expert in administrative alternatives to mass tort litigation and asbestos litigation in 2006, for example, would have created a federal depository to review asbestos bankruptcy trust claims for any inconsistencies to ensure that claims filed across trusts were valid. A 2010 proposal by the Institute for Legal Reform (ILR), an affiliate of the U.S. Chamber of Commerce that represents the business community, is aimed at imposing reporting requirements on asbestos bankruptcy trusts to report claimant-related information to increase transparency.³³ Specifically, the proposal would require asbestos trusts to file publicly available quarterly reports. Reports submitted under this proposal would need to describe each demand for payment the trust received during the reporting period, including an individual's asbestos exposure history, as well as each amount paid for demands during the report period, but would not include confidential medical records or claimant Social Security numbers. The ILR believes that a lack of transparency presently undermines the intent of § 524(g) to the extent that contradictory claims are depleting trust assets to the detriment of valid future claimants. According to the ILR, to restore oversight, either the U.S. Trustee's program needs statutory authority to directly oversee the administration of the trusts or all of the stakeholders, such as solvent defendants and other trusts, should have access to claimant work history and exposure information to monitor for inconsistent or fraudulent claims. The Committee on Rules of Practice and Procedure of the Judicial Conference of the United States, Advisory Committee on Bankruptcy

³³According to its website, the U.S. Chamber Institute for Legal Reform (ILR) is a "national campaign representing the nation's business community, with the critical mission of making America's legal system simpler, fairer, and faster to everyone."

Rules (Advisory Committee), anticipates considering the proposal at its fall 2011 meeting.³⁴

The Advisory Committee's Subcommittee on Business Issues preliminarily identified several issues it would consider before recommending action on the ILR proposal. The issues raised primarily focus on whether the courts have authority to prescribe such a rule, whether implementation of the proposed rule falls within the scope of bankruptcy jurisdiction, and whether the ILR proposal demonstrated a sufficient need for the reporting and disclosure provisions it advocates. With respect to the courts' authority to prescribe such a rule, the subcommittee opined that imposing discovery and other disclosure requirements for purposes of matters "outside the contours of a bankruptcy case," such as tort and other nonbankruptcy suits, might exceed the courts' authority to prescribe rules involving practice and procedure in bankruptcy cases.³⁵ With respect to the bankruptcy court's jurisdiction, the subcommittee acknowledged that while its jurisdiction does not cease upon the confirmation of a plan of reorganization, it does decrease at that point. It further acknowledged that while in instances where a confirmed plan establishes a trust pursuant to § 524(g), and the bankruptcy court continues to exercise jurisdiction to receive annual reports and other information from the trustees, the extent of this postconfirmation exercise of jurisdiction remains unsettled. The rule proposed by ILR would operate postconfirmation and, as such, the reporting and disclosure obligations the rule would impose may not appropriately fall within the bankruptcy court's jurisdiction. With respect to the reporting and disclosure obligations the proposed rule would impose, the subcommittee primarily addressed two points. First, it suggested that quarterly reporting requirements would not necessarily achieve the purpose of ensuring the integrity of the trust payment system by rooting out improper claim payments, and acknowledged that one person seeking and receiving payments from several trusts does not itself reveal

³⁴The Judicial Conference serves as the principal policy making body concerned with the administration of the U.S. Courts. The Judicial Conference also supervises the Director of the Administrative Office of the U.S. Courts in the performance of his or her duties as the administrative officer of the courts of the United States.

³⁵See 28 U.S.C. § 2075 (empowering the Supreme Court of the United States "to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure in cases under [the Federal bankruptcy code], but that "such rules shall not abridge, enlarge, or modify any substantive right").

impropriety. Second, the subcommittee opined that the bankruptcy court may not need the information at the level of detail proposed by the rule, in particular as it relates to enabling defendants in tort actions to offset against a judgment any amounts the plaintiff has already been paid for the same injury. The subcommittee also opined, however, that if discovery tools in tort litigation have proven to be ineffective and that trusts should be providing more information than they currently are, a legislative solution, such as an amendment to § 524(g) that imposes additional requirements on trusts created under that provision may be appropriate. The Judicial Conference plans to give the ILR suggestion further consideration after hearing responses from interested parties in the fall of 2011.

Various legislative proposals have sought to address the means for compensating persons with diseases or conditions attributed to asbestos exposure. Such proposals have sought to establish more fair and efficient processes for resolving asbestos injury claims, ensuring the availability of compensation for all present and future claimants, providing compensation commensurate with the degree of injury suffered, relieving federal and state courts of the burden of asbestos-related litigation, and better ensuring the availability of scarce resources for legitimate claimants. Most proposals involved consolidating responsibility for the receipt, evaluation, and payment of claims into a single office, while also proposing the establishment of a single fund, sustained by contributions of asbestos defendants, insurers, and other responsible parties, from which valid claims would be paid. The proposals would further have established the processes and procedures of such offices as the exclusive remedy for asbestos claims and generally would have barred the pursuit of asbestos-related claims in federal or state courts. More recent proposals, such as the Fairness in Asbestos Injury Resolution Act of 2005, referred to as the FAIR Act, would have potentially affected the viability of asbestos personal injury trusts by requiring, among other things, that trusts deposit a portion of their assets into the fund established under that proposed act. The current regime for addressing the liability of asbestos defendants—primarily, asbestos personal injury trusts and the tort system—remains. For a summary of proposed federal legislation addressing compensation for asbestos-related harms and death, see appendix I.

Agency Comments and Our Evaluation

We provided a draft of this report to the Department of Justice (DOJ), Administrative Office of the U.S. Courts, and the Federal Judicial Center for official review and comment. None of these agencies provided comments on this report. DOJ and the Administrative Office of the U.S. Courts provided technical clarifications, which we incorporated where appropriate.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Administrative Office of the U.S. Courts, Federal Judicial Center, Department of Justice, and interested congressional committees. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>.

If you or your staff have any questions concerning this report or wish to discuss the matter further, please contact me at (202) 512-8757, or jenkinswo@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix II.

Sincerely yours,



William O. Jenkins, Director
Homeland Security and Justice Issues

Appendix I: Select Federal Legislative Proposals Addressing Compensation for Asbestos-Related Harms or Death

Proposed legislation	Citation	Brief synopsis of select provisions
Asbestosis and Mesothelioma Benefits Act	H.R. 6906, 93rd Cong. (1st Sess. 1973).	With respect to claims for benefits filed before December 31, 1974, would authorize the Secretary of Health, Education, and Welfare to promulgate regulations to provide compensation, in conjunction with state worker's compensation laws, where an asbestos worker is disabled or deceased due to asbestosis or mesothelioma. Such regulations would ensure consideration of all relevant evidence, including workers' exposure to asbestos and relevant medical tests. With respect to claims for benefits filed after December 31, 1974, the proposed act would authorize the Secretary of Labor to promulgate regulations to provide compensation where an asbestos worker is disabled or deceased due to asbestosis or mesothelioma, but only if applicable state workers' compensation laws do not provide adequate coverage. The Secretary would list in the <i>Federal Register</i> those state workers' compensation laws that do not provide adequate coverage as a basis for awarding compensation.
Asbestos Health Hazards Compensation Act of 1981	S. 1643, 97th Cong. (1st Sess. 1981).	Recognizing that all parties directly or indirectly responsible for the occurrence of occupational asbestos diseases, including the federal government and the asbestos industry, should participate in the compensation for workers injured as a result of exposure to asbestos, would establish minimum standards under which state and federal workers' compensation laws will provide prompt, adequate, exclusive, and equitable compensation for occupational diseases or death resulting from exposure to asbestos. Among other provisions, the Secretary of Labor would prescribe, by regulation, minimum standards for determining if a worker's disability or death is due to asbestos-related disease would entitle a worker to compensation from his or her employer should a state or federal workers' compensation law be insufficient, and, if sufficient, benefits under a state or federal workers' compensation law would be the exclusive remedy against the employer, or any subsidiaries, predecessors, affiliates, or successors, among others.
Asbestos Health Hazards Compensation Act	H.R. 5224, 97th Cong. (1st Sess. 1981).	Would authorize the Secretary of Labor, in accordance with regulations promulgated pursuant to this authority, to direct responsible parties (including entities engaged in the manufacture, import, and distribution of asbestos) to make payment of benefits with respect to persons suffering a disability or who have died as a result of asbestos-related diseases before January 1, 1983. It would further establish an Asbestos Health Hazards Compensation Fund, sustained and developed with contributions from responsible parties, from which all valid claims for benefits would be paid. The fund would be directed by a board composed of representatives of responsible parties and affected persons, among others, that would be responsible for determining the validity of claims prior to authorizing disbursement and making investments on behalf of the fund, among other things.

**Appendix I: Select Federal Legislative
Proposals Addressing Compensation for
Asbestos-Related Harms or Death**

Proposed legislation	Citation	Brief synopsis of select provisions
Occupational Health Hazards Compensation Act of 1982	H.R. 5735, 97th Cong. (2d Sess. 1982).	Would authorize compensation for death or disability if a claimant established that exposure to asbestos (or uranium ore) during the course of employment caused the resulting condition and if compensation had not been otherwise awarded under other workers' compensation laws. It would provide that an order awarding or denying compensation be filed with the Department of Labor's Office of Workers' Compensation Programs, the applicable state workers' compensation agency and insurance commissioner, and that notice be provided to the claimant, responsible employer, and that employer's insurance carrier. It would require that all employers be responsible for payment of compensation to their employees by maintaining sufficient insurance or by furnishing proof to the Secretary of Labor of their financial ability to pay such compensation. In the event a responsible employer cannot be identified, it would provide for the payment of benefits out of an Asbestos Compensation Excess Liability Fund sustained with contributions of manufacturers and importers of asbestos and asbestos-containing products. Compensation to which a claimant is entitled under this proposed act is a claimant's exclusive remedy; entities contributing to the fund must continue to satisfy its obligations to maintain the liability protections under the proposed act.
Occupational Disease Compensation Act of 1983	H.R. 3175, 98th Cong. (1st Sess. 1983).	With the purpose of establishing a rational, effective workers' compensation law that provides prompt, adequate, and equitable compensation for workers disabled or deceased due to workplace exposure to toxic substances, including asbestos, and providing a mechanism for reducing related litigation, would establish a Toxic Substance Employee Compensation Insurance Pool from which all compensation for claims filed under this proposed law would be paid. All employers or toxic substance market participants, as determined by the Secretary of Labor, that participate as covered contributors of the pool would get the benefit of the proposed act's limited liability provisions (that is, compensation under the proposed act would be a claimant's exclusive remedy) provided they establish that they have sufficient insurance to meet their obligations to the pool.
Asbestos Workers' Recovery Act	H.R. 1626, 99th Cong. (2d Sess. 1986).	Recognizing the number of asbestos-related lawsuits, their potential impacts on the courts, economy, and victims, and that then-existing programs do not adequately address circumstances, would propose a federal mechanism by which all involved parties would, to the extent commensurate with their contribution to a persons disability or death caused by occupational exposure to asbestos, share the costs of compensation. Before filing a claim for supplemental benefits under this proposed act, an application for workers' compensation must have been filed. The Secretary of Health and Human Services, in evaluating a claim for supplemental benefits, would rely exclusively (except where not possible) on the determination of the applicable workers' compensation program concerning the nature and extent of the claimants condition, the extent to which an asbestos-related disease caused the condition, and whether exposure to asbestos in the course of employment caused the condition. It would create a National Medical Panel on Asbestos-Related Diseases within the Department of Health and Human Services to, among other things, promulgate a list of diseases caused by occupational exposure to asbestos. It would also impose an annual assessment on asbestos defendants and insurers of asbestos defendants' policies, and would have accounted for companies filing for bankruptcy, including reorganization under Chapter 11 of the federal bankruptcy code. Amounts assessed, as well as federal appropriations and other sources would sustain an Asbestos-Related Disease Trust Fund, with the Secretary of the Treasury (or a designee) serving as managing trustee, and an Asbestos-Related Disease Trust Fund Conservation Committee would, among other responsibilities, review claims. Contributors to the fund would be protected from further liability due to occupational exposure to asbestos, except for liability under workers' compensation laws.

**Appendix I: Select Federal Legislative
Proposals Addressing Compensation for
Asbestos-Related Harms or Death**

Proposed legislation	Citation	Brief synopsis of select provisions
Fairness in Asbestos Compensation Act of 1999	S. 758 106th Cong. (1st Sess. 1999).	Acknowledging, among other things, that asbestos litigation had already lead to the bankruptcy of more than 15 companies, representing a “great majority” of the former asbestos industry, it would establish an Asbestos Resolution Corporation, provide for the appointment of a Medical Advisory Board, establish criteria for how a claimant may demonstrate medical eligibility, and establish an alternative dispute resolution process to ensure prompt, efficient, fair, and inexpensive resolution of claims. Under the process proposed, a claimant would provide the corporation with contacts for all entities allegedly responsible for the asbestos-related injury, as well as the basis for the allegations (e.g., dates, locations, nature and frequency of exposure). The corporation notifies all named parties and allows for a period of reasonable discovery. If the parties do not settle, a mediator is appointed and both parties are expected to make good faith offers of settlement. If settlements are not reached, the claimant may pursue arbitration or file a civil action (though a civil action may only be filed if the procedures proposed by this act are followed and a release from mediation is obtained). Costs for these processes would be allocated among all named parties (i.e., the parties alleged to have caused the harm) and would be deposited into an Asbestos Resolution Corporation Trust Fund managed by the Secretary of the Treasury. This proposed act would not apply to existing trusts, though a trust would be able to voluntarily, albeit irrevocably, subject itself to the act.
Asbestos Compensation Act of 2000	H.R. 1283, 106th Cong. (2d Sess. 2000).	Would establish within the Department of Justice an Office of Asbestos Compensation to exercise exclusive jurisdiction (except for claims brought under any workers’ compensation laws or veterans’ benefits program) to determine if a claimant is entitled to compensation and the amount of compensation. It would further require the appointment of a medical director to manage the medical review process and to determine if a claimant meets medical or testing eligibility requirements, establish within the office an Asbestos Compensation Fund managed by a trustee and initially funded through appropriations but sustained through offsetting collections of cost and penalties paid to it, among other sources, establish an Office of Administrative Law Judges to expedite administrative adjudication of asbestos claims, and establish an Advisory Committee to periodically evaluate the medical eligibility criteria. Medically eligible claimants would name defendants who, after receiving notice, must provide claimant with a good faith settlement offer, after which the trustee would make an offer of compensation to the claimant. If the claimant were to accept any of defendants’ offers of settlement, the trustee’s offer would be reduced accordingly; if the claimant accepts the trustee’s offer, the trustee would then either accept the defendant(s) offer or decide to prosecute the claims; if claimant rejects all offers it may elect for administrative adjudication or may opt out of settlement proceedings and file suit against the defendant(s) in any state or federal court of competent jurisdiction. The office would further collect data on products, settlements, judgments, and awards in connection with asbestos claims, make such data publicly available, and exercise subpoena authority.
To amend the Internal Revenue Code of 1986 to provide relief for payment of asbestos-related claims.	H.R. 1412, 107th Cong. (1st Sess. 2001).	Would amend the Internal Revenue Code to, among other things, provide that any settlement fund established for the principal purpose of resolving and satisfying present and future claims relating to asbestos would not be taxed.

**Appendix I: Select Federal Legislative
Proposals Addressing Compensation for
Asbestos-Related Harms or Death**

Proposed legislation	Citation	Brief synopsis of select provisions
Asbestos Claims Criteria and Compensation Act of 2003	S. 413, 108th Cong. (1st Sess. 2003).	Recognizing, among other things, that asbestos exposure has created a flood of litigation “targeting approximately 8,400 defendant companies” and articulating its purpose to give priority to asbestos claimants who demonstrate actual physical harm or illness caused by asbestos, fully preserve the rights of claimants exposed to asbestos but who will pursue compensation in the future, enhance the ability of the federal and state judicial systems to supervise and control asbestos litigation and asbestos-related bankruptcy proceedings, and preserve scarce resources, the proposed act would prohibit a person from bringing or maintaining a civil action absent a prima facie showing of physical impairment due to a medical condition for which asbestos exposure was a substantial contributing factor, and would set forth minimum requirements for making such a prima facie showing.
Fairness in Asbestos Injury Resolution (FAIR) Act of 2003	S. 1125, 108th Cong. (1st Sess. 2003).	Would create a privately funded, publicly administered Asbestos Injury Claims Resolution Fund to provide the necessary resources for a fair and efficient system to resolve asbestos injury claims by providing compensation to legitimate present and future claimants, to provide compensation based on the severity of the injury, and to relieve federal and state courts of the burden of asbestos litigation. Would establish within the Court of Federal Claims an Office of Special Asbestos Masters to provide fair compensation in a nonadversarial manner to persons whose health has been adversely affected by asbestos exposure, and a process by which persons suffering from an eligible disease or condition may file a claim with the Court. The proposed act would establish the requisite medical and exposure evidence, as well as asbestos-disease levels. Claimants who meet established requirements would be entitled to an award as determined by the prescribed benefits table, which sets forth a scheduled value for asbestos-related conditions and diseases. The fund would be administered by an administrator (appointed by the President) through an Office of Asbestos Injury Claims Resolution and would be sustained via assessments from defendant participants (as determined by the fund administrator) as well as amounts paid to the fund by insurer participants, as determined by an Asbestos Insurers Commission. The proposed act would impose criminal sanctions on parties who knowingly and willfully submit false information or otherwise make attempts to defraud the process and it would prohibit asbestos claims from being pursued in any federal or state court. The proposed act would further impact a debtor company’s attempt to reorganize under Chapter 11 of the federal bankruptcy code and establish a trust under § 524(g) of the code and it would require that any trusts established under § 524(g) assign a portion of its corpus to the fund.
Fairness in Asbestos Injury Resolution (FAIR) Act of 2004	S. 2290, 108th Cong. (2d Sess. 2004).	Would establish an Office of Asbestos Disease Compensation within the Department of Labor to provide timely, fair compensation, in amounts and under terms specified in the proposed act, on a no-fault basis and non-adversarial manner, to individuals whose health has been adversely affected by exposure to asbestos. The office would be headed by an administrator responsible for, among other things, promulgating regulations and procedures for processing claims, and operating an Asbestos Injury Claims Resolution Fund, sustained with contributions from defendant and insurer participants as described in the proposed act. The administrator would establish an Advisory Committee on Asbestos Disease Compensation to advise the administrator on claim filings and processing procedures, and authorizes a Medical Advisory Committee to provide expert advice on medical issues. The proposed act sets out medial criteria, means for weighing occupational exposure, and requisite medical and exposure evidence. Claimants who meet all applicable criteria would be entitled to an award, the amount determined pursuant to the prescribed benefits table (basically, a schedule of disease values) along with a structured payment schedule. Criminal sanctions could be imposed for knowing and willful attempts to defraud. The proposed act would further impact a debtor company’s attempt to reorganize under Chapter 11 of the federal bankruptcy code and establish a trust under § 524(g) of the code, and it would require that any trusts established under § 524(g) assign a portion of its corpus to the fund.

**Appendix I: Select Federal Legislative
Proposals Addressing Compensation for
Asbestos-Related Harms or Death**

Proposed legislation	Citation	Brief synopsis of select provisions
Asbestos Compensation Fairness Act of 2005	H.R. 1957, 109th Cong. (1st Sess. 2005).	With a purpose to give priority to claimants who demonstrate actual physical harm or illness caused by exposure to asbestos or silica, fully preserve the rights of future claimants, enhance the ability of state and federal judicial systems to supervise and control asbestos and silica litigation and asbestos-related bankruptcy proceedings, and to conserve scarce recourses, the proposed act would require that a person bringing or maintaining a civil action make a prima facie showing of physical impairment resulting from a medical condition of which exposure to asbestos was a substantial contributing factor, with minimum requirements for making such a prima facie showing set forth in the proposed act. It would establish the federal district courts as having jurisdiction over asbestos and silica claims and would authorize courts to consolidate for trial any number and type of asbestos and silica claims with consent of all parties, but absent consent would authorize the consolidation of claims relating to the same exposed person and members of his or her family. It would further establish plaintiffs' burden of proof, hold a defendant liable only for that portion of a judgment that corresponds to that defendant's percentage of liability (regardless of whether all or other parties were involved in the case), and established separate liability provisions for sellers, renters, lessors, and premises owners (i.e., distinguishing them from manufacturers).
Fairness in Asbestos Injury Resolution Act of 2005	S. 852, 109th Cong. (2d Sess. 2006).	Would establish an Office of Asbestos Disease Compensation within the Department of Labor to provide timely, fair compensation, in amounts and under terms specified in the proposed act, on a no-fault basis and nonadversarial manner, to individuals whose health has been adversely affected by exposure to asbestos. The office would be headed by an administrator responsible for, among other things, promulgating regulations and procedures for processing claims, and operating an Asbestos Injury Claims Resolution Fund, sustained with contributions from defendant and insurer participants as described in the proposed act. The administrator would establish an Advisory Committee on Asbestos Disease Compensation to advise the administrator on claim filings and processing procedures, and authorizes a Medical Advisory Committee to provide expert advice on medical issues. The proposed act sets out medial criteria, means for weighing occupational exposure, and requisite medical and exposure evidence. Claimants who meet all applicable criteria would be entitled to an award, the amount determined pursuant to the prescribed Benefits Table (basically, a schedule of disease values) along with a structured payment schedule. Criminal sanctions could be imposed for knowing and willful attempts to defraud. The proposed act would further impact a debtor company's attempt to reorganize under Chapter 11 of the federal bankruptcy code and establish a trust under § 524(g) of the code, and it would require that any trusts established under § 524(g) assign a portion of its corpus to the Fund. The remedies provided under this proposed act would be the exclusive remedy available for asbestos claims and, generally, would bar the pursuit of all asbestos claims in federal or state courts.

Source: GAO analysis of proposed legislation.

Appendix II: Contact and Staff Acknowledgments

GAO Contact

William O. Jenkins, Jr., (202) 512-8777 or jenkinswo@gao.gov

Staff Acknowledgments

In addition to the contact named above, Chris Currie, Assistant Director, and Gary M. Malavenda Analyst-in-Charge, led the development of this report. Elizabeth Dunn, Octavia Parks, and Corinne Robertson made significant contributions. David Alexander assisted with the design and methodology. Tom Lombardi provided legal counsel. Jason Kelly, Lara Miklozek, and Robert Robinson provided technical support.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through GAO's Web site (www.gao.gov). Each weekday afternoon, GAO posts on its Web site newly released reports, testimony, and correspondence. To have GAO e-mail you a list of newly posted products, go to www.gao.gov and select "E-mail Updates."

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's Web site, <http://www.gao.gov/ordering.htm>.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact:

Web site: www.gao.gov/fraudnet/fraudnet.htm

E-mail: fraudnet@gao.gov

Automated answering system: (800) 424-5454 or (202) 512-7470

Congressional Relations

Ralph Dawn, Managing Director, dawnr@gao.gov, (202) 512-4400
U.S. Government Accountability Office, 441 G Street NW, Room 7125
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548



EXHIBIT 5

KMESA**Medical
Literature**

South African Asbestos: Production, Exports, and Destinations, 1959-1993

John S. Harington, DSc,^{1*} and Neil D. McGlashan, DSc²

Production and export figures of South African asbestos were analyzed over 1959-1993. They show stable sales of chrysotile. Those of crocidolite and amosite reached their peaks in the mid-1970s, after which trade fell drastically, crocidolite to 5% of its earlier peak and amosite to nil. Factors responsible for these virtual collapses were health issues, stricter legislation in First World countries, and litigation. In 1992, 21 countries continued to import crocidolite, although in reduced quantities. In the early 1960s, Europe and North America were the major recipients of South African asbestos. By 1989-91, these regions were surpassed by the Far East, which took over 90% of chrysotile and 70% of amosite. For crocidolite at that time, the Middle East took nearly 40%, Europe 28%, and Africa 21%. This implies that the newly importing countries can confidently expect an increase in asbestos-related disease and death well into the twenty-first century, even if the trade ceased now. Am. J. Ind. Med. 33:321–326, 1998. © 1998 Wiley-Liss, Inc.

KEY WORDS: South African crocidolite; amosite; chrysotile; production; exports; destinations

INTRODUCTION

Until amosite operations ceased in 1992, South Africa had the unique distinction of producing all three major types of primary commercial asbestos, crocidolite, amosite, and chrysotile. All three have long been associated with asbestos disease, but information on the epidemiology of mesothelioma in South Africa relates chiefly to crocidolite. Comparatively little is known about the health effects of amosite and virtually nothing about those of chrysotile [Felix et al., 1994]. These authors give a comprehensive history of the hazards and the mining of South African asbestos, which reinforces Felix's stark account [1991] of mining communities severely affected by crocidolite.

With such evidence in mind, we considered it worthwhile to examine the production and export of South African asbestos from 1959 to 1993, and by which countries and in what quantities each of the three types of South African asbestos was imported. The year 1959 was chosen partly because more detailed trade figures became available then and because it was shortly after that date that the association of malignant mesothelioma with exposure to asbestos was proved, in this case to crocidolite in South Africa [Wagner et al., 1960].

The South African asbestos trade started in the early nineteenth century when crocidolite was first reported between 1803 and 1806 near Prieska in the northwestern Cape by a geologist named Lichtenstein. Mining [Hall, 1930] and exports [Mining Statistics 1983; 1985] started in the same year. By 1930, 7,000 tons per year were produced [Hall, 1930], but there are no records available of the amounts exported at that time nor to what countries.

Amosite was discovered near Penge in Sekhukhuneland in the Transvaal, some 200 miles northeast of Johannesburg, by C.J. Ward in 1907, and mining started there in 1914 [Hall, 1930; Beukes and Dreyer, 1986]. Although the mining of amosite in the Transvaal took place later than that of

¹Unit of Cell Biology, Department of Zoology, University of the Witwatersrand, Johannesburg, South Africa

²Department of Geography and Environmental Studies, University of Tasmania, Hobart, Australia

*Correspondence to: John Harington, Department of Zoology, University of the Witwatersrand, WITS 2050, South Africa.

Accepted 2 October 1997

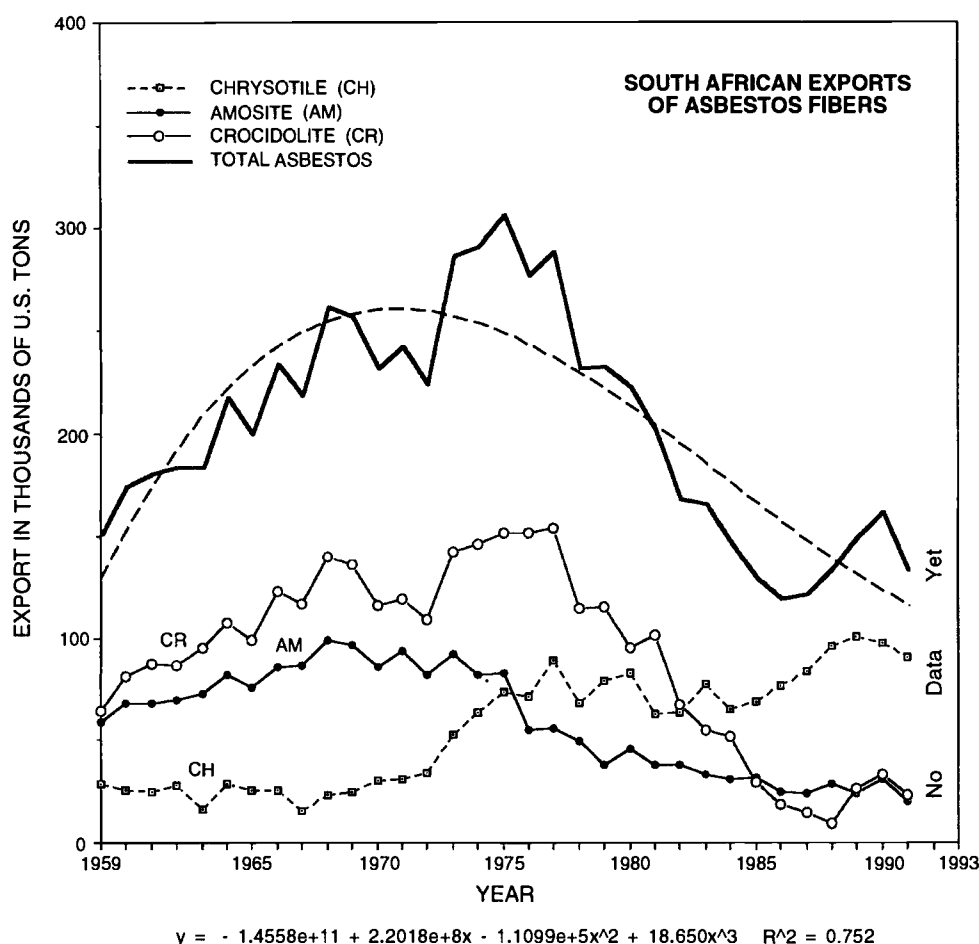


FIGURE 1. South African exports of chrysotile, amosite, and crocidolite, 1959-1991.

crocidolite in the Cape, it was produced in amounts well in excess of crocidolite from 1928-1959. Thereafter, crocidolite became the dominant fiber by tonnage [Harington et al., 1971]. Some crocidolite is found at Pietersburg in the Transvaal, but the yields are much lower than those from the Cape. Between 1959 and 1991, Transvaal crocidolite exports ranged from 0.6% to 11% of Cape crocidolite figures.

Small amounts of South African tremolite and anthophyllite, also amphiboles, are available, but these are not exploited to any extent. For these fibers, production and export figures are minimal. They were no longer listed from 1973. In the analyses to follow, figures for tremolite and anthophyllite and for Transvaal crocidolite are included with those for Cape crocidolite.

Chrysotile was first recognized in South Africa in 1905 in the eastern Transvaal [Mining Statistics 1983, 1985], and prospecting started in 1915. The most productive mining and milling operation is near Barberton, which started in the early 1940s [Hart, 1988; SAMI, 1985, p148]. This enterprise, unlike that of crocidolite and amosite mines, is still working close to production capacity at ~90,000 tons per annum [Hart, 1992].

SOURCE MATERIALS

All tonnages throughout this report are quoted in US ton equivalents (equal to 2,000 lbs). Figures for the production and export of South African chrysotile, amosite, and crocidolite over the period 1959-82 were obtained from the quarterly information circulars *Minerals/Minerale* (MM) of the Department of Mines of the Republic of South Africa. For destinations of these exports, MM provides data from 1959-1964. From about 1965-1981, such details were no longer available because of sanctions applied to the ruling South African government at that time. From 1982, the Department of Mineral and Energy Affairs resumed detailed publication of all asbestos operations in its annual reports of selected commodities in the mineral industry (1983-1993/94) under the name *South Africa's Mineral Industry* (SAMI). These publications also provide information on individual countries receiving South African exports. Information on the most recent 2 years of exports and destinations are withheld in each issue of SAMI for reasons of company confidentiality. Further details of the many countries importing South African asbestos from 1980-1992 were provided by SAMI printouts.

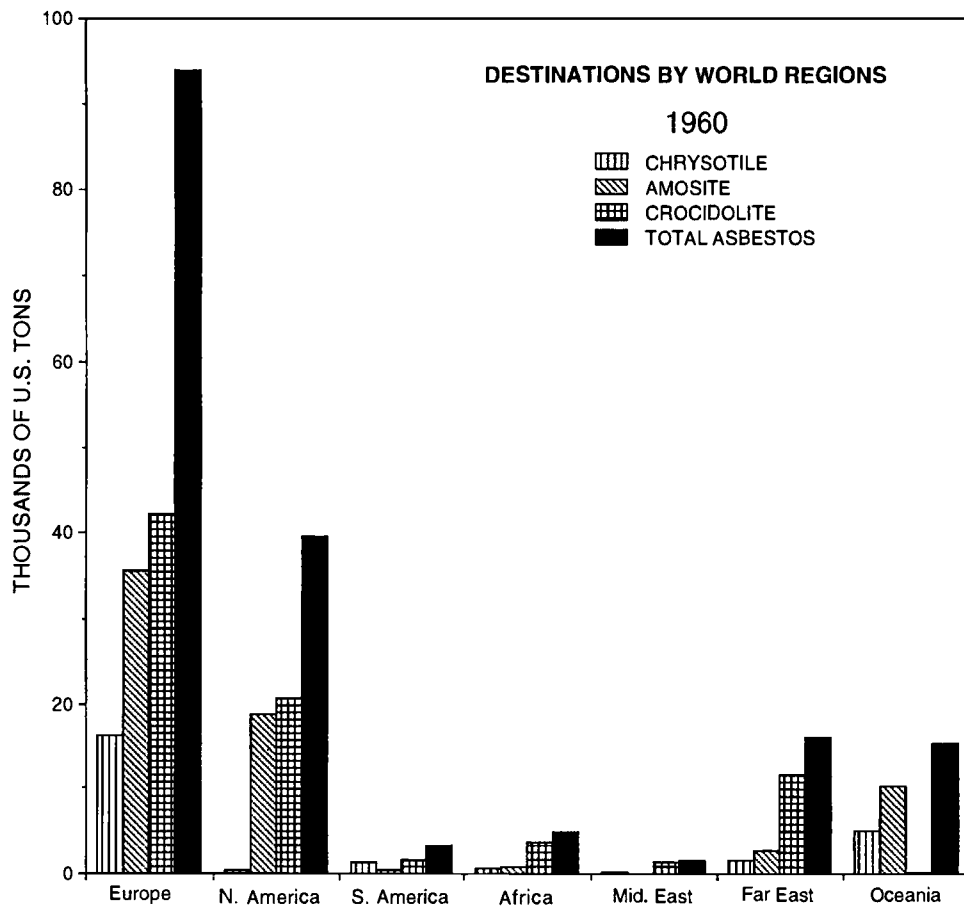


FIGURE 2. 1960 destinations of South African asbestos to seven major world regions.

Earlier data on international and southern African asbestos trade over 1935-1963 were compiled by May [1965]. During 1957-1962, world production was estimated at 3 million tons. By 1992, the latest available figure was 2.9 million tons, a closely comparable figure. The former USSR contributed 52.8% of this, Canada (predominantly Quebec Province) 18.2%, and South Africa ranked 7th with 4.1% [SAMI, 1993/4].

About 95% of the world's production of asbestos is of chrysotile, of which three-quarters of Canadian output serves the markets of North America and Asia, particularly Japan. South African production of crocidolite, amosite, and chrysotile, and other countries' asbestos make up most of the remaining 5% [Hart, 1988].

South Africa has long been the international provider for amosite and crocidolite and the major producer of asbestos in Africa. Others are Zimbabwe and Swaziland, both exclusively producers of chrysotile. In 1992, South Africa produced 135,400 tons of chrysotile, amosite, and crocidolite, and Zimbabwe 152,561 and Swaziland 32,818 tons of chrysotile. With the exception of these three, no other African country produces asbestos. Principal African importers of asbestos are Algeria, South Africa, Egypt, Tunisia, and Morocco, followed by Ghana, Zambia, Kenya, Senegal, and

Burundi, in that order [World Mineral Statistics, 1988-92; 1994].

South African export figures for total asbestos and for chrysotile, amosite, and crocidolite, together accounting for 95% of production, are shown in Figure 1.

From the peaks of the mid-1970s, except for chrysotile, a steady decline of both production and exports of South Africa fiber set in, culminating in the cessation of amosite operations in June of 1992, due essentially to the collapse of its Far Eastern market and drastically lowered production and export of crocidolite (Fig. 1). This depressed situation is reflected in the figures for the South African asbestos mines' total labor force provided by the Minerals Bureau in Johannesburg: in 1980, 11,968 (21 mines); in 1985, 7,084 (9 mines); in 1990, 5,051 (8 mines); and in 1995, 1,940 (5 mines).

Official comment by SAMI [1983, p105] describes the market for amosite and crocidolite as being depressed for various reasons. In 1983, the possibility existed of a partial ban on the manufacture of certain asbestos products in the United States. This ban came into effect in 1989, but was rescinded in 1991 [Federal Register, 1994], a development welcomed by industry [SAMI, 1984, p131].

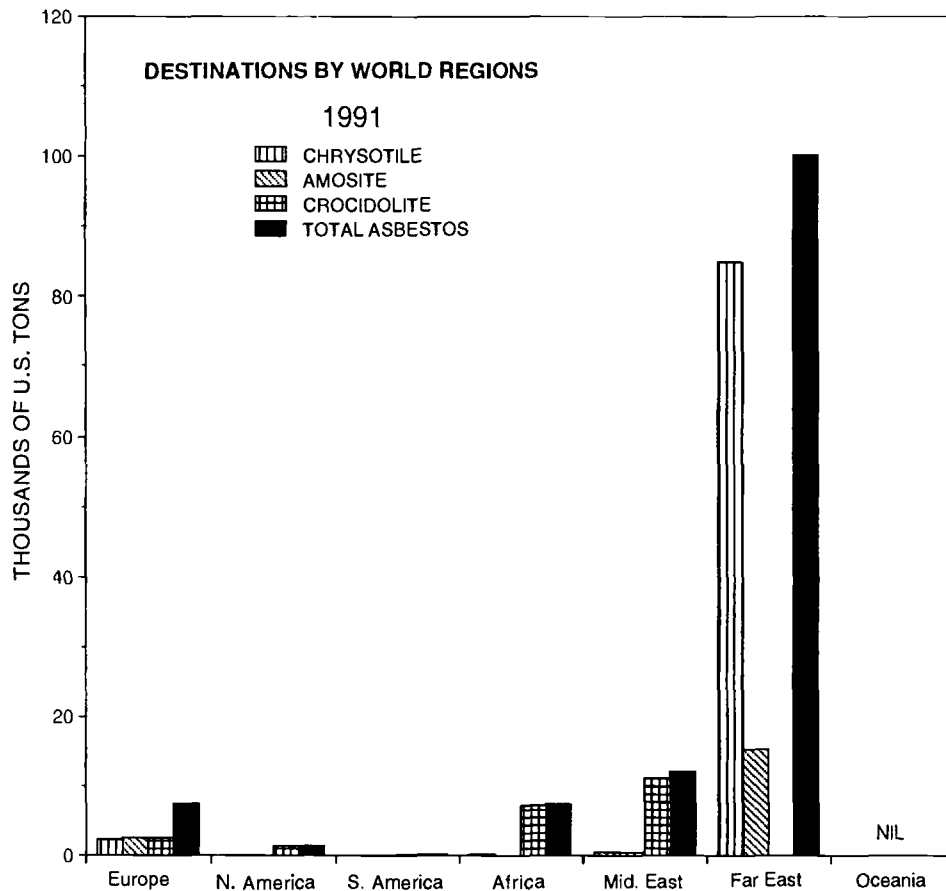


FIGURE 3. 1991 destinations of South African asbestos to seven major world regions.

In 1985, SAMI concluded (p148) that “despite the anti-asbestos lobby world-wide, asbestos fiber in general and amphiboles in particular, will continue to provide a range of products which contributes to an improved lifestyle for many people throughout the developed and developing world.” In addition, there was sufficient evidence . . . “that all fibers, whether chrysotile, amphibole, or other minerals or synthetic(s) (could) be used safely” [see also SAMI, 1985, p149; Hart, 1988].

DESTINATIONS OF EXPORTS

From 1936 to 1963, the bulk of South African asbestos went to Western Europe, including the United Kingdom, and to the United States, and smaller but increasing amounts to Australia and New Zealand, India and Pakistan, Latin America, and Japan [May, 1965]. Over the next 30 years, however, a dramatic shift of trade toward the Far East came to dominate the pattern for all three asbestos types, the major importers in 1991 being Japan (64%), South Korea (28%), and Thailand (5%) [SAMI Printouts, 1991]; see Figures 2 and 3.

Over 1980-1992, 26 individual countries continued to import crocidolite, including the United States, which took

91,683 tons, Italy 59,747, Iran 50,056, Spain 37,042, Yugoslavia 34,654, Algeria 30,903, Romania 28,462, Mexico 26,668, France 13,066, Japan 12,270, Germany 11,353, and the United Kingdom 3,702. By 1984, the United States, ranked second to Italy in 1980, had drastically decreased its receipt of this fiber from 20,854 tons in that year to a mere 551 in 1992. Total cessation of imports of crocidolite occurred in Germany in 1987, France in 1988, and the United Kingdom in 1991. Virtual cessation occurred in Spain in 1987 and Japan in 1988. By 1992, the following 12 countries no longer imported crocidolite: Argentina, Belgium, Indonesia, Iran, Israel, South Korea, Singapore, Spain, Swaziland, Taiwan, Thailand, and Zimbabwe. Australia, Canada, and Romania were presumably not importing fiber as they were not listed in the 1992 printout returns.

In 1992, 21 countries were still importing crocidolite, several in comparatively small amounts (Fig. 4). India, in this list, is also among eight developing countries known to import asbestos from Brazil [Giannasi and Thébaud-Mony, 1997]. The total amount specifically of South African crocidolite imported in 1992 by the 21 countries amounted to 15,996 tons.

The three largest importers were members of the Arab League in North Africa and the Middle East, with 47% of the

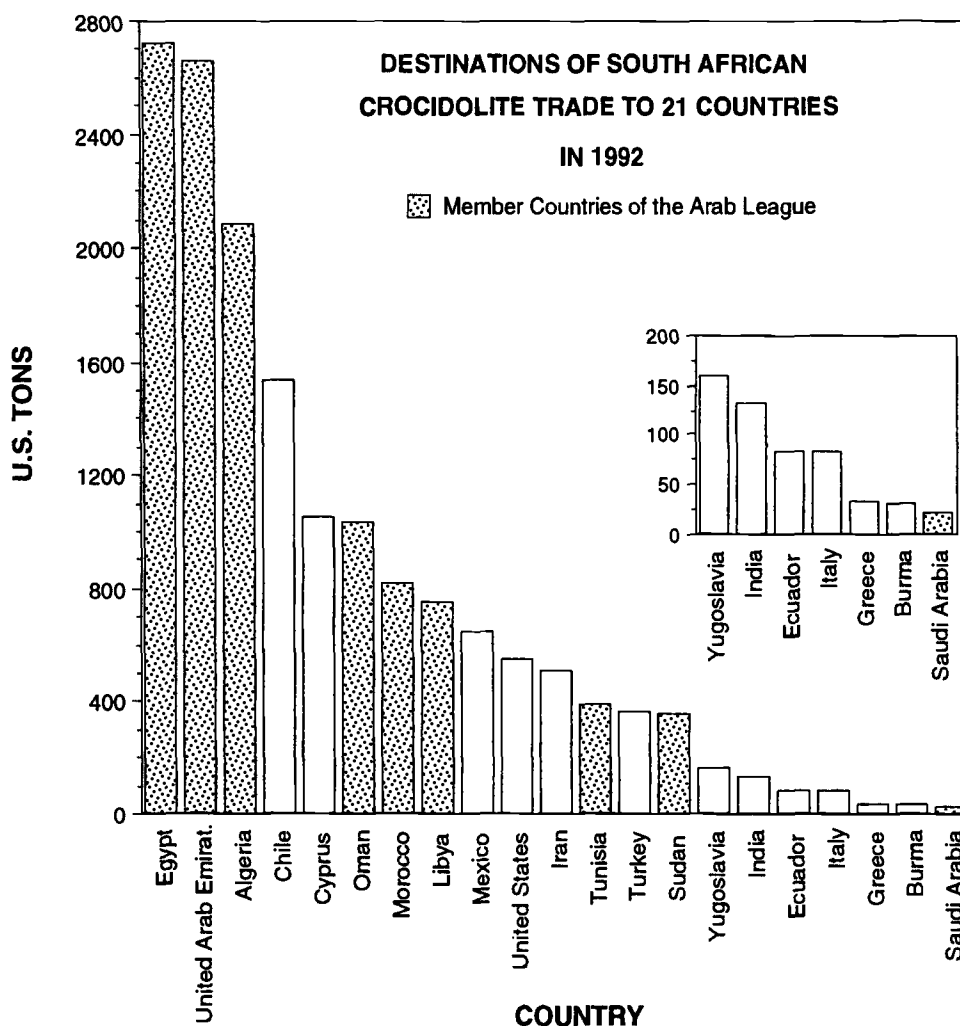


FIGURE 4. Destinations of South Africa crocidolite trade to 21 countries, 1992.

total. Six other Arab League countries imported a further 21% of the total of 15,996 tons, itself a mere 5% of the 344,234 imported by the 21 countries in the peak year, 1977.

DISCUSSION

The essence of the production and export figures of South African asbestos over 1959-1993 lies in the rise and fall of the amphibole asbestos industry occasioned by the mixed fortunes of the country's unique crocidolite and amosite trade. Exports of crocidolite dropped to 5% of their peak in the late 1970s and those of amosite ceased in 1993 from their peak in 1968. These precipitous falls contrast strongly with the stability of the chrysotile trade. Due to the strong steadying effect by the two world dominant producers of this fiber, South African production and exports held firm over the 1970s to the 1990s compared to the massive contemporaneous decrease in the sales and therefore the production, of amosite and crocidolite.

Yet another striking feature was the Far Eastern countries almost complete replacement of Europe and North America as the principal destinations for South African exports of asbestos over 1960-1991.

In South Africa, asbestosis, lung cancer, and mesothelioma followed the exploitation of asbestos, resulting in thousands of persons suffering progressive ill health or premature death [Felix et al., 1994]. Marchand [1991], in his account of the discovery of the association of mesothelioma with exposure to crocidolite in South Africa, reiterates this gloomy situation, evidenced [Felix, 1991; Felix et al., 1994, p277-278] by the history of the heavily crocidolite-polluted community at Mafefe in the Northern Transvaal, a matter that has still not been ameliorated. Elsewhere, workers and residents of Kuruman, Prieska, Pomfret, Barberton, and Badplaas shared a similar fate.

It remains to be seen what future effects are to be experienced in poor and developing countries to which asbestos, particularly crocidolite and amosite, has been sent

and to which crocidolite is still being exported. The crocidolite mining and milling operations in Australia, although closed in 1966, have also given rise to continuing health risks [de Klerk and Armstrong, 1992], which are remarkably similar to those resulting from the more extensive and longer developments in South Africa [Felix, 1991; Felix et al., 1994]. Here, the exact toll on nonwhite workers and residents repatriated or retired ill with debilitating and progressive disease will probably never be known.

The conclusion of the work by Felix and her colleagues [1994] and their strictures on the role of asbestos management influencing research in South Africa until the 1980s (p 272) make for rivetting but sad reading, emphasizing as they do the inexcusable role played by a neglectful industry and state over several decades [see also Marchand, 1991]. The asbestos tragedy has been called "one of the most colossal blunders of the twentieth century" by Bill Sells, a former executive for Johns-Manville, once a major manufacturer of asbestos products. "In my opinion," wrote Sells in 1994, "the blunder that cost thousands of lives and destroyed an industry was a management blunder, and the blunder was denial," instead of the "responsibility . . . and product stewardship" demanded of so serious a situation.

Concomitant with the reduction of asbestos use in developed countries, the increasing use in developing countries, albeit at lower overall tonnages, inevitably means that disease of long latency must continue to occur well into the twenty-first century. Even the ending of amosite operations in South Africa in 1992 and the considerable decrease in production of its even more dangerous relative, crocidolite, cannot at this date prevent further illness and deaths. It is unlikely that developing countries will be able to apply either "appropriate measures of protection" or "intelligent precautions" advocated by Murray in 1990, nor have they in place the medical care necessary to recognize "a silent epidemic of asbestos-related diseases" when this does occur [Giannasi and Thébaud-Mony, 1997]. In spite of the earlier and numerous reports of the hazardous effects of crocidolite, 59 countries continued to import it from South Africa in 1980 and 21 in 1992. The total ban so rationally urged is far from likely to be achieved.

ACKNOWLEDGMENTS

We acknowledge the cooperation of the Minerals Bureau of the Department of Mineral and Energy Affairs of South Africa and the valuable assistance of Ms Marise Burger and of Dr. W.J. Nicholson of Mt. Sinai Medical Center, New York City. Dr. A. Cantrell of the National Centre of Occupational Health, Johannesburg, produced useful references. Funding for one of us (JSH) was kindly

provided by two Research Committee Grants from the University of the Witwatersrand.

REFERENCES

- Beukes NJ, Dreyer CJB (1986): Amosite asbestos deposits of the Penge area. In Anhaeusser CR, Maske S (eds): "Mineral Deposits of Southern Africa," Vol. I. Johannesburg: Geol Soc S Afr, pp 901-910.
- De Klerk NH, Armstrong BK (1992): The epidemiology of asbestos and mesothelioma. In Henderson DW, Shilkin KB, Langlois SLP, Whitaker D (eds): "Malignant Mesothelioma" New York: Hemisphere, pp 223-250.
- Federal Register (1994): Technical Amendment in Response to Court Decision on Asbestos: Manufacture, Importation, Processing and Distribution Procedures, 59: June 28, 33208-33211.
- Felix M (1991): Risking their lives in ignorance. In Cock J, Kock E (eds): "Going Green." Cape Town: Oxford University Press, pp 33-43.
- Felix MA, Leger J-P, Ehrlich RI (1994): Three minerals, three epidemics - asbestos mining and disease in South Africa. In Mehlman M, Upton AC (eds): "The Identification and Control of Environmental Diseases: Asbestos and Cancer." Adv Modern Environ Toxicol XXII: Princeton: Princeton University Press, pp 265-286.
- Giannasi F, Thébaud-Mony A (1997): Occupational exposures to asbestos in Brazil. Int J Occup Environ Health 3:150-157.
- Hall AL (1930): Asbestos in the Union of South Africa. Geological Survey Memoir No. 12. Union of South Africa, Department of Mines and Industries, Pretoria, pp 324.
- Harington JS, Gilson JC, Wagner JC (1971): Asbestos and mesothelioma in man. Nature 232:54-55.
- Hart HP (1988): Asbestos in South Africa. J S Afr Inst Min Metall 88:185-198.
- Hart HP (1992): In Robinson I: Mines move to combat inflation. "Engineering News Mining," Johannesburg: Nov 27, p 5 only.
- Marchand PE (1991): The discovery of mesothelioma in the Northwestern Cape Province in the Republic of South Africa. Am J Ind Med 19:241-246.
- May TC (1965): Statistical Tables - Asbestos. In Whipple HE (ed): "Biological Effects of Asbestos." New York: Ann NY Acad Sci, pp 745-765.
- Mining Statistics 1983 (1985): Dept Mineral and Energy Affairs, Republic of South Africa, pp 48-59.
- Murray R (1990): Asbestos: A chronology of its origins and health effects. Br J Ind Med 47:361-365.
- SAMI (1983-1993/4): "South Africa's Mineral Industry." Dept of Mineral and Energy Affairs, Johannesburg, S. Africa (from Director, Minerals Bureau, Private Bag X4, Braamfontein 2017, S. Africa).
- SAMI Print Outs (1980-1992): Countries importing South African asbestos. Minerals Bureau, Dept Mineral and Energy Affairs, Johannesburg, S. Africa.
- Sells B (1994): What asbestos taught me about managing risk. Harvard Bus Rev, March-April:76-90.
- Wagner JC, Sleggs CA, Marchand P (1960): Diffuse pleural mesothelioma and asbestos exposure in the North Western Cape Province. Brit J Ind Med 17:260-271.
- World Mineral Statistics 1988-92, Production: Exports:Imports (1994): Keyworth, Nottingham: British Geol Survey, pp 21-24.

EXHIBIT 6

Mesothelioma in South Africa



Scientifically Reviewed By: Arti Shukla, Ph.D. | Written by: Karen Selby, RN | Last Update: 04/17/2025 | 9 Min Read

Expert Verified

The incidence of mesothelioma in South Africa ranks among the highest in the world. The hefty mesothelioma count stems from the country's extensive history of asbestos mining and production over more than a century.

Get Your Free Mesothelioma Guide >

✓ [Table of Contents](#) [[Show](#)]

[Causes](#) [Treatment Centers](#) [Risks](#) [Environmental Asbestos Exposure](#)

[Asbestos Use](#) [Asbestos Exposure](#) [Asbestos Products](#) [Legacy of Mining](#)

The incidence of mesothelioma in South Africa ranks among the highest in the world.

South Africa reports approximately 200 cases of mesothelioma per year. A 2002 study cites that more than 2,700 South Africans have died of [mesothelioma](#). Researchers say the cancer is underreported.

Environmental exposure accounts for 30% of mesothelioma cases in South Africa. Many are from the Northern Cape area. More than 70% of reported environmental cases affect women and children. Exposure happened when asbestos miners brought home fibers on their hair and clothes.

Diseases such as HIV and tuberculosis are serious health issues for the country. Exposed workers who die of these conditions before developing mesothelioma can skew statistics on the cancer's true incidence.

South Africa was a global leader in asbestos production. The nation operated a thriving industry for more than a century. But South Africa banned asbestos in 2008.

The ban prohibits the importation and exportation of asbestos. It also bans the use and manufacturing of the mineral.

Cause of Mesothelioma

Africa's asbestos mining and production for more than 100 years are the causes of mesothelioma.

Doctors [around the world](#) saw high rates of lung disease in workers exposed to asbestos in the early 1900s. Christopher Wagner, a South African pathologist, discovered a definitive link between the exposure and cancer in 1960.

Wagner's findings stemmed from a 1956 autopsy he performed on a South African man who worked at a gold mine. The autopsy revealed no signs of tuberculosis. Instead, he found a tumor in the patient's right chest and a collapsed lung.

He gained further evidence for his study from Dr. C.A. Sleggs, the chief medical officer of Kimberley Tuberculosis Hospital.

Sleggs performed [biopsies](#) after collecting imaging scans from patients



South African miners suffered for decades from the hazards of asbestos exposure.

who lived near the mine. He found [mesothelioma of the pleura](#) in those biopsies. Shortly afterward, Wagner reported the link between the exposure and mesothelioma.

Manufacturers ignored the findings. The industry ramped up the output of crocidolite asbestos from 60,389 tons in 1960 to 155,477 tons in 1974.

Mesothelioma Treatment Centers in South Africa

Patients in South Africa can seek [treatment for mesothelioma](#) at these cancer centers:

- Sandton Oncology Centre (Johannesburg)
- Chris Hani Baragwanath Hospital (Johannesburg)
- Arwyp Medical Centre (Gauteng)
- Wilmed Park Private Hospital (Klerksdorp)
- Steve Biko Academic Hospital (Pretoria)
- GVI Oncology (Bellville)
- Netcare Unitas Hospital (Pretoria)
- Lenmed Health (Johannesburg)

Leading centers in South Africa can provide cutting-edge therapies to cancer patients. But not all facilities have doctors who specialize in mesothelioma. This runs the risk of [misdiagnosing patients](#).



Request Your Free Mesothelioma Guide Today

[Get Your Free Guide](#) >

Who Is at Risk?

South Africans most at [risk for developing mesothelioma](#) are former asbestos miners. These workers excavated massive deposits of the mineral from the earth. And they released clouds of toxic dust into the air.

Workers and others who inhaled the dust increased their risk of developing mesothelioma. The disease's [lengthy latency period](#) is 20-50 years after exposure.

Miners of gold, diamonds and other minerals were also at risk. Asbestos can form alongside these minerals. Miners sometimes disturbed these deposits and suffered dangerous exposures.

Even outside of the mines, it was hard for people to escape danger. While the risks to miners were significant, the majority of mesothelioma cases in South Africa have stemmed from asbestos use in secondary industry.

Three such industries known for high risks of exposure include:

- Steam locomotive maintenance and other types of railway work
- The asbestos cement industry
- Artisans who used extensively used asbestos insulation, such as boilermakers

Workers in other professions in South Africa lost their lives after harmful exposures. Those occupations include::

■ Asbestos milling	■ Textile manufacturing and repair
■ Construction	■ Power station maintenance
■ Insulation installation, repair and removal	■ Shipbuilding and repair
■ Asbestos product manufacturing	■ Power station maintenance
■ Brake pad manufacturing and repair	■ Construction
	■ Welding

Environmental Exposure

During the mining process, asbestos would become airborne and spread to nearby towns. When people inhaled the dust, they experienced environmental exposure.

[Research published in 2021](#) studied the use of semi-quantitative X-ray powder diffraction (XRD). The technique would determine asbestos contamination levels in soils. The scientists also used this method to assess distribution patterns of asbestos mineral species in the surrounding soils.

The results from the 2021 study indicate that XRD is a useful tool for identifying target areas after rehabilitation efforts that may require more detailed, time-consuming, and

costly analysis.

Asbestos has contaminated many parts of South Africa, most notably the Northern Cape Province. A report on Penge concluded that ongoing risks of environmental exposure make the town unfit for habitation. Northern Cape still struggles with exposure risks from the region's 82 remaining asbestos mine dumps.

Asbestos Use in South Africa

South Africa is a country rich with minerals, known worldwide for its ample deposits of gold and diamonds. The nation also has a long history of mining and exporting asbestos, a toxic mineral fiber linked to the rare and aggressive cancer mesothelioma and [various other diseases](#).

Although South Africa officially banned the use, processing and manufacturing of asbestos-containing products in 2008, past exposures from decades ago eventually raised the country's [incidence of mesothelioma](#) to one of the highest rates in the world.

Out of the six types of asbestos minerals used commercially, South Africa has mined three on a large scale: amosite, chrysotile and crocidolite. While South Africa has used asbestos domestically for a variety of different purposes, the vast majority of its mined reserves were exported to other countries.

South Africa was the third largest asbestos producer in the 1970s, behind Canada and the USSR. The nation was once a global leader in the production of crocidolite and amosite, supplying approximately 97 percent of the world's crocidolite and practically all of the world's amosite.

The asbestos mining industry in South Africa reached its peak in 1977 when it employed 20,000 miners and achieved an output of 380,000 tons. Exports began to decline soon

after, as evidence of serious health complications prompted countries around the world to enact restrictive legislation on asbestos use.

Between 1910 and 2002, South Africa mined more than 10 million tons of asbestos. The last of the nation's asbestos mines ceased production in 2001 and closed down the following year. South Africa outlawed all types of asbestos by 2008, but the once-lucrative industry has left the environment polluted. Asbestos exposure risks continue to threaten the well-being of South Africans to this day.

Exposure in South Africa

South Africa once operated numerous mines that provided the bulk of the world's supply of the mineral. Over the years, mining at these sites caused large-scale occupational and environmental exposures to toxic dust.

The South African asbestos mines were owned by subsidiaries of major European corporations, including Griqualand Exploration and Finance Company Ltd., Turner & Newall Ltd. and the Cape Asbestos Company. These corporations cared little about the welfare of their South African workers or the people who lived near the mines. Health and safety standards at the South African mines were incredibly poor, especially compared with the mines the companies operated in Europe.

Because many of the South African mine workers — including women and children — were largely undocumented, it is difficult to assess the true scope of harm the mines caused. The country reports about 200 cases of mesothelioma per year, but most likely this is an underestimate.

Products

Asbestos's natural resistance to heat, chemicals, acid and electricity made it a highly desirable material that served a wide range of uses. Manufacturers primarily used the mineral for insulation and fireproofing applications, but it has more than 3,000 documented uses.

In South Africa and worldwide, asbestos was once a popular material in:

- Boilers
- Steel supports in buildings
- Steam pipes
- Air conditioning ducts
- Asbestos cement
- Textiles
- Roofing and other construction materials
- Brakes, gaskets and clutch pads

However, the main pathway of asbestos exposure for South Africans has historically been work-related, primarily in professions like mining, milling, construction, insulation work and asbestos cement manufacturing.

For example, in February 2019, the Ndlambe Municipality had to halt demolition and renovation work on a residential home because asbestos was found. A neighbor reported that the roof contained asbestos and that workers were not taking safety precautions to avoid exposure.

Legacy of Mining in South Africa

EXHIBIT 7

States Where Suits
Have Been Filed

California
Connecticut
Delaware
Florida
Georgia
Illinois
Massachusetts
New Jersey
North Carolina
Ohio
Pennsylvania
South Carolina
Texas

States We Shipped
Asbestos To

Alabama
Arkansas
California
Colorado
Connecticut
Delaware
Florida
Georgia
Illinois
Indiana
Iowa
Kansas
Louisiana
Maryland
Maine
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New York
North Carolina
Ohio
Oklahoma
Pennsylvania
South Carolina
Tennessee
Texas
Virginia
Washington
West Virginia
Wisconsin

Foreign States
We Shipped Asbestos To

Acapulco, Grs. Mexico
Alberta, Canada
Barbados, Spain
Barrientos Mexico
Coah, Mexico
D. F. Mexico
Edo. De Mexico
Frosec SA de CB Mexico
Jal, Mexico
Johannesburg, South Africa
Juaiez, Mexico
Kingston, Jamaica
Mexico City, ?, Mexico
Middlesex, England (House Order)
Monlerrey S.A.
Montreal, Canada
Nl. Mexico
North Surrey, British Columbia
Ontario, Canada
Rio de Janeiro, Brazil
Santo Domingo, Dominican Republic
Tam. Mexico
Tlalnepantla, Mexico
Venice, Italy

EXHIBIT 8

Per

our

Concussion

10-6-76

With Compliments



North American Asbestos Corporation

150 North Wacker Drive

Chicago, Illinois 60606

Telephone (312) 726-8515

1117AS JUN 015

PLAINTIFF EXHIBIT

WEY 5050

FIBER CUSTOMERS

1960 through 1969

ACF, Inc.	Carribean Asbestos
Adel Corporation	Catalyst Research
Aeroseal	Celotex Corporation
Aircraft Porous Media	Cement Asbestos
Albi Manufacturing Co.	Certain-Teed Products
Allpax Company	Cherokee
Amercoat Corporation.	A. W. Chesterton
American Air Filter	Chem-Mechanical
American Cyanamid Co	Chubb & Sons
American Pipe & Construction Co.	Chicago Firebrick
American Wood Board	Clark Asbestos
Amkor International	Conneaut Plastics
Amoco Chemical Corporation	Continental Silver Line Products
Asbestos Corporation of Am.	Conley Corporation
Asbestos de Occidente S.A. (Suarez)	Conwed Corporation
Asbestos de Mexico, S. A.	Cook Paint & Farnish
Asbestos Products Mfg. Co.	Corita-Reynolds
Asbestos Monterrey, S.A. (Suarez)	C.T.L.
Asbestos Textiles Company	CisCan Chemical Company
ASB Corporation	
Ash Corporation	Davis, R. L.
Armstrong Cork Atlantic Research	Delco Moraine
Autocars, Ltd	Detroit Aluminum
	Development Consultants
Babcock & Wilcox Company	G. H. Dexter & Sons
Baldwin-Ehret-Hill	Dorec Plastic
J. B. Bealrd Company	Dow Chemical Company
Beckman Instruments	Durametallic Corporation
	Dow Smith Corporation
Bendix Corporation	Durez Plastic Divn
Black Sivals & Bryson	Dysdon Products
Blue Rock Mining	Detroit Aluminum
Borg Warner	
Brazosport Plastics	Eagleton Engineering
Brono & CID	Eaton-Dikenen
Wallace Buck	Empire Corporation
Budd Company (The)	Enflo Corporation
Burlington Mills	Ewing Engineering
	Exomet Inc.
Calabrian Company (The)	
Cal. Scientific Glass	Flexitallie Company
Calresin Company	Flintkote
Canadian International	Fibercast Company
Philip Carey	

1121AS JUN 015

FIBER CUSTOMERS CONT.

1960 through 1969

GAF Corporation
 Garlock, Inc.
 Gem Inc.
 General American Trans
 General Aniline
 General Asbestos Gasket
 General Fiber
 General Electric
 General Firelace
 Gifford-Hill America, Inc.
 Gladding-McBean
 Grace & Company (Central)
 Grand Haven Plastics
 Greene Tweed

 James K. Harbinson
 Havig Industries
 Hays Manufacturing Company
 Hercules, Inc.
 Herty Foundation
 Hollingsworth & Vose
 Holmes Insulations Ltd
 Hooker Chemical
 Hooper Paper Company
 Hope Asbestos
 Holshouser's
 Horizons Inc.
 Hurlbut Papers
 (Meadpaper Spec.)

 IACA (Aislantes Indus)
 Industrias de Asbestos Cemento
 International Paper Company
 International Vermiculite Company
 International Wood Products
 Insulseal

 Johns-Manville Corporation
 Justice, Mr. C. G.

 Kay Asbestos
 Keene Corporation
 E. Kellerman

Keasbey & Mattison Co.
 Kellogg, M. F.
 Kenco Inc.
 Keyes Fiber Company
 Knolls Atomic Power
 Knowlton Bros.

 Lab Glas
 Arthur D. Little
 Lockheed Ga.
 C. H. Loy
 Lubrizol Corporation

 S M Company
 Magla Products
 Marbon Chemical
 Mason & Hanger
 Materiales Aislant (MASA)
 Mathieson
 McGinnis Marine
 Meadpaper Specialties
 Mellon Institute
 Merla Tool
 Mesa Plastics
 Midland Trading
 Minnesota Mining
 Molded Fiberglass
 Monostructure
 Monsanto Chemical
 Moraine Products
 George Monrell
 Morton Chemical
 Mundet Cork Corporation

 Naugatuck Chemical
 National Gypsum
 National Starch
 National Tank
 Nico Products Company
 Nicolet Industries

 O I.
 Orangeburg Manufacturing Co.
 Owens Systems
 Owens-Corning Fiber Glass

112?AS JUN 015

FIBER CUSTOMERS
January - July 22, 1975

Aladdin Products
Atlas Asbestos Company
Ameron, Corrosion Control Div. ✓
Asbestos Textile Co., Inc.,

Brown Insulating Systems Inc.

Celotex Corporation
Cement Asbestos Products Co.
Conley Corporation
Crane Packing Company

Del Mar Western Chemical Inc.
Dow Chemical U.S.A. (Texas)
Exochem Corporation

Fibre Process
Flanders Filters Inc.,
Foseco Canada Ltd.
Foseco Minsep, Inc.

Garlock, Inc.
Garlock de Mexico, S.A.
Gulf Coast S & S

Haveg Industries Inc.,

International Paper Co.

Koch Fiberglas Products Co.

Masonite Canada Ltd.
Meadpaper Specialty

Pittsburgh Metals Purifying Co.
Plumb Chemical

A.O. Smith-Inland Company
Suarez Group

T & M Rubber Specialties
Therm-X

U.S. Plywood Corporation
Universal Refractories Corporation

Weyerhaeuser Company

1118AS JUN 015

FIBER CUSTOMERS

1970 through 1974

Aladdin Products
 Amercoat Corporation
 Amercoat Mexicana, S.A.
 American Cyanamid Company
 Ameron, Corrosion Control Divn
 Armstrong Cork Co., Inc.
 Asbestos Products Mfg. Co.
 Asbestos Service Company
 Asbestos Textile Co., Inc.
 Atlas Chemical Company

Bendix Corporation
 Beetle Plastics, Inc.
 Brazosport Plastics
 Brown Insulating Systems, Inc.
 M. A. Bruder & Sons, Inc.

C.I.P. Company
 Calcott Co., Ltd
 Canadian International Paper Co.
 Philip Carey Corporation
 Carboline Company
 Caribbean Asbestos Products Ltd
 Carolina Gasket & Rubber Co., Inc.
 Catalyst Research Corporation
 Celotex Corporation (The)
 Cement Asbestos Products Co.
 Certain-Teed Products Corporation
 Chemical Development Corporation
 Cis-Can Chemical & Industrial Sales Ltd
 Clark Asbestos Company
 Collagen Corporation
 Conley Corporation
 Control Industrial Monclova, S.A.
 Conwed Corporation

Del Mar Western Chemical, Inc.
 DeSoto, Inc.
 Dexter Corporation
 Dow Chemical U.S.A.
 Durametalllic Corporation

Evans Products Company
 Exochem Corporation
 Exomet, Inc.
 Exotermicos Monclova, S.A.

Ferro Engineering Company
 Canadian Ferro Hot Tops Ltd
 Fibercast Company
 Fiberite Corporation
 Fiber Process Divn
 (Sub. of Lydall, Inc.)

Fibreboard Corporation
 Fibre-Res Products, Inc.
 Flanders Filter, Inc.
 Flintkote Company (The)
 Fosco Canada Ltd
 Fosco Minsep, Inc.
 Fosco, S. de C.V.

GAF Corporation
 Garlock, Inc.
 Garlock de Mexico, S.A.
 Greene, Tweed & Company
 Gulf Coast S & S

Haveg Industries, Inc.
 Haysite Divn
 (formerly Hays Mfg. Co.)
 Herty Foundation
 Hollingsworth & Vose Company
 Holmes Insulations Ltd
 Hooker Chemical Corporation

Insul Co., Inc.
 International Paper Company
 International Vermiculite Company
 Iowa Paint Manufacturing Co., Inc.

Johns-Manville Corporation

1110AS JUN 015

FIBER CUSTOMERS CONT.

1970 through 1974

Kay Asbestos Company
 Keene Corporation
 A. J. Kellos Construction Co., Inc.
 Kimberly-Clark Corporation
 Knowlton Brothers, Inc.
 Koch Products
 Kolrane Products Corporation
 Koncrete Assoc. Products
 Kordell Industries

Lab Glass Inc.
 Landis Sales Company
 Leffingswell Chemical Company
 Los Angeles Chemical Company

Masonite Canada Ltd
 Materiales Aislantes, S.A.
 Meadpaper Specialties
 Mexalite Del Norte, S.A.
 Monsanto Company

National Gypsum Company
 (Gold Bond Bldg. Products)
 Nicolet Industries, Inc.
 North American Rockwell

Owens-Corning Fiberglas Corp.

PPG Industries, Inc.
 Pallflex Products Corporation
 Perlite Processing
 Pittsburgh Corning Corporation
 Pittsburgh Metals Purifying Company
 Plumb Chemical Corporation
 Polymer Application Inc.
 H. K. Porter Co., Inc.
 Productos Mexalit, S.A.

Ranisan Products Company
 Rasmussen Iron Works
 Raybestos-Manhattan, Inc.
 Readybuilt Products Company (The)
 Rex-Buckeye Company
 Rochester Paper Company
 Rogers Corporation
 Alberto Rosa
 Rostone Corporation

A. O. Smith-Inland Inc.
 Smooth-On, Inc.
 Spraycraft Corporation
 Sprinkmann Sons
 Standard Refractories Ltd
 Stone Art Company
 Strathmore Paper Company
 Suarez Group

Thermo Asbestos, S.A.
 Therm-X Company

U. S. Plywood Corporation
 United States Gypsum Company
 Universal Refractories Corporation

Wagner-Insul Company
 Westinghouse Electric Corporation
 Weyerhaeuser Company

1120AS JUN. 0 15

FIBER CUSTOMERS CONT.

1960 through 1969

P.P.G. Industries
 Fall Corporation
 Fallflex Products
 Pawhattan
 Pesce Company
 Phillips Petroleum Company
 Pipe Linings Inc.
 Pittsburgh Corning
 Pittsburgh Plate & Glass
 Pittsburgh Metals
 Plastics Engineering
 Plastics & Fibers
 Plumb Chemical
 Polymer Dispersion
 H. K. Porter Company
 Potlatch Forests
 Pratt & Whitney
 Premix Inc.
 H. C. Price Company
 Products Mexalit
 Products Technique
 Refractory & Insulation
 Rasmussen Iron Works
 Raybestos Manhattan
 Raychem Corporation
 Resinoll Engineering Company
 Resisto Chemical Corporation
 Rogers Corporation
 Rostone Corporation
 Frank Ruggles
 Ruberiod Company

A. M. Safety Razor
 Sangamo Electric
 W. M. Schultz
 Schundler, F.E.
 Sealite Insulations Manufacturing Co.
 Shell Chemical
 Simmons Ltd
 Simpson Fiber Company
 Simpson Timber
 Smith & Kanzler

Smooth-On, Inc.
 Southern Asbestos
 Southern Pipe & Casing Company
 Spaulding Fiber Company
 Special Electric
 Squire House
 N. H. Stark Company
 Stebbins Engineering
 Sterling Packing
 Springfield Armory
 Strathmore Papers
 Structural Fibers

Taylor Forge
 Techo Eterno Eureka (Suarez)
 Termo Asbestos
 Terrastone Inc.
 Thermoid Company
 Thiokol Chemical
 Toby Chemical
 Totman-Morgan

Union Asbestos
 Union Insulating
 Unit Plastics
 United Bedding
 U. S. Ind. Chemical
 U. S. Plywood Corporation
 U. S. Polymeric
 Universal Refractories

Vernay Productsd
 Victor Manufacturing
 Vitmasco Corporation

W K M Divn
 Wagner Co., Chas H.
 Wagner Insulating
 Wards Nat'l Science
 Wareham Manufacturing Company
 Welln Davit & Boat

1120AS JUN 015

FIBER CUSTOMERS CONT.

1960 through 1969

West Jersey Paper
Westinghouse Electric
Weyerhaeuser Company
Whirlpool
Wilken Insulation
Williamson Adhesive
Wilt Laboratory
Wood Conversion Company
Wrenn Paper
F. B. Wright
Wurlitzer Company

Carl Zehr

48 Insulations

1121AS JUN 015

FIBER CUSTOMERS

1954 through 1959

Aber Company	Fibercast Company
Acetylene Cylinder	Fiberite
ACF Industries	Fibreboard
Air Reduction	Foster-Wheller
Allied Chemical	
American Asbestos Textile	Garlock, Inc.
American Brake Shoe	General Fiber
American Insulator	General Plastics
Amkor International	Glidden
Asbestos Corporation	B. F. Goodrich
Asbestos Products	Greene Tweed
Bakelite	Haas Battery
Baldwin-Ehret-Hill	Haskelite Manufacturing Company
Battelle Memorial	Hawley Products
Blandy Paper	Hollingsworth & Vose
Brunswick-Balke	Houston Construction Company
Budd Company	
Burlington	Ind. Engineering Co.
	Insulation Construction
California Scientific Glass	
Calresin Company	Keasbey-Mattison
Capac Industries	Kellerman
Campbell Fibre Glass	
Philip Carey Company	Arthur D. Little
Cherokee	
Chicago Fire Brick	Johns-Manville Corporation
Cincinnati Milling	Johnson-Fagg Inc.
Conneaut Plastics	
Control Diamond	Materiales Aislantes
Corn Products Company	Maxim Silencer
	Mellon Institute
Dallas Stove	Monostructure
M. H. Detrick	Monsanto Chemical
Dow Chemical	Moraine Products
Dresser Manufacturing	George Morrell
Durametallic	Morton Salt
Durez Plastics (Hooker Chem.)	Mundet Cork Corporation
Ehret Magnesia	National Bruck
Empire Corporation	National Gypsum

1125AS JUN 015

FIBER CUSTOMERS CONT..

1954 through 1959

National Tank
 Naugatuck
 Neches Insulation
 Norris Thermador

Owen-Mathieson
 Owens-Illinois

Pabco
 Pesce Company
 Pipe Linings
 H. K. Porter

Raybestos-Manhattan
 Resisto-Chemical
 Rock Wool Insulation
 Rogers Corporation
 Rogers Slade Hill
 Ruberoid
 Frank Ruggles
 Refractory and Insulation
 S.S.A.
 Sacomo-Sierra
 F. E. Schundler
 Schramm
 Southern Insulation
 Sprayo Flake
 Sprinkman
 Stebbins Engineering
 Sterling Supply

Tallman-McCluskey
 Terrastone
 Thermold

Union Asbestos
 U. S. Polymeric
 U. S. Gypsum
 U. S. Mineral Wool
 U. S. Rubber
 Universal Packing
 University of California
 University of New York
 University of Washington

Victor Manufacturing

W. K. M.
 Charles Wagner
 Wallace-Buck
 Wards Nat'l Science
 Ernest Werner
 Whirlpool Corporation
 Wilkin Insulations
 Williamson Adhesive
 Grant Wilson
 Wood Conversion
 Wrenn Paper

Yardley Plastics

Carl Zehr

1126AS JUN 015

TEXTILE CUSTOMERS.
January - July 22, 1975

Ameron, Corrosion Control Divn
Asbestos Specialties Co.

A. W. Chesterton Co.
Crane Packing Company

Delaware Valley Pkg & Rubber Co., Inc.

Garlock of Canada, Ltd
General Gasket Corp.
Gordon Gasket & Packing Co.

Hennig Asbestos & Packing Co.
Hercules Packing Co.
(Richardson Co.)

Manufacturera a Inversionista, S.A.
M. Mauritzon & Co.

Phelps Packing & Rubber Co.

Sacomo Sierra Inc.
Sepco Corporation

Tampa Rubber & Gasket Co., Inc.

1127AS JUN 015

TEXTILE CUSTOMERS

1970 through 1974

Anchor Packing Company (The)
Arcy Manufacturing Company
Asbestos-Fab, Inc
Asbestos Products & Fabricators

Braiding & Packing Works of Am., Inc.

Capital Rubber & Specialty Co., Inc.
Carolina Gasket & Rubber Co., Inc.
A. W. Chesterton Company
Chesterton, Mexicana, S.A.
Crane Packing Company

Delaware Asbestos & Rubber Company
Delaware Valley Packing & Rubber Co.
Dico Plastics Inc
Draco Mechanical Supply, Inc.

Empak-Mex., S.A.
Ethyl Corporation

Garlock, Inc.
Garlock of Canada Ltd
General Gasket Corporation
Gordon Gasket & Packing Company
Greene, Tweed & Company

Hennig Asbestos & Packing Company
Hercules Packing Corporation
(Richardson Co.)
Houston Gasket & Packing Company

Industrial & Marine Specialties Inc.
Interspace Corporation

Manufacturera e Inversonista, S.A.
M Mauritzon & Company
Minnesota Mining & Mfg. Co.

Nohl Industries, Inc.

Phelps Packing & Rubber Co., Inc.
Phbenix Asbestos Manufacturing Co.
Porter Hayden Company

Raybestos-Manhattan, Inc.
Carl E. Roeming Industrial Sales
Rust Engineering Company (The)

Sacomo-Sierra Inc.
Sepco Corporation

Tampa Rubber & Gasket Co., Inc.
Tri-State Roofing & Sheet Metal Co.
C. E. Thurston & Sons, Inc.

Universal Oil Products Company

1128AS JUN 015

TEXTILE CUSTOMERS

1960 through 1969

Aber Company	DCA Food Industries
Ace Foundry	Delaware Asbestos & Rubber Co.
Acme Print.	Delaware Valley Packing & Rubber Co.
Aerotec Industries	Dennagan & Gold.
Air Reduction Sales	M. H. Detrick Company
Air Research Manufacturing Co.	Dow Chemical
Amercoat Corporation	Dow Smith
American Asbestos Textile Corp.	E. I. DuPont
American Instrument Company	
Amoco Chemical	Eagle Asbestos
Anchor Packing	Empaquetaduras
An Cor Ind. Plas.	Eureka Packing
Arcy Manufacturing	
Armstrong Contracting	F & M Manufacturing
Asbestos Duct	Fiberite Corporation
Asbestos Fab, Inc.	Flange Klamp
Asbestos Products & Fabricating	Flexco, Inc.
Asbestos Products Los Angeles	Flexitall Gasket
Asbestos Products, St. Paul	Fluoro Plastics
Atlas Asbestos	Foster Wheeler Corporation
B. T. U. Engineering	Garlock, Inc.
Bahmans Engineering	General Asbestos & Rubber
Bangor Lumber	General Gasket
Bay-Mor Corporation	General Refractories Co.
Bell & Gossett Company	General Steel Company
Belmont Packing & Rubber Company	D. C. Genter Company
Berwyn Lumber	Georgia Institute of Technology
Braiding & Packing Works of Am.	Glastic Corporation
Bridgeport, City of	Glidden Company
Brunswick Corporation	Grady C. Rich
	Grand Rapids Part
CaCan	Grant Wilson
Phillip Carey Manufacturing Company	Great Lakes Carbon Corporation
Cash & Carry Lumber Company	Green Tweed & Company
A. W. Chesterton	Gulf Rubber & Supply
Continental Diamond	
Cooke Electric	George V. Hamilton
Corrugated Asbestos	Harco Chemical, Inc.
Crane Packing Company	L. E. Harnisch

1129AS JUN 015

TEXTILE CUSTOMERS CONT.

1960 through 1969

Harrison Radiator
Heacon, Inc.
Hennig Asbestos
Hercules Packing Company
Bill Hirschberg
Hohmeier Mill
Holderle Bros.
Hood Spronge Rubber
Hope Asbestos Inc.
Houston Gasket & Packing Company

I.L.G. Elect. Vent.
Industrial & Marine Specialties

Jeanette Glass Company
Johns-Manville Products

Kaiser Aluminum
Kenmore Lumber
Kirkhill Rubber
Peter Knowe
Kovash

Laboratory Service
Lewers & Cooke
Los Angeles, City of

3 M Company
Manufacturera e Inversioniste, S.A.
M Mauritzon & Company
McGraw Edison
Miko Bros.
Minnesota Mining
Molded Fiber Glass
Mosaic Building Products
Morton Chemical
Mueller Construction
Munaco Packing & Rubber Co., Inc.

New Jersey Asbestos Corporation
Norwalk Truck

Oxford Royal Mushroom Products Inc.

Pacific Power & Light
Packing Engineers Corporation
Pan American World
Paul's Asbestos Products
Peko Tile
Phelps Packing & Rubber Company
Philadelphia Asbestos Corporation
Phoenix Asbestos
Pillsbury Company (The)
H. K. Porter

R & I Corporation
F. D. Ramsey & Company
Raybestos-Manhattan
Refractory & Insulation Corporation
Reichold Chemical
River Road Lumber Company
Roeth & Cutler
Rotary Company (The)
Rust Engineering

Sacomo Manufacturing Company
Sacomo-Sierra Inc.
Sandia Corporation
Seal-Tite Manufacturing Company
Senn & Clapper Cabinet Shop
Sepco Corporation
Southeastern Products Corporation
Space Flex Corporation
Alex Stafford
Stebbins Engineering
Ster-O-Matic
Sterling Packing
Stone Art
Stoner Rubber
Structural Forms
Sunbeam Equipment

1130AS JUN 015

TEXTILE CUSTOMERS CONT.

1960 through 1969

Tallman-McCluskey
Taplist & Harding
Ten Copper
Thatcher Glass
Thrall Car Manufacturing Co.
C. E. Thurston
Turner Brooks
Tywood Industries

Unarco Industries, Inc
Underwriters Laboratory
Union Asbestos & Rubber Co.
Union Carbide Corporation
U. S. Gasket Company
U.S. Industries
U. S. Polymeric
U S. Plywood
U S Rubber Company
U S. Steel
Universal Oil Products
University of Illinois
USP Grand Rapids
USP New York City
USP San Francisco

Ventura c/o Calabrian

T. E. Wannamaker, Inc.
Welln Davit Boat
Wilson Raymond
Woodall Industries

Zia Company (The)

1131AS JUN 015

TEXTILE CUSTOMERS

1954 through 1959

Aber Company (The)
 Air Research Manufacturing Co.
 Alexandria Res.
 Algoma Plywood
 American Asbestos Company
 American Asbestos Textile
 American Brake Shoe
 American Cyanamid
 Anchor Packing Co.
 Anchorage Plastics
 Annheuser Schantz
 Armco Drainage
 Armstrong Cork
 Art Institute, Chicago
 Asbestos Duct Construction
 Asbestos Fab
 Asbestos Products Inc
 Asbestos Product & Fab
 Asbestos Products L A.
 Asbestos & Magnesia
 Asbestos Textile
 Astro Plastics
 Atlas Powder

Babbitt Pipe Company
 Bakelite
 Baldwin Hill
 Ballas Egg Products
 Beech Aircraft
 Earwyn Lumber
 Elaw-Knox
 Brunswick Asbestos

CTL
 California Rubber
 Calresin
 Calumet Building
 Calumet Fiberglass
 Canoflex AAT
 Capac Industries
 Cellcote
 A. W. Chesterton
 Chetron Corporation
 Cincinnati Milling
 Cincinnati Testing

Coast Manufacturing
 Columbia Foundry
 Columbia Southern Chemical
 Continental Diamond
 Cordo Chemical
 Crane Packing Company
 Custom Craft

Dallas Stove
 Delaware Fire Equipment Co.
 Detrick, M. H.
 Diamond Boat Company
 Dutton Asbestos

Ecko Products
 Eureka Packing

Fabricon Products
 Fairchild Engine
 Firmaline Products
 Flexco Inc.
 Flexitall Gasket
 Flexrock
 John Flocker
 Formica Corporation

Garlock, Inc.
 Garlock Packing Company
 General Plastic
 Geneva Boat Company
 Global Packing
 Goodyear Aircraft
 Grant Wilson
 A. P. Green
 Greene Tweed

Hartford City
 Heacon Inc.
 Hennig Asbestos
 Hills McCanna
 Holmes & Narver
 Hoskins
 Howard Boats
 Hunter Manufacturing Co.

1132AS JUN 015

TEXTILE CUSTOMERS CONT.

1954 through 1959

Industrial Gloves
Ing Electric
International Molding Plastics

Johns-Manville Corporation
Johnson Fagg

Kirkhill Rubber Company

LaSanco
Liquid Nitrogen

Marmyte Corporation
M. Mauritzon
McCracken-Ripley
Metalclad Insulation
Mississippi Power
John Mohr
Molded Fibreglass
Monostucture, Inc
Monsanto Chemical
Mooney Bros
George Morrell
Morton Salt
Muff Inc.

National Brick
National Gypsum
National Tank
National Thread
Navgatuck Chemical
New Jersey Asbestos Company
Northern Plastics

Packing Engineers
Pearson Plastic
Phelps Packing Company
Philadelphia Asbestos
Pipe Linings
Pipestone
Pittsburgh Corning
Plastic Products
Plastics & Coal Chemical
Plating Acc. Company

Pilbrico Company
Poly Fiber
Product Tech Canada
Product Techniques

Q M Corporation

Raybestos-Manhattan
Reaction Motors
Reliance Packing
Roeth & Cutler
Ralph Rowen

Sacomo Manufacturing Company
Schering
Schundler
Seal Tite
Sealview
Sentinal Glass Company
A. O. Smith Corporation
H. A. Smith
Southeastern Products
Southern Insulation
Southern Ohio Fabricators
Sparkler Manufacturing Company
Alex Stafford
Standard Oil Company
Star Glove
Statham Laboratories
Stauffer Chemical
Stearns-Rogers
Stedfast Rubber
Sterling Supply
Struct Forms
Sunbeam Equipment
Swanee Williams

Tallman-McCluskey
Tennessee Copper
Thurston

Union Asbestos
University of California
U. S. Gasket
U. S. Naval Ordnance

1133AS JUN 015

TEXTILE CUSTOMERS CONT.

1954 through 1959

U. S. Polymeric

U. S. Plywood, Baltimore

" Bronx
" Charlotte
" Chicago
" Cleveland
" Denver
" Detroit
" Kansas City
" Knoxville
" Louisiana
" Los Angeles
" Medford
" Miami
" Newark
" New York
" Philadelphia
" Pittsburgh
" Portland
" Salt Lake City
" San Francisco
" Seattle

U. S. Rubber

Wallace & Gale

West Back

Wheeler

Wood Conversion

1134AS JUN 015

EXHIBIT 9

NAAC Sales

- * Sales securements lists - no purchase or shipment orders
 - A. J. Kellas Construction Co. - Atlanta, Georgia
- * A. O. Smith Corporation - Milwaukee, Wisconsin
 - A. O. Smith Inland Inc. - Little Rock, Arkansas
- * A. W. Chesterton Company - Everett, Massachusetts
 - A. W. Chesterton - Everett, Massachusetts
 - A. W. Chesterton - Lawrence, Massachusetts
 - A. W. Chesterton - Stoneham, Massachusetts
 - A. W. Chesterton - Woburn, Massachusetts
 - A. W. Chesterton Co. - Massachusetts
 - A. W. Chesterton, Woburn, Massachusetts
 - Aber Co., Inc. - Bloomington, Texas
- * Aber Co., Inc. - Houston, Texas
 - Accounting Division (Dept. Water & Power) - Los Angeles CA
- * Ace Foundry Company - Company, Illinois
- * Acme Printing Appliance - Schiller Park, Illinois
 - Adel Corporation - Los Angeles, California
- * Aerojet General Corp. - Nimbus, California
- * Aerotec Industries, Inc. - South Norwalk, Connecticut
- * Air Research Mfg. Co. - Phoenix, Arizona
- * Air Reduction Sales Co. - Chicago, Illinois
- * ~~Air Research Co. - Phoenix, Arizona~~
- * Aircraft Porous Media - Glen Cove, New York
- * Aislantes Indust. - Mexico, D. F.
- * Aislantes Industriales - Vera Cruz, Mexico
- * Aislantes Industries S.A. - Mexico City, Mexico

Aladdin Products - Westport Island, Maine

Alberto Rosa - Barcelona, Spain

* Alexander Stafford Corp. - Grand Rapids, Michigan

Allpax Co., Inc. - Mamaroneck, New York

Almaundora del Nordeste S.A. - Monterrey N.L. Mexico

* Amer. Air Filter Co. - Louisville, Kentucky

Amercoat Corp. - Ardmore, Oklahoma

Amercoat Corp. - Brea, California

* Amercoat Corp. - South Gate, California

Amercoat Mexicana S.A. - Laredo, Texas

* American Air Filter - Louisville, Kentucky

* American Asbestos Textile Corp. - ~~A~~ Morristown, Pennsylvania

American C Yanamid Co - Stanford, Connecticut

American C Yanamid Co. - Maryland

American C Yanamid Co. - Perrysberg, Ohio

* American Instrument Co. - Silver Spring, Maryland

* American Insulator - New Freedom, Pennsylvania

American Pipe & Construction Co. - Azusa, California

American Pipe & Construction Co. - Irwindale, California

Ameron - Ardmore, Oklahoma

Ameron - Brea, California

* Amoco Chemical Corp. - Saymour, Indiana

Anchor Packing - Denver, Colorado

Anchor Packing - General

Anchor Packing - Philadelphia, Pennsylvania

- * Anchor Packing Co. - Boston, Massachusetts
- Arcy Manufacturing Co. - New York, New York
- Armstrong Contracting Supply Corp. - Billings, Montana
- Armstrong Cork Co. - Bearer Falls, Pennsylvania
- Armstrong Cork Co. - Fulton, New York
- Armstrong Cork Co. - Lancaster, Pennsylvania
- * Art Stove Fireplace Co. - Cleveland, Ohio
- * Art Stove Fireplace Co. - Cleveland, Ohio
- Asbestos Corp. of America - Garwood, New Jersey
- Asbestos ^{Constructors} Duct^h - Chicago, Illinois
- * Asbestos Fab, Inc. - Milwaukee, Wisconsin
- Asbestos Monterey - General
- Asbestos Monterrey - Laredo, Texas
- Asbestos Monterrey - Monterrey, Mexico
- Asbestos Products & Fabricators - Los Angeles, California
- Asbestos Products Manufacturing - Newark, New Jersey
- * Asbestos Products of America - Garwood, New Jersey
- * Asbestos Products, Inc. - St. Paul, Minnesota
- Asbestos Service Co. - Milwaukee, Wisconsin
- Asbestos Specialties Co. - Detroit, Michigan
- Asbestos Specialties Co. - Madison Heights, Michigan
- Asbestos Textile - North Brookfield, Massachusetts
- * Asbestos Textile Co. - Chicago, Illinois
- Asbestos de Bajo - Ensescada Baja, California
- Asbestos de Mexico - Barrientos, Mexico

Asbestos de Mexico - Edo de Mexico

Asbestos de Mexico - General

Asbestos de Mexico - Laredo, Texas

Asbestos de Mexico - Mexico City, Mexico

Asbestos de Mexico - Tlalnepantla, Mexico

Asbestos de Occidento - Guadalajara Jal. Mexico

Asbestos de Occidento - Laredo, Texas

Atlantic Research Co. - Saugus, California

Atlas Asbestos - Montreal, Quebec, Canada

* Atlas Asbestos - North Wales, Pennsylvania

* Atlas Asbestos - Seal Tite Mfg. - North Wales, Pennsylvania

* Atlas Asbestos - Seal Tite Mfg. - North Wales, Pennsylvania

* Atlas Asbestos Co. - North Wales, Pennsylvania

Atlas Chemical Co. - Miami, Florida

* BTU Engineer Corp. - Waltham, Massachusetts

* BTU Engineering Corp. - Waltham, Massachusetts

* Babbitt Pipe Co. - West Hanover, Massachusetts
Babcock & Wilcox - Augusta, Georgia

Baldwin-Ehret Hill - Garwood, New Jersey

Baldwin-Ehret Hill - Kalamazoo, Michigan

Baldwin-Ehret Hill - Trenton, New Jersey

Baldwin-Ehret Hill - Valley Forge, Pennsylvania

* Baldwin-Hill - Kalamazoo, Michigan
* Bangor Lumber Co. - Bangor, Pennsylvania

* Beech Aircraft - Wichita, Kansas

Beetle Plastics - Ardmore, Oklahoma

* Bell and Gossett - Morton Grove, Illinois

Belmont Packing & Rubber Co. - Philadelphia, Pennsylvania

Bendix Corp. - Troy, New York

* Berwyn Lumber Co. - Berwyn, Illinois

* Black, Sivalis & Bryson - Ardmore, Oklahoma

* Bohmann Engineering Co. - Chicago, Illinois

Braiding & Packing Works of America - Brooklyn, New York

Brazosport Plastics - Angleton, Texas

Brown - General

Brown Foundry Supplies - Cleveland, Ohio

Brown Foundry Supplies - North Royalton, Ohio

Brown's Insulating Systems Inc. - North Royalton, Ohio

* Bruno & Cia - Buenos Aires, Argentina

* Brunswick Balke Collander Co. - Marion, Virginia

* Brunswick-Balke-Collander Co. - ~~Marion, Virginia~~
Muskegon, Michigan

* Brunswick-Balke-Collender - Chicago, Illinois

* Budd Company (The) - Philadelphia, Pennsylvania

C. E. Thurston & Sons, Inc. - Chesapeake ~~and Norfolk~~, Virginia

C. H. Dexter Co. - Windsore Locks, Connecticut

* C. H. Luh - Van Nuys, California

C.I.P. Co. - Quebec

C.J. Tower & Sons - Buffalo, New York

* CTL, Inc. - Cincinnati, Ohio

Calabrian - Barter Contracts - New York, New York

Calcott Co., Ltd. - Ontario

* California Scientific Glass - El Monte, California

* California Scientific Glass - South El Monte, California

* Calresin Co. - Los Angeles, California

* Calumet Fiberglass - Hammond, Indiana

Canadian Ferro Hot Tops - Stoney Creek, Ontario

Canadian Industries Ltd. - Calgary, Ontario

Canadian International Papers - Gateneau, Quebec, Canada

Canadian International Papers - Montreal 2, Quebec, Canada

Canadian Johns-Manville - West Hill MIE 4S3, Canada

Capco - General

Cape Asbestos (Canada) Ltd. - Toronto 1, Canada

Cape Asbestos (Canada) Ltd. - Burlington, Ontario, Canada

Cape Asbestos - Uxbridge, England

Cape Asbestos Fibres Ltd.

Cape Asbestos South Africa (Pty) Ltd.

Cape Blue Mines

Capitol Rubber & Specialty Co. - Baton Rouge, Louisiana

Capitol Rubber & Specialty Co. - Jackson, Mississippi

Carboline Co. - Xenia, Ohio

* Carborundum Co. - Niagra Falls, New York

Caribbean Asbestos Products - Kingston, Jamaica

Carl E. Roeming Industrial Sales - Milwaukee, Wisconsin

Carl E. Roeming Industrial Sales - Baraboo, Wisconsin

Carl Roeming Industries (also see Carl Roeming)

Carolina Gasket & Rubber Co., Inc. - Greenboro, North Carolina

Cash and Carry Lumber - Joliet, Illinois

Catalyst Research Corp. - Baltimore, Maryland

Celanese Corp. - Clark, New Jersey

* Celotex Corp. - Chicago, Illinois

* Celotex Corp. - Garwood, New Jersey

Celotex Corp. - L'anse, Michigan

* Celotex Corp. - Largo, Indiana

* Celotex Corp. - Pittston, Pennsylvania

Cement Asbestos Co - Birmingham, Alabama

Cement Asbestos Co - Mobile, Alabama

Cement Asbestos Co. - General

Cement Asbestos Co. - Ragland, Alabama

Cement Asbestos Co. - Van Buren, Arkansas

Cement Asbestos Co. - Woodward, Alabama

Central Distribuidora de Asbestos Cemento - Mexico City, Mexico

Certain-Teed Products - Ambler, Pennsylvania

Chembest Division of Unarco - Bloomington, Illinois (see Unarco)

Chemical Development Corp. - Danvers, Massachusetts

* Chemical Flow Corporation - Little Falls, New Jersey

* Chemical Flow Corporation - Little Falls, New Jersey

* Chemichanical, Inc. - South Holland, Illinois

Chempreme, Inc. - Alden, New York

Chesterton Mexicana S.A. - Naucalpan De Juarez, Mexico

* Chetron Corporation - Los Angeles, California

Chicago Firebricks Co. - Chicago, Illinois

City Cervice Co. - Tampa, Florida

* City of Bridgeport, Connecticut - Bridgeport, Connecticut

Clark Asbestos - Ontario, Canada

Clark Asbestos Co. - Calumet City, Illinois

Clark Asbestos Co. - Cleveland, Ohio

Collagen Corp. - Newport, Maine

~~* Columbia-Southern - Corpus Christi, Texas~~

* Columbia-Southern^{Chemical} - Corpus Christi, Texas

Conley Corp. - Tulsa, Oklahoma

Consolidated Warehouse - Philadelphia, Pennsylvania

* Continental Diamond Fibre - Newark, Delaware

Continental Products Co. - Euclid, Ohio

Control Industrial Monclova - Monclova, Coah, Mexico

Control Industrial Monclova - C.D. Frantera, Coah, Mexico

Conweed Corp. - Cloquet, Minnesota

* Cook Electric Co. - Franklin Park, Illinois

* Cook Electric Co. - Franklin Park, Illinois

Cook Paint & Varnish Co. - North Kansas City, Missouri

* Cordo Chemical Corp. - Mobile, Alabama

Corning Glass Works - Painted Post, New York

* Crane Packing Co. - Chicago, Illinois

Crane Packing Co. - Morton Grove, Illinois

Cris-Can Chemical Industrial Sales - Edmond, Alberta Canada

* Croflon Plastics, Inc. - Byron Center, Michigan

* Croker & Stallings, Inc. - Baltimore, Maryland

Custodis Construction Co. - Nebraska City, Nebraska

* DCA Food Industries, Inc. - Elliott City, Maryland

Davies Turner - Philadelphia, Pennsylvania

De Soto Inc. - Des Plaines, Illinois

DeKate Inc. - Redford, Michigan

Del Mare Western Chemical Inc. - Costa Mesa, California

Delaware Asbestos & Rubber Co. - Philadelphia, Pennsylvania

* Delaware Fire Equip. - Riverton, NJ

* Delaware Packing - Chester, Pennsylvania

Delaware Valkey Packing & Rubber - Chester, Pennsylvania

* Delco Morane - Dayton, Ohio

Detroit Aluminum & Brass Corp.

Dev-Con Canada Ltd. - Ontario, Canada

* Development Consultants - Cincinnati, Ohio

Dico Plastics - Milwaukee, Wisconsin (See Nohl Industries also)

Dixie Rubber & Belting Co. - Jackson, Mississippi

Dow Chemical - Freeport, Texas

Dow Chemical - Pittsburgh, California

Dow Chemical - Plaquemine, Louisiana

Dow Chemical - Port Allen, Louisiana

Dow Chemical - Savannah, Georgia

Draco Mechanical Supply Inc. - St. Louis, Missouri

Draco Mechanical Supply Inc. - Palmyra, New York

* Dunagan & Goldman - Winter Park, Florida

* Dunagan & Goldman - Winter Park, Florida

* Dunnagan & Goldman - Winter Park, Florida

Dupont Experimental Station - Wilmington, Delaware

* Duralastic Products - Detroit, Michigan

Durametallic Corp. - Kalamazoo, Michigan

- * Durez Plastics - Niagara Falls, New York
- Durez Plastics (See Hooker Chemicals also) - North Tonawanda, New York
- E. I. Dupont de Nemours & Co. - Wilmington, Delaware
- E. Butterworth & Co Inc. - Dracut, Massachusetts
- E.I. Dupont de Nemours & Co. - Deepwater, New Jersey
- * Eagle Asbestos & Packing - New Orleans, Louisiana
- Eagle Pitcher Industries - Joplin, Missouri
- Eagle Pitcher Industries - Savannah, Georgia
- * Eaton-Dikeman Co. - Mt. Holly Springs, Pennsylvania E.G.N.E.P.
- * Eli Sandman Company - Worchester, Massachusetts
- Empaquetaduras S.A - Mexico 13 D.F.
- Empaquetaduras S.A. - Vera Cruz, Mexico
- Empax - Mexico 4 D.F. Mexico
- Empax-Mexico S.A. - Acapulco, Gro, Mexico
- Empax-Mexico S.A. - Laredo, Texas
- Empax-Mexico S.A. - Mexico City, Mexico
- * Empire Corp. - Adams City, Colorado
- Ethyl Corp. - Pasadena, Texas
- Eureka Packing Co. - Brooklyn, New York
- Evans Products Co. - Corona, California
- * Ewing Engineering Co. - Milwaukee, Wisconsin
- Exochem Corp. - Lorain, Ohio
- Exomet Inc - Conneaut, Ohio
- Exotermicas Monclaua S.A. - Monclaua Cashila, Mexico
- * F & M Mfg. Corporation - Cranford, New Jersey
- * F. B. Wright Co. - Dearborn, Michigan
- * F. D. Ramsey & Co. - LaPorte, Indiana

F.B. Wright Co - Pittsburgh, Pennsylvania
 * Fabiricon Products - Ecorse, Michigan
 Farrell Lines Inc. - Chicago, Illinois

Ferro Engineering Co - Stony Creek, Ontario, Canada

Ferro Engineering Division - Cleveland, Ohio

Ferro Engineering Division - Calumet City, Illinois

Fiber Process Division - Rochester, New Hampshire

Fibercast Co. - Sandsprings, Oklahoma

Fiberite Corp. - Winona, Minnesota

Fibre-Res Products Inc. - Iola, Kansas

Fibreboard Corp. - Emeryville, California

Fibreboard Corp. - Oakland, California

* Fibreboard Paper Prod. - Oakland, California

* Fibreboard Paper Prod. - San Francisco, California

* Fibreboard Paper Products - Newark, California

Flanders Fillers Inc. - Winona, Minnesota

* Flangeklamp Corporation - Buffalo, New York

* Flangeklamp Corporation - Buffalo, New York

* Flexco, Inc. - Huntington Park, California

* ~~Flexitalic Gasket Co. - Camden, New Jersey~~

* Flexitalic Gasket Co. - Camden, New Jersey

Flintkote Co. - Philadelphia, Pennsylvania

Flintkote Co. - Rayenna, Ohio

* Fluro-Plastics - Philadelphia, Pennsylvania

* Forco, Inc. - Cincinnati, Ohio

Forty Eight Insulation - Aurora, Illinois

Foseco -Mexico - Jlalnapantla, Edo, Mexico

Foseco Inc - Chicago, Illinois

Foseco Inc - Guelph, Ontario Canada

Foseco Inc - Uniontown, Pennsylvania

Foseco Inc. - Cleveland, Ohio

Foseco Inc. - Kensington, Illinois

Foseco Inc. - Mt. Braddock, Pennsylvania

Foseco Mexico - Ver, Mexico

Frank G. Ruggles - Short Hills, New Jersey

* Frank G. Ruggles Co. - New York, New York

* Frank Ruggles - New York, New York

* Frank Ruggles - New York, New York

G A F. Corp. - Gloucester, New Jersey

G.A.F. Corp. - Erie, Pennsylvania

G.A.F. Corp. - New York, New York

G.H. Vincent - Ft. Lauderdale, Florida

Gaddis Engineering Co. - Port Washington, New York

Garlock - General

* Garlock Inc - Camden, New Jersey

Garlock Inc. - Palmyra, New York

Garlock Mechanical Rubber Division - Palmyra, New York

~~* Garlock Packing - Palmyra, New York~~

* Garlock Packing - Palmyra, New York

Garlock de Mexico S.A. - Mexico 15 D.F. Mexico

Garlock de Mexico S.A. - Vera Cruz, Mexico

Garlock of Canada - Toronto, Canada

* Gary Steel Prod. Corporation - Lynchburg, Virginia

General Aniline & Film Corp. - Erie, Pennsylvania

* General Fireplace Company - Waverly, Ohio

General Gasket Co. - St. Louis, Missouri

* General Refractories Co. - Gary Indiana

* General Refractories Co. - Buffalo, New York

* General Refractories Co. - Buffalo, New York

General Tire & Rubber Co. - Akron, Ohio

George A. Rowley & Co. Inc. - Philadelphia, Pennsylvania

~~* George Morrell Corp. - Muskegon, Michigan~~

* George Morrell Corp. - Muskegon, Michigan

* George V. Hamilton, Inc. - McKees, Pennsylvania

* George V. Hamilton, Inc. - McKees Rocks, Pennsylvania

* Gifford-Hill-American - Dallax, Texas

* Gladding, McBean & Co. - Los Angeles 39, California

* Glastic Corporation - Cleveland, Ohio

Gold Bond Building Products - New Orleans, Louisiana (See National Gypsum Co.)

Gordon Gasket & Packing Co. - Charleston, West Virginia

* Grace & Co. - Sucursal, Guatemala

* Grady C. Rich - Morehead City, North Carolina

* Grand Haven Plastics - Grand Haven, Michigan

* Grand Rapids Partitions, Inc. - Grand Rapids, Michigan

* Grant Wilson Inc. - Chicago, Illinois

* Grant Wilson, Inc. - Chicago, Illinois

Greene Tweed & Co. - North Wales, Pennsylvania

Gulf Coast S & S - Freeport, Texas

H.K. Porter Company, Inc. - Charlotte, North Carolina

* Harco Chemical, Inc. - Bethel, Connecticut

* Hardley Plastics Co. - Columbus, Ohio

* Harrison Radiator Division of General Motors - Lockport, New York

Haueg Industries - Marshalltown, Delaware

Haueg Industries - Wilmington, Delaware

* Hawaiian Pineapple Co. - San Francisco, CA

Hays Manufacturing Co. - Erie, Pennsylvania

Haysite Division - Erie, Pennsylvania

~~* Heacon Co. - Greenwich, Connecticut~~

~~* Heacon Co. - Greenwich, Connecticut~~

* Heacon Co. - Greenwich, Connecticut

* Heacon, Inc. - Greenwich, Connecticut

Hellenic - New York, New York

Hennig Asbestos & Packing Co. - Chicago, Illinois

Hercules Incorporated - Redford, Virginia

Hercules Packing Corp. - Alden, New York

Hercules Products Division - Houston, Texas

Herfty Foundation - Savannah, Georgia

Herschberg, Bill - Chicago, Illinois

* Herschberg, Bill - Chicago, Illinois

* Hollenbeck & Sather, Inc. - Des Plaines, Illinois

Hollingsworth & Vose Co. - General

Hollingsworth & Vose Co. - Greenwich, New York

Hollingsworth & Vose Co. - West Groton, Massachusetts

Hollingsworth & Vose Co. - East Walpole, Massachusetts

Holmes Insulations Ltd - Sarina, Ontario

* Honeier Mill & Lumber Company - Chicago, Illinois

* Hood Sponge Rubber Company - Chicago, Illinois

Hooker Chemicals - North Tonawanda, New York (See Dutez Plastics)

Hope Asbestos Ltd. - Toronto, Ontario, Canada

Horizons, Inc. - Cleveland, Ohio

* *Houston Construction - River Grove, IL*
Houston Gasket & Packing Co. - Houston, Texas

Houston Manufacturing Speciality Co. Inc. - Houston, Texas

* *Hurlbut Papers - South Lee Massachusetts (See Mead Corp also)*
* *IACA - Ciudad Trujillo, D.R.*
* I. A. C. R. - Guatemala

* I. B. Beaird Company - Shreveport, Louisiana

* I. S. C. A. - Dominican Republic

* I. S. C. A. - Dominican Republic

* ILG Electric Ventilating Co. - Chicago, Illinois

Industrial & Marine Specialties Inc. - Tampa, Florida

Industrial & Marine Specialties Inc. - New Smyrna Beach, Florida

Industrias de Asbestos Cemento C Por 9 - Santo Domingo, Rep. Dominican

Insul Co., Inc. - East Palastine, Ohio

* Insulated Products Co. - Van Nuys, California

* Insulated Products Co. - Van Nuys, California

* *Insulation Const. Co. - Skokie, IL*
Intercontinental Tube Trade - Transuaal, South Afria

* International Fibreboard Ltd. - Gatineau, Quebec, Canada

International Paper Co. - Nanchez, Mississippi

International Vermiculite Co. - Denver, Colorado (See National Gypsum)

International Vermiculite Co. - Girard, Illinois (See National Gypsum)

* International Wood Products - Long Beach, California

* International Wood Products - Long Beach, California

Interpace Corp. - Los Angeles, California

Interpool - New York, New York

Iowa Paint Manufacturing Co. - Des Moines, Iowa

Irwin Brown Co. - (See International Vermiculite)

Irwin Brown Co. - (See U.S. and National Gypsum)

* Jeanette Glass Company - Jeanette, Pennsylvania

Jim Walter Research Group - St. Petersburg, Florida

Johns-Manville - Berlin, New Jersey

Johns-Manville - Billerica, Massachusetts - sample

Johns-Manville - Denison, Texas

Johns-Manville - Denver, Colorado

Johns-Manville - Green Cove Springs, Florida

Johns-Manville - Houston, Texas

Johns-Manville - Jacksonville, Florida

Johns-Manville - Laredo, Texas

Johns-Manville - Long Beach, California

Johns-Manville - Los Angeles, California

Johns-Manville - Manville, New Jersey

Johns-Manville - Marrero, Louisiana

Johns-Manville - Nausha, Bahamas

* Johns-Manville - New Brunswick, New Jersey

Johns-Manville - New Orleans, Louisiana

Johns-Manville - New York, New York

Johns-Manville - North Billerica, Massachusetts

Johns-Manville - Philadelphia, Pennsylvania

Johns-Manville - San Francisco, California

Johns-Manville - Stockton, California

* Johns-Manville - Tilton, New Hampshire

Johns-Manville - Waukegan, Illinois

* Johns-Manville Mexicana - Mexico, D. F.

Johns-Mnville - Boston, Massachusetts

~~K. M. Kellogg Co. - New Market, New Jersey~~

* Kaiser Aluminum - Chalmette, Louisiana

Kay Asbestos Co. - Essington, Pennsylvania

Kay Asbestos Co. - Morton, Pennsylvania

Keene Corp. - Garwood, New Jersey

Keene Corp. - General

Keene Corp. - Port Kennedy Station, Pennsylvania

Keene Corp. - Princeton, New Jersey

Keene Corp. - Trenton, New Jersey

* Kenmore Lumber Co. - Akron, Ohio

Kenne Corp. - Kalamazoo, Michigan

Kenne Corp. - Valley Forge, Pennsylvania

Kerrco Inc - Lincoln, Nebraska

Keyes Fibre Co. - Waterville, Maine

Kimberly Clark - Neenah, Wisconsin

* Kingsley Mach. & Fabr. Co. - Buffalo, New York

- * Kirkhill Rubber Co. - Brea, California
- Knowlton Bros., Inc. - Waterton, New York
- Koch Fiberglass Products - Wichita, Kansas
- Koch Products - Wichita, Kansas
- Kolrane Products Corp. - Riverside, California
- Koncrete Assiation Products - Rockford, Illinois
- Kordell Industries - Mishiwaka, Indiana
- * Kovash, Inc. - Dickinson, North Dakota
- L. E. Harnisch & Co. - Chicago, Illinois
- Lab Glass Inc. - Vineland, New Jersey
- Lake Asbestos of Quebec
- Landis Sales Co. - Los Altos, California
- Latex Fiber Industries Inc. - Camden, New Jersey
- Leeds - North Wales, Pennsylvania
- Leffingwell Chemical Co. - Brea, California
- Lewers & Cooke Ltd. - Honolulu, Hawaii
- Lincoln Electric Co. - Cleveland, Ohio
- Los Angeles Chemical Co. - South Gate, Caliifornia
- Lubrival Corp. - Wickliffe, Ohio
- M. A. Bruder & Sons - Philadelphia, Pennsylvania
- M. A. Bruder & Sons Inc. - Philadelphia, Pennsylvania
- * M. H. Detrick Co. - Aurora, Illinois
- * ~~M. H. Detrick Co. - Chicago, IL~~
- M. Mauritzon & Co. - Chicago, Illinois
- ~~* M. H. Detrick - Aurora, Illinois~~
- ~~M. W. Kellogg Co. - New Market, New Jersey~~
- * Madison & Hanger - Amarillo, Texas

Manufacturea & Inversisnista S.A. de C.V. - Naucalpan Edo de Mexico

* Marbon Chemical - Washington, West Virginia

Marbon Division - Washington, West Virginia

Marmac

* Mason & Hanger - Amarillo, Texas

* Mason & Hanger - Amarillo, Texas

Masonite Canada Ltd. - Gatineau, Quebec, Canada

Materiales Aislantis S.A. - Monterrey N.L. Mexico

Mauritzon Inc. - Chicago, Illinois

Mauritzon, Inc. - Detroit, Michigan

* McGraw-Edison Company - Pittsburgh, Pennsylvania

* McCracken - Ripley Co. - Portland, Oregon

* Mead Corp. - Chillicothe, Ohio

Mead Corp. - See Hurlbut Papers - South Lee, Massachusetts

Mead Papers - Middleton, Ohio

Merla Food Corp. - Garland, Texas

* Metaltek Insulation - Torrance, CA

Mexalit Del Norte - El Paso, Texas

Mexalit Del Norte - General

Mexalit de Occidents S.A. de C.V.

Mexalits - General

* Miko Brothers - Bridgeport, Connecticut

Minnesota Mining & Manufacturing Co. - Monrovia, California

Minnesota Mining & Manufacturing Co. - St. Paul, Minnesota

* Molded Fiber Glass Company - Ashtabula, Ohio

* Molded Fiberglass Body Co. - Ashtabula, Ohio

Monsanta Co. - St. Louis, Missouri

* Mooney Bros. Corporation - Lodi, New Jersey

- * Moosic Lumber Company - Moosic, Pennsylvania
- Morton Chemical Co. - Chicago, Illinois
- Morton Chemical Co. - Weeks, Louisiana
- * Mueller Construction - Chicago, Illinois
- * ~~Muff~~ - ~~It~~ (Swanney & Wms., Burbank, CA) Montclair, California
- * Mundet Cork Corporation - North Bergen, New Jersey
- N H. Mtarck Corp. - Cedarburg, Wisconsin
- * National Brick - Long Island City, New York
- National Gypsum - Alexander, IN (See Irwin Brown Co. & International Vermicalite)
- National Gypsum - Buffalo, New York (See Irwin Brown Co. & International Vermicalite)
- National Gypsum - General
- National Gypsum - Millington, NJ (See Irwin Brown Co. & International Vermicalite)
- National Gypsum - Mobile, Alabama (See Irwin Brown Co. & International Vermicalite)
- National Gypsum - New Orleans, LA (See Irwin Brown Co. & International Vermicalite)
- * National Gypsum - St. Louis, Missouri
- * National Starch & Chemical - Plainsfield, New Jersey
- * New Jersey Asbestos Company - New York, New York
- New York Blower Co. - LaPorte, Indiana
- Nicolet Industries, Inc. - Ambler, Pennsylvania
- Nippon Asbestos Co., Ltd. - New York, New York
- * Nobell Research Lab - Coloma, California
- Nohl Industries - Milwaukee, Wisconsin (also see Dico Plastics Inc.)
- North American Asbestos Corp.
- North American Rockwell - Linesville, Pennsylvania
- Nuova Capamianto - Spain
- Orangeburg Manufacturing Co. (Division of Flintkote Co. - Ravenna, Ohio)
- Oven Systems Inc - Menomonee Falls, Wisconsin

Owens Corning - Berlin, New Jersey

Owens Corning - Bloomington, Illinois

Owens Corning - General

* Owens Corning - Granville, Ohio

Owens Corning - Toledo, Ohio

Owens Corning - Lawn Side, New Jersey

Owens Corning - Lawn Side, New Jersey

Owens Corning - Lindenwold, New Jersey

Owens Corning - Vineland, New Jersey

* Oxford Royal Mushroom Prod. - Kelton-Chester County, PA

P.P.G. Industries, Inc.

PPG Industries - Corpus Christi, Texas

* Packing Engineer Corp. - Cranford, New Jersey

Pall Corp. - Puttman, Connecticut

* Pall Corporation - Glen Cove, Long Island, New York

Pallflex Products - Putnam, Connecticut

* Pan American World Airways, Patrick A.F.B. - Florida

Paseo de la Reforma - Mexico

* Peko Tile - Paletine, Illinois

Perlite Processing - Santa Fe Springs, California

* Peter Knowe & Son Co. - Chicago, Illinois

Phelps Packing & Rubber Co. - Baltimore, Maryland

* Philadelphia Asbestos Corp. - Philadelphia, Pennsylvania

* Philip Carey Mfg. - Philadelphia, Pennsylvania

Phillip Carey - Cincinnati, Ohio

Phillip Carey - Lockland, Ohio

Phoenix Asbestos Manufacturing Co. - Garwood, New Jersey

Phoenix Gasket & Packing Manufacturing Co. - Garwood, NJ

* Pilisbury Co. - New Albany, Indiana

* Pipe Linings, Inc. - Wilmington, California

Pittsbrgh Metals Purifying Co. - Chicago, Illinois

Pittsburgh Corning (See PPG, Pittsburgh Plate Glass and Corning Glass Works)

Pittsburgh Corning Corp. - Chicago, Illinois

Pittsburgh Corning Corp. - Port Alleghany, Pennsylvania

Pittsburgh Corning Corp. - Pittsburgh, Pennsylvania

Pittsburgh Corning Corp. - Galveston, Texas

Pittsburgh Corning Corp. - Tyler, Texas

Pittsburgh Corning Corp. - Owentown, Texas

Pittsburgh Corninng Corp - Philadelphia, Pennsylvania

Pittsburgh Metals Purifying Co. - Saxonburg, Pennsylvania

Pittsburgh Plate Glass Co. - Lake Charles, Louisiana

* Plastics & Fibers - Sheboygan, Wisconsin

* Plastics & Fibers - South River, New Jersey

* Plastics & Ribers - Ramsey, New Jersey

Plumb Chemical - Bristol, Virginia

Plumb Chemical - Philadelphia, Pennsylvania

Polymer Application, Inc. - Tonawanda, New York

Polymer Application, Inc. - Summit, New Jersey

Polymer Application, Inc. - Balavia, Ohio

Polymer Dispersions, Inc. - Xenia, Ohio

Polymer Dispersions, Inc. - Fairport Harbor, Ohio

Porter Hayden - Edison, New Jersey

Power Dynamics - St. Louis, Missouri

Powhatan Mining Co. - Baltimore, Maryland

Powhatan Mining Co. - Joliet, Illinois

Pratt & Whitney Aircraft - South Windsor, Connecticut

* Premix, Inc. - Conneaut, Ohio

* Product Techniques - Brantford, Ontario

Productos Mexalit S.A.

* Ralph Parsons Co. - Los Angeles, California

Ranisan Products - Lorian, Ohio

Rasmussen Iron Works - Whittier, California

Raybestos Manhattan, Inc. - General

Raybestos Manhattan, Inc. - Manheim, Pennsylvania

Raybestos Manhattan, Inc. - Bridgeport, Connecticut

Raybestos Manhattan, Inc. - North Charleston, South Carolina

Raybestos Manhattan, Inc. - Stratford, Connecticut

* *Reaction Motors - Denville, NJ*

Readybuilt Products Co. - asbestos sample - Baltimore, Maryland

Refoelortis

* Refractory & Insulation Corp. - Port Kennedy, Pennsylvania

* Reichhold Chemicals, Inc. - South San Francisco, California

Resinoid Engineering Corp. - Skokie, Illinois

* Resisto Chemical, Inc. - Wilmington, Delaware

Rex Buckeye Co. - Cleveland, Ohio

Reynolds Metals Co. - McCook, Illinois

Richardson Co. - Alden, New York (also see Hercules Packing)

Rochester Paper Co. - Adams, Massachusetts

* Roeth & Butler, Inc. - Chicago, Illinois

* Roeth & Cutler - Chicago, Illinois

Rogers Corp. - General

Rogers Corp. - Manchester, Connecticut

Rogers Corp. - Rogers, Connecticut

Rosa (see also Alberto Rosa)

Rostone Corp. - Lafayette, Indiana

* Ruberoid Co - New York, New York

Ruberoid Co. - Erie, Pennsylvania

Ruberoid Co. - South Bound Brook, New Jersey

Rust Engineering Corp. - Carnegie, Pennsylvania

Rust Engineering Corp. - Pittsburgh, Pennsylvania

Sacomo Manufacturing Co. - San Francisco, California

Sacomo Manufacturing Co. - Burlington, California

Sacomo-Sierra, Inc. - Carson City, Nevada

* Sangamo Electric - Marion, Illinois

Seal Products Co. - Germantown, Wisconsin

* Seal-Tite Manufacturing Co. - North Wales, Pennsylvania (see Atlas Asbestos)

Sealtite Insulation Manufacturing Co. - Merton, Wisconsin

Seoco Corp. - Pensacola, Florida

Sepco Corp. - Atlanta, Georgia

Sepco Corp. - Birmingham, Alabama

Sepco Corp. - Doraville, Georgia

Sepco Corp. - Kingsport, Tennessee

Sepco Corp. - Pellham, Georgia

Shell Chemical Co. - Union, New Jersey

* Simpson Timber Company - Shelton, Washington

Smith (See A.O.Smith In-land)

Smooth-On, Inc. - Gillette, New Jersey

Southeastern Products Corp. - Chattanooga, Tennessee

Southeastern Products Corp. - Pelham, Alabama

Southern Pipe & Casing Co. - Azusa, California

* Space Flex, Inc. - Los Angeles, California

* Sparkler Manufacturing Co. - Mundelein, Illinois

* Spaulding Fiber Co., Inc. - North Rochester, New Hampshire

Spraycraft Corrp. - Newrk, New Jersey

Sprinkmann Sons - Milwaukee, Wisconsin

* Standard Oil Company - Cleveland, Ohio

Standard Refractories - Burlington, Ontario, Canada

* Stebbins Engineering - Watertown, New York

* Ster-O-Matic - Mundelein, Illinois

* Ster-O-Matic - Mundelein, Illinois

* Sterling Packing and Gasket - Houston, Texas

Stone Art Co. - Santa Fe Springs, California

* Stoner Rubber Co - Anaheim, California

* Stoner Rubber Co. - Anaheim, California

Stratmore Papers Co. - West Springfield, Massachusetts

* Structural Fibers - Chardon, Ohio

- * Structural Foams - Cleveland, Ohio
- Suarez - Quebec, Canada
- Sunbeam Equipment Corp. - Meadville, Pennsylvania
- T.N. - Rubber Specialties - Goshen, Indiana
- T.R. Rasmussen - Whittier, California
- * Tallman-McCluskey ^{Fabrics} Fabrics - Kirkwood, Missouri
- Tampa Rubber & Gasket Co. - Tampa, Florida
- Taunton Engineering Co. - Taunton, Massachusetts
- Taylor Forge & Pipe Works - Chicago, Illinois
- Tecko Eterno Eureka S.A. - Mexico 19 D.F., Mexico
- Tecko Eterno Eureka S.A. - Laredo, Texas
- * Tennessee Copper Co. - Copperhill, Tennessee
- Termo Asbestos S.A. - Laredo, Texas
- Termo Asbestos S.A. - Mexico 14 D.F., Mexico
- Termo Asbestos S.A. - Santa Clara Edo de Mexico
- * Thatcher Glass Manufacturing Company - New York, New York
- * Thatcher Glass Manufacturing Company - New York, New York
- * The Budd Company, Polychem Div. - Adams, Massachusetts
- * The Rotary Co , Inc. - Buffalo, New York
- * Therm X Co - Kennett Square, Pennsylvania
- * Thiokol Chemical - Bristol, Pennsylvania
- * Thiokol Chemical - Trenton, New Jersey
- * Thiokol Chemical Corp. - Denville, New Jersey
- Thurston & Son (See also C.E.Thurston)
- Tri State Roofing & Sheet Metal Co. - Charleston, West Virginia
- Turner Asbestos Fibres - Manchester

* Turner-Brooks, Inc. - Toledo, Ohio

Ty-Wood Industries, Ltd. - Weston, Ontario, Canada

U O.P. Air Correction - Darien, Connecticut

* U. S. Gasket (Div. Garlock Pkg.) - Camden, New Jersey

* U. S. Industries - Chicago, Illinois

* U. S. Industries - Chicago, Illinois

* U. S. Naval Ordnance - Pasadena, California

* *U. S. Plywood - Chicago, Illinois*

* U. S. Plywood - Columbus, Ohio

* *" " - Detroit, Michigan*

* U. S. Plywood - East Hartford, Connecticut

* U. S. Plywood - East Hartford, Connecticut

* U. S. Plywood Corp. - Grand Rapids, Michigan

* *U. S. Plywood Corp. - Louisville, Ky*

* U. S. Plywood Corp. - New York, New York

* U. S. Plywood Corp. - San Francisco, California

* U. S. Polymeric & Chemicals - Santa Ana, California

* U. S. Polymeric & Chemicals - *Stamford*, California

* ~~U. S. Rubber - New York, New York~~

* U. S. Rubber - New York, New York

* U. S. Rubber - Passaic, New Jersey

U.S Plywood - Champion Paper Inc. - Brewster, New York

U.S. Industrial Chemical Co. - Tuscola, Illinois

* U.S. Plywood Corp. - ^aSeattle, Washington

U.S. Plywood - Champion Paper Inc. - South River, New Jersey

* U.S. Plywood Corp. - Rochester, New York

* U.S. Plywood Corp. - Tacoma, Washington

Unarco Industries - Bloomington, Illinois

- * Underwriter Laboratory - Chicago, Illinois
- * Underwriters Lab., Inc. - Chicago, Illinois
- * Underwriters Lab., Inc. - Chicago, Illinois
- * Underwriters Laboratory - Chicago, Illinois
- Union Asbestos & Rubber Co. - Bloomington, Illinois
- Union Asbestos - Bloomington, Illinois
- Union Insulating - Parkesburg, West Virginia
- * United States Plywood Corp. - Buffalo, New York
- United States Plywood Corp. - Algoma, Wisconsin (U.S.Plywood)
- * United States Plywood Corp. - Albany, New York
- United States Plywood Corp. - South River, New Jersey (U.S.Plywood)
- { United States ^{Gypsum} ~~Sylvania~~ - East Chicago, Indiana (U.S.Gypsum) (Irwin Brown)
- { United States ^{Gypsum} ~~Sylvania~~ - Greenville, Mississippi (U.S.Gypsum) (Irwin Brown)
- Universal Oil Products - Darien, Connecticut
- Universal Refractories - Milwaukee, Wisconsin
- Universal Refractories - Oak Creek, Wisconsin
- Universal Refractories - Wampum, Pennsylvania
- Universal Refractories - Greenville, Pennsylvania
- * University of Illinois - Chicago, Illinois
- Vanrosse
- Vernay Products - Long Island, New York
- Vernay Products - Pompano Beach, Florida
- * Victor Manufacturing - Chicago, Illinois
- Vimasco Corp. - Nitro, West Virginia
- * W-K-M Division of A.C.F. Industries - Missouri City, Texas

- * W-K-M Division of A.C.F. Industries - Houston, Texas
- * W.R. Grace Co. - Guatemala, C.A.
- W.R. Zanes & Co. - Houston, Texas
- * WTU Engineering - Waltham, Massachusetts
- Wagner Insul Co. - Cucamonga, California
- Ward's Natural Science Establishment - Rochester, New York
- * Welin Davit and Boat - Perth Amboy, New Jersey
- * Welin Davit and Boat - Perth Amboy, New Jersey
- * Welin, Davit & Boat - Perth Amboy, New Jersey
- * West Jersey Paper Co. - Camden, New Jersey
- Westinghouse Electric Corp. - Pittsburgh, Pennsylvania
- Westinghouse Electric Corp. - Hampton, South Carolina
- Weyerhaeuser Co - Snoquaime, Wisconsin
- Weyerhaeuser Co. - Marshfield, Wisconsin
- * Wilkin Insulation - Elmwood Park, Illinois
- * William E. Walch - Cloquet, Minnesota
- * Wilson Raymond Co. - Chicago, Illinois
- * Wood Conversion - Cloquet, Minnesota
- * Woodall Industries, Inc. Skokie, Illinois
- * Wrenn Paper Company - Middletown, Ohio
- Wright (see also F.B.Wright) - Pittsburgh, Pennsylvania
- Wurlitzer Co. - North Tonawanda, New York

SAMPLES

Johns-Manville - Billerica, Massachusetts - sample

Readybuilt Products Co. - asbestos sample - Baltimore, Maryland

Asbestos samples in "B" misc. 1972 Correspondence

"C" general 1977

Johns-Manville W3 complaint file

Johns-Manville - Billerica

Johns-Manville - Amosite General 1975

"R" General 1970-1971

Readybuilt Products Co.

"M" General 1973

"M" General 1977

"A" Mississippi 1970

"S" General 1970

"A" Miscellaneous 1972

"A-Z" Miscellaneous 1972

"I" Miscellaneous 1974

"S" Miscellaneous 1976