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March 6, 1978

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Group Solicitor
Cape Industries Limited
114 Park Street
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RE: Cape - Future Commercial Activities in the U.S.A.

Dear Tony:

Thank you for your letter of February 24th which Max and I have reviewed carefully. Many of the questions that you raise have been discussed previously in connection with the NAAC operation. It is our opinion that if Don International and Cape Contracts International Ltd. operate as wholly autonomous subsidiaries, then any assets that such subsidiaries might have in the United States would not be subject to attachment to satisfy any asbestosis default judgment obtained against Cape. However, if Don International is incorporated in the United States and is wholly owned by the Cape, any dividends declared might be subject to attachment by a judgment creditor of the Cape.

If Cape should exercise direct control over the activities of either of these subsidiaries in the United States, Cape would be faced with the same contentions that were made in the Tyler cases with respect to the doctrine of piercing the corporate veil. The judgment creditor would have the burden of showing such domination by the Cape and that the subsidiaries of Cape selling or contracting in the United States are merely branches or divisions of Cape rather than independent subsidiaries. The greater autonomy in the operation of the subsidiaries, the less chance there would be of any successful attachment of the assets of the subsidiary to satisfy any default judgments against Cape.

We agree that it is most unlikely that any plaintiff would bother to pursue collection of any default judgments against Cape in any of the current asbestosis cases pending in the United States. It has been the practice of practically every plaintiff to join as many defendants as possible, most of whom are substantial corporations such as Johns-Manville and most of whom are adequately insured. There is, of course, the risk that some of the defendants who may have been customers of any of the Cape subsidiaries would endeavor to obtain indemnification and/or contribution from the Cape on the same grounds asserted in the Tyler litigation.

The only cases that we are aware of where the Cape and/or EGNEP have been named as defendants are the two Illinois cases pending in the United States District Court fo the Northern District of Illinois involving employees of the Johns-Manville Sales Corporation Waukegan plant. As I advised you in our recent telephone conversation, we withdrew from that litigation as attorneys for Cassiar when it appeared that under a most recent decision of the Illinois Supreme Court a doctrine of contribution among tortfeasor defendants based on relative fault might be available to Cassiar. However, a recent modification of that decision by our Supreme Court now makes such a doctrine available only prospectively to occurrences after March 1, 1978, and accordingly, such relief will not be available to Cassiar against the Cape. However, there is still the possibility that Johns-Manville as a "customer" of Cape and/or EGNEP might seek indemnity on the theory of active-passive negligence and if a counterclaim is filed against Cape and EGNEP asserting such a claim for relief and a default is permitted, Johns-Manville might take steps to enforce that judgment against the assets of Cape. We doubt that the plaintiffs in these two cases would seek to take an early default judgment against Cape and/or EGNEP and such relief would not be available to Johns-Manville until a final money