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September 8, 1995

AOR 1995-36

Federal Elections Commission
Office of General Counsel
999 E Street, N.W.
Washington, D.C. 20436

Dear Sir/Madam:

The purpose of this letter is to request an Advisory Opinion from you pursuant to CFR 112.1(e).

On March 18, 1994, I submitted an Advisory Opinion Request to the FEC concerning Armco Steel Company, L.P. and the formation of AK Steel Corporation ("AK Steel"). The FEC issued an Advisory Opinion (AO 1994-9) on June 6, 1994. One of the issues addressed in that Advisory Opinion was the affiliation of the AK Steel PAC and the Armco, Inc. PAC. The Commission decided that disaffiliation of the AK Steel PAC from the Armco, Inc. PAC would be premature at that time. The Commission concluded that "[t]his does not preclude a different conclusion at a later point in the operations of AK Steel and AK Holding." My client, AK Steel, believes that circumstances now warrant a determination by the Commission that the AK Steel PAC and the Armco, Inc. PAC ("Armco PAC") are now disaffiliated.

Since the time of the issuance of AO 1994-9, Armco, Inc. ("Armco") has sold all of its shares of AK Steel common stock. Prior to that time, Armco owned approximately 1,023,987 shares of AK Steel stock, representing an approximate 4% ownership interest in AK Steel. Armco now has no ownership interest in AK Steel. Enclosed is a copy of a May 5, 1995 newspaper article which announced the sale of stock. AK Steel believes Armco's sale of all of its AK Steel stock is an extremely significant event which by itself warrants a determination of disaffiliation between the AK Steel PAC and the Armco, Inc. PAC. However, there are a number of other pertinent factors which, viewed in the context of the overall relationship between AK Steel and Armco, clearly establish that the two PACs should no longer be burdened with the FEC's affiliation requirements.

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AK Steel and Armco are separate, publicly traded corporations. AK Steel is not a subsidiary, branch, division, department or local unit of Armco. Indeed, the two companies are actually competitors. AK Steel and Armco compete directly with each other in two specific product areas. In the hot-rolled steel product area, the most basic of flat-rolled steel products, Armco and AK Steel are direct competitors. AK Steel supplies hot-rolled steel from its Middletown, Ohio plant to a wide variety of markets, primarily in the U.S. midwest. Armco, through its Mansfield, Ohio steel operations, is also a supplier of this product in the same geographic area, and frequently it sells to the same customers to whom AK Steel either supplies product or from whom AK Steel solicits business. Additionally, Armco and AK Steel also produce comparable galvanized (zinc coated) sheet steels and market that product to the same heating, venting and air conditioning markets.

AK Steel has also undergone significant management changes. Beginning in June of 1992, a new senior management team was installed at the predecessor to AK Steel. Headed by Thomas C. Graham, this new executive management has no prior Armco experience. The new senior management subsequently instituted substantial changes in the line and staff management. As an indication of the magnitude of these changes, more than seventy (70) of the top one hundred (100) salaried positions have changed hands since mid-1992. A majority of the changes involved replacing former Armco personnel with outside personnel. At the executive management level, eight (8) of the eleven (11) officers of AK Steel, including the Chairman and Chief Executive Officer, have no Armco experience. None of the AK Steel officers and employees are employees of Armco (i.e. no overlap of officers or directors). The only overlap exists on the Board of Directors. Mr. James F. Will, Armco's Chief Executive Officer, has been elected to serve another term on the Board of AK Steel. AK Steel's Board consists of 10 persons, and thus, Mr. Will clearly has insufficient power to control or direct the affairs of the Company. The AK Steel Board members serve at the discretion of the AK Steel shareholders, who vote on the Board members at the AK Steel annual meeting or by proxy.

An analysis of the factors established by the Commission to determine if the PACs are *affiliated*, as well as the totality of the circumstances, we believe, makes it clear that no affiliation exists between the two PACs. Before doing so, however, we believe it is important to recognize that the factors set forth in 11 CFR § 110.3 relate to *affiliation*, as opposed to *disaffiliation*. The Commission, when the affiliation rules were promulgated, noted this distinction:

A question that has arisen in advisory opinions is whether affiliated committees, such as separate segregated funds of corporations, may disaffiliate at some point after their parent corporations have ceased to be commonly owned or controlled. See AOs 1987-21 and 1986-42. Although the entities involved in those advisory

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opinions had not reached the point of disaffiliation, the Commission recognizes that under the appropriate circumstances, disaffiliation might be possible. *See* AO 1983-28. The revised rules do not address this topic because the Commission has not had sufficient opportunities to examine particular situations in which corporations or other organizations seek to sever their connections with other corporate or noncorporate entities and to develop criteria for such determinations. However, nothing contained in the new affiliation regulations reverses or modifies the Commission's decisions on this subject. Federal Register, Vol. 54, No. 158, August 17, 1989, pg. 34101 (emphasis added).

Additionally, it is important to note the Congressional intent behind the affiliation rule. Congress stated that the rule regarding affiliation of political committees was "intended to curtail the vertical proliferation of political committee contributions... U.S. Code Congressional and Administrative News, P.L. 94-283, pg. 969. Congress further stated:

The anti-proliferation rules established by the conference substitute are intended to prevent corporations, labor organizations, or other persons or groups of persons from evading the contribution limits of the conference substitute. Such rules are described as follows:

1. All of the political committees set up by a single corporation and its subsidiaries are treated as a single political committee.

5. The anti-proliferation rules stated also apply in the case of multiple committees established by a group of persons.

Id. at pg. 973.

With this important background in mind, we believe the following facts establish that Armco and AK Steel are truly separate and distinct companies and should not be deemed to be affiliated for purposes of determining applicable contribution limits:

- (A) Armco not only does not own a controlling interest in the voting stock or securities of AK Steel, it now owns no AK Steel stock

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whatsoever; likewise, AK Steel does not own any voting stock or securities of Armco;

- (B) Neither AK Steel's corporate governing documents (e.g. bylaws) nor the formal or informal practices or procedures of AK Steel provide Armco with the ability to direct or participate in the governance of AK Steel;
- (C) Neither Armco nor the Armco PAC have the authority or ability to hire, appoint, demote or otherwise control the officers or other decision-making employees of AK Steel or its PAC;
- (D) Armco and AK Steel do not have any overlapping officers or employees;
- (E) Armco does not provide funds or goods in a significant amount or on an ongoing basis to AK Steel; AK Steel currently does business with Armco, on an arms length basis. That business consists of (1) AK Steel processes stainless steel slabs for Armco on a toll basis, and (2) periodically, AK Steel purchases stainless steel coils from Armco at market prices. Both transactions are conducted on an arms length basis;
- (F) The Armco PAC and the AK Steel PAC do not conduct any joint fundraising activities and do not transfer monies between the two committees, nor do they make contributions to each other.

Quite simply, the two companies are not related and not affiliated. The AK Steel PAC was established by AK Steel, its operations are financed by AK Steel, and it is maintained and controlled by AK Steel. Armco has no involvement whatsoever in the operation of the AK Steel PAC. This is because Armco and AK Steel are separate and distinct companies, with their own employees, their own officers, their own business agendas and their own goals and strategies. Requiring the separate political committees of these two competing companies to coordinate their contribution activities and strategies simply makes no sense and is not warranted under any interpretation of the affiliation rules. The only apparent connection between the two companies is the presence of Mr. Will on the Board of Directors of AK Steel. However, it certainly cannot be the FEC's position that such representation on the AK Steel Board results in affiliated status. If such were to be the case, every corporation which has an officer of another corporation on its Board of Directors would be deemed affiliated, under FEC rules, with the Board member's corporation. Such would be an illogical and unworkable result.

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Accordingly, AK Steel respectfully requests an Advisory Opinion from the Commission determining that the AK Steel PAC is no longer affiliated with the Armco PAC. If any additional information is necessary or would be helpful in reaching your decision, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Grant S. Cowan", written in a cursive style.

Grant S. Cowan

GSC/gc

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Armco Inc. sells AK stock

Company's ties with city of Middletown dwindling

By John Carter
Journal Staff Writer

5-5-95

Armco Inc. has sold its shares of AK Steel common stock, nearly severing its ties to Middletown.

Pittsburgh-based Armco said Thursday that it completed last week a month-long series of transactions in which it sold 1,023,987 shares of AK Steel stock.

The sale netted Armco \$27.2 million. Armco will record a second-quarter gain of \$25.9 million, or 24 cents a share, the company said.

It will use capital-loss claims to offset state and federal taxes on the gain.

Armco Inc. was awarded the shares in AK Steel in exchange for giving up its 50 percent stake in Armco Steel Co. L.P. when Armco Steel was recapitalized

and became AK Steel in April 1994.

Armco's 1 million shares represented about 4 percent of AK Steel's common stock.

"When we acquired it, it was always our intention to sell it," Armco spokesman Jim Herzog said. "We were not a long-term investor."

Under terms of the agreement with AK Steel, Armco Inc. was not allowed to sell the stock for at least six months after AK Steel's initial public offering a year ago.

Herzog said Armco sold its stake for a simple reason.

"We've got other uses for the money," he said, citing Armco's major capital improvement projects — such as the continuous caster at its Mansfield facility — and pension obligations.

Some of the shares were sold

on the open market, and a large portion was bought later in the series of transactions by an unnamed buyer, Herzog said.

Public disclosure rules do not apply to any acquisition of stock that represents less than 5 percent of the total of a publicly held company.

AK Steel had no comment on the sale.

The link between Armco and the city where it was born in 1900 isn't cut completely.

Its research division, with about 150 people, remains in Middletown, and Armco has an agreement with AK Steel until 2002 to roll some of its specialty steels here.

Armco Chief Executive Officer James F. Will is a member of AK Steel's board of directors, and has been nominated to serve a second term.