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Johns-Manville

Internal Correspondence

To: M. Harris, J. A. McKinney
D. Poutiatine

Date: February 19, 1976

From: J. R. M. Hutcheson

Copies: A. R. Dennis, R. E. Sampson

D. POUTIATINE

A. F. D.

Subject: ADVOCATE SALES AGREEMENT

Attached is a copy of the executed Sales Agreement between C.F.E. and Advocate for the sale and purchase of Advocate grades A-25 and A-35. The original is on file in our office.

Attach.

MT 012674

MEMORANDUM OF AGREEMENT made as of the 1st day of January, 1977.

BETWEEN:

ADVOCATE MINES LIMITED, a corporation incorporated under the laws of the Province of Ontario, with head office located in the Municipality of Metropolitan Toronto, Ontario

(hereinafter called "Advocate");

- and -

COMPAGNIE FINANCIERE ETERNIT, S.A., a corporation incorporated under the laws of Belgium, with head office located at Brussels, Belgium

(hereinafter called "CFE");

WHEREAS:

(a) Advocate produces asbestos fibre at its mine located at Baie Verte, Newfoundland;

(b) To the significant advantage of Advocate, CFE has purchased and caused to be purchased a substantial portion of the Advocate production of asbestos fibre since Advocate commenced production of asbestos fibre in 1963;

(c) CFE wishes to assure itself of a long term source of supply of asbestos fibre and Advocate wishes to assure itself of a long term market for its asbestos fibre;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and of the mutual covenants and agreements herein contained, the parties hereto have agreed and do hereby agree as follows:

1. Sale and Purchase of Asbestos Fibre

1.1 Advocate shall sell and CFE shall purchase 55/72 of Advocate's annual production of asbestos fibre grade A-25 and 100% of Advocate's annual production of asbestos fibre grade A-35 for each calendar year during the term of this Agreement.

1.2 The parties hereto acknowledge and agree that the asbestos fibre to be purchased hereunder by CFE shall be purchased for the account of CFE and other purchasers connected

with it and all references herein to asbestos fibre to be sold to or purchased by CFE shall include asbestos fibre purchased for the account of such other purchasers. Upon the direction of CFE to Advocate the asbestos fibre to be purchased for the account of other purchasers shall be shipped directly to them.

2. Delivery

2.1 All Advocate asbestos fibre shall be sold to CFE f.a.s. vessel or f.o.b. truck Baie Verte, Newfoundland.

2.2 At the request of CFE, Advocate will, for the account of CFE, act as its agent in assisting in arranging and expediting shipments of asbestos fibre from Baie Verte to CFE or its customers including without limiting the generality of the foregoing; preparing necessary shipping and title documentation and consular invoices, coordinating the arrival and departure of carriers and arranging for stevedoring and other loading services not provided by carrier. Advocate shall be reimbursed by CFE for all out-of-pocket expenses and shall be indemnified and saved harmless by CFE from any and all liabilities, losses and expenses reasonably incurred on behalf of CFE under this subsection 2.2.

3. Price

3.1 The net prices for all asbestos fibre sold by Advocate to CFE for use or resale outside Canada shall be competitive to those charged by Canadian Johns-Manville Company, Limited ("CJM") for asbestos fibre of like grade and quality produced by CJM at its Jeffrey mine and mill in Asbestos, Canada and sold to same or similar non-Canadian purchasers which are not affiliates of CJM, and under same or similar long-term contracts.

3.2 The parties further agree that if, for any reason, the prices charged by CJM, to non-Canadian customers, become subject to control by any government or governmental authority or agency or are otherwise influenced thereby, which controls or influences do not affect Advocate's prices, such controlled or influenced prices will not be used for the purposes of Section 3.1 hereof and the prices to be charged by Advocate to CFE shall be subject to negotiation between the parties.

3.3 Any change by Advocate in its prices shall be effective with respect to CFE as of January 1 of any year provided that at least 30 days' written notice has been given to CFE, or as of any other day upon one hundred twenty (120) days' written notice. Any such change in prices will be

effective with respect to all asbestos fibre delivered to CFE on and after the effective date of such change, provided that prices in effect on December 31 of a given year will apply on shipments of asbestos fibre produced in the year in which such prices are applicable but which are taken by CFE within 90 days following December 31 of that year.

3.4 All asbestos fibre purchased hereunder shall be paid for in Canadian dollars and on such terms as Advocate may stipulate from time to time. Advocate may from time to time designate an alternative currency, provided notice is given to CFE in accordance with the provisions of paragraph 3.3 above.

4. Production and Shipping Schedules

4.1 Advocate shall use its best efforts, having regard to good mining practice, to assure that the tonnages of asbestos fibre to be purchased by CFE shall be produced and available for shipment in accordance with the reasonable expectations of CFE. Advocate shall provide to CFE, monthly reports as to tonnages and grades of fibre produced, fibre inventory, fibre shipped and production forecasts.

4.2 CFE shall use its best efforts to cause Advocate fibre production to be purchased by it to be shipped in a regular and timely fashion, subject to weather, ice conditions and the availability of shipping. CFE shall consult with Advocate with respect to the establishment of shipping schedules for fibre produced and shall advise Advocate in advance of the arrival dates of all ships and other carriers for loading at Baie Verte.

5. Force Majeure

5.1 If Advocate or CFE shall be prevented or delayed from performing any of their respective obligations on their part to be performed hereunder by reason of acts of God, strike, fire, flood, interruption or delay in transportation, war, insurrection or mob violence, requirement or regulation of government, unavoidable casualties, shortage of labour, equipment or materials, plant breakdown or failure of operating requirements or any disabling cause, without regard to the foregoing enumeration, beyond the control of either Advocate or CFE, as the case may be, which cannot be overcome by the means normally employed in performance, then and in every such event, any such failure to perform shall not be deemed a breach of this Agreement but performance of any of the aforesaid obligations shall be suspended during such period of disability.

5.2 In the event that any such cause should arise, the party affected shall, as soon as practical, advise the other

party in writing of the occurrence of such cause, and shall take such action as may reasonably be available to it to endeavour to eliminate such cause, provided that the party so affected by such cause shall not be required to settle strikes, lockouts or other labour difficulties contrary to its wishes.

5.3 It is agreed that if CFE should be excused from performing any of its obligations hereunder by reason of the occurrence of an event of force majeure as referred to in subsection 5.1 hereof, Advocate shall be entitled to cause the asbestos fibre to be purchased by CFE to be discontinued and if such period extends for more than 180 days to be sold elsewhere.

6. Duration

6.1 This Agreement shall be effective with respect to asbestos fibre shipped by Advocate to CFE commencing with calendar year 1977 and shall continue for a period ending December 31, 1985. Thereafter, this Agreement shall be automatically renewed for an additional period of five (5) calendar years unless terminated by either party by written notice given to the other at least thirty (30) days prior to January 1, 1985.

6.2 Termination by either Advocate or CFE pursuant to the provisions of section 6.1 above shall not affect any obligations incurred prior to such date.

7. Law

7.1 This agreement shall be governed by and interpreted in accordance with the laws of the Province of Ontario and shall for all purposes be deemed to have been made in the Province of Ontario.

7.2 Should any portion of this agreement be found to be void as contrary to the laws of Ontario or Canada, then such portions shall be severable and shall not affect the validity of any other parts of this agreement.

8. Arbitration

Any dispute arising in connection with this agreement between or among any of the parties hereto shall be finally settled under the Rules of Conciliation and Arbitra-

tion of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules. The parties agree that any such conciliation or arbitration proceeding shall be held in Toronto, Ontario, Canada and shall be conducted in the English language.

9. Notices

9.1 All notices, statements, and other communications to be given, submitted, or made by one party to the other shall be sufficiently given if in writing and sent by post, postage paid, or by telegram, cable or telex or delivered to the address of such party as specified in subsection 9.2 of this agreement. Notices, statements and communications sent by post shall be deemed to have been received four business days from the date of mailing. Notices, statements and communications sent by telegram, cable or telex shall be deemed to have been received on the first business day following the date of transmission, and if delivered shall be deemed to have been received on the date of delivery.

9.2 The addresses to which notices, statements or other communications shall be sent by post, telegram, cable or telex shall be as follows:

ADVOCATE

Advocate Mines Limited
c/o Canadian Johns-Manville Company, Limited
P.O. Box 1500
Asbestos, Quebec

Telex No. 055-60827

with a copy to:
Advocate Mines Limited
250 University Avenue
Toronto, Ontario
M5H 3E9

Telex No. 06-22687

CFE

Compagnie Financiere Eternit, S.A.
9 Rue Ducale
Brussels 1, Belgium

Telex No. 46-21696

Any party may change its address for the purposes previously stated in this paragraph, by 15 days' notice to the other, given as aforesaid.

10. Assignment

10.1 The provisions hereof and the benefits and obligations of the parties hereunder may not be assigned by them without the prior written consent of the other parties hereto.

10.2 This agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

11. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto in respect of the subject matter hereof and supersedes all prior representations, negotiations, writings, memoranda, letters of intent and agreements. This Agreement may be modified or amended only by written instrument duly executed by the parties hereto.

12. Time

Time shall be of the essence of this agreement.

13. Board Approval

This Agreement, any modification or amendment thereto, or any price negotiated by the parties pursuant to section 3.2 hereof shall be subject to approval or ratification by the Advocate Board of Directors in accordance with its established procedures.

IN WITNESS WHEREOF the parties hereto have duly executed this agreement as of the day and year first above written.

ADVOCATE MINES LIMITED

By _____

And _____

COMPAGNIE FINANCIERE ETERNIT, S.A.

By _____

And _____