40-8948

CYPRUS
Foote Mineral

Cyprus Foote Mineral Company
348 Holiday Inn Drive
Kings Mountain, North Carolina 28086
(704) 739-2501
FAX (704) 734-0208

March 21, 1995

Ray Glinski, Radiation Specialist
Region III
U.S. Nuclear Regulatory Commission
801 Warrenville Road
Lisle, IL 60532-4351

RE: Class Action Complaint

Dear Mr. Glinski:

As per your recent telephone conversation, I have attached a copy of the Class Action Complaint that Cyprus Foote Mineral Company received.

Please call me if you have any additional questions or requests.

Sincerely,

Patrick E. Lee

PEL:amb
Enclosure

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FOOTE LITHIUM

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

SUE ANN MALERNEE,
EDWARD K. MALERNEE,
NATHAN MALERNEE, a minor, by and through
EDWARD K. MALERNEE and
SUE ANN MALERNEE, parents, natural
guardians and next friends,
NICHOLAS MALERNEE, a minor, by and through
EDWARD K. MALERNEE and
SUE ANN MALERNEE, parents, natural
guardians and next friends,
MARY FRANCES McMASTERS,
JOANNA MARTHA HANNON,
FRED HANNON, AND
LARRY L. MESARCHIK

Plaintiffs

vs.

CABOT CORPORATION,
CYPRUS AMAX MINERALS COMPANY,
CYPRUS FOOTE MINERAL COMPANY, AND
NEWMONT MINING CORPORATION

Defendants

JUDGE: 248

MAGISTRATE JUDGE ABEL

CLASS ACTION COMPLAINT

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Now come plaintiffs, for themselves and all other members of the class hereinafter described, and state for their Complaint as follows:

I. PARTIES

1. Plaintiffs are each citizens of the State of Ohio. Each of the Plaintiffs is currently a resident of Guernsey County, Ohio.

2. Plaintiffs bring claims on behalf of themselves, and also bring claims on behalf of a class of other individuals situated similarly to them who have been, and who continue to be, adversely impacted by the presence of unnaturally occurring radioactive substances in Guernsey and surrounding counties of the State of Ohio. Each of the members of the proposed class is a citizen and a resident of the State of Ohio.

3. Defendant Cabot Corporation (hereinafter "Cabot") is the surviving corporation of its merger with Cabot Berylco, Inc. in 1985. Cabot Berylco, Inc., formerly Kawecki Berylco Industries, Inc., was the surviving corporation of a 1968 merger between Kawecki Chemical Company and Berylium Corporation. Cabot is a Delaware corporation with its principal place of business at 75 State Street, Boston, Massachusetts 02109. Cabot does business in the Southern District of Ohio.

4. Defendant Cyprus Amax Minerals Company (hereinafter "Cyprus Amax") is a Delaware corporation with its principal place of business located at 9100 E. Mineral Circle, Englewood, Colorado 80112. Cyprus Amax is the surviving corporation of a merger of Cyprus Minerals Company, Inc. and Amax, Inc. Cyprus Amax is the ultimate parent of defendant Cyprus Foote Mineral Company, Inc. Cyprus Amax does business in the Southern District of Ohio.

5. Defendant Cyprus Foote Mineral Company (hereinafter "Cyprus Foote") is a Pennsylvania corporation with its principal place of business located at 348 Holiday Inn Drive,

Kings Mountain, North Carolina 28086. Cyprus Foote is the successor-in-interest to Foote Mineral Company which owned and operated the ferroalloy production facility, real estate and other improvements on State Route 209 South, Byesville, Ohio near Cambridge, Ohio (hereinafter the "Cambridge Site") from approximately October 5, 1967 until approximately May 5, 1987. Foote Mineral Company was the surviving corporation of its October 5, 1967 merger with Vanadium Corporation of America. Cyprus Foote does business in the Southern District of Ohio.

6. Defendant Newmont Mining Corporation (hereinafter "Newmont") is a Delaware corporation with its principal place of business located at 1700 Lincoln Street, Denver, Colorado 80203. Newmont owned a controlling interest in Foote Mineral Company, whereby it conducted business in the Southern District of Ohio from approximately 1974-1987.

II. JURISDICTION AND VENUE

7. This Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §1331; 28 U.S.C. §1332; Sections 107 and 113 of CERCLA, 42 U.S.C. §§9607 and 9613. The amount in controversy exceeds fifty thousand dollars ($50,000.00). The Court also has pendent jurisdiction over the common-law causes of action contained in this Complaint. Personal jurisdiction over each of the defendants is available to each of the Class Plaintiffs and each of the class members. Venue is appropriate in the Southern District of Ohio.

III. CLASS ACTION ALLEGATIONS

8. This action is brought by plaintiffs (hereinafter collectively "the Class Plaintiffs") as a class action, on their own behalf and on behalf of all persons similarly situated.

9. The maintenance of this matter as a class action is appropriate pursuant to the provisions of Rule 23 of the Fed. R. Civ. P.

10. The Class Plaintiffs seek from defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont, *inter alia*, the recovery of past and future response costs, compensatory and punitive damages, the establishment of a medical monitoring fund, preliminary and permanent injunctive relief, as well as the costs of this action, attorney and expert witness fees, and expenses.

11. The Class Plaintiffs seek to represent a class of persons who have been exposed to radioactive substances improperly possessed, generated, treated, stored, disposed of or otherwise managed by the defendants, and who have suffered damages as a consequence thereof.

12. The proposed class is defined as:

> Those persons who (on March 6, 1995) were the owners of, or those persons who have been (at any time) the occupants of or invitees to, those real properties in Guernsey and adjoining counties of Ohio where there were located (on March 6, 1995) radioactive substances generated, disposed, stored, sold, given away or otherwise disbursed from the Cambridge Site by any of the defendants prior to May 4, 1987.

13. This class is comprised of both natural and legal persons. The natural persons are both adults and children. The adults represent their own interests as well as the interests of their minor children for whom they are the parents or legal guardians.

14. The members of this class have either suffered (and are suffering), *inter alia*, diminution (or a complete loss) of the value of real property owned by them, and/or are at increased risk for the development of future disease, and/or also suffer from a legitimate fear of

contracting cancer and other life-threatening diseases as a result of their exposure to radioactive substances possessed by the defendants. These class members have suffered harm, and are entitled to damages, as detailed below.

15. The Class Plaintiffs are all adults and all are either the owners of, occupants of, or were invitees to such real property in Guernsey County, Ohio where radioactive substances from the Cambridge Site have been released to the environment.

16. The Class Plaintiffs have all either suffered (and are suffering), *inter alia*, diminution (or a complete loss) of the value of real property owned by them, and/or are at increased risk for the development of future disease, and/or also suffer from a legitimate fear of contracting cancer or other life-threatening diseases as a result of their exposure to radioactive substances possessed by the defendants. The Class Plaintiffs have suffered harm, and are entitled to damages, as detailed below. Class Plaintiffs are adequate representatives, and have claims typical of the class of plaintiffs they seek to represent.

17. Counsel for the Class Plaintiffs are capable of adequately representing the class of plaintiffs which Class Plaintiffs seek to represent.

18. The exact number of class members as described above is not known, but is estimated at more than 1,000 members. The class is so numerous that joinder of individual members is legally and procedurally impracticable. Certification of this matter as a class action would promote judicial economy, and would represent a convenience to both the Court and the members of the class.

19. All requirements of Rule 23, Fed. R. Civ. P. are satisfied by this action. There are common questions of law and fact in this proceeding affecting the rights of each individual member of the class and the relief sought is common to each class member, namely:

a. Whether the defendants are liable to plaintiffs for necessary costs of response under §107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. §9601 *et seq.*;

b. Whether the plaintiffs are at increased risk for the development of future disease as a result of their exposure to the radioactive materials generated by the defendants;

c. Whether the defendants are responsible for establishing a medical monitoring fund under CERCLA and/or Ohio common law to compensate class members for medical services necessitated by the plaintiffs' exposure to the radioactive substances generated by the defendants;

d. Whether defendants' conduct which allowed the radioactive and hazardous substances to remain in, and to be disbursed throughout, an area populated by the class members constitutes willful, wanton and gross disregard for the health, safety and well-being of the class members;

e. Whether the presence of radioactive and hazardous substances in a residential community as a result of the defendants' conduct constitutes a private nuisance under Ohio law;

f. Whether the defendants were engaged in an ultrahazardous activity rendering them strictly responsible for all damages occasioned by such activity under Ohio law; and

g. Whether defendants intentionally or negligently inflicted serious emotional distress, discomfort and inconvenience upon the class members by storing and/or disposing radioactive substances in Guernsey County, Ohio.

20. The Class Plaintiffs are aware that a class action lawsuit was filed in this Court on November 7, 1994 by Allan and Suzanne Strawsburg against Metallurg, Inc., Shield Alloy

[sic] Metallurgical Corporation, Cyprus Foote Mineral Company and Foot [sic] Mineral Company (United States District Court, Southern District of Ohio, Eastern Division, Case No. C2-94-1069) (assigned to Judge Smith) (hereinafter "the Strawsburg litigation"). That action remains pending before this Court.

21. The Plaintiffs in the Strawsburg litigation have not yet filed a motion for class certification. The proposed class of plaintiffs defined in the Complaint in the Strawsburg litigation is different from the proposed class defined herein. Specifically, the proposed class in the Strawsburg litigation does not include as members of the proposed class those persons, including both adults and children, who have resided on the property containing radioactive materials (but who do not own such homes). Nor does the class proposed in the Strawsburg litigation contain the invitees to properties containing radioactive materials. The class Plaintiffs in the within action seek to maintain this litigation on behalf of, *inter alia*, such non-owner occupants and invitees to properties contaminated with radioactive waste.

22. The Plaintiffs in the Strawsburg litigation have filed suit against two Defendants who are currently involved in bankruptcy reorganization proceedings (Metallurg, Inc. and Shieldalloy Metallurgical Corporation), and a stay of such claims has been ordered. The Plaintiffs in the within action have thus not asserted claims against any company currently involved in a bankruptcy proceeding.

23. The Plaintiffs in the Strawsburg litigation have filed suit against Foot [sic] Mineral Company. Foote Mineral Company was a predecessor corporation to Cyprus Foote Mineral Company. On information and belief, Foote Mineral Company no longer exists as a separate

corporate entity. Plaintiffs in the within action have not asserted any claims against Foote Mineral Company.

IV. BACKGROUND

24. Vanadium Corporation of America built a ferroalloy production facility at the Cambridge Site in approximately 1957.

25. From approximately 1957 to 1972, this facility, *inter alia*, produced a ferro-columbium alloy from tin slag containing thorium and ferro-columbium ores containing natural thorium and uranium.

26. The tin slag and ferro-columbium ore was radioactive source material licensed by the Atomic Energy Commission ("AEC") (now the Nuclear Regulatory Commission, hereinafter "NRC"). Other radioactive source materials have been found on-site.

27. On September 15, 1965, the AEC issued Vanadium Corporation of America license STB-850 for storage and use of tin slag containing natural thorium, solely and exclusively at the Cambridge Site. Subsequent license amendments and renewals increased the allowable amount of radioactive source materials authorized to be possessed, identified ferro-columbium ores containing natural thorium and uranium as additional licensed radioactive source materials, and changed the license number to SMB-850. All other original license conditions remained the same.

28. Kawecki Chemical Company was issued AEC license STB-849 on August 23, 1965 for storage and use of tin slag containing natural thorium at, *inter alia*, the Cambridge site.

The waste slag generated from the use of the radioactive source material at the Cambridge site was a black glassy mass containing elevated levels of thorium.

29. Nearly all of the radioactive source material from the tin slag and ferro-columbium ores passed through the production process resulting in radioactively-contaminated slag waste.

30. The radioactively-contaminated slag waste was intended to be disposed of by burial on-site at the Cambridge Site.

31. The AEC did not approve of the transfer of control of Vanadium Corporation of America's License SMB-850 due to the merger with Foote Mineral Company in 1967, but nonetheless renewed and transferred the source material license to Foote Mineral Company subsequent to its expiration on November 30, 1969. The renewed License SMB-850 was issued on August 28, 1970, subject to the same conditions as the original license.

32. In 1974, Newmont acquired controlling interest in Foote Mineral Company. License SMB-850 expired on August 31, 1975, without renewal and was retired by the NRC on May 5, 1987.

33. In 1987, Defendant Newmont sold the Cambridge Site to Shieldalloy Metallurgical Corporation. The NRC issued source material license SMB-1507 for decontamination and decommissioning of the Cambridge site to Shieldalloy Metallurgical Corporation on or about May 5, 1987 .

34. In February, 1988, Defendant Newmont divested controlling interest in the Foote Mineral Company to Cyprus Minerals Company, Inc. Cyprus Minerals Company, Inc. changed the name of Foote Mineral Company to Cyprus Foote Mineral Company on August 22, 1989.

35. At various times during the period from 1957 until May 4, 1987, Defendants sold, gave away, distributed or otherwise disbursed the radioactive slag from the Cambridge Site to members of the class for off-site use as structural fill, backfill, road surfacing, erosion control and other unauthorized uses. In conscious disregard for the well-being of the community, the Defendants concealed from the public the fact that the slag was radioactive. Members of the class had no knowledge (either actual or constructive) of the radioactive properties of the slag until May, 1994, when the NRC conducted a meeting at which it was disclosed that the Defendants had distributed radioactive slag to the public. Any and all statutes of limitation as to the claims of members of the class were tolled until such time as the acts and omissions of the Defendants were finally revealed to the public in May, 1994.

36. The radioactive slag was sold, given away, distributed and/or otherwise disbursed to the unwary public, in clear violation of the source material license, which requires the licensee to maintain absolute control over access to the radioactive material and restricts use of the radioactive material to the Licensed Facility.

37. The number of off-site locations in the vicinity of the Cambridge Site where radioactive slag from the Licensed Facility has been released to the environment (hereinafter, "Vicinity Properties") is unknown, but is known to be greater than the seventeen (17) properties where the NRC has found the material to date.

38. The NRC has interviewed former employees of the defendants who reported that:

a. There was no differentiation of radioactive or non-radioactive slag at the Licensed Facility;

b. The use of slag from the Licensed Facility for fill at off-site locations was common practice; and

c. They themselves had used slag from the Licensed Facility at off-site locations.

39. The NRC has interviewed residents of Guernsey County who reported that the amount of slag from the Licensed Facility placed on their property ranged from a pick-up truck load to over 200 tons, as follows:

a. A resident of Guernsey County reported personally taking several car trunk loads of slag piled along the township road behind the Licensed Facility and placed it on the driveway of his house in 1970 or 1971;

b. A contractor reported taking about 45 tons of slag from the Licensed Facility for use as fill around the foundation of a house under construction in 1982;

c. A contractor reported delivering slag from the Licensed Facility to a house for use as driveway fill in 1979 and 1981;

d. An individual reported using the slag from the Licensed Facility as driveway fill in 1973 and 1978;

e. A resident of Guernsey County reported having three dump truck loads of slag from the Licensed Facility delivered for use as driveway fill in 1971;

f. A resident of Guernsey County reported having slag from the Licensed Facility delivered and used as driveway fill in 1984;

g. A resident of Guernsey County has four receipts from purchasing 9.5 tons of slag directly from Foote Mineral Company on March 12, 1985 for $26.00;

h. A Guernsey County contractor reported that:

(1) Foote Mineral Company never indicated that the slag was contaminated in any way;

(2) Trucks from various entities were "lined up" in the mid-1980's to get the slag;

(3) The entities getting the slag included private residents, construction contractors and local townships;

(4) The slag was used within a 20-mile radius from the Licensed Facility, and;

(5) He purchased approximately 200 tons of slag from the Licensed Facility for use as fill around culverts, and under driveways and parking lots;

i. Another Guernsey County contractor estimated using about 100 tons of slag from the Licensed Facility as roadfill and structural fill under parking lots; and

j. A Guernsey County resident reported receiving six to eight tons of slag from the Licensed Facility for use under a 1983 addition to his home.

40. The NRC surveyed 58 properties as of September 22, 1994 that reportedly received slag from the facility and 17 (29.3%) of them have radionuclide levels in excess of NRC's own criteria for unrestricted use by the general public.

41. There is no valid NRC license for, or NRC-approved Decommissioning Funding Plan covering, the radioactive substances on the Vicinity Properties.

42. NRC Director of the Office of Nuclear Material Safety and Safeguards, Robert M. Bernero, with the concurrence of R. Fonner of the NRC Office of General Counsel, in a letter dated October 21, 1994 to Ohio House Representative Greg Didonato and carbon copied to, among others, United States Senators Howard Metzenbaum and John Glenn, stated that, ". . . the owners of the properties on which the slag is found . . . could be subject to [NRC] licensing . . . [and thus would have] legal responsibility for any needed remediation." This letter further states that the NRC has the power to compel the possessor of the radioactive materials, including members of the class of Plaintiffs, to perform the required remediation. The costs of such remediation are likely to be enormous.

43. Radioactive slag has been found off-site in areas beyond the limits of those surveyed by the NRC.

44. Dr. Steven J. Aron, Jr., a Qualified Radiation Expert by the Ohio Public Health Council has independently confirmed the NRC's finding of radioactive materials above normal background levels in samples he has taken and has concluded that " . . . there is a health concern for anyone, particularly children who may come in contact with radioactive slag."

45. Class Plaintiffs Malernees have defendants' radioactive substances on their real property around, *inter alia*, the basement foundation of their home in excess of 10 times normal background levels. Class Plaintiffs Malernees have confirmed radon levels of 5.3 picocuries per liter (pCi/l) in a first floor bedroom and 5.9 pCi/l in their finished basement.

46. Class Plaintiff McMasters has defendants' radioactive substances on her real property at levels 50 times normal background levels. The material on the McMasters property is a black glassy substance which contains elevated levels of thorium.

V. COUNT ONE

Recovery of CERCLA Response Costs

47. The allegations contained in Paragraphs 1 through 46 inclusive are hereby incorporated as though fully rewritten herein.

48. The Vicinity Properties where the radioactive slag is located are "facilities", within the meaning of Section 101(9) of CERCLA, 42 U.S.C. §9601(9). The residences occupied by Plaintiffs Malernees, Mesarchik, McMasters and Hannons are CERCLA "facilities".

49. Hazardous substances as defined by CERCLA §101(14), 42 U.S.C. §9601(14) have been detected and found in the soil at Vicinity Properties including, without limitation, natural thorium, uranium and their decay-chain products.

50. The release of radioactive materials in the slag located at Vicinity Properties is not subject to the financial protection requirements under Section 170 of the Atomic Energy Act of 1954, 42 U.S.C.A. 2011, as amended, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

51. There have been, and there continue to be, releases and threats of releases of hazardous substances at the Vicinity Properties.

52. Cabot, Cyprus Amax, Cyprus Foote and Newmont are "covered persons" as described in §107(a) of CERCLA, 42 U.S.C. §9607(a), since they arranged for the disposal of hazardous substances owned or possessed by such person at any facility owned or operated by another party or entity and containing such hazardous substances.

53. As a result of the release or threatened release of hazardous substances, the Class Plaintiffs have incurred since May, 1994 and will continue to incur in the future, necessary response costs which are consistent with the National Contingency Plan (NCP), 40 C.F.R. §300.1 *et seq.*, such as environmental testing and monitoring; retaining medical and radiation safety professionals to evaluate the human health effects posed by exposure to the hazardous substances present at the Vicinity Properties; radiation mitigation measures; removal of hazardous substances from Vicinity Properties; permanent relocation of the members of the class to other homes not on Vicinity Properties; and attorney fees and expenses incurred and to be incurred by Class Plaintiffs and the class they seek to represent.

54. Pursuant to §107(a) of CERCLA, Cabot, Cyprus Amax, Cyprus Foote and Newmont are liable to the Class Plaintiffs (and the class that they represent) for all past and future response costs, including attorney fees and expenses, which have been or will be incurred by the Class Plaintiffs (and the class that they represent) in response to the release or threatened release of hazardous substances at the Vicinity Properties.

55. Pursuant to CERCLA §113(g)(2), Class Plaintiffs (and the class that they represent) are entitled to a declaration that Cabot, Cyprus Amax, Cyprus Foote and Newmont are liable for future response costs incurred by Class Plaintiffs (and the class that they represent) in response to the release or threatened release of hazardous substances at the Vicinity Properties.

VI. COUNT TWO

Medical Monitoring Fund

56. The allegations contained in Paragraphs 1 through 55 inclusive are hereby incorporated as though fully rewritten herein.

57. The Vicinity Properties are "facilities" within the meaning of 42 U.S.C. §9601(9). Hazardous substances as defined by CERCLA have been detected in the soil and the air in homes on Vicinity Properties including, without limitation, natural thorium, uranium, Radium-226, Radon-222, their decay-chain products, and alpha and gamma radiation.

58. There have been releases and threats of releases of hazardous substances at the Vicinity Properties which have resulted in off-site contamination. Cabot, Cyprus Amax, Cyprus Foote and Newmont are within the class of "covered persons" described in Section 107(a) of CERCLA, 42 U.S.C. §9607(a), since they arranged for the disposal of hazardous substances

owned or possessed by such person at any facility owned or operated by another party or entity and containing such hazardous substances.

59. As a result of the releases or threat of releases of hazardous substances, the Class Plaintiffs (and the class that they represent) are at increased risk for the development of future disease, and they are entitled, pursuant to §107(a) of CERCLA, and Ohio common law, to the establishment of a fund to effect the medical testing necessary to monitor the environmental and human health effects of the release or threatened release of hazardous substances.

VII. COUNT THREE

Negligence

60. The allegations contained in Paragraphs 1 through 59 inclusive are hereby realleged as though fully rewritten herein.

61. Through their respective acts and omissions, Cabot, Cyprus Amax, Cyprus Foote and Newmont have each been negligent, and this negligence has proximately caused each of the Class Plaintiffs (and the class that they represent) to be injured. Although Cabot, Cyprus Amax, Cyprus Foote and Newmont each knew, or should have known, that these plaintiffs were likely to be injured as a consequence of their exposure to radioactive and hazardous substances, Cyprus Amax, Cyprus Foote and Newmont each failed to conform their conduct to the standard of reasonable care in light of these risks.

62. Cabot, Cyprus Amax, Cyprus Foote and Newmont owe a duty of care toward the Class Plaintiffs (and to each of the members of the class that they represent). Defendants have breached that duty by disposing and maintaining hazardous and radioactive substances at the

Vicinity Properties when defendants knew, or in the exercise of reasonable care should have known, that these hazardous and radioactive substances presented an actual or potential health hazard to the Class Plaintiffs (and the class that they represent).

63. Cabot, Cyprus Amax, Cyprus Foote and Newmont failed to exercise reasonable care in failing to advise the Class Plaintiffs (and the members of the class that they represent) of the identity of the hazardous and radioactive substances at the Vicinity Properties and the health hazards associated with their presence at these sites.

64. Cabot, Cyprus Amax, Cyprus Foote and Newmont knew, or in the exercise of reasonable care should have known, that these hazardous and radioactive substances presented actual and/or potential health hazards to the Class Plaintiffs (and each member of the class that they represent), and that by their acts and omissions, they unreasonably exposed the Class Plaintiffs (and the members of the class) to such hazardous and radioactive substances which may cause property damage, increase the risk of contracting illness, or interfere with the comfortable enjoyment of life and property.

65. As a direct and proximate result of Cabot, Cyprus Amax, Cyprus Foote and Newmont's wrongful conduct, the Class Plaintiffs (and each member of the class that they represent) have suffered, are suffering, and will continue to suffer harm in the form of:

a. Property damage;

b. Increased risk of physical injury as a result of exposure to hazardous and radioactive substances;

c. Fear and apprehension of further exposure to, and impact from, defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont's disposal of hazardous and radioactive substances;

d. Emotional distress;

e. Severe and debilitating emotional distress;

f. Economic and financial harm due to diminution of property values; and

g. Other consequential, incidental, general and special damages, the full extent of which will be made certain at the time of trial.

66. The Class Plaintiffs (and the class that they represent) seek money damages from Cabot, Cyprus Amax, Cyprus Foote and Newmont to compensate them for these wrongs.

VIII. COUNT FOUR

Strict Liability in the Conduct of an Ultrahazardous Activity

67. The allegations contained in Paragraphs 1 through 66 inclusive are hereby realleged as though fully rewritten herein.

68. From approximately 1957 until 1972, Cabot, Cyprus Amax, Cyprus Foote and Newmont utilized radioactive substances in its research, development and production processed at the Cambridge Site.

69. The handling of radioactive substances in research, development and production processes is an ultrahazardous activity under Ohio law. The release of radioactive substances for offsite use and disposal on properties in the vicinity of the Cambridge Site, including, without limitation, residential, commercial, industrial and public properties is an ultrahazardous activity under Ohio law.

70. The release and disposal of hazardous and radioactive substances by Cabot, Cyprus Amax, Cyprus Foote and Newmont constitutes an ultrahazardous activity for purposes of strict liability, constituting absolute nuisance or nuisance *per se*.

71. As a direct and proximate result of Cabot, Cyprus Amax, Cyprus Foote and Newmont's ultrahazardous activities, the Class Plaintiffs (and the class that they represent) have suffered, are suffering, and will continue to suffer harm. The Class Plaintiffs (and each member of the class) seek money damages to compensate them for these wrongs.

IX. COUNT FIVE

Private Nuisance

72. The allegations contained in Paragraphs 1 through 71 inclusive are hereby realleged as though fully rewritten herein.

73. The Class Plaintiffs' past exposure (and that of the members of the class), and the likelihood of future exposure to hazardous and radioactive substances at the Vicinity Properties presents a grave and imminent threat now, and in the future to, Class Plaintiffs' (and each member of the class) health, safety and property, and constitutes an absolute nuisance or a substantial unreasonable interference with individual use and enjoyment of property.

74. The special damage to each Class Plaintiff (and that of each member of the class) differs in kind from that suffered by the public at large.

75. As a direct and proximate result of this continuing nuisance by defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont, the Class Plaintiffs (and each member of the class) have suffered, are suffering and will continue to suffer harm, including, without limitation,

serious emotional distress. The Class Plaintiffs (and each member of the class) seek money damages from Cabot, Cyprus Amax, Cyprus Foote and Newmont to compensate them for these wrongs, and also seek preliminary and permanent injunctive relief to compel Cabot, Cyprus Amax, Cyprus Foote and Newmont to abate this continuing nuisance.

X. COUNT SIX

Reckless and Wanton Misconduct

76. The allegations contained in Paragraphs 1 through 75 inclusive are hereby realleged as though fully rewritten herein.

77. By releasing, disposing of and maintaining hazardous and radioactive substances at the Vicinity Properties, defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont have intentionally and knowingly, recklessly and wantonly disregarded the injurious consequences to the Class Plaintiffs (as well as members of the class), and acted in a manner presenting a risk of grave injury to the Class Plaintiffs (and members of the class).

78. As a direct and proximate result of these intentional or reckless activities by Cabot, Cyprus Amax, Cyprus Foote and Newmont, the Class Plaintiffs (as well as members of the class) have suffered, are suffering and will continue to suffer harm. The Class Plaintiffs (and members of the class) seek money damages to compensate them for these wrongs, and seek punitive damages to deter the defendants from future reprehensible conduct.

XI. COUNT SEVEN

Injunctive Relief

79. The allegations of paragraphs 1 through 78 of this Complaint are hereby realleged as if fully rewritten herein.

80. Class Plaintiffs (and members of the class they seek to represent) are substantially likely to suffer immediate and irreparable harm if the radioactive and other hazardous substances on the Vicinity Properties are not removed immediately. Neither the Class Plaintiffs nor any other member of the class of plaintiffs they seek to represent, has any adequate remedy at law to compel the removal of these hazardous and radioactive substances.

81. Class Plaintiffs seek preliminary and permanent injunctive relief compelling defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont to identify and remove all radioactive and hazardous substances from the Vicinity Properties.

WHEREFORE, the Class Plaintiffs (and each member of the class) pray that:

(A) the Class Plaintiffs (and other members of the class) recover from the defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont, jointly and severally, their past and future response costs, and such funds necessary to establish a medical monitoring fund, as well as their attorney fees and expenses under Section 107(a) of CERCLA; 42 U.S.C. §9607(a), and Ohio law; the Class Plaintiffs (and other members of the class) obtain a declaratory judgment that defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont are liable for the Class Plaintiffs' future response costs under Section 113(g)(2) of CERCLA; 42 U.S.C. §9613(g)(2); and

(B) the Class Plaintiffs (and other members of the class) recover from defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont, jointly and severally, the general and special compensatory damages as alleged in Counts Three, Four and Five in the amount of Five Hundred Million Dollars ($500,000,000.00); and

(C) the Class Plaintiffs (and other members of the class) recover punitive damages against Defendant Cabot Corporation as alleged in Count Six in the amount of Forty-Eight Million Eight Hundred Forty Thousand Dollars ($48,840,000.00); and

(D) the Class Plaintiffs (and other members of the class) recover punitive damages against Defendant Cyprus Amax Minerals Co. as alleged in Count Six in the amount of Two Hundred Thirty-Two Million Nine Hundred Thousand Dollars ($232,900,000.00); and

(E) the Class Plaintiffs (and other members of the class) recover punitive damages against Defendant Cyprus Foote Mineral Co. as alleged in Count Six in the amount of Three Million Five Hundred Ninety-Six Thousand Eight Hundred Thirteen Dollars and Twenty Cents ($3,596,813.20); and

(F) the Class Plaintiffs (and other members of the class) recover punitive damages against Defendant Newmont Mining Corporation as alleged in Count Six in the amount of Sixty-Two Million Nine Hundred Eighty-Three Thousand Two Hundred Dollars ($62,983,200.00); and

(G) the Class Plaintiffs (and members of the class) recover from defendants, jointly and severally, the costs of suit, including, without limitation, their attorney's fees and expert witness fees and expenses; and

(H) the Court grant preliminary and permanent injunctive relief requiring defendants Cabot, Cyprus Amax, Cyprus Foote and Newmont to immediately identify, mitigate and remove, all radioactive and hazardous substances from the Vicinity Properties; and

(I) grant such other, further and different relief as may be deemed just and proper.

Respectfully submitted,

Steven D. Bell (0031655)
ULMER & BERNE
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583
(216) 621-8400

Trial Attorney

Michael B. Gardner (0061118)
ULMER & BERNE
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583
(216) 621-8400

Of Counsel

JURY DEMAND

Plaintiffs hereby demand a trial by jury.

Steven D. Bell (0031655)
1300 East Ninth Street, Suite 900
Cleveland, Ohio 44114-1583
(216) 621-8400

Trial Attorney

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