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Re: Draft Advisory Opinion 1994-9

Dear Commission Secretary:

On behalf of AK Steel Corporation, I take this opportunity to comment on the draft Advisory Opinion which I received from the Office of General Counsel on May 12, 1994.

Transfer of Funds

We accept the findings and draft Opinion of the Office of General Counsel as it relates to the transfer of funds from the state PACs to ArmLP PAC. We believe that ArmLP and the state PACs complied with all of the requirements set-forth on pages 11 and 12 of the draft Opinion. The funds transferred to ArmLP PAC were attributed to those state PAC members who had most recently contributed to the state PACs. Thus, the funds transferred were those funds most recently received by the state PACs. The specific amount attributed to the individuals was determined based on the percentage of their usual payroll deductions. Care was taken to assure that no amount in excess of actual contributions was attributed to any individual. No requests to transfer funds were sent to any contributors not in the restricted class.

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Commission Secretary

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Affiliation of AK Steel and Armco/Kawasaki

We must respectfully take exception to the Office of General Counsel's conclusion reached on the issue of affiliation. We believe that application of the factors set-forth in 11 CFR 100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J) warrants a conclusion that the companies are not affiliated.

1. No Sponsoring Organization Owns A Controlling Interest in the Voting Stock or Securities of Another Sponsoring Organization

As the draft Opinion notes on page 2, Kawasaki owns approximately 20 percent of the common stock of AK Steel, and Armco will own approximately 4 percent of the common stock. Thus, neither company even approaches a controlling interest in the stock of AK Steel. We believe this factor is the single most significant factor for determining whether one sponsoring organization should be deemed affiliated with another.

2. Neither Armco nor Kawasaki is Authorized or Able to Participate in the Governance of AK Steel, Either Through Provisions of Constitutions, By-Laws or Otherwise.

As the draft Opinion notes at pages 12 and 13, we do not anticipate that the governing documents of AK Steel will enable either Armco or Kawasaki to engage in the governance of AK Steel or AK Holding. It is anticipated that the governance and management of AK Steel and AK Holding will be independent and separate from the former joint venturers. Furthermore, there is a Joint Venture Termination Agreement which terminates most of the obligations between the parties. The fact that Armco and Kawasaki each have one Board member should not in any way affect this determination. Even together, those two Board members represent a distinct minority. To hold otherwise would result in the determination that numerous companies throughout the country who have Board members from other companies are *affiliated* with the companies of their Board members.

3. Neither Armco nor Kawasaki Will Have the Authority or Ability to Hire, Demote or Otherwise Control the Decisionmakers of AK Steel.

There is no reason to believe or even suspect that Armco or Kawasaki would have any ability or authority to hire, fire or otherwise control the decisionmakers of AK Steel. Although the Board of AK Steel has the authority to hire and fire officers of the corporation, the fact that Armco and Kawasaki together represent a substantial minority of the Board would support the position that, even together, they cannot hire or fire people.

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4. There are No Common or Overlapping Officers or Employees of AK Steel and Armco/Kawasaki.

There are not, to my knowledge, currently any common or overlapping officers or employees of AK Steel and Armco/Kawasaki. Obviously, many of the current employees and officers of AK Steel were formerly employed by ArmLP. That entity essentially became AK Steel through the reorganization. To follow the logic of the draft Opinion, any time a company spins-off a division or subsidiary into a separate, independent entity, this CFR factor would not be met, since the employees and officers of the new entity would obviously have formerly been employed by the spun-off entity. That fact, by itself, should not demonstrate affiliation.

5. Armco and Kawasaki Did Not Have An Active or Significant Role in the Creation of AK Steel.

The draft Opinion notes, correctly, that Armco and Kawasaki were instrumental in the formation of ArmLP, the predecessor organization. However, the formation of AK Steel was, in essence, through a public offering of stock. Arguably, the bankers and lawyers involved had the most significant role in the formation of AK Steel, together with the general investing public which purchased the overwhelming majority of shares.¹

We continue to believe that this situation is significantly similar to the situation presented to the Commission recently in Advisory Opinion 1993-23. The similarities are that (1) the recapitalization of ArmLP ended any controlling interest by Armco and Kawasaki, (2) it is anticipated that AK Steel shares will be traded vigorously on the open market leading to large numbers of different shareholders, (3) it is expected that no single group of shareholders will own a controlling interest in AK Steel, (4) the governing documents of AK Steel do not enable Armco or Kawasaki to participate in AK Steel's governance, (5) the governance and management of the companies is intended to be separate and independent, (6) AK Steel will not share any common officers and employees with Armco and Kawasaki. Indeed, the only apparent difference between AO 1993-23 and this case is the fact that Armco and Kawasaki each have one single Board member on the Board of AK Steel and AK Holding. It does not seem reasonable to conclude, however, that that fact would lead to a determination that the companies are affiliated for federal election law purposes.

We believe that the Office of General Counsel thoroughly investigated our Advisory Opinion Request and has diligently attempted to present the facts as accurately as possible. We

¹ We note that several other CFR factors (e.g. E, G, H, and K) do not appear to apply to this situation, further indicating, in our view, non-affiliation.

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believe they have done so. Nevertheless, the application of the relevant factors to a particular situation is often subjective, and we believe that, when these factors are examined in the context of the overall relationship between AK Steel and Armco and Kawasaki, the Commission should conclude that the companies are not affiliated.

Very truly yours,



Grant S. Cowan

GSC/gc

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