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CONFIDENTIAL AND WORK
PRODUCT MEMORANDUM

TO: Evan Burkholder

DATE: November 28, 1984

FROM: Stephen A. Milwid

RE: Deposition of Geoffrey A. Higham

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I reviewed the Abstract of the Deposition of Geoffrey A. Higham that Walter took in London, England and I wish to make the following comments.

Throughout the deposition, reference was made to statements contained in Cape Asbestos' Annual Reports starting with the report for 1973 (pp. 42 - 45). These reports stated with reference to the Tyler, Texas litigation that the actions were being strenuously contested and in the opinion of the Cape's American legal advisors, the amounts claimed were highly speculative and conjectural and had no basis in law or in fact. Mr. Higham identified our firm as the "American legal advisors" and stated that the person he dealt with was myself. I can recall no direct dealings with Mr. Higham with respect to the contents of the notes in the Annual Reports. Tony Penna, the Group Solicitor for the Cape Companies, was the person with whom I dealt. Our opinion was based primarily on the defense of lack of jurisdiction over the person of the Cape Companies as the law on that subject existed at that time, and a defense that we continued to assert in all pleadings, even after the trial court overruled the jurisdiction motions. (See draft of an Affidavit that I recently prepared and forwarded to Penna for use in the Tyler II proceedings pending in the High Court of England).

At page 47, Mr. Higham testified as to the Minutes of a Cape Board meeting on November 1, 1977 dealing with the settlement of the Tyler I cases in which it was indicated that the settlement was made on the basis of legal advice from the

DEPOSITION EXHIBIT
Higham #3
9-12-86

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United States and the United Kingdom. In that connection, the total settlement was $20,000,000 to which Cape Industries contributed $1,000,000 and the insurers for North American Asbestos contributed $4,200,000. The person with whom I dealt at Cape Industries in September, 1977 as to such authorization was Dr. Richard Gaze. The primary factor that was considered in authorizing the payment of $1 million on behalf of Cape Industries was that the other co-defendants including the insurers of NAAC indicated that they were prepared to settle separately with the 407 plaintiffs' and would seek indemnity from the Cape Companies and that the plaintiffs' attorneys would proceed separately to trial against the Cape Companies as the sole remaining defendants. Dr. Gaze and I took into consideration the exposures that were involved, primarily with the expense of such further litigation as well as the risk of being the sole defendants appearing before a Texas jury with 407 Texan plaintiffs.

Mr. Higham's statement at page 53 that he had no recollection of the discussion that gave rise to the proposal that NAAC be wound-up should be helpful in the subsequent deposition of Max Meyer. At page 54, he referred to the Board Minutes as saying that the reason for winding up NAAC was that the selling arrangement for asbestos in the U.S. would be more closely controlled from South Africa and at pp. 73 - 76, this was tied into the formation of Associated Mineral Corporation of Liechtenstein and its agreement with Continental Products Corporation of Chicago since, as he stated at page 74, "the reason behind it was that some countries do not like doing business with South Africa and it is necessary for them to make arrangements," and at page 76 he gave the further reason that through Associated Mineral Corporation, Cape would have another subsidiary as a selling outlet in various areas of the world.

At pp. 62 and following, Walker questioned Mr. Higham as to the source of in his recommendation to the Board that Cape would not appear and defend product liability litigation in the U.S. He stated that the basis for that recommendation to Board would have been legal advice received both in the U.S. and the U.K. suggesting that as being the best course

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of action for the company. At pp. 64 -65, he stated that the source for the legal advice from the U.S. would be Lord, Bissell & Brook. I know of no basis for that conclusion by Mr. Higham. After the Tyler I litigation was settled, I recall a telephone conversation with Tony Penna in which he stated that based on the advices of Cape's U.K. solicitors, Cape would not appear in any subsequent U.S. product liability litigation and would resist in the U.K. any endeavors to collect any default judgments that might be entered in the U. S. I also recall that even as early as 1975, Mr. Penna advised that attorneys representing EGNEP in South Africa had already given the same advice.

At page 67, Mr. Higham testified that he met very rarely with Max Meyer and did not meet him more than once a year. I met him only once in August, 1977, in London. just prior to the scheduled commencement of the trial in Tyler, Texas.

We certainly had no participation in the negotiations that commenced some time in 1976 (pp. 68 - 73) with Transvaal Consolidated Land (TCL), dealing with the sale of the Cape mining properties in South Africa. Mr. Higham testified at page 71 that Cape made it very plain to TCL that the Cape was not responding to any product liability claims in the U.S.

On the whole, from my review of this Abstract, it does not appear that Walker, in the 89 pages of the deposition, uncovered very much, particularly pertaining to the decision for the dissolution of NAAC.

Stephen A. Milwid

SAM/ds