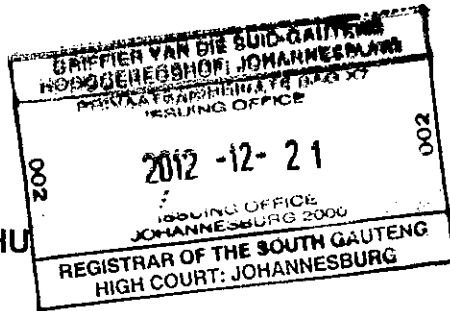


IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)

CASE NO: 48026/12

In the matter between:

BONGANI NKALA	First Applicant
SIPORONO PHAHLAM	Second Applicant
MAPHATSOE KOMPI	Third Applicant
THEMBEKILE MNAHENI	Fourth Applicant
MATONA MABEA	Fifth Applicant
MOKHOLOFU BOXWELL	Sixth Applicant
ALLOYS MNCEDI MSUTHU	Seventh Applicant
MYEKELWA MKENYANE	Eighth Applicant
MASIKO SOMI	Ninth Applicant
ZWELENDABA MGIDI	Tenth Applicant
MTHOBELI GANGATHA	Eleventh Applicant
LANDILE QEBULA	Twelfth Applicant
PHUMELELO SOLITASI SIYOCOLO	Thirteenth Applicant
TEKEZA JOSEPH MDUKISA	Fourteenth Applicant
MICHAEL LITABE	Fifteenth Applicant
JOSEPH LEBONE	Sixteenth Applicant
LIPHAPANG AKIME LEBINA	Seventeenth Applicant
ZAMA GANGI	Eighteenth Applicant
MALUNGISA THOLE	Nineteenth Applicant
MONOKOA THOMAS LEPOTA	Twentieth Applicant



MZAWUBALEKWA DIYA	Twenty-first Applicant
MSEKELI MBUZIWENI	Twenty-second Applicant
ZANEYEZA NTLONI	Twenty-third Applicant
TOHLANG PAULOSI MAKO	Twenty-fourth Applicant
NANABEZI MGODUSWA	Twenty-fifth Applicant
THULENKHO KUSWANA	Twenty-sixth Applicant
MALEBURU REGINA LEBITSA	Twenty-seventh Applicant
MATAASO MABLE MAKONE	Twenty-eighth Applicant
MATSEKELO CISILIA MASUPHA	Twenty-ninth Applicant
MATISETSO MASEIPATI JESENTA NONG	Thirtieth Applicant

and

HARMONY GOLD MINING COMPANY LIMITED (Registration number M1950/038232/06)	First Respondent
EVANDER GOLD MINES LIMITED (previously KINROSS MINES LIMITED) (Registration number M1963/006226/06)	Second Respondent
LESLIE GOLD MINES LIMITED (Registration number 1959/001124/06)	Third Respondent
RANDFONTEIN ESTATES LIMITED (Registration number 1889/00251/06)	Fourth Respondent
ARMGOLD/HARMONY FREEGOLD JOINT VENTURE (PROPRIETARY) LIMITED (Registration number 2001/029602/07)	Fifth Respondent
AVGOLD LIMITED (previously TARGET EXPLORATION COMPANY LIMITED) (Registration number 1990/007025/06)	Sixth Respondent
UNISEL GOLD MINES LIMITED (Registration number 1972/010604/06)	Seventh Respondent
LORAINÉ GOLD MINES LIMITED (Registration number 1950/039138/06)	Eighth Respondent

WINKELHAAK MINES LIMITED (Registration number 1955/003606/06)	Ninth Respondent
BRACKEN MINES LIMITED (Registration number 1959/001126/06)	Tenth Respondent
ANGLOGOLD ASHANTI LIMITED (previously VAAL REEFS EXPLORATION AND MINING COMPANY LIMITED) (Registration number 1944/01734/06)	Eleventh Respondent
FREE STATE CONSOLIDATED GOLD MINES (OPERATIONS) LIMITED (Registration number 1937/009266/06)	Twelfth Respondent
GOLD FIELDS LIMITED (previously EAST DRIEFONTEIN GOLD MINING COMPANY LIMITED AND DRIEFONTEIN CONSOLIDATED LIMITED) (Registration number 1968/004880/06)	Thirteenth Respondent
GOLD FIELDS OPERATIONS LIMITED (previously WESTERN AREAS GOLD MINING COMPANY LIMITED) (Registration number 1959/0032096/06)	Fourteenth Respondent
NEWSHELF 899 (PROPRIETARY) LIMITED (Registration number 2007/019941/07)	Fifteenth Respondent
BEATRIX MINES LIMITED (Registration number 1977/002138/06) FARWORKS/682 LIMITED (previously	Sixteenth Respondent
KLOOF GOLD MINING COMPANY LIMITED) (Registration number M1964/004462/06)	Seventeenth Respondent
DRIEFONTEIN CONSOLIDATED (PROPRIETARY) LIMITED (Registration number 1993/002956/07)	Eighteenth Respondent
GFI MINING SOUTH AFRICA (PROPRIETARY) LIMITED (Registration number M2002/031431/07)	Nineteenth Respondent
VILLAGE MAIN REEF LIMITED (Registration number M1943/005703/06)	Twentieth Respondent
BUFFELSFONTEIN GOLD MINES LIMITED (Registration number M1995/0100726/06)	Twenty-first Respondent
BLYVOORUITZICHT GOLD MINING COMPANY LTD (Registration number M1937/009743/06)	Twenty-second Respondent

DOORNFONTEIN GOLD MINING COMPANY LTD
(Registration number M1947/024709/06)

Twenty-third Respondent

SIMMER AND JACK MINES LIMITED
(Registration number 1924/007778/06)

Twenty-fourth Respondent

DRDGOLD LIMITED
(Registration number 1895/00926/06)

Twenty-fifth Respondent

EAST RAND PROPRIETARY MINES LTD
(Registration number M1893/000773/06)

Twenty-sixth Respondent

ANGLO AMERICAN SOUTH AFRICA LIMITED
(Registration number 1917/005309/06)

Twenty-seventh Respondent

AFRICAN RAINBOW MINERALS
(previously ANGLOVAAL MINING LIMITED)
(Registration number 1933/004580/06)

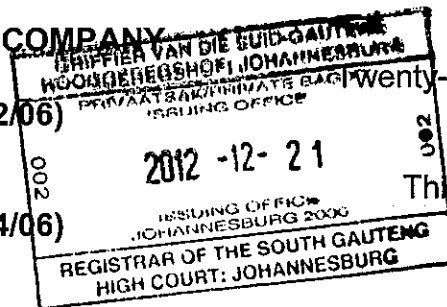
Twenty-eighth Respondent

RANDGOLD AND EXPLORATION COMPANY LIMITED
(Registration number 1992/005642/06)

Twenty-ninth Respondent

JCI LIMITED
(Registration number 1894/000854/06)

Thirtieth Respondent



NOTICE OF MOTION

TAKE NOTICE THAT the applicants intend to apply to this court for an order in the following terms:

1. It is declared that the following persons each constitute a class:

1.1 current and former mineworkers who have silicosis (whether or not accompanied by any other disease) and who work or have worked on the gold mines listed on the attached annexure "A" at any time from 1 January 1965 to date ("the first class").

1.2 the dependants of mineworkers who died as a result of silicosis (whether or not accompanied by any other disease) and who worked on the gold mines listed on the attached annexure "A" at any time after 1 January 1965 ("the second class").

2. The applicants are granted leave to act as representatives of the members of –

2.1 the first class; and

2.2 the second class,

in the further conduct of these proceedings ("the class action").

3. The applicants' legal representatives of record, Richard Spoor Attorneys, are certified as the legal representatives of the members of –

3.1 the first class ; and

3.2 the second class,

for the further conduct of the class action.

4. It is declared that the applicants have the requisite standing to bring the class action and to represent the members of –

4.1 the first class; and

4.2 the second class,

in claims for damages sustained as a result of contracting silicosis during their employment in the mines.

5. The applicants are granted leave to pursue the class action in two stages:

5.1 First, to seek declaratory relief in respect of the respondents' liability on behalf of the classes as 'opt-out' classes, with notice provided to members of the classes as set out in this Notice of Motion.

5.2 Second, if successful at the first stage, to claim damages on an individual basis on behalf of the classes as 'opt in' classes, with notice provided to members of the classes in accordance with directions from the Trial Court, if any.

6. It is ordered that the members of the first class will be bound by the judgment or judgments in the class action that apply to all members of the class unless they give written notice to Richard Spoor Attorneys that they wish to be excluded as members of the classes by a date to be determined by this court.

7. It is ordered that the members of the second class will be bound by the judgment or judgments in the class action that apply to all members of the class unless they give written notice to Richard Spoor Attorneys, that they wish to be excluded as members of the class by a date to be determined by this court.

8. It is ordered that the members of each class are to be notified of this action by way of a notice attached as Annexure B1 or B2, as the case may be. The notice must be -

8.1 mailed to each employee or former employee at their last known address, as provided by the Respondents;

- 8.2 handed by the Respondents to all current gold mining employees of the Respondents;
- 8.3 published in one edition of the most read daily newspaper in the Eastern Cape, Lesotho, Botswana, Mozambique, and Zimbabwe;
- 8.4 disseminated by radio on the two most prominent radio stations in the Eastern Cape, Lesotho, Botswana, Mozambique, and Zimbabwe respectively, twice daily in English and in the regions' most popular languages, other than English, over a period of one week in each of two successive months;
- 8.5 to the extent that the Respondents are able to secure their cooperation, placed by the Respondents on display in a prominent position, accessible to members of the public, at each National Union of Mineworkers Union (NUM) and Association of Mineworkers and Construction Union (AMCU) office, Solidarity, Department of Labour office, Unemployment Insurance Fund office and The Employment Bureau of Africa (TEBA) office at or nearest to each of the Respondents' mines, if such offices exist in the vicinity, and to maintain such displays for a period of 60 days;
- 8.6 to the extent that the Applicants are able to secure their cooperation, placed by the Applicants on display in prominent locations at all foreign Welfare Association offices and in foreign mine union offices in the vicinity where the applicants reside and to maintain such displays for a period of 60 days.

9. The applicants are ordered to maintain a call centre for three months to answers questions and to accept all opt out members. The call centre must employ bilingual, appropriately trained responders capable of conversing in the two most popular languages in the Eastern Cape, Lesotho, Botswana, Mozambique and Zimbabwe.
10. Each of the parties are granted leave to approach this court again, on the same papers duly amplified, for an order varying or amplifying the provisions of this order pertaining to notice and the costs associated with notice, in the event that this is considered necessary by any party.
11. The First to Thirtieth Respondents are ordered within 60 days of this order to provide the applicants in this application through their respective attorneys of record, with a list of names, identity numbers, last known addresses, and telephone numbers of any current or former mine workers, living and deceased, (and of their dependents where available) who worked in their respective mines and were found on medical or radiological examination by a mine medical practitioner; to be suffering from silicosis or who were found to have undergone lung changes suggestive of or consistent with silicosis.
12. The costs of giving and responding to notice of the class action to the members of the classes in the manner provided in paragraphs 7 and 8 above are to be borne by the parties as follows:
 - 12.1 the applicants represented by Richard Spoor Attorneys – one thirty-first of the costs;

12.2 each Respondent – one thirty-first of the costs.

13. It is ordered that the costs of this application are to be paid by any respondents who oppose it, jointly and severally.

TAKE NOTICE FURTHER THAT the affidavits of **RICHARD SPOOR** and of the first to thirtieth applicants will be used in support of this application.

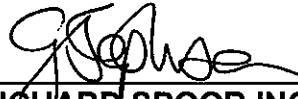
KINDLY TAKE NOTICE FURTHER THAT the applicants have appointed the offices of Richard Spoor Attorneys at the address stated below, as the address at which they will accept notice of service of all process in these proceedings.

KINDLY TAKE FURTHER NOTICE THAT if any of the respondents intend opposing this application, they are required:

1. To notify applicants' attorney of record in writing, within fifteen (15) days of the service of the notice of motion, of such intention to oppose;
2. Within fifteen (15) days of notifying the applicants' attorney of their intention to oppose the application, to deliver their answering affidavit, if any, together with any relevant documents in answer to the allegations made by applicants; and
3. To appoint in their notice of opposition an address, within 8 kilometres of the office of the Registrar at which they will accept notice and service of all documents in these proceedings.

If no notice of intention to oppose is given, the application will be made on 5 March 2013 at 10h00, or as soon after that as counsel may be heard.

Dated at **JOHANNESBURG** on this the 21st day of December 2012.



RICHARD SPOOR INC ATTORNEYS

Applicants' Attorneys

Eton Building, Sherborne Square

5 Sherborne Road, Parktown

Tel: (011) 482 6081

Ref: Ms G Jephson

TO : THE REGISTRAR
South Gauteng High Court
Johannesburg

AND TO : HARMONY GOLD MINING COMPANY LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : EVANDER GOLD MINES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : LESLIE GOLD MINES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : RANDFONTEIN ESTATES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : ARMGOLD/HARMONY FREEGOLD JOINT VENTURE

PROPRIETARY LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : AVGOLD LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : UNISEL GOLD MINES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : LORAINÉ GOLD MINES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : WINKELHAAK MINES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : BRACKEN MINES LIMITED
Randfontein Office Park
Corner Main Reef Road and Ward Avenue
Randfontein

AND TO : ANGLOGOLD ASHANTI LIMITED
76 Jeppe Street
Newtown, Johannesburg

**AND TO : FREE STATE CONSOLIDATED GOLD MINES
(OPERATIONS) LIMITED**
76 Jeppe Street
Newtown, Johannesburg

AND TO : GOLD FIELDS LIMITED
150 Helen Road
Sandown, Sandton

AND TO : GOLD FIELDS OPERATIONS LIMITED
150 Helen Road
Sandown, Sandton

AND TO : NEWSHELF 899 (PROPRIETARY) LIMITED
150 Helen Road
Sandown, Sandton

AND TO : BEATRIX MINES LIMITED
150 Helen Road
Sandown, Sandton

AND TO : FARWORKS/682 LIMITED
150 Helen Road
Sandown, Sandton

**AND TO : DRIEFONTEIN CONSOLIDATED
(PROPRIETARY) LIMITED**
150 Helen Road
Sandown, Sandton

**AND TO : GFI MINING SOUTH AFRICA
(PROPRIETARY) LIMITED**
150 Helen Road
Sandown, Sandton

AND TO : VILLAGE MAIN REEF LIMITED
Isle of Houghton, First floor Old Trafford 1
13 Boundary Road
Houghton Estate, Houghton

AND TO : BUFFELSFONTEIN GOLD MINES LIMITED
Isle of Houghton, First floor Old Trafford 1
13 Boundary Road
Houghton Estate, Houghton

**AND TO : BLYVOORUITZICHT GOLD MINING
COMPANY LIMITED**
Quadrum Office Park, Building 1
50 Constantia Boulevard

Constantia Kloof Ext 28
Roodepoort

AND TO : **DOORNFONTEIN GOLD MINING
COMPANY LIMITED**
Quadrum Office Park, Building 1
50 Constantia Boulevard
Constantia Kloof Ext 28
Roodepoort

AND TO : **SIMMER AND JACK MINES LIMITED**
357 Rivonia Boulevard
Rivonia

AND TO : **DRDGOLD LIMITED**
Quadrum Office Park, Building 1
50 Constantia Boulevard
Constantia Kloof Ext 28
Roodepoort

AND TO : **EAST RAND PROPRIETARY MINES LIMITED**
Quadrum Office Park, Building 1
50 Constantia Boulevard
Constantia Kloof Ext 28
Roodepoort

AND TO : **ANGLO AMERICAN SOUTH AFRICA LIMITED**
44 Main Street, Johannesburg

AND TO : **AFRICAN RAINBOW MINERALS LIMITED**
ARM House, 29 Impala Road
Chislehurst, Sandton

AND TO : **RANDGOLD AND EXPLORATION COMPANY LIMITED**
7th Floor Fredman Towers
13 Fredman Drive, Sandown

AND TO : **JCI LIMITED**
10 Benmore Road
Morningside, Sandton.

ANNEXURE "A": LIST OF GOLD MINES

ITEM	NAME OF MINE
1.	Harmony Gold Mine
2.	Virginia Gold Mine
3.	Merriespruit Gold Mine
4.	Unisel Gold Mine
5.	Free State Saaiplaas Gold Mine
6.	Free State Saaiplaas Gold Mine Shafts 2 and 3
7.	Saaiplaas Gold Mine Shafts 4 and 5 (now Masimong Mine)
8.	President Steyn Gold Mine
9.	President Steyn Gold Mine Shafts 1 and 2 (now part of Bambanani)
10.	President Steyn Gold Mine Shaft 4
11.	President Brand Gold Mine
12.	President Brand Gold Mine Shafts 1, 2, 3 and 5
13.	Kusasaletu Gold Mine (formerly Elandsrand)
14.	Elandsrand Gold Mine
15.	DeelKraal Gold Mine
16.	Evander Gold Mine
17.	Kinross Gold Mine
18.	Winkelhaak Gold Mine
19.	Bracken Gold Mine
20.	Leslie Gold Mine
21.	Randfontein Estates Gold Mine
22.	Doornkop Gold Mine
23.	Freegold 1 Gold Mine (now Bambanani)
24.	Freegold 2 Gold Mine (now part of Tshepong Mine)
25.	Free Gold 3 Gold Mine (now part of Tshepong Mine)
26.	Freegold 4 Gold Mine (now part of Tshepong Mine)
27.	Tshepong Gold Mine (formerly Freegold 2 and 4)
28.	Bambanani Gold Mine (formerly Freegold 1)
29.	Masimong Gold Mine (formerly Free State Saaiplaas 4 and 5)
30.	H J Joel Gold Mine
31.	Joel Gold Mine
32.	St Helena Gold Mine
33.	Western Holdings Gold Mine
34.	Matjhabeng Gold Mine (formerly part of Western Holdings Mine)
35.	Target Gold Mine
36.	Target Gold Mine Shafts 1 and 2
37.	Target Gold Mine Shaft 3
38.	Loraine Gold Mine
39.	Loraine Gold Mine Shaft 3 (now part of Target Mine)
40.	Freddies Gold Mine
41.	Freddies Gold Mine Shafts 7 and 9 (now part of Target Mine)
42.	Phakisa Gold Mine
43.	Hartebeesfontein (now part of Buffelsfontein Mine)

44.	Vaal Reefs Gold Mine
45.	Vaal Reefs Gold Mine Shafts 1, 2, 3, 4, 5, 6 and 7
46.	Vaal Reefs Gold Mine No 8 Shaft (now Great Nologwa)
47.	Vaal Reefs Gold Mine No 9 Shaft (now Kopanang Mine)
48.	Vaal Reefs Gold Mine No 10 Shaft (now Tau Lekoa Mine)
49.	Vaal Reefs Gold Mine No 11 Shaft (now Moab Khotsong Mine)
50.	Great Nologwa Gold Mine (formerly Vaal Reefs 8)
51.	Kopanang Gold Mine (formerly Vaal Reefs 9)
52.	Tau Lekoa Gold Mine (formerly Vaal Reefs 10)
53.	Moab Khotsong Gold Mine (formerly Vaal Reefs 11)
54.	Western Deep Levels Gold Mine
55.	Western Deep Levels Gold Mine Shaft 1 (now Mponeng Mine)
56.	Western Deep Levels Gold Mine Shaft 2 (now Savuka Mine)
57.	Western Deep Levels Gold Mine Shaft 3 (now Tau Tona Mine)
58.	Mponeng Gold Mine (formerly Western Deep Levels 1)
59.	Savuka Gold Mine(formerly Western Deep Levels 2)
60.	Tau Tona Gold Mine(formerly Western Deep Levels 3)
61.	Free State Geduld Gold Mine
62.	South Deep Gold Mine
63.	Beatrix Gold Mine
64.	Oryx Gold Mine
65.	Kloof Gold Mine
66.	Libanon Gold Mine
67.	Leeudoorn Gold Mine
68.	Venterspost Gold Mine
69.	Western Areas Gold Mine
70.	East Driefontein Gold Mine
71.	West Driefontein Gold Mine
72.	Driefontein Consolidated Gold Mine
73.	Kloof-Driefontein Complex (KDC Complex)
74.	Buffelsfontein Gold Mine
75.	Blyvooruitzicht Gold Mine
76.	Doornfontein Gold Mine (now part of Blyvooruitzicht Mine)
77.	East Rand Proprietary Mines
78.	Durban Roodepoort Deep Gold Mine

ANNEXURE B1 – NOTICE TO CLASS 1

NOTICE TO: All persons who currently work or have worked as mineworkers on any of the following gold mines in South Africa, at any time from 1 January 1965 to date, and who have silicosis:

Harmony Gold Mine
Virginia Gold Mine
Merriespruit Gold Mine
Unisel Gold Mine
Free State Saaiplaas Gold Mine
Free State Saaiplaas Gold Mine Shafts 2 and 3
Saaiplaas Gold Mine Shafts 4 and 5 (now Masimong Mine)
President Steyn Gold Mine
President Steyn Gold Mine Shafts 1 and 2 (now part of Bambanani)
President Steyn Gold Mine Shaft 4
President Brand Gold Mine
President Brand Gold Mine Shafts 1, 2, 3 and 5
Kusasaletu Gold Mine (formerly Elandsrand)
Elandsrand Gold Mine
Deelkraal Gold Mine
Evander Gold Mine
Kinross Gold Mine
Winkelhaak Gold Mine
Bracken Gold Mine
Leslie Gold Mine
Randfontein Estates Gold Mine
Doornkop Gold Mine
Freegold 1 Gold Mine (now Bambanani)
Freegold 2 Gold Mine (now part of Tshepong)
Free Gold 3 Gold Mine (now part of Tshepong)
Freegold 4 Gold Mine (now part of Tshepong)
Tshepong Gold Mine (formerly Freegold 2 and 4)
Bambanani Gold Mine (formerly Freegold 1)
Masimong Gold Mine (formerly FS Saaiplaas 4 and 5)
H J Joel Gold Mine
Joel Gold Mine
St Helena Gold Mine
Western Holdings Gold Mine
Matjhabeng Gold Mine (formerly part of Western Holdings)
Target Gold Mine
Target Gold Mine Shafts 1 and 2
Target Gold Mine Shaft 3
Lorraine Gold Mine
Lorraine Gold Mine Shaft 3 (now part of Target)

Freddies Gold Mine
Freddies Gold Mine Shafts 7 and 9 (now part of Target)
Phakisa Gold Mine
Hartebeesfontein (now part of Buffelsfontein)
Vaal Reefs Gold Mine
Vaal Reefs Gold Mine Shafts 1, 2, 3, 4, 5, 6 and 7
Vaal Reefs Gold Mine No 8 Shaft (now Great Noligwa)
Vaal Reefs Gold Mine No 9 Shaft (now Kopanong)
Vaal Reefs Gold Mine No 10 Shaft (now Tau Lekoa)
Vaal Reefs Gold Mine No 11 Shaft (now Moab Khotsong)
Great Noligwa Gold Mine (formerly Vaal Reefs 8)
Kopanang Gold Mine (formerly Vaal Reefs 9)
Tau Lekoa Gold Mine (formerly Vaal Reefs 10)
Moab Khotsong Gold Mine (formerly Vaal Reefs 11)
Western Deep Levels Gold Mine
Western Deep Levels Gold Mine Shaft 1 (now Mponeng)
Western Deep Levels Gold Mine Shaft 2 (now Savuka)
Western Deep Levels Gold Mine Shaft 3 (now Tau Tona)
Mponeng Gold Mine (formerly Western Deep Levels 1)
Savuka Gold Mine(formerly Western Deep Levels 2)
Tau Tona Gold Mine(formerly Western Deep Levels 3)
Free State Geduld Gold Mine
South Deep Gold Mine
Beatrix Gold Mine
Oryx Gold Mine
Kloof Gold Mine
Libanon Gold Mine
Leeudoorn Gold Mine
Venterspost Gold Mine
Western Areas Gold Mine
East Driefontein Gold Mine
West Driefontein Gold Mine
Driefontein Consolidated Gold Mine
Kloof-Driefontein Complex (KDC Complex)
Buffelsfontein Gold Mine
Blyvooruitzicht Gold Mine
Doornfontein Gold Mine (now part of Blyvooruitzicht)
East Rand Proprietary Mines
Durban Roodepoort Deep Gold Mine

KINDLY BE ADVISED THAT:

A class action will be instituted in the South Gauteng High Court, Johannesburg on [date] against the companies that owned and/or controlled and/or employed mineworkers at the mines listed above, for monetary damages sustained by mineworkers who contracted silicosis as a result of working on such mines.

The class action will be brought on behalf of the following class:

Current and former mineworkers who have silicosis (whether or not accompanied by any other disease) and who work or have worked on any of the gold mines listed above at any time from 1 January 1965 to date.

Take notice that if you fall within this definition, you are automatically a member of the class, unless you choose to opt-out as directed below.

The claim brought on behalf of the class is that the companies that owned and/or controlled and/or employed mineworkers at the mines listed above, breached their statutory, common law and/or constitutional duties to comply with the applicable laws and regulations and to provide a safe and healthy work environment that was not injurious to the health of the mineworkers.

All members of the class shall be bound by the judgment or any settlement, whether favourable or not, and all members shall be precluded from instituting the same claim independently.

Any monetary damages and other financial relief obtained by the class representatives under a judgment or settlement shall be distributed to individual members of the class. Should the class action proceed to a stage where individual damages are to be determined, class members will be advised by the class representatives' attorneys of record of the steps required to be taken by class members to opt-in to the action for this purpose.

Should you wish not to be a member of the class, you may opt out of the class by sending a written notice to the following class representatives' attorneys of record, to be received by no later than [date]:

**Richard Spoor Attorneys – Ref: Mr Richard Spoor, Tel. +27 (0)11 482 6081;
email: info@richardspoorinc.co.za; postal address: PO Box 303 Parklands, 2121**

Alternatively, you may contact the following Call Centre to opt out of the class, or to obtain further information about the class action: [add number]. The Call Centre will remain operational until [date].

Take notice further that electronic copies of the application may be obtained by any interested party on request by e-mailing the attorneys of record described above.

As a member of the class, you have a right to participate in the proceedings. Should you wish to do so, kindly contact the attorneys of record.

ANNEXURE B2 – NOTICE TO CLASS 2

NOTICE TO: All persons who are the dependants of mineworkers who died as a result of silicosis and who worked on any of the gold mines in South Africa listed below at any time after 1 January 1965:

Harmony Gold Mine
Virginia Gold Mine
Merriespruit Gold Mine
Unisel Gold Mine
Free State Saaiplaas Gold Mine
Free State Saaiplaas Gold Mine Shafts 2 and 3
Saaiplaas Gold Mine Shafts 4 and 5 (now Masimong Mine)
President Steyn Gold Mine
President Steyn Gold Mine Shafts 1 and 2 (now part of Bambanani)
President Steyn Gold Mine Shaft 4
President Brand Gold Mine
President Brand Gold Mine Shafts 1, 2, 3 and 5
Kusasaletu Gold Mine (formerly Elandsrand)
Elandsrand Gold Mine
DeelKraal Gold Mine
Evander Gold Mine
Kinross Gold Mine
Winkelhaak Gold Mine
Bracken Gold Mine
Leslie Gold Mine
Randfontein Estates Gold Mine
Doornkop Gold Mine
Freegold 1 Gold Mine (now Bambanani)
Freegold 2 Gold Mine (now part of Tshepong)
Free Gold 3 Gold Mine (now part of Tshepong)
Freegold 4 Gold Mine (now part of Tshepong)
Tshepong Gold Mine (formerly Freegold 2 and 4)
Bamabanani Gold Mine (formerly Freegold 1)
Masimong Gold Mine (formerly FS Saaiplaas 4 and 5)
H J Joel Gold Mine
Joel Gold Mine
St Helena Gold Mine
Western Holdings Gold Mine
Matjhabeng Gold Mine (formerly part of Western Holdings)
Target Gold Mine
Target Gold Mine Shafts 1 and 2
Target Gold Mine Shaft 3
Lorraine Gold Mine
Lorraine Gold Mine Shaft 3 (now part of Target)

Freddies Gold Mine
Freddies Gold Mine Shafts 7 and 9 (now part of Target)
Phakisa Gold Mine
Hartebeesfontein (now part of Buffelsfontein)
Vaal Reefs Gold Mine
Vaal Reefs Gold Mine Shafts 1, 2, 3, 4, 5, 6 and 7
Vaal Reefs Gold Mine No 8 Shaft (now Great Noligwa)
Vaal Reefs Gold Mine No 9 Shaft (now Kopanong)
Vaal Reefs Gold Mine No 10 Shaft (now Tau Lekoa)
Vaal Reefs Gold Mine No 11 Shaft (now Moab Khotsong)
Great Noligwa Gold Mine (formerly Vaal Reefs 8)
Kopanang Gold Mine (formerly Vaal Reefs 9)
Tau Lekoa Gold Mine (formerly Vaal Reefs 10)
Moab Khotsong Gold Mine (formerly Vaal Reefs 11)
Western Deep Levels Gold Mine
Western Deep Levels Gold Mine Shaft 1 (now Mponeng)
Western Deep Levels Gold Mine Shaft 2 (now Savuka)
Western Deep Levels Gold Mine Shaft 3 (now Tau Tona)
Mponeng Gold Mine (formerly Western Deep Levels 1)
Savuka Gold Mine (formerly Western Deep Levels 2)
Tau Tona Gold Mine (formerly Western Deep Levels 3)
Free State Geduld Gold Mine
South Deep Gold Mine
Beatrix Gold Mine
Oryx Gold Mine
Kloof Gold Mine
Libanon Gold Mine
Leeudoorn Gold Mine
Venterspost Gold Mine
Western Areas Gold Mine
East Driefontein Gold Mine
West Driefontein Gold Mine
Driefontein Consolidated Gold Mine
Kloof-Driefontein Complex (KDC Complex)
Buffelsfontein Gold Mine
Blyvooruitzicht Gold Mine
Doornfontein Gold Mine (now part of Blyvooruitzicht)
East Rand Proprietary Mines
Durban Roodepoort Deep Gold Mine

KINDLY BE ADVISED THAT:

A class action will be instituted in the South Gauteng High Court, Johannesburg on [date] against the companies that owned and/or controlled the mines listed above, and/or that employed mineworkers at such mines, for monetary damages sustained by dependants of mineworkers who died of silicosis, covering loss of support due to the death of the breadwinner and medical and funeral expenses.

The class action will be brought on behalf of the following class:

All dependants of mineworkers who died as a result of silicosis (whether or not accompanied by any other disease) and who worked on any of the aforementioned gold mines at any time after 1 January 1965.

Take notice that if you fall within this definition, you are automatically a member of the class, unless you choose to opt-out as directed below.

The claim brought on behalf of the class is that the companies that owned and/or controlled and/or employed mineworkers at the mines listed above breached their statutory, common law and/or constitutional duties to comply with the applicable laws and regulations and to provide a safe and healthy work environment that was not injurious to the health of the mineworkers.

All members of the class shall be bound by the judgment or any settlement, whether favourable or not, and all members shall be precluded from instituting the same claim independently.

Any monetary damages and other financial relief obtained by the class representatives under a judgment or settlement shall be distributed to individual members of the class. Should the class action proceed to a stage where individual damages are to be determined, class members will be advised by the class representatives' attorneys of record of the steps required to be taken by class members to opt-in to the action for this purpose.

Should you wish not to be a member of the class, you may opt out of the class by sending a written notice to the following class representatives' attorneys of record, to be received by no later than [date]:

Richard Spoor Attorneys – Ref: Mr Richard Spoor, Tel. +27 (0)11 482 6091; email: info@richardspoorinc.co.za; postal address: PO Box 303 Parklands, 2121

Alternatively, you may contact the following Call Centre to opt out of the class, or to obtain further information about the class action: [add number]. The Call Centre will remain operational until [date].

Take notice further that electronic copies of the application may be obtained by any interested party on request by e-mailing [address].

As a member of the class, you have a right to participate in the proceedings. Should you wish to do so, kindly contact the attorneys of record as described above.

IN THE SOUTH GAUTENG HIGH COURT, JOHANNESBURG
(REPUBLIC OF SOUTH AFRICA)

CASE NO: _____

In the matter between:

BONGANI NKALA	First Applicant
SIPORONO PHAHLAM	Second Applicant
MAPHATSOE KOMPI	Third Applicant
THEMBEKILE MNAHANI	Fourth Applicant
MATONA MABEA	Fifth Applicant
MOKHOLOFU BOXWELL	Sixth Applicant
ALLOYS MNCEDI MSUTHU	Seventh Applicant
MYEKELWA MKENYANE	Eighth Applicant
MASIKO SOMI	Ninth Applicant
ZWELENDABA MGIDI	Tenth Applicant
MTHOBELI GANGATHA	Eleventh Applicant
LANDILE QEBULA	Twelfth Applicant
PHUMELELO SOLITASI SIYOCOLO	Thirteenth Applicant
TEKEZA JOSEPH MDUKISA	Fourteenth Applicant
MICHAEL LITABE	Fifteenth Applicant
JOSEPH LEBONE	Sixteenth Applicant
LIPHAPANG AKIME LEBINA	Seventeenth Applicant
ZAMA GANGI	Eighteenth Applicant
MALUNGISA THOLE	Nineteenth Applicant
MONOKOA THOMAS LEPOTA	Twentieth Applicant
MZAWUBALEKWA DIYA	Twenty-first Applicant

MSEKELI MBUZIWENI	Twenty-second Applicant
ZANEYEZA NTLONI	Twenty-third Applicant
TOHLANG PAULOSI MAKO	Twenty-fourth Applicant
NANABEZI MGODUSWA	Twenty-fifth Applicant
THULENKHO KUSWANA	Twenty-sixth Applicant
MALEBURU REGINA LEBITSA	Twenty-seventh Applicant
MATAASO MABLE MAKONE	Twenty-eighth Applicant
MATSEKELO CISILIA MASUPHA	Twenty-ninth Applicant
MATISETSO MASEIPATI JESENTA NONG	Thirtieth Applicant

and

HARMONY GOLD MINING COMPANY LIMITED (Registration number M1950/038232/06)	First Respondent
EVANDER GOLD MINES LIMITED (previously KINROSS MINES LIMITED) (Registration number M1963/006226/06)	Second Respondent
LĒSLIE GOLD MINES LIMITED (Registration number 1959/001124/06)	Third Respondent
RANDFONTEIN ESTATES LIMITED (Registration number 1889/00251/06)	Fourth Respondent
ARMGOLD/HARMONY FREEGOLD JOINT VENTURE (PROPRIETARY) LIMITED (Registration number 2001/029602/07)	Fifth Respondent
AVGOLD LIMITED (previously TARGET EXPLORATION COMPANY LIMITED) (Registration number 1990/007025/06)	Sixth Respondent
UNISEL GOLD MINES LIMITED (Registration number 1972/010604/06)	Seventh Respondent
LORAINÉ GOLD MINES LIMITED (Registration number 1950/039138/06)	Eighth Respondent

WINKELHAAK MINES LIMITED (Registration number 1955/003606/06)	Ninth Respondent
BRACKEN MINES LIMITED (Registration number 1959/001126/06)	Tenth Respondent
ANGLOGOLD ASHANTI LIMITED (previously VAAL REEFS EXPLORATION AND MINING COMPANY LIMITED) (Registration number 1944/01734/06)	Eleventh Respondent
FREE STATE CONSOLIDATED GOLD MINES (OPERATIONS) LIMITED (previously WESTERN HOLDINGS LIMITED) (Registration number 1937/009266/06)	Twelfth Respondent
GOLD FIELDS LIMITED (previously EAST DRIEFONTEIN GOLD MINING COMPANY LIMITED & DRIEFONTEIN CONSOLIDATED LIMITED) (Registration number 1968/004880/06)	Thirteenth Respondent
GOLD FIELDS OPERATIONS LIMITED (previously WESTERN AREAS GOLD MINING COMPANY LIMITED) (Registration number 1959/0032096/06)	Fourteenth Respondent
NEWSHELF 899 (PROPRIETARY) LIMITED (Registration number 2007/019941/07)	Fifteenth Respondent
BEATRIX MINES LIMITED (Registration number 1977/002138/06)	Sixteenth Respondent
FARWORKS/682 LIMITED (previously KLOOF GOLD MINING COMPANY LIMITED) (Registration number M1964/004462/06)	Seventeenth Respondent
DRIEFONTEIN CONSOLIDATED (PROPRIETARY) LIMITED (Registration number 1993/002956/07)	Eighteenth Respondent
GFI MINING SOUTH AFRICA (PROPRIETARY) LIMITED (Registration number M2002/031431/07)	Nineteenth Respondent
VILLAGE MAIN REEF LIMITED (Registration number M1943/005703/06)	Twentieth Respondent
BUFFELSFONTEIN GOLD MINES LIMITED (Registration number M1995/0100726/06)	Twenty-first Respondent
BLYVOORUITZICHT GOLD MINING COMPANY LTD	

(Registration number M1937/009743/06)	Twenty-second Respondent
DOORNFONTEIN GOLD MINING COMPANY LTD (Registration number M1947/024709/06)	Twenty-third Respondent
SIMMER AND JACK MINES LIMITED (Registration number 1924/007778/06)	Twenty-fourth Respondent
DRDGOLD LIMITED (Registration number 1895/00926/06)	Twenty-fifth Respondent
EAST RAND PROPRIETARY MINES LTD (Registration number M1893/000773/06)	Twenty-sixth Respondent
ANGLO AMERICAN SOUTH AFRICA LIMITED (Registration number 1917/005309/06)	Twenty-seventh Respondent
AFRICAN RAINBOW MINERALS (previously ANGLOVAAL MINING LIMITED) (Registration number 1933/004580/06)	Twenty-eighth Respondent
RANDGOLD AND EXPLORATION COMPANY LIMITED (Registration number 1992/005642/06)	Twenty-ninth Respondent
JCI LIMITED (Registration number 1894/000854/06)	Thirtieth Respondent


FOUNDING AFFIDAVIT

I, the undersigned,

RICHARD SPOOR

do hereby make oath and say :

- 1 I am a practising attorney and the attorney for the applicants in this matter.
- 2 I am duly authorised to depose to this affidavit on behalf of the applicants.


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- 3 The contents of this affidavit are within my personal knowledge except where otherwise indicated by the context, and are to the best of my belief both true and correct.

NATURE OF THIS APPLICATION

- 4 This is an application on behalf of two classes:

4.1 Current and former mineworkers who have silicosis (whether or not accompanied by any other disease) and who work or have worked on the gold mines listed on the attached annexure "A" at any time from 1 January 1965 to date ("the first class").

4.2 The dependants of mineworkers who died as a result of silicosis (whether or not accompanied by any other disease) and who worked on the gold mines listed on the attached annexure "A" at any time after 1 January 1965 ("the second class").

- 5 The applicants seek certification of the two classes in order to represent them in a class action for damages. A draft of the particulars of claim is attached to this application.

- 6 Tens of thousands of former mineworkers have contracted silicosis as a result of breathing silica dust generated during gold mining and related processes. While some of these mineworkers may have received statutory compensation in terms of the Occupational Diseases in Mines and Works Act, Act 78 of 1973 ("ODIMWA"), such compensation does not provide for past and future medical

costs, past and future loss of earnings, or general damages. As such it does not approximate their actual loss and harm. The vast majority have not received any compensation at all.

7 In the *Mankayi* case, the Constitutional Court has found that these mineworkers have the right to institute actions for damages against their former employers for lung diseases contracted as a result of their exposure to harmful dust and gases whilst working on the mines.¹

8 I was the attorney for the plaintiff in the *Mankayi* case. Since then, I have been engaged in the preparation of this application and the litigation to follow. To this end I and those engaged by me have:

8.1 Secured the resources and built the capacity to procure the necessary evidence and to conduct the litigation;

8.2 Retained a team of expert witnesses in the fields of occupational lung disease, epidemiology, mine engineering and ventilation, and a historian;

8.3 Established co-operative relationships with a range of non-governmental organisations concerned with the plight of former mineworkers in South Africa, Lesotho, Swaziland and Botswana;

8.4 Taken instructions from some 17 000 former gold-miners and spouses of deceased gold-miners;

¹ *Mankayi v Anglo Gold Ashanti Limited* 2011 (3) SA 237 (CC).



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- 8.5 Initiated a programme to have my clients, being the applicants in this matter, medically examined as close to their homes as possible;
- 8.6 Put together a panel of medical experts to examine the results of the medical examinations with a view to making a diagnosis of silicosis or silico-tuberculosis or not as the case may be; and
- 8.7 Retained a team of counsel to settle and move this application and to prosecute the ensuing litigation.
- 9 I have referred above to the instructions of some 17 000 former gold-miners and spouses of deceased gold-miners.
- 9.1 All of the gold-miners concerned have instructed me that they believe that they suffered a lung function impairment in consequence of their exposure to dust in the respondents' gold mines. In the great majority of cases, for want of resources and access to an appropriate medical facility and medical expertise, the former mineworkers have not obtained any formal medical diagnosis to confirm their belief that they have in fact suffered an injury to their respiratory system.
- 9.2 Similarly, the spouses of the deceased gold-miners have instructed me that their breadwinners died as a result of contracting silicosis in consequence of their exposure to dust in the respondents' gold mines,
- 10 In preparing this affidavit and the draft particulars of claim, I have consulted with various experts and had regard to their views on the issues raised in this matter. These experts are well recognised in their field and include:



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10.1 Professor Jonathan Elliot Myers, Professor of Public Health Medicine and Director for Occupational and Environmental Health Research, Department of Public Health and Family Medicine, University of Cape Town;

10.2 Professor Rodney Ivan Ehrlich, Professor and Senior Specialist, Department of Public Health and Family Medicine, University of Cape Town; and

10.3 David William Stanton, an expert in occupational hygiene and health who has served on government, industry and society standards and tripartite committees, including the Mine Health and Safety Council Expert Panel for Silicosis Prevention Research.

11 I attach copies of their curricula vitae as Annexures RS1, RS2 and RS3. If certification is granted, the applicants will call these persons as expert witnesses at trial.

12 The nature of the relief sought at this stage is purely procedural. The recent judgment of the Supreme Court of Appeal ("SCA") in *The Trustees for the Time Being of the Children's Resource Centre Trust & Others v Pioneer Food (Pty) Ltd & Others*² established that certification is a necessary requirement for the institution of a class action, and set out the requirements for certification.

² *The Trustees for the Time Being of the Children's Resource Centre Trust & Others v Pioneer Food (Pty) Ltd & Others* (50/2012) [2012] ZASCA 182 (29 November 2012) (hereafter *Pioneer Foods*), and in particular paragraph 23.



13 In terms of that judgment, this Court is not required to determine the merits of the applicants' causes of action, nor to adjudicate the facts on which that cause of action will be founded. At this stage, the Court must determine:

13.1 Whether the classes are defined with sufficient precision by objective criteria;

13.2 Whether the members of the two classes sought to be established have a prima facie cause of action against the respondents;

13.3 Whether there are common issues of fact or law that are capable of class-wide determination;

13.4 Whether the class representatives and legal representatives are appropriate to represent the classes;

13.5 Whether the cause of action is such that its pursuit in the form of a class action is appropriate.

14 I submit that the effect of the judgment is that if this Court is satisfied on these questions, it should grant prayers 1 to 4 of the notice of motion, declaring the existence of the two classes for the purpose of a class action, declaring that the applicants have standing to represent the classes, and certifying the applicants' legal representatives as class representatives. The remainder of the prayers in the notice of motion are orders regulating the further conduct of the class action.

15 If certified, the applicants seek to pursue the class action in two stages:



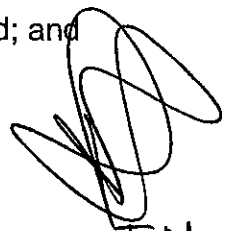
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- 15.1 First, they will first seek a declaratory order establishing the nature and extent of the respondents' liability. This relief will be sought on behalf of the classes as 'opt-out' classes, with notice provided to members of the classes as set out at paragraphs 8 and 9 of the Notice of Motion.
- 15.2 Second, if successful at the first stage, damages will be claimed on an individual basis. Persons falling within the class definitions will be required to 'opt in' to the classes at this stage, by notifying the applicants' attorneys of record accordingly. Directions will be sought from the Trial Court in respect of the notice required to be given to class members for this purpose.
- 16 In the event that this Court does not agree that the class action should proceed in this manner, the applicants are prepared to proceed on the basis of:
- 16.1 The bifurcated approach above, but with damages being sought at the second stage collectively rather than individually; or
- 16.2 On the basis of the class action proceeding in a single stage rather than two stages.
- 17 This affidavit deals with the following issues in turn:
- 17.1 The parties;
- 17.2 Background and history, which includes information on:
- 17.2.1 Silicosis;



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- 17.2.2 Silicosis and tuberculosis disease in the South African gold mining population;
 - 17.2.3 The respondents' knowledge of the risks associated with exposure to silica dust;
 - 17.2.4 The respondents' knowledge of the measures to be taken to prevent exposure of gold miners to harmful quantities of silica dust; and
 - 17.2.5 The failure of the respondents to take effective measures to prevent the exposure of mineworkers to harmful quantities of silica dust.
- 17.3 The applicants' causes of action;
- 17.4 The definition of the classes;
- 17.5 Standing;
- 17.6 Suitability and appropriateness of adjudication in the form of a class action;
- 17.7 Management of the action, which includes discussion of:
- 17.7.1 The bifurcated proceeding proposed to be followed;
 - 17.7.2 The notification to class members; and
 - 17.7.3 The determination of damages.
- 17.8 The certification of Richard Spoor Attorneys as attorneys of record; and



17.9 The pending application in the Jibhana matter for certification to conduct a class action on behalf of mineworkers suffering from silicosis.

THE PARTIES

The Class Representatives

18 The first applicant is Bongani Nkala, a former mineworker residing at Kambi Administrative Area, Mthatha. The first applicant worked at Harmony Gold Mine as a Team Member from 1985 to 1997.

19 The second applicant is Siporono Phahlam, a former mineworker residing at Imizizi Administrative Area, Redoubt, Bizana. The second applicant worked at the following mines:

19.1 President Brand as a Team Leader from 1971 to 1974;

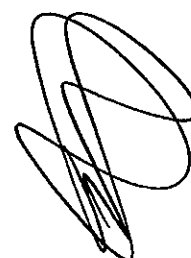
19.2 Vaal Reefs as a Team Leader from 1974 to 1980; and

19.3 Elandsrand as a Miner from 1980 to 2004.

20 The third applicant is Maphatsoe Kompie, a former mineworker residing at Ha Mathabela Qomo-Qomong, Lesotho. The third applicant worked at the following gold mines:

20.1 Deelkraal as a Winch Driver from 1981 to 1997; and

20.2 Elandsrand as a Loco Driver from 1997 to 2009.



21 The fourth applicant is Thembekile Mnaheni, a former mineworker residing at Mohoabatsana Administrative Area, Mount Fletcher. The fourth applicant worked at Kinross Gold Mine as a Labourer and Winch Driver from 1976 to 1998.

22 The fifth applicant is Matona Mabea, a former mineworker residing at Mekaling Ha Makoanyane, Lesotho. The fifth applicant worked at Randfontein Gold Mine as a member of the Stop Team, a Winch Driver and a Team Leader from 1977 to 2004.

23 The sixth applicant is Mokholofu Boxwell, a former mineworker residing at Butha-Buthe, Lesotho. The sixth applicant worked at the following gold mines:

23.1 Winkelhaak as a Timber Boy from 1965 to 1978;

23.2 Libanon as a Machine Driller from 1979 to 1980;

23.3 Bracken as a Machine Driller from 1980 to 1992; and

23.4 Free Gold (Joel) as a Machine Driller from 1994 to 1998.

24 The seventh applicant is Alloys Mncedi Msuthu, a former mineworker residing at Mthumasi Administrative Area, Ramafole Location, Mount Fletcher. The seventh applicant worked at the following gold mines:

24.1 West Driefontein as a Labourer from 1977 to 1978; and

24.2 President Steyn/Free Gold (Bambanani) as a Drill Operator from 1978 to 2009.



25 The eighth applicant is Myekelwa Mkenyane, a former mineworker residing at Amadiba Location, Bizana. The eighth applicant worked at the following gold mines:

25.1 Kinross as a General Worker from 1975 to 1976;

25.2 Free State Saaiplaas as a General Worker and a Winch Driver from 1976 to 1998;

25.3 Masimong Division as a Gang Supervisor and a Development Team Leader from 1998 to 2005; and

25.4 Harmony as a Stope Team Leader from 2005 to 2009.

26 The ninth applicant is Masiko Somi, a former mineworker residing at Nyaka Location, Bizana. The tenth applicant worked at the following gold mines:

26.1 President Steyn as a Cleaner from 1976 to 1977;

26.2 Western Holdings / Free Gold (Matjhabeng) as a Chief Boss Assistant from 1977 to 1987; and

26.3 Free State Geduld from 1977 to 1995.

27 The tenth applicant is Zweledaba Mgidi, a former mineworker residing at Twazi Administrative Area, Flagstaff. The tenth applicant worked at the following gold mines:

27.1 Loraine as a Timber Boy from 1983 to 1998;

27.2 President Brand as a Winch Driver from 1999 to 2004; and



27.3 President Steyn / Free Gold (Bambanani) from 2004 to 2011.

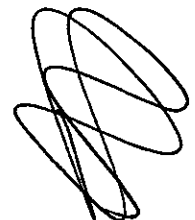
28 The eleventh applicant is Mthobeli Gangatha, a former mineworker residing at at Nkunzimbini Administrative Area, Lusikisiki. The eleventh applicant worked at Unisel Gold Mine as a Timber Boy and a Loco Driver from 1986 to 2001.

29 The twelfth applicant is Landile Qebula, a former mineworker residing at Ngxokweni, Libode, Eastern Cape. The twelfth applicant worked at Vaal Reefs No 8 Shaft / Great Nologwa Gold Mine as a Stope Team Member, a Machine Operator, a Mine Assistant and a Loco Operator from 1978 to 1995, and from 2004 to 2010.

30 The thirteenth applicant is Phumelelo Solitasi Siyocolo, a former mineworker residing at Ntlenzi Administrative Area, Flagstaff. The thirteenth applicant worked at Vaal Reefs Gold Mine as a Timber Boy, a Winch Driver and a Machine Operator from 1977 to 2008.

31 The fourteenth applicant is Tekeza Joseph Mdukisa, a former mineworker residing at Mkdona Administrative Area, Bizana. The fourteenth applicant worked at Western Deep Levels No 2 Shaft / Savuka as a Transporter, Pipe Layer, Team Member, Machine Operator, Loco Driver, Loco Team Leader and Construction Team Leader from 1970 to 1998.

32 The fifteenth applicant is Michael Litabe, a former mineworker residing at Ha Motemekoane, Maseru, Lesotho. The fifteenth applicant worked at Western



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Deep Levels as a Pipe Attendant, Stope Team Member, Winch Driver and Stope Team Leader from 1975 to 2003.

33 The sixteenth applicant is Joseph Lebone, a former mineworker residing at Mohale's Hoek, Lesotho. The sixteenth applicant worked at the following gold mines:

33.1 President Brand as a member of the Stope Team from 1972 to 1973; and

33.2 President Steyn / Free Gold (Bambanani) as a Winch Driver, Loco Driver and Loader Driver from 1974 to 2006.


34 The seventeenth applicant is Liphapang Akime Lebina, a former mineworker residing at Ha Josiase, Maseru, Lesotho. The seventeenth applicant worked at the following gold mines:

34.1 Free State Saaiplaas as a Store Attendant in 1966;

34.2 President Brand as a Boiler Maker and Loco Driver from 1967 to 1975, and from 1976 to 1998; and

34.3 Western Deep Levels as a Boiler Maker and Loco Driver from 1975 to 1976.

35 The eighteenth applicant is Zama Gangi, a former mineworker residing at Gorha Administrative Area, Lusikisiki. The eighteenth applicant worked at South Deep Gold Mine as a Single Drum Operator, a Timber Boy and a Mine Assistant from 1981 to 2005, and from 2007 to 2008.



36 The nineteenth applicant is Malungisa Thole, a former mineworker residing at Imizizi Administrative Area, Bizana. The nineteenth applicant worked at Western Areas Gold Mine as an Electrician from 1980 to 1999.

37 The twentieth applicant is Monokoa Thomas Lepota, a former mineworker residing at Ha Elia, Roma, Lesotho. The twentieth applicant worked as a Loco Driver and a Rock Drill Operator at the following gold mines:

37.1 Free State Geduld from 1973 to 1974,

37.2 President Steyn from 1974 to 1976;

37.3 Hartebeesfontein from 1977 to 1986; and

37.4 Beatrix from 1988 to 2007.

38 The twenty-first applicant is Mzawubalekwa Diya, a former mineworker residing at Bizana, Eastern Cape. The twenty-first applicant worked at Kloof Gold Mine as a Team Member, Winch Operator, Loco Driver and Bell Ringer from 1978 to 2005.

39 The twenty-second applicant is Msekeli Mbuziweni, a former mineworker residing at Nqabeni Village, Esikelo Administrative Area, Bizana. The twenty-second applicant worked at the following gold mines:

39.1 East Driefontein Mine as a Winch Driver from 1978 to 2000; and

39.2 Driefontein Consolidated as a Winch Driver from 2000 to 2006.



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40 The twenty-third applicant is Zaneyeza Ntloni, a former mineworker residing at Twali, Eastern Cape. The twenty-third applicant worked at Buffelsfontein Gold Mine as a Machine Operator from 1979 to 1980, and from 1981 to 2006.

41 The twenty-fourth applicant is Tohlang Paulosi Mako, a former mineworker residing at Mohale's Hoek, Lesotho. The twenty-fourth applicant worked at Hartebeesfontein Gold Mine as a Sweeper, Timber Boy and a Miner Assistant from 1982 to 2003.

42 The twenty-fifth applicant is Nanabezi Mgoduswa, a former mineworker residing at Tshuzi Location, Luphilisweni Administrative Area, Bizana. The twenty-fifth applicant worked as a Machine Operator, Water Jet Operator and Winch Driver at the following gold mines:

42.1 Vaal Reefs mine in 1989, and from 1993 to 1994;

42.2 Hartebeesfontein Mine from 1991 to 1992;

42.3 Vaal Reefs Mine (No 10 Shaft) / Tau Lekoa from 1997 to 2009.

43 The twenty-sixth applicant is Thulenkho Kuswana, a former mineworker residing at Bizana. The twenty-sixth applicant worked at the following gold mines:

43.1 Vaal Reefs as a Machine Operator from 1976 to 1979; and

43.2 Blyvooruitzicht as a Winch Driver from 1979 to 2009.



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- 44 The twenty-seventh applicant is Maleburu Regina Lebitsa, a widow residing at Ha-Motsoane, Naleli, Lesotho. The twenty-seventh applicant is the dependant of the late Lekhooanyana Isaac Lebitsa, a former mineworker who died as a result of silicosis and who worked at Vaal Reefs from 1974 to 1997.
- 45 The twenty-eighth applicant is Mataaso Mable Makone, a widow residing at Botha-Bothe, Ha-Tumane, Lesotho. The twenty-eighth applicant is the dependant of the late Molupe Makone, a former mineworker who died as a result of silicosis and who worked at Western Holdings Gold Mine from 1974 to 2008.
- 46 The twenty-ninth applicant is Matsekelo Cisilia Masupha, a widow residing at Thuathe Phutha-Lichaba, Ha Thuntsane, Lesotho. The twenty-ninth applicant is the dependant of the late Mokonyana Robert Masupha, a former mineworker who died as a result of silicosis and who worked at President Brand Gold Mine from 1975 to 2003.
- 47 The thirtieth applicant is Matiisetso Maseipati Jesenta Nong, a widow residing at Matelile, Ha Rannakoe, Lesotho. The thirtieth applicant is a dependant of the late Samuel Leponesa Nong, a former mineworker who died as a result of silicosis and who worked at President Steyn / Free Gold (Bambanani) from 1984 to 2005.



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The Respondents

48 The respondents' registered offices and principal places of business are situated within the jurisdiction of this Court.

49 The first respondent is Harmony Gold Mining Company Limited ("Harmony"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1950/038232/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The first respondent owned and / or controlled the following mines:

49.1 Harmony Gold Mine situated in the Free State, from 1950 to date;

49.2 Virginia Gold Mine situated in the Free State, from 1972 to date;

49.3 Merriespruit Gold Mine situated in the Free State, from 1972 to date;

49.4 Unisel Gold Mine situated in the Free State, from 1996 to date;

49.5 Saaiplaas Gold Mine Shafts 2 and 3 situated in the Free State, from 1997 to date;

49.6 President Brand Gold Mine Shafts 1, 2, 3 and 5 situated in the Free State, from 1998 to date;

49.7 Kusasaletu Gold Mine (formerly Elandskraal mine, an amalgamation of Elandsrand and Deelkraal mines) situated on the Gauteng-North West Province border, from 2001 to date;



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- 49.8 Evander Gold Mine (comprised of an amalgamation of Kinross Gold Mine, Bracken Gold Mine, Leslie Gold Mine and Leslie Gold Mine) situated in Mpumalanga, from 1998 to date;
- 49.9 Kinross Gold Mine situated in Mpumalanga, from 1998 to date;
- 49.10 Winkelhaak Gold Mine situated in Mpumalanga, from 1998 to date;
- 49.11 Bracken Gold Mine situated in Mpumalanga, from 1998 to date;
- 49.12 Leslie Gold Mine situated in Mpumalanga, from 1998 to date;
- 49.13 Randfontein Estates Gold Mine situated in Gauteng, from 2000 to date;
- 49.14 Doornkop Gold Mine (including the South Reef Project) situated in Gauteng, from 2000 to date;
- 49.15 Tshepong Gold Mine (previously Freegold 2 and 4) situated in the Free State, from 2002 to date;
- 49.16 Masimong mine (previously Freegold 3 and Saaiplaas Gold Mine Shafts 4 and 5) situated in the Free State, from 1998 to date;
- 49.17 Bambanani Gold Mine (previously Freegold 1 and President Steyn Gold Mine Shaft 4) situated in the Free State, from 2002 to date. (Bambanani Gold Mine has also incorporated shafts 1 and 2 of President Steyn Gold Mine from 2010 to date);
- 49.18 Joel Gold Mine (previously HJ Joel) situated in the Free State, from 2002 to date;
- 49.19 St Helena Gold Mine situated in the Free State, from 2002 to date;



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49.20 Matjhabeng Gold Mine (previously Western Holdings) situated in the Free State, from 2002 to date;

49.21 Target Gold Mine Shafts 1 and 2 (previously Loraine Gold Mine Shafts 1 and 2) situated in the Free State, from 2004 to date;

49.22 Target Gold Mine Shaft 3 (previously Loraine Gold Mine Shaft 3) situated in the Free State, from 2010 to date;

49.23 Freddies Gold Mine Shafts 7 and 9 situated in the Free State, from 2010 to date; and

49.24 Phakisa Gold Mine situated in the Free State, from 2002 to date.

50 The second respondent is Evander Gold Mines Limited ("Evander") (previously Kinross Mines Ltd), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1963/006226/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The second respondent owned and / or controlled the following mines:

50.1 Evander Gold Mine situated in Mpumalanga, from 1996 to date;

50.2 Kinross Gold Mine situated in Mpumalanga, from 1963 to date;

50.3 Winkelhaak Gold Mine situated in Mpumalanga, from 1996 to date;

50.4 Bracken Gold Mine situated in Mpumalanga, from 1996 to date; and

50.5 Leslie Gold Mine situated in Mpumalanga, from 1996 to date.



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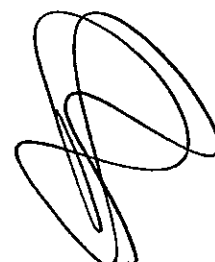
51 The third respondent is Leslie Gold Mines Limited ("Leslie"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1959/001124/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The third respondent owned and / or controlled Leslie Gold Mine situated in Mpumalanga, from 1959 to date.

52 The fourth respondent is Randfontein Estates Limited ("Randfontein"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1889/00251/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The fourth respondent owned and / or controlled the following mines:

52.1 Randfontein Estates Gold Mine situated in Gauteng, from 1889 to date;
and

52.2 Doornkop Gold Mine (including the South Reef Project) situated in Gauteng, from or about 1990 to date.


53 The fifth respondent is ARMgold/Harmony Freegold Joint Venture (Pty) Limited ("ARMgold/Harmony"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 2001/029602/07 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The fifth respondent owned and / or controlled the following mines:



- 53.1 Tshepong Gold Mine (previously Freegold 2 and 4) situated in the Free State, from 2002 to date;
- 53.2 Masimong mine (previously Freegold 3 and Saaiplaas Gold Mine Shafts 4 and 5) situated in the Free State, from 2002 to date;
- 53.3 Bambanani Gold Mine (previously Freegold 1 and President Steyn Gold Mine Shaft 4) situated in the Free State (from 2002 to date). Bambanani Gold Mine now also incorporates shafts 1 and 2 of President Steyn Gold Mine, from 2010 to date;
- 53.4 Joel Gold Mine (previously HJ Joel) situated in the Free State, from 2002 to date;
- 53.5 St Helena Gold Mine situated in the Free State, from 2002 to date; and
- 53.6 Matjhabeng Gold Mine (previously Western Holdings) situated in the Free State, from 2002 to date.

54 The sixth respondent is Avgold Limited ("Avgold") (previously Target Exploration Company Limited), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1990/007025/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The sixth respondent owned and / or controlled the following mines:

54.1 Target Gold Mine situated in the Free State, from 1990 to date;



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54.2 Loraine Gold Mine Shafts 1 and 2 situated in the Free State, from 1996 to date;


54.3 Loraine Gold Mine Shaft 3 and situated in the Free State, from 1996 to 1998 and from 2010 to date;

54.4 Freddies Gold Mine Shafts 7 and 9 situated in the Free State, from 2010 to date;

54.5 Hartebeesfontein Gold Mine situated in the North West, from 1996 to 1999.

55 The seventh respondent is Unisel Gold Mines Limited ("Unisel"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1972/010604/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The seventh respondent owned and / or controlled Unisel Gold Mine situated in the Free State, from 1972 to date.

56 The eighth respondent is Loraine Gold Mines Limited ("Loraine"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1950/039138/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The eighth respondent owned and / or controlled Loraine Gold Mine situated in the Free State, from 1950 to 1998.



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57 The ninth respondent is Winkelhaak Mines Limited ("Winkelhaak"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1955/003606/06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The ninth respondent owned and / or controlled Winkelhaak Gold Mine situated in Mpumalanga, from 1955 to date.

58 The tenth respondent is Bracken Mines Limited ("Bracken"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1959/001126/06 06 and with its registered office at Randfontein Office Park, corner Main Reef Road and Ward Avenue, Randfontein. The tenth respondent owned and / or controlled Bracken Gold Mine situated in Mpumalanga, from 1959 to date.

59 The eleventh respondent is AngloGold Ashanti Limited ("Anglogold Ashanti") (previously Vaal Reefs Exploration and Mining Company Limited), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1944/01734/06 and with its registered office at 76 Jeppe Street, Newtown. The eleventh respondent owned and / or controlled the following mines:

59.1 Vaal Reefs Gold Mine Shafts 1, 2, 3, 4, 5, 6 and 7 situated in the North West, from 1944 to 1998;

59.2 Great Nologwa Gold Mine (previously Vaal Reefs No 8 Shaft) situated in the North West, from 1944 to date;



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- 59.3 Kopanang Gold Mine (previously Vaal Reefs No 9 Shaft) situated in the North West, from 1984 to date;
- 59.4 Tau Lekoa Gold Mine (previously Vaal Reefs No 10 Shaft) situated in the North West, from 1985 to 2010;
- 59.5 Moab Khotsong Gold Mine (previously Vaal Reefs No 11 Shaft) situated in the North West, from 1944 to date;
- 59.6 Mponeng Gold mine (previously Western Deep Levels No 1 Shaft) situated in Gauteng, from 1998 to date;
- 59.7 Savuka Gold Mine (previously Levels No 2 Shaft) situated in Gauteng, from 1998 to date; and
- 59.8 Tau Tona Gold Mine (previously Western Deep Levels No 3 Shaft) situated in Gauteng, from 1998 to date.
- 59.9 Tshepong Gold Mine (previously Freegold 2 and 4) situated in the Free State, from 1998 to 2002;
- 59.10 Masimong mine (previously Freegold 3 and Saaiplaas Gold Mine Shafts 4 and 5) situated in the Free State, from 1998 to 2002;
- 59.11 Bambanani Gold Mine (previously Freegold 1 and President Steyn Gold Mine Shaft 4) situated in the Free State, from 1998 to 2002;
- 59.12 Joel Gold Mine (previously HJ Joel) situated in the Free State, from 1998 to 2002;



59.13 Matjhabeng Gold Mine (previously Western Holdings) situated in the Free State, from 1998 to 2002; and

59.14 Elandsrand Gold Mine (including Deelkraal Gold Mine) situated on the Gauteng-North West Province border, from 1998 to 2001.

60 The twelfth respondent is Free State Consolidated Gold Mines (Operations) Limited (previously Western Holdings Limited) ("Free State CGM"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1937/009266/06 and with its registered office at 76 Jeppe Street, Newtown. The twelfth respondent owned and / or controlled the following mines:

60.1 President Brand Gold Mine situated in the Free State, from about 1985 to 1998;

60.2 President Steyn situated in the Free State, from 1985 to 1998;

60.3 Freddies Gold Mine situated in the Free State, from 1985 to 1998.

60.4 Free State Saaiplaas situated in the Free State, from about 1985 to 1998.

60.5 Free State Geduld situated in the Free State, from 1985 to 1998.

60.6 Western Holdings situated in the Free State, from 1937 to 1998.

61 The thirteenth respondent is Gold Fields Limited ("Gold Fields") (previously East Driefontein Gold Mining Company Limited and Driefontein Consolidated Limited), a company duly registered in terms of the company laws of the

Republic of South Africa, with registration number 1968/004880/06 and with its registered office at 150 Helen Road, Sandown, Sandton. The thirteenth respondent owned and / or controlled the following mines:

61.1 South Deep Gold Mine situated in Gauteng, from 2007 to date;

61.2 Beatrix Gold Mine (which integrates Oryx Gold Mine from 1998) situated in the Free State, from 1998 to date;

61.3 Kloof Gold Mine (including Libanon Gold Mine, Leeudoorn Gold Mine and Venterspost Gold Mine) situated in Gauteng, from 1998 to date.

61.4 East Driefontein Gold Mine situated in Gauteng, from 1968 to date;

61.5 West Driefontein Gold Mine situated in Gauteng, from 1981 to date;

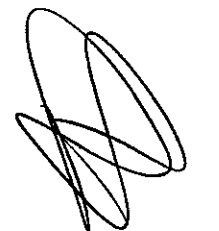
61.6 Driefontein Consolidated Gold mine situated in Gauteng, from 1981 to date.

61.7 Since 2010, the thirteenth respondent refers to Kloof Gold Mine and Driefontein Consolidated Gold Mine as the KDC Complex.

62 The fourteenth respondent is Gold Fields Operations Limited ("Gold Fields Operations") (previously known as Western Areas Gold Mining Company Limited), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1959/003209/06 and with its registered office at 150 Helen Road, Sandown, Sandton. The fourteenth respondent owned and / or controlled the following mines:



- 62.1 Western Areas Gold Mine situated in Gauteng, from 1959 to 1995 (when it merged with South Deep Gold Mine);
- 62.2 South Deep Gold Mine situated in Gauteng (created as a result of the merger between South Deep Exploration Company and Western Areas Gold Mine in 1995), from 1995 to date.
- 63 The fifteenth respondent is Newshelf 899 (Proprietary) Limited ("Newshelf 899"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 2007/019941/07 and with its registered office at 150 Helen Road, Sandown, Sandton. The fifteenth respondent owned and/or controlled the South Deep Gold Mine, from 2007 to date.
- 64 The sixteenth respondent is Beatrix Mines Ltd ("Beatrix Mines"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1977/002138/06 and with its registered office at 150 Helen Road, Sandown, Sandton. The sixteenth respondent owned and / or controlled Beatrix Gold Mine (which integrates Oryx Gold Mine from 1998) situated in the Free State, from 1977 to date.
- 65 The seventeenth respondent is Farworks/682 Limited ("Farworks") (previously known as Kloof Gold Mining Company Ltd); a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1964/004462/06 and with its registered office at 150 Helen Road, Sandown,



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Sandton. The seventeenth respondent owned and / or controlled Kloof Gold Mine situated in Gauteng, from 1964 to date.

66 The eighteenth respondent is Driefontein Consolidated (Proprietary) Limited ("Driefontein"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1993/002956/07 and with its registered office at 150 Helen Road, Sandown, Sandton. The eighteenth respondent owned and / or controlled Driefontein Consolidated Gold mine (created out of the merger of East Driefontein and West Driefontein gold mines in 1981) situated in Gauteng, from 1993 to date.

67 The nineteenth respondent is GFI Mining South Africa (Proprietary) Limited ("GFI"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M2002/031431/07 and with its registered office at 150 Helen Road, Sandown, Sandton. The nineteenth respondent owned and/or controlled the following mines:

67.1 Beatrix Gold Mine situated in the Free State, from 2002 to date; and

67.2 the KDC (Kloof – Driefontein Complex) situated in Gauteng, from 2002 to date.

68 The twentieth respondent is Village Main Reef Limited ("Village Main Reef"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1934/005703/06 and with its registered office at Isle of Houghton, First floor Old Trafford 1, 13 Boundary Road. The twentieth respondent owned and / or controlled the following mines:



68.1 Tau Lekoa Gold Mine (previously Vaal Reefs Gold Mine No 10 Shaft) situated in the North West, from 2011 to date;

68.2 Buffelsfontein Gold Mine (which has included Hartebeesfontein Gold Mine from 1999 to date) situated in the North West, from 2011 to date; and

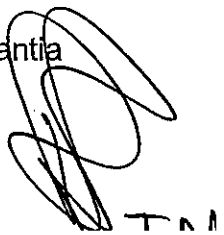
68.3 Blyvooruitzicht Gold Mine (including Doornfontein Gold Mine) situated in the North West, from 2011 to date.

69 The twenty-first respondent is Buffelsfontein Gold Mines Limited ("Buffelsfontein"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1995/010072/06 and with its registered office at Isle of Houghton, First floor Old Trafford 1, 13 Boundary Road. The twenty-first respondent owned and / or controlled the following mines:

69.1 Buffelsfontein Gold Mine (which has included Hartebeesfontein Gold Mine from 1999 to date) situated in the North West, from 1999 to date; and

69.2 Tau Lekoa Gold Mine (previously Vaal Reefs No 10 Shaft) situated in the North West, from 1995 to date.

70 The twenty-second respondent is Blyvooruitzicht Gold Mining Company Limited ("Blyvooruitzicht"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1937/009743/06 and with its registered office at Quadrum Office Park, Building 1, 50 Constantia

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Boulevard. The twenty-second respondent owned and / or controlled Blyvooruitzicht Gold Mine (which merged with Doornfontein Gold Mine in 1995) situated in the North West, from 1937 to date.

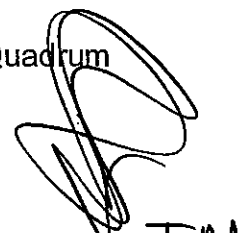
71 The twenty-third respondent is Doornfontein Gold Mining Company Limited ("Doornfontein"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1947/024709/06 and with its registered office at Quadrum Office Park, Building 1, 50 Constantia Boulevard. The twenty-third respondent owned and / or controlled Doornfontein Gold Mine situated in the North West, from 1947 to date.

72 The twenty-fourth respondent is Simmer and Jack Mines Limited ("Simmer and Jack"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1924/007778/06 and with its registered office at 357 Rivonia Boulevard, Rivonia. The twenty-fourth respondent owned and / or controlled the following mines:

72.1 Buffelsfontein Gold Mine (which has included Hartebeesfontein Gold Mine from 1999 to date) situated in the North West, from 2005 to 2011;
and

72.2 Tau Lekoa Gold Mine (previously Vaal Reefs No 10 Shaft) situated in the North West, from 2010 to 2011.

73 The twenty-fifth respondent is DRDGold Limited ("DRDGold"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1895/000926/06 and with its registered office at Quadrum

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Office Park, Building 1, 50 Constantia Boulevard. The twenty-fifth respondent owned and / or controlled the following mines:

73.1 Buffelsfontein Gold Mine (which has included Hartebeesfontein Gold Mine from 1999 to date) situated in the North West, from 1997 to 2005;

73.2 Blyvooruitzicht Gold Mine (which merged with Doornfontein mine in 1995) situated in the North West, from 1997 to 2011; and

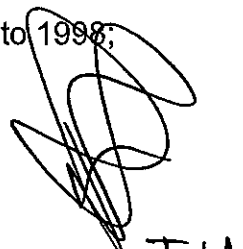
73.3 East Rand Proprietary Mine situated in Gauteng, from 2003 to date.

74 The twenty-sixth respondent is East Rand Proprietary Mines Limited ("East Rand Proprietary Mines"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number M1893/000773/06 and with its registered office at Quadrum Office Park, Building 1, 50 Constantia Boulevard. The twenty-sixth respondent owned and / or controlled East Rand Proprietary Mines situated in Gauteng, from 1893 to date.

75 The twenty-seventh respondent is Anglo American South Africa Limited ("Anglo American SA"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1917/005309/06 and with its registered office at 44 Main Street, Johannesburg. The twenty-seventh respondent owned and/or controlled the following mines:

75.1 Vaal Reefs Gold Mine situated in the North West, from 1944 to 1998;

75.2 Western Deep Levels Gold Mine situated in Gauteng, from 1944 to 1998;



75.3 President Steyn Gold Mine situated in the Free State, from 1948 to 1998;

75.4 President Brand Gold Mine situated in the Free State, from about 1950 to 1998;

75.5 Free State Geduld Gold Mine situated in the Free State, from about 1937 to 1998;

75.6 Free State Saaiplaas Gold Mine situated in the Free State, from about 1950 to 1998;

75.7 Freddie's Gold Mine situated in the Free State, from about 1950 to 1998;

75.8 Western Holdings Gold Mine situated in the Free State, from about 1937 to 1998;

75.9 Elandsrand Gold Mine situated on the Gauteng-North West Province border, from about 1974 to 1998.

76 The twenty-eighth respondent is African Rainbow Minerals Limited ("ARM") (previously Anglovaal Mining Limited), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1933/004580/06 and with its registered office at ARM House, 29 Impala Road, Chislehurst, Sandton. The twenty-eighth respondent owned and/or controlled the following mines:

76.1 Lorraine Gold Mine situated in the Free State, from 1950 to 1996;

76.2 Hartebeesfontein Gold Mine situated in the North West, from 1933 to 1996;



76.3 Target Gold Mine situated in the Free State, from 1990 to 1996; and

76.4 Virginia Gold Mine situated in the Free State, from about 1950 to 1972.

77 The twenty-ninth respondent is Randgold and Exploration Company Limited ("Randgold"), a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1992/005642/06 and with its registered office at 7th Floor Fredman Towers, 13 Fredman Drive, Sandown. The twenty-ninth respondent owned and/or controlled the following mines:

77.1 Harmony Gold Mine situated in the Free State, from 1993 to 1996;

77.2 East Rand Proprietary Mines situated in Gauteng, from 1993 to 1996;

77.3 Durban Roodepoort Deep situated in Gauteng, from 1993 to 1996;

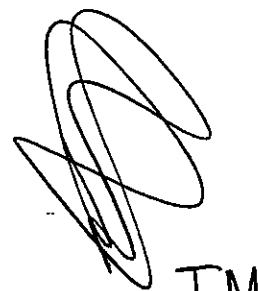
77.4 Blyvooruitzicht Gold Mine situated in the North West, from 1993 to 1996;

77.5 Doornfontein Gold Mine situated in the North West, from 1995 to 1996;

and

77.6 Buffelsfontein Gold Mine situated in the North West, in 1996.

78 The thirtieth respondent is JCI Limited, a company duly registered in terms of the company laws of the Republic of South Africa, with registration number 1894/000854/06 and with its registered office at 10 Benmore Road, Morningside, Sandton. The thirtieth respondent owned and/or controlled the following mines:



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- 78.1 Randfontein Estates Gold Mine situated in Randfontein, from about 1913 to 1997;
- 78.2 Western Areas Gold Mine situated south-west of Johannesburg, from 1959 to 1997;
- 78.3 H J Joel Gold Mine situated in the Free State, from 1985 to 1997; and
- 78.4 South Deep Gold Mine situated south-west of Johannesburg, from 1990 to 1997.

Definition of terms

- 79 The term "class period" means the period from 1 January 1965 to date.
- 80 The term "owner" as used in this affidavit means the owner of a mine, as defined in Section 1(xiv) of the Mines and Works Act 27 of 1956; Section 1 of the Minerals Act 50 of 1991 and in section 102 of the Mine Health and Safety Act 29 of 1996. The terms "owned" or "own" have a corresponding meaning.
- 80.1 Section 1(xiv) of the Mines and Works Act 27 of 1956 read:

'owner' in relation to a mine, works or machinery, includes the lessee of the mine, works, machinery or any part thereof, and a tributor for the working of the mine or any part thereof, but does not include a person who owns only rights to the surface of the land on which a mine, works or machinery is situate;



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80.2 Section 1 of the Minerals Act 50 of 1991 defined "owner" in relation to a mine as:

(b) (i) the holder of the prospecting permit or mining authorisation concerned.

80.3 Section 102 of the Mine Health and Safety Act 29 of 1996 reads:

(a) "owner" in relation to a mine, means

(i) the holder of a prospecting permit or mining authorisation issued under the Minerals and Petroleum Resources Development Act.

81 Save where the context indicates otherwise, a reference to a respondent is a reference to the respondent as an employer and to its servants acting in the course and scope of their employment.


82 Save where the context indicates otherwise, the term "control" as used in this affidavit means the control exercised by:

82.1 the owner of the mine;

82.2 the parent company of the mine-owning subsidiary company, if any;
and/or

82.3 the company contracted to manage the operations of the mine, if any.

83 The control exercised by a parent company refers to the effective control or influence exercised by a parent company over the activities of its subsidiary



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mine-owning company. In this regard the applicants place reliance on the following:

83.1 At all material times the principal business of the parent mining company was to direct, manage and control the business of their subsidiary mine-owning company in order to maximise the returns on their and, to the extent that there were other significant shareholders in their mine-owning subsidiaries, other shareholders' investment in their subsidiaries.

83.2 The parent company regarded and dealt with their mine-owning subsidiaries as an integrated part of their own business.

83.3 The parent company's direction, management and control over their mine-owning subsidiary was exercised on both a formal and informal level.

83.4 On a formal level the parent company entered into a so-called "service agreement" with the mine-owning subsidiary in terms of which it was appointed, for remuneration, as secretary, financial and engineering advisor and/or buying agent of the mine-owning subsidiary. In such capacity it provided expert and lay services, guidance and advice to the mine-owning subsidiary that impacted materially upon the environmental conditions to which the applicants and members of the first class and the spouses of members of the second class were exposed.

83.5 Such, services, guidance and advice related, inter alia to the following:

83.5.1 mine planning and design;



- 83.5.2 mine ventilation design;
- 83.5.3 environmental control;
- 83.5.4 dust control design and implementation;
- 83.5.5 health and the provision of medical services;
- 83.5.6 procurement of mining equipment;
- 83.5.7 the provision of mine medical services; and
- 83.5.8 the setting of production and financial targets.

83.6 On an informal level, the management and/or directors of the mine-owning subsidiary recognised that superior knowledge of mining and ultimate authority resided in the parent company, and to that extent were entitled and did in fact rely upon that superior knowledge and authority in the conduct of its mining activities.

83.7 The parent company was aware that the subsidiary company would rely upon its authority, guidance and advice and that this would materially impact upon the environmental conditions to which mineworkers would be exposed, and upon the health of such mineworkers.



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BACKGROUND AND HISTORY

Silicosis

- 84 Silicosis is a disease characterised by fibrosis of the lungs. Fibrosis is the replacement of normal tissue with connective ("collagenous" or "scar") tissue that plays no role in, and may obstruct, the normal functioning of the lung.
- 85 Silicosis is caused by the inhalation of crystalline silica dust. Crystalline silica is a common mineral that is also known as quartz. When crystalline silica dust is inhaled the smallest dust particles, commonly referred to as 'respirable particles', may be deposited in the alveolar region of the lung. Crystalline silica is cytotoxic and thus damages the lung tissue. This results in scarring or fibrosis, which reduces lung function.
- 86 Crystalline silica or quartz is found in association with gold on the Witwatersrand and the Free State gold fields where the respondents' mines are situated.
- 87 Crystalline silica dust is generated and raised into the air by many of the processes associated with mining such as blasting, drilling and the handling and transport of rock containing quartz.
- 88 Silicosis is an irreversible, progressive, incurable, and at later stages disabling and potentially fatal disease.



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- 89 The silicosis risk depends on the amount of crystalline silica inhaled and actually deposited in the alveolar region as well as the exposure time.
- 90 The first symptom of silicosis is dyspnoea (breathing difficulty), which may become increasingly serious. In view of the restrictive nature of this lung disease, compensatory emphysema (destruction of the alveolar walls) may occur. Other symptoms include a cough and chest pain.
- 91 Radiologically, silicosis presents as widespread nodules in the lungs, measuring 2-5 mm in diameter with predominance in the middle and upper zones. In severe cases large conglomerate nodules are present in the middle and upper lung zones with associated emphysematous lung tissue changes. This severe type of silicosis is also known as Progressive Massive Fibrosis or PMF.
- 92 The most usual complication of silicosis, and a frequent cause of death, is tuberculosis (silico tuberculosis).
- 93 Respiratory insufficiency due to fibrosis and emphysema, sometimes accompanied by *cor-pulmonale* (enlargement of the heart due to the continued effort to breathe with a restrictive lung disease), is another cause of death.
- 94 Persons with silicosis are also prone to lung infections, which are likely to be more severe than in persons with healthy lungs.



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95 Due to its progressive nature, silicosis may take many years to appear. Its symptoms worsen over time, even after exposure to crystalline silica dust has stopped. Ongoing medical monitoring and treatment is required to manage and limit the harmful impact of the disease and its complications. These interventions may include:

95.1 Regular x-rays and lung function tests to monitor progression of the disease;

95.2 Regular investigation for pulmonary tuberculosis, and treatment which may include hospitalisation;

95.3 Immunization against influenza and pneumococcal pneumonia;

95.4 Intermittent antibiotic treatment for lung infections, which may include hospitalisation;

95.5 Physiotherapy and treatment with corticosteroids in acute cases;

95.6 Treatment with isoniazid to prevent tuberculosis; and

95.7 In advanced cases, supplemental oxygen and even a lung transplant may be indicated.

Silicosis and tuberculosis disease in the South African gold mining population

96 Silicosis and silico-tuberculosis have had a devastating impact upon the health of South African gold mineworkers.



97 The rates of occurrence of silicosis and silico-tuberculosis amongst South African gold mineworkers are among the highest in the world.

97.1 A 1997 research study of former mineworkers, principally gold mineworkers, in Kweneng District, Botswana³ ("the Thamaga study") found a prevalence rate of pneumoconiosis (a generic term that covers all fibrogenic diseases of the lungs associated with the inhalation of dust) of between 22% and 36%. There was a 6.85% prevalence of PMF.


97.2 In a 1998 research study of former mineworkers, principally gold mineworkers, in Libode, Eastern Cape⁴ ("the Libode study") it was found that between 22% and 36% had silicosis.

97.3 A 2004 study of the Safety in Mines Research Advisory Committee⁵ ("SIMRAC 606"), to measure the prevalence of silicosis among in-service black gold mineworkers, found that 23.9% of the mineworkers examined had contracted silicosis.

³ Steen, T.W., Gyi, K. M., White, N.W., Gaosianelwe, T., Ludick, S., Mazonde, G.N., Mabongo, N., Ncube, M., Ehrlich, R. and Schirhout, G (1997) *Prevalence of occupational lung disease among Botswana men formerly employed in the South African mining industry*. Occupational and Environmental Medicine 54:19-26.

⁴ Trapido, A.S., Mqoqi, N.P., Williams, B., White, N.W., Solomon, A., Goode, R.H., Macheke, C.M., Davies, A.J. and Panter, C. (1998) Prevalence of occupational lung disease in a random sample of former mine workers, Libode District, Eastern Cape province, South Africa. American Journal of Industrial Medicine 34:305-313.

⁵ Churchyard, G., Pemba, L., Magadla, B., Dekker, K., Vermeis, M., Ehrlich, R., Te Water Naude, J., Myers, J. and White, N (2003) *Silicosis prevalence and exposure response relationships in older black mineworkers on a South African goldmine*. Johannesburg, South Africa, Safety in Mines Research Advisory Committee.



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- 97.4 A research study of a cohort of retrenched gold mineworkers from Lesotho, published in 2008⁶ ("the Lesotho study") which was a follow up study to SIMRAC 606, showed a silicosis rate of 24.6%.
- 98 Knowledge of the high incidence of silicosis in South African gold mineworkers is not new.
- 98.1 Between 1970 and 1980 some 13,428 black gold mineworkers were certified to have contracted silicosis.
- 98.2 Beadle stated in 1965 that between 2000 and 3000 new cases of silicosis were diagnosed each year from a mining population of 300 000.⁷
- 99 The association between tuberculosis and silicosis has long been recognised, and it is universally accepted that silicotic mineworkers are at significantly elevated risk of contracting tuberculosis.
- 99.1 SIMRAC 606 cited recent other studies that showed that mineworkers with chronic silicosis have a three-fold increase in the incidence of tuberculosis compared to a group without silicosis when matched for exposure and age. The authors reported further that the incidence of tuberculosis increases in direct proportion to the severity of the silicosis. The risk ratio for those with an International Labour Organisation classification of 3/3 (which indicates a high profusion of silicotic nodules

⁶ Girdler-Brown, Brendan V., White, Neil W., Ehrlich, Rodney I., and Churchyard, Gavin J. (2008) *The Burden of Silicosis, Pulmonary Tuberculosis and COPD Among Former Basotho Goldminers*. American Journal of Industrial Medicine 51:640-647.

⁷ Beadle DG . The Need for Dust Sampling. J M V Soc of SA 1965a; 18(1): 2-12.



in the lungs) was comparable to the increased risk of tuberculosis in HIV infected subjects.

99.2 One of the studies cited in SIMRAC 606, Cowie (1994),⁷ concluded that *"the incidence of tuberculosis during this 7-yr study suggests that one quarter of these men with silicosis will have developed tuberculosis by 60 years of age."*

100 The prevalence of tuberculosis in former gold mineworkers is predictably high.

100.1 In the Libode study, radiological tuberculosis was present in between 33% and 47% of the former mineworkers examined. (The differences are attributable to different x-ray readers.)

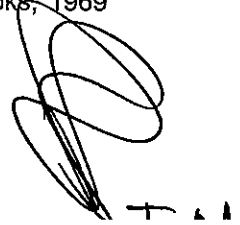
100.2 In the Thamaga study, 26.3% reported that they had previously had treatment for tuberculosis. The prevalence of past tuberculosis amongst the former mineworkers in the Lesotho study was 26%.

The mining industry's knowledge of silicosis and silico-tuberculosis and the need to control dust

101 Silicosis was described in the biomedical literature as an occupational lung disease as early as the 1840s.⁸

⁷ Cowie, R. L. (1994) *The Epidemiology of tuberculosis in gold miners with silicosis*. Am. J. respiratory Crit. Care Med., Vol 150, No.5. Nov 1994, 1460-1462.

⁸ Frederick Engels, *The Condition of the Working Class in England*, (London: Panther Books, 1969 [1897]: 230-38).



102 Gold mining began at the Witwatersrand in 1886. Very soon afterward, the risk to mineworkers from silica dust became apparent. Several public reports described the health impact of mineworkers' *"phthisis,"* an antiquated term used to describe silicosis associated tuberculosis (silico-tuberculosis).


103 In 1902 the Weldon Miners' Phthisis Commission was appointed by the Governor of the Transvaal to investigate the cause and prevalence of phthisis. It determined that silica dust was the primary underlying cause, and recommended dust elimination by methods still widely applied today. It recommended *inter alia* that it was *"urgently necessary"* to:-

103.1 *"Prevent the discharge of the minute, hard, angular particles of dust, already referred to, into the mine atmosphere, and which are largely produced by blasting and rock drill operations";* and

103.2 *"Supply the working places throughout the mine with air in sufficient quantities and in such a manner as to render harmless and sweep away all vitiated atmosphere."*

104 The investigations of the Weldon Miners' Phthisis Commission were considered so thorough and comprehensive, that its Report was regarded by the United States Bureau of Labor Statistics as *"one of the most notable contributions to the knowledge of a question which is of worldwide importance [phthisis], wherever dust-producing occupations are carried on"*.

105 In relation to the impact of compensation, the Report suggested that:-



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“The disastrous experience of the last 15 years, involving the loss of countless useful lives, is suggestive of the conclusion that if silicosis... were recognised as an industrial disease, entitling that person to adequate pecuniary compensation, a material reduction in death rate would soon be a matter of time.”

106 In 1903, the South African Native Affairs Commission into the status and condition of “Natives” and other matters reported that:-

“The extent to which Miners’ Phthisis prevails at the present time is so great that preventive measures are an urgent necessity, and that such a large number of sufferers in our midst is a matter of keen regret.”⁹

107 In 1912, South Africa became the first state to compensate silicosis as an occupational disease. The relationship between exposure to dust on the one hand and pneumoconiosis and silico-tuberculosis on the other, which was first thus recognised in 1912, continues to be recognised in statute.

108 In 1916 gold mineworkers with pulmonary tuberculosis, a recognised complication of silicosis, also became eligible for awards in what was again a world first.

109 Between 1902 and 1925 silicosis was the subject of no fewer than nine legislative acts, six commissions, ten parliamentary select committees and four major state industry reports. The Chamber of Mines established its own standing committee on dust in 1914.

110 Between 1912 and 1946 fifteen acts dealing with pneumoconiosis were passed, and South Africa became a world centre for research into dust diseases. A

⁹ South African Native Affairs Commission. Report: 1903-1905. 1905. Cape Town Limited Printers.

series of international conferences were held in Johannesburg between 1930 and 1969, which helped to define the scientific and regulatory agendas on pneumoconiosis.

111 In 1973, the Occupational Diseases in Mines and Works Act 78 of 1973 ("ODIMWA") was passed to apply to "*controlled mines*". A controlled mine is one where "*risk work*" is performed. Risk work is defined as work at any mine or place in a mine where dust occurs or is likely to occur, which causes or is likely to cause pneumoconiosis in persons working there.

111.1 ODIMWA requires mine owners to carry out entrance and periodical medical examinations of persons employed in their mines to determine their fitness to perform risk work and to determine whether or not they had contracted pneumoconiosis or tuberculosis. The law further makes provision for the recording and reporting of such diseases.

111.2 The act also provides for the determination of the risk (of contracting pneumoconiosis) at different mines and the establishment of a compensation fund, to be funded by amounts levied on mine owners. Levies are determined by the risk associated with working in each mine.

The gold mining industry's knowledge of the measures to be taken to prevent exposure of gold miners to harmful quantities of dust

112 It is axiomatic that by preventing the exposure of mineworkers to harmful quantities of noxious silica or quartz dust, silicosis can be prevented.



113 The basic principles and means whereby the exposure of mine workers to harmful quantities of noxious dusts can be eliminated are universal, and have had application for at least 100 years. They may be summarised as follows:

113.1 Inform workers of the risk posed by dust and educate them as to the means by which it may be mitigated;

113.2 Identify the source of the dust;

113.3 Prevent or minimise the escape of dust into the air, through the introduction of appropriate engineering controls;

113.4 Evacuate contaminated air from the work place through proper ventilation;

113.5 Dilute such dust that remains in the air to safe levels with clean air;

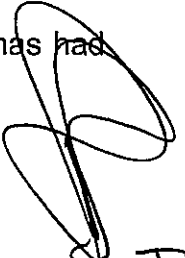
113.6 Where these measures are not protective of mineworkers' health, provide suitable respiratory protection equipment to persons exposed;

113.7 Ensure compliance and maintain the controls that are put in place;

113.8 Monitor the efficacy of the measures taken by measuring the amount of harmful dust to which mineworkers are exposed; and

113.9 Monitor the health effects on the workforce of exposure, with a view to making continuous improvements.

114 The principles and means by which mineworkers' exposure to harmful quantities of dust could be prevented appear from the legislation that has had



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application to the mines over the last century. Some of the relevant provisions are set out below:

114.1 As early as 1896 the Zuid Afrikaanse Republiek Wet 12 of 1986 provided that:-

Section 53. *"Iedere mijn moet voortdurend met een voldoende toevoer van versche lucht voorzien worden.*

Voor iederen ondergronds werkenden persoon moet niet minder dan 2 kubieke meter versche lucht per minuut aan de inname worden aangevoerd, en zooveel meer als de omstandigheden mogen vereischen.

Mocht de Mijninspecteur het noodig oordeelen, zoo zal een register van de hoeveelheden door de mijn circuleerende lucht worden gehouden."

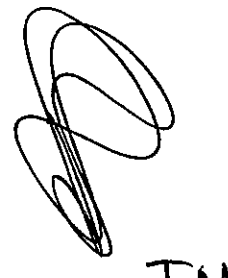
Section 54. *"De stroom versche lucht moet, waar noodig, doelmatig verdeeld worden, en naar en langs elke arbeidsplek door de geheele mijn in voldoende hoeveelheden geleid worden om den rook van ontplofbare stoffen of andere nadeelige gasses onschadelijk te maken en weg te voeren, zoodat alle arbeidsplekken en personenvervoerwegen in een geschikten toestand zijn voor menschen om daarin te werken en te rijden."*

Section 55. *"Alle deuren die de ventilatie bevorderen of op eenigerlei wijze daarop invloed uitoefenen moeten zoo gesteld zijn dat zij van zelf sluiten"*.

114.2 The Transvaal Mines Works and Machinery Ordinance 54 of 1903 provided inter alia:-

114.2.1 Section 146(5) made mandatory the use of *"a water jet or spray or other means equally efficient so as to prevent the escape of dust thereby caused into the air when drilling"*.

114.2.2 Section 146(6) prohibited re-entry into a working place after blasting—



“until the lapse of at least half an hour, unless the air in such place has been cleared of the dust and smoke arising from such blasting by efficient ventilation or other special means or unless an effective respirator or other apparatus is used to prevent the inhaling of such dust and smoke.”

114.2.3 Section 146(i)(5) required that working places, specifically development ends (tunnelling) and stopes (production areas) be provided with a continuous supply of clean water sufficient *“for effectively damping the broken ground and for allaying the dust caused by drilling operations”*.

114.2.4 Section 146(ii)(2) stipulated that:

“No person shall in any part of a mine remove any broken rock or ground if such rock or ground is in a dusty condition, until it has been effectively damped so as to prevent the escape of dust into the air during removal.”

114.3 Under the Mines and Works Act 12 of 1911 and the regulations thereto:

114.3.1 Section 9(1) prohibited persons from working underground for more than eight hours during any consecutive period of 48 hours or forty eight hours during any consecutive seven day period.

114.3.2 Regulations 56(4) and 109(2)(b) required the drawing up and maintenance of mine plans to show the ventilation arrangements and the provision of water, water sprayers and other devices for the allaying of dust.



114.3.3 Regulation 59 stipulated that air quality measurements (CO₂) be made every three months in working areas and for these to be recorded.

114.3.4 Regulation 58 stipulated minimum air quality standards for CO₂, CO and oxides of nitrogen (blasting fumes) after blasting.


114.3.5 Regulation 161(3) required shift bosses to observe compliance with the regulations and to record and report to the manager or mine overseer on contraventions and instructions given by him to secure the health and safety of persons working under him.

114.3.6 Regulation 161(5) required shift bosses to

"at least once during his shift inspect every portion of the section of the mine assigned to him in which persons are working or through which they may have occasion to pass, and shall ascertain the condition thereof as regards ventilation, sanitation, the presence of gases, and the state of the hanging wall, footwall, and sides, and generally so far as the safety and health of persons are concerned, and more particularly as regards the observance of the Regulations for the prevention of dust, and shall then and there enter in his notebook particulars of any unsatisfactory conditions."

114.3.7 Regulation 178(2) required that *"All regulations referring to the prevention of miners' phthisis so far as they concern coloured workmen, be translated into the more important native languages and kept posted up in the compounds."*

114.3.8 Regulation 61 imposed a blanket prohibition on any person working or remaining in any place in a mine if the air contains,



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dust, smoke or fumes perceptible by sight, smell or other senses.


114.4 In 1913, significant amendments were made to the regulations under the Mines and Works Act 12 of 1911. The amended regulations provided *inter alia* that:-

114.4.1 The definitions read with regulation 58(2) provided for the establishment of ventilation districts within a mine, each with its own independent air intake and return airway off the main airways and required that the quantity of air circulating in each such district be measured every three months and recorded.

114.4.2 Regulation 59 required, for the first time, that the "*quantity of dust present in the air of working places, travelling ways and waiting places shall be determined from time to time by or under the direct supervision of a certificated assayer*", who was also made responsible for the accuracy of the results, and for the recording of those results.

114.4.3 Regulation 60(1).provided that blasting may take place only once every 24 hours, unless permitted otherwise.

114.4.4 Regulation 101(a) and (d) provided that axial water feed drilling machines (drills where the water travels to the tip of the drill steel to allay dust at the point where it is generated) were mandatory in stopes with no through ventilation and in raises



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(upward sloping tunnels), unless the Inspector of Mines permitted otherwise.

114.4.5 Regulation 101(e) provided that:

"No person shall commence or continue to drill any hole, or cause or permit such commencement or continuation of drilling, unless the floor, roof, sides and broken rock of the working place, to a distance of at least twenty-five feet from such hole, have been thoroughly wetted and kept wet."

114.4.6 Regulation 101(2) provided that no broken rock or ground may be moved unless it and the floor and the roof and the sides of the working place had been *"effectively wetted and kept wet, so as to prevent the escape of dust into the air during removal."*

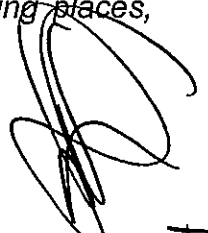
114.4.7 Regulation 101(3) provided that no work of any kind liable to create dust may be performed—

"unless and until the floor, roof and sides of the working place to a distance of at least twenty-five feet have been effectively wetted and kept wet, unless such place is naturally sufficiently wet to render the formation of dust impossible".

114.4.8 Regulation 143(2)(d) provided that:-

"Any person who has knowledge of dust or fumes in the workings during working hours, or of defective ventilation, or of any other condition or conditions prejudicial to health or safety shall similarly record the matter without delay in the record book."

114.4.9 Regulation 158(10)(b) provided that the manager was responsible to ensure that *"the surfaces in all working places,*




travelling ways and shafts which are not naturally wet to be kept wet or regularly washed down."

114.4.10 Regulations 161(3) and 161(5) required shift bosses to inspect at each shift every working place, to note the observance of regulations for the prevention of dust, and to record any breaches; while regulation 161(7) provided that the Manager was required to countersign such record.

114.4.11 Regulation 161(10) required the appointment of a competent person, in mines employing more than 1000 persons, whose principal duty was to examine and report to the Manager on:-

- (a) all matters relating to the mine's water supply, its quality, distribution and use;
- (b) the condition of the necessary appliances for using water at each working place and elsewhere;
- (c) the dust sampling of the mine; and
- (d) the conditions of the mine relating to ventilation and health.

114.4.12 Regulation 158(10(f)) stipulated that all ore-bins, ore-passes or grizzleys (all of which are installations through which the broken ore is moved) should be fitted with efficient atomisers (fine water sprayers or foggers) to control dust.



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114.5 In 1937, the regulations to the 1911 Act were substantially redrafted and refined, but no material changes were introduced.

114.6 In 1949, the regulations were again substantially redrafted and refined.

The material changes included the following:

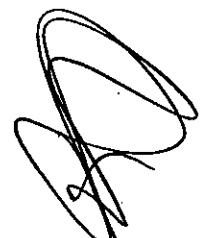
114.6.1 Regulation 62(2) provided for improved ventilation of development ends and other areas where there is no through ventilation.

114.6.2 Regulation 62(3) prohibited stoping where there was no through-ventilation, except by permission of the Inspector of Mines.

114.6.3 Regulation 101(1)(b) prohibited the use of percussion drills other than axial water feed drills.

114.7 Following the enactment of the Mines and Works Act 27 of 1956 the regulations were again amended. A number of material changes in the control of dust were brought about by the amended regulations (promulgated in March 1965):

114.7.1 Regulation 6.1 empowered the Government Mining Engineer to specify the concentration of dust, noxious fumes or harmful gasses in the ambient air that may not be exceeded. It is to be noted that no determination for dust was ever made under this regulation.



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114.7.2 The requirement, first stipulated in regulation 61 to Act 12 of 1911, that no person may work or remain in any part of the mine if the air contains harmful smoke, gas, fumes or dust perceptible by sight smell or other senses was retained. However, regulation 6.6(2) now also stipulated that:-

“The workings of every part of a mine where persons are required to travel or work shall be properly ventilated to maintain safe and healthy environmental conditions for the workmen and the ventilating air shall be such that it will dilute and render harmless any inflammable or noxious gases and dust in the ambient air.”

114.7.3 The regulations signalled a change in the manner in which the minimum quantities of air to be provided to working places were determined. Since 1893 these quantities had been determined by reference to a fixed volume of air multiplied by the number of persons working in the mine or (later) in the ventilation district. Regulation 6.7 stipulated a minimum velocity of air along the working face of a stope, and the quantity of air to be supplied at the end of every development end, or other blind tunnel as a volume to be provided (30 cubic feet) per minute for each square foot of the average cross-sectional area of the excavation.

114.7.4 Regulation 6.9.(1)(a) expressly identified the places where dust measurement had to be taken every three months, namely all main airways and all working stopes, development ends and shafts.



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114.7.5 Regulation 6.10(3) made blasting procedures more stringent by requiring that they should be so arranged that *"no person is exposed to harmful dust, smoke, gas and fumes from blasting"*.

114.7.6 The stipulations were also made more stringent in respect of re-entry into workings after blasting. Regulation 6.10.(4) required that re-entry should not take place *"until a sufficient quantity of fresh air has been caused to flow through such place to clear it of harmful dust, smoke, gas or from blasting."*

114.7.7 In relation to development ends, regulation 6.10(5) required that they be ventilated so as to ensure that *"harmful dust, smoke and fumes from blasting are effectively expelled before the expiry of the interval stipulated by the Inspector of Mines."*

114.7.8 Regulation 6.19(1) provided that machines used for *"ripping, picking, cutting, drilling or loading rock"* were now required to be *"fitted with means, or means had to be provided either effectively to prevent dust being created by the operation of the machine or for effectively trapping such dust."*

114.7.9 Regulation 6.19(3) made more stringent the requirement that efficient atomisers be provided at ore-passes and extended it.

The regulation now read,

"Where rock, coal or other mineral is discharged at any main bin, ore-pass or at any transfer point of a conveyor belt or of an ore-pass system, a constant supply of clean water shall be applied by means of efficient atomisers or sprays which shall be kept at all times in good working order, or a dust extraction system shall be provided and

operated, to prevent the escape of dust into the air while rock, coal or other mineral is being discharged at the openings of such bins, passes or transfer points."

114.8 In 1970, the regulations to the Mines and Works Act 27 of 1956 were amended again and promulgated under Government Notice R992. Chapter 10 of the amended regulations was materially similar to the previous chapter 6 of the regulations, as described above.

114.9 In 1987, the first reference was made to "*respirable dust*" in regulation 2.16.1(b) which deals with the duties of the ventilation officer, who is required to measure and report on same. Respirable dust was however not defined.

114.10 The Mines and Works Act 27 of 1956 was repealed by the Minerals Act 50 of 1991. However, the regulations under the Mines and Works Act were carried forward under the new Act.

114.11 The enactment of the Mine Health and Safety Act 29 of 1996 ("the MHSA"), which repealed those aspects of the Minerals Act dealing with health and safety, brought about significant change.

114.11.1 The MHSA signalled the change from a prescriptive regulatory approach to a modern risk-based system of occupational hygiene management. However, the prescriptive regulations that had been carried forward from the Mines and Works Act to the Minerals Act were retained until their repeal on 20 July 2002.




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114.11.2 Section 11 of the MHSA introduced a formal risk assessment process in terms of which the mine owner is required:

- (a) To identify the hazards to health and safety to which employees may be exposed at work;
- (b) To assess the risk to health and safety posed by those hazards;
- (c) To record the said hazards and risks, and then in consultation with the health and safety committee;
- (d) To determine measures necessary to eliminate or minimise the risk;
- (e) Insofar as any risk remains, to provide personal protective equipment and monitor the risk.
- (f) As far as is reasonably practicable, to implement the measures determined to be necessary.
- (g) To review the hazards identified and the risks assessed *inter alia* in the light of the results of occupational hygiene measurements and medical surveillance and any accident investigations.

114.11.3 Sections 12 and 13 of the MHSA require the mine owner to introduce a system of occupational hygiene measurement in order to measure levels of exposure to hazards and to establish a system of medical surveillance.



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114.12 Simultaneously with the promulgation of regulations under the MHSA, the old Mines and Works Act regulations (dealing with Ventilation Gasses and Dust), which had been carried forward into the Minerals Act), were repealed by GN R904 of 2 July 2002.

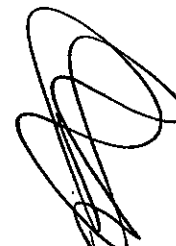
114.13 The promulgation of the new MHSA regulations meant that for the first time, a statutory occupational exposure limit (OEL) for respirable crystalline silica quartz was stipulated, at 0.1mg/m³.

114.13.1 That OEL of 0.1mg/m³, had previously been adopted by the American Congress of Government Occupational Hygienists ("ACGIH") in 1972.

114.13.2 A very similar standard had been proposed by Beadle in a 1969 paper of the Mine Ventilation Society.¹⁰ He made the proposal after a visit to the United States. He wrote:-

"At long last, the Americans appear to be realising the limitations of dust sampling with the midget impinger and are seeking improved sampling methods. The American Conference of Governmental Industrial Hygienists (A.C.G.I.H.) is an excellent body which has for many years specified, for the benefit of its members, the Threshold Limit Values (T.L.V.) which it considers should be applied in judging levels of many toxic substances. Although the Conference itself does not believe that the levels should be entrenched in legislation, this is, in fact, done in some states. Many other countries, including our South African Government Mining Engineers Department, accept these as useful limits by which to judge conditions."

¹⁰ D.G. Beadle. Dust — Recent Developments in Australia, U.S.A., Canada, Great Britain and South Africa.



114.13.3 The 1972 ACGIH standard of 0.1mg/m³ for respirable silica dust is predicated upon a 40 hour working week. Where workers are exposed for a longer period, as is the case for South African gold mineworkers who work 48 hour weeks, the standard needs to be made more stringent to be protective.

114.13.4 The National Institute for Occupational Safety and Health, a US federal agency responsible for conducting research and making recommendations for the prevention of work-related disease and injury, reviewed the silicosis hazard as the principal problem with silica exposure in 1974, when it issued a Criteria Document setting a recommended exposure limit (REL) of 0.05 mg/m³.

115 From the above it is clear that, had the South African Gold Mining Industry and its members complied with the provisions of the legislation, and applied the information that was freely available and known regarding the measures that could be implemented and the systems that could be put in place to prevent the exposure of mineworkers to harmful quantities of dust, the epidemic of silicosis and silico-tuberculosis among South African gold mineworkers could and would have been prevented.



The failure of the gold mining industry to take effective measures to prevent the exposure of mineworkers to harmful quantities of crystalline silica dust

116 As is evident from the prevalence of silicosis among mineworkers, the South African Gold Mining industry has failed to take effective measures to prevent the exposure of mine workers to harmful quantities of harmful dust. The result has been an epidemic of industrial disease death and suffering and harm likely unprecedented in industrial history.

117 The fundamental failure of the industry has been not to reduce the levels of harmful dust to a safe level.

117.1 The Report of the Leon Judicial Commission of Enquiry¹¹ found that dust levels had remained roughly the same over a period of 50 years, indicating little improvement in ventilation.

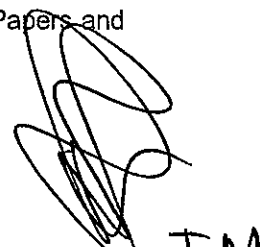
117.2 In 1964 Mr FG Hill, Technical Manager of Rand Mines Ltd (one of the larger mining houses at the time) published a paper for the Association of Mine Managers,¹² in which he stated:

"Men employed underground on the industry's gold mines are still contracting pneumoconiosis and at a rate which compels us to regard the disease as a significant occupational hazard.

Although the present position is much better than 50 years ago, pneumoconiosis has not yet been eliminated from South African

¹¹ The Report of the Leon Judicial Commission of Enquiry into Mine Health and Safety, Government Printer 2005.

¹² F.G. Hill. The Importance of Better Dust Control in the Prevention of Pneumoconiosis. Papers and Discussions 1964-1965, Association of Mine Managers of South Africa pp. 69-81. 1965.



gold mines. During the period 1920 to 1950 the average time taken by certified silicotics to contract first-stage pneumoconiosis increased from some eight years to approximately 22 years, but since 1950 little improvement has taken place and the average time today is, according to general opinion, still of the order of 22 to 24 years. As the 1950 figures relate to dust breathed over the previous 20 years or so, they appear to indicate that there has been only a small improvement in dust conditions in our mines in the past two or three decades."

117.3 A Presidential commission of enquiry into occupational health (the Erasmus Commission),¹³ reported in 1976 that:

"Generally speaking, industrialists in the Republic and the Territory of South-West Africa spend very little money on and do not devote much time to or organise for the prevention of occupational diseases. This poor showing can be attributed to indifference on the part of industry, which is to be seen in the small numbers of industrial health staff employed, the failure to use protective equipment, the absence of warning signs and preventive measures, a lack of knowledge of the products handled, and scant guidance. There is a lack of standards and norms."

117.4 The Benjamin and Greef Committee of Inquiry into a National Occupational Health and Safety Council in South Africa (Report 1997) recorded that:

"It is now generally acknowledged that the ODMW Act's compensation system contributed significantly to the poor control of health hazards in the mining industry as noted by the Leon Commission. First, the extremely low levels of compensation paid to black mineworkers under the ODMW Act prior to 1994, and the correspondingly low compensation assessment paid by mines, meant that the compensation system contained no financial incentive for employers to tackle dust problems in the mines.

The cost of the compensation system to employers is further reduced by the fact that the State covers the cost of administering this compensation system. Second, larger mines

¹³ Report of the Commission of Enquiry on Occupational Health. Government Printer, Pretoria 1976.

were permitted to monitor dust levels to determine their compensation levies. In the case of small mines, the state performed this function. The method of measurement adopted (gravimetric sampling) did not provide any meaningful feedback to control hazardous dust levels effectively. The result was a system in which more was spent on determining air quality indices for mines for the purpose of calculating contributions and on anatomical pathology than on either controlling and rectifying hazardous conditions or on compensating workers. This approach has been criticised by the Department of Health, the Leon Commission and the mining employers and trade unions."

117.5 In an article published in 2011 in the *Journal of Public Health Policy*¹⁴

Professor Jill Murray and colleagues from the National Centre of Occupational Health ("NCOH"), reported on the impact of the migrant labour system on dust levels in the gold mines.

"The migrant labour system has weakened incentives to control dust and disease by externalizing cost of disease, moving them away from the gold mining industry to communities and the State. ...Barriers to compensation are considerable and the majority of qualifying claimants have not received awards, thus reducing the substantial financial incentive to control dust that would be brought about by compensation payments and hence increased levies on mines."

117.6 In 1999 the NCOH produced a report into Occupational Health Indicators in South Africa.¹⁵ In the course of preparing that report the researchers considered more than 26 000 dust measurements, collected for the purpose of determining the risk levy payable in terms of ODIMWA, from 48 gold mines. They calculated that of those mines, only 8 had all estimated quartz measurements within 0.1mg/m³, 21 mines had

¹⁴ Jill Murray, Tony Davies and David Rees. Occupational Lung Disease in the South African Mining Industry. *Journal of Public Health Policy* 32, 565-579. 2011.

¹⁵ A Report on Occupational Health Indicators for South Africa; National Centre for Occupational Health January 1999, NCOH Report No 1/99.

measurements of between 0.1 and 0.1mg/m³, and 19 mines had measurements above 0.4mg/m³.

117.7 The 2008 report of an audit conducted by the Department of Mineral and Energy Affairs into levels of compliance with health and safety legislation by the mining industry, states at page 51-52:

"But as the audits confirm the findings made by Judge Leon in his Commission report, there is a pervasive culture of non-compliance to legislative requirements. Inquiry after inquiry makes findings to the effect that risk assessments are not conducted, training is not done, early morning examinations are not done, equipments not maintained and the list goes on and on.

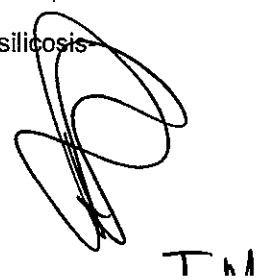
These problems are more pronounced in some commodities than the other; gold and platinum being the two commodities of serious concern."

117.8 In a report published in *Mining Weekly* on 19 May 2011,¹⁶ the Chairperson of Gold Fields is reported to have said that:

"Interventions that the company is making to combat silicosis include the 94%-complete installation of additional first-stage pre-filtration systems in order to remove larger particles of dust; the 83%-complete use of foggers to trap dust particles liberated from tipping points before these enter the main airstream; the 54%-complete installation of self-closing tip doors to stop dust from entering the intake airways; and the 100%-complete dust-binding treatment of footwalls.

The company reports that 98% of the dust measurements taken in the March quarter were below the occupational exposure limit of 0,1 milligrams a cubic metre."

¹⁶ <http://www.miningweekly.com/article/mine-fatality-trend-deeply-concerning-assessing-silicosis-exposure-goldfields-2011-05-19>.



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117.8.1 It is worth recalling that: the ZAR Law 12 of 1896 had made it mandatory for all doors that promote ventilation, or which in any way influence the ventilation, to be self-closing, and that this requirement has been mandatory ever since.

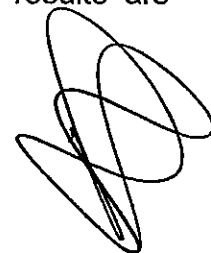
117.8.2 Also, that regulation 6.19(3) of the 1965 regulations to the Mines and Works Act 27 of 1956 stipulated that efficient atomisers or sprays or dust extraction system were to be provided and operated at any main bin, ore pass or at any transfer point (which includes tips) *"to prevent the escape of dust into the air"*.

117.8.3 At the time of this report, Gold Fields employed some 40 000 people on its gold mines. If only half of these worked underground, it would suggest that at least 400 of its employees are still being exposed to harmful levels of silica dust.

117.8.4 There is no reason to suppose that Gold Fields' mines are any worse than the mines operated by others.

117.9 A National Mining Summit in 2003 agreed upon the following milestones to eliminate silicosis:

117.9.1 By the year 2008, 95% of all exposure measurement results will be below the occupational exposure limit (OEL) for respirable crystalline silica of 0.1mg/m³. These results are individual readings and not averaged results.



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117.9.2 From the year 2013, using current diagnostic techniques, no new cases of silicosis will occur among previously unexposed individuals.

117.10 This constituted a tacit admission that by 2003 there were still significant numbers of gold mineworkers exposed to dust levels that exceeded the OEL, and that that this was responsible for the new silicosis cases generated.

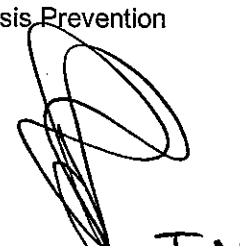
117.11 As at the end of 2012, these milestones have yet to be achieved.

118 The reasons for the industry's extensive non-compliance are multifold, but cost and the search for profit weigh heavily.

118.1 At the 1969 Mine Ventilation Society Symposium of the Chamber of Mines Anti-Dust Campaign,¹⁷ chief ventilation officer asked the question:

"Why do men go back into development ends early? Why do they remove rock when it is dry? We—by 'we' I mean the Mining Industry—make it financially worthwhile for the man underground to break regulations in order to earn more money. We mine with multi-blast development ends, we push multi-blast development ends through, we want to get three blasts, four blasts, five blasts a shift.—We pride ourselves, we break records. How do we break the records? — By people pinching minutes, by going in early. In other words, in our bonus system for mining, we make it worth the man's while to break regulations in order to earn additional money. I think a bonus system for a man who works safely, for a man who has low dust

¹⁷D.G. Beadle. A Critical Evaluation of the Anti-Dust Campaign and Suggestions for the Future. MVS Symposium 1969. Silicosis Prevention Information Resources CD (CM, ZA page), Silicosis Prevention Information Resource. MHSC 2006.



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counts, has definitely a lot more merit than any of these anti-dust campaigns we are trying to push at the moment.

If we think about it very carefully, the man who scrapes dry, does so because there is no water available, or because he has no water hose. Why does he scrape dry? — Because he wants his pay, he wants his money for the rock he produces. In other words, he is interested in financial gain and if his health suffers as a result of it, he couldn't care a damn.

Our shaft sinkers break world records in shaft sinking. How? — By going in very quickly after the blast, by cleaning very quickly. These shaft sinkers earn very high salaries over a very short working life, and after 10, 12, 15 years they often end up with second or third-stage pneumoconiosis because they break regulations, because we — the Mining Industry — make it worth their while to break regulations and damage their health in the process.”

118.2 At the same Symposium, a university lecturer stated:-

“There is a maxim in the mines to the effect that the reason why pneumoconiosis still occurs so frequently is that ventilation is not as cheap as compensation. There are two elements here: The cost of ventilation and the cost of compensation. I have not seen anybody put a figure to the cost of ventilation for the Industry; we know the cube law, however, and we can ourselves from our own experience, probably attach some sort of figure of ventilation cost to the industry. Compensation cost on the other hand is fairly easily determined. If we look at the reports of the Pneumoconiosis Compensation Commissioner for the year ending 31st March, 1968, we see that the latest levy for schedule 'A' mines, that is the larger gold mines, is 1.6 million rands. It was an exceptionally low figure, the previous year it was about 3.8 and the previous year just above 4, but the point is that for an industry in the particular year 1967, the total working profits of the industry were something like three hundred and eight million rand, dividends were one hundred and twenty-six million rand, lease payments thirty-five million rand, tax ninety seven million rand, total salaries two hundred and eighteen million rand. And then we put against it a million rand for compensation. I think that this is the nub here. I think that it would cost considerable sums of money to improve ventilation appreciably and I think that we must consider whether this rate of compensation is not something that we can live with for the life of the mine. We can, however, provide a rather more rational approach. . . .”



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118.3 The NUM 1994 submission to the Leon Commission considered that the pressure of production often resulted in disregard for Regulation 10.10 relating to the effective wetting of the face and broken rock after blasting for dust control (pp. 14-15).

118.4 In a keynote address at the Mine Health and Safety Summit 2011 the Minister of Mineral Resources, Ms S Shabangu said:-

“Before I close, I would like to urge the MHSC: To apply its mind to the unintended consequences of the current bonus incentive scheme. It is time that this industry stops mindless risk taking by both management and employees.”

119 Gravimetric sampling is the internationally accepted method of determining the concentrations of respirable dust to which workers are exposed.

119.1 It involves the use of a personal sampling device, an air pump and filter that traps respirable dust, which is attached to the workman for an extended period of time (ideally a full shift) to measure his actual exposure in the activities in which he is usually engaged.

119.2 Other sampling methods measure either average dust concentrations at a specific place or measure exposure of an individual workman at a specific moment. Because of the very significant differences in exposure of persons performing specific tasks, even while working in the same geographic area and over time and in the course of a single shift, these other sampling methods have limited utility when it comes to protecting workers exposed to the heaviest concentrations of dust.



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119.3 Gravimetric sampling was adopted by most developed countries in the 1970s, but was adopted by the South African gold mining industry for the purpose of assessing the efficacy of engineering controls in respect of individual workers, only after it was legislated in 2002.

119.4 Even after 2002 the method was not properly applied. The Chamber of Mines Annual Report for 2007-2008 records (at pp. 54-55), in relation to the new laws:

“that there is incomplete compliance with the current legislation, employees do not seem to be aware of their exposure and are not sufficiently trained on the importance – to them – of the sampling programme. There is concern that overall the sampling programme does not appear to be consistently and comprehensively monitored.

The DME should undertake thorough, in-depth inspections to ensure that the mines are following correct sampling procedures to maintain the veracity of submitted results.

Sampling programmes should be monitored for the duration of the work shift to ensure that employees are wearing the sampling pumps, wearing them correctly and that they are operating properly. Miners have been observed wearing pumps incorrectly, removing them during the shift and, in some instances, those wearing the pumps were in low dust areas like haulages and waiting areas.

Employees also report that sampling pumps sometimes hinder them from performing their duties properly. To address this problem, they hang the pumps in the waiting area during the shift and only wear them at the end of the shift before returning to surface. They also report that they find the sampling pumps uncomfortable to wear.”

119.5 The delay in using gravimetric sampling to measure and control the individual worker's exposure was not attributable to any lack of awareness regarding the method or technical capacity.

119.6 Since 1992, gold mines had been required to conduct gravimetric dust sampling and to submit the results, for the purpose of determining risk levies in terms of ODIMWA.

119.7 Gravimetric sampling was, however, not used to obtain reliable occupational exposure measurements with a view to taking corrective and preventive action. Instead air monitoring was only a routine exercise to determine an average figure for the mine on dust exposure, which with other factors would determine the levy paid by the mine into the compensation fund. The lower the average dust exposure for the mine, the lower the levy paid by the mine.

119.8 SIMRAC Project GAP 046 ¹⁸ reported that:-

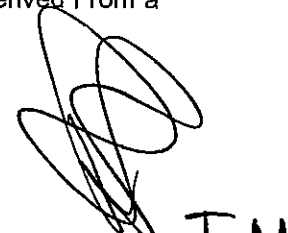
“The present programme of sampling has been used only to compute numbers on which dust levies can be based. The strategy is not suitable to gauge the dustiness of working places and individual unsatisfactory exposures remain difficult to detect or trace.”

119.9 In SIMRISK 401 Report (1997)¹⁹ the author reported that:-

“The fundamental concern is that present practices do not serve dust measurement for either control purposes or occupational exposure assessments. Moreover, good epidemiology is lacking. It was concluded that the health burden of dust over-exposure to the South African mining industry and to the general economy is probably underestimated.”

¹⁸ A.D. Unsted. GAP 046 Personal Gravimetric Dust Sampling and Risk Assessment. SIMRAC March 1996.

¹⁹ A.J. Kielblock. SIMRISK 401 Final Project Report. Current and Future Health Risks Derived From a Health Risk Assessment of the South African Mining Industry. SIMRAC July 1997. p. 27.



"Occupational exposure assessments are practically non-existent and, at best, coincidental. The present practice, which relies on establishing adjusted averages for mines, serves neither control nor occupational exposure purposes and has been used only to calculate a risk levy."

119.10 The Benjamin and Greef Committee of Inquiry stated:

"The method of measurement adopted (gravimetric sampling) did not provide any meaningful feedback to control hazardous dust levels effectively. The result was a system in which more was spent on determining air quality indices for mines for the purpose of calculating contributionsthan on either controlling and rectifying hazardous conditions.... This approach has been criticised by the Department of Health, the Leon Commission and the mining employers and trade unions."

120 The Department of Minerals and Energy's 2007 Presidential Mine Health and Safety Audit found that tuberculosis rates in South African mines continue to be the highest in the world.²⁰ The audit could not have been more blunt about the cause:

"There is a pervasive culture of non-compliance to legislative requirements. Inquiry after inquiry makes findings to the effect that risk assessments are not conducted, training is not done, early-morning examinations are not done, equipment is not maintained and the list goes on and on."

121 The audit went on to say that the system of administrative penalties for non-compliance failed to serve as a deterrent:

"Provision is made in the Act for referral of cases to the director of public prosecution where negligence has resulted in death or serious injury. Every year referrals are made, but no prosecution has ever taken place."

²⁰ Department of Minerals and Energy, Republic of South Africa. "Presidential Mine health and Safety Audit." Mine Health & Safety Audits, 2008.

122 In this regard I record that, to the best of my knowledge and notwithstanding extensive enquiry, despite the death and serious injury of thousands of mineworkers over the last decades in consequence of their having been exposed to harmful quantities of crystalline silica dust, there has never been an inquest nor an accident enquiry into one of these deaths or injuries. This despite the fact that such inquests and enquiries should have taken place, both in terms of the relevant mine health and safety legislation and in terms of the Inquests Act. Nor, to the best of my knowledge, has any employer ever been prosecuted for negligently exposing a mineworker to excessive quantities of dust and thereby causing his death.

123 In the absence of any civil remedy, the industry has enjoyed almost complete immunity in respect of the harm done to mineworkers' health as a result of exposure to harmful quantities of noxious dusts, and has never been held accountable.

124 At all material times the respondents have been aware that significant numbers of the gold mineworkers employed on their mines were exposed to harmful quantities of crystalline silica dust. This fact was apparent to them from the numbers of such mineworkers who were found to be suffering from silicosis during the periodic medical examinations that they underwent while employed on their mines, as well as the results of the periodic dust measurements taken by them.

124.1 Before a mineworker is permitted to work in a gold mine he must undergo a medical examination.



124.2 If the examination reveals the presence of silicosis the mineworker is not permitted to work in the mine.

124.3 Therefore, when the mineworkers began work in the gold mines, they were not suffering from silicosis.

124.4 Once employment in the mines begins, periodic medical examinations are conducted.

124.5 If the medical examination reveals the presence of silicosis, the mineworker is retrenched from the mines.

124.6 For each retrenched mineworker, respondents were on actual notice that the mineworker was exposed to harmful quantities of crystalline silica dust in their mine, and that such exposure caused the mineworker to contract silicosis.

125 At the trial, the applicants will seek to show that all the above-mentioned facts demonstrate that the respondents knew or should have known:

125.1 that silica dust causes silicosis and tuberculosis;

125.2 that gold miners employed on their mines were and are exposed to harmful levels of silica dust causing them to contract silicosis; and

125.3 that such exposures could and should have been prevented.



126 I emphasise that this Court is not asked to make a ruling on the extent of the mining industry's knowledge or their conduct for the purposes of certification. At this stage of proceedings we ask the Court only to consider whether the members of the class have a *prima facie* cause of action against the respondents. I submit that this background demonstrates that they do.

THE CAUSES OF ACTION

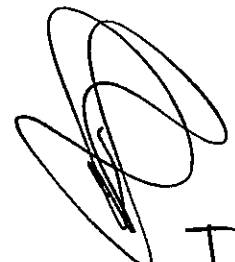
127 The members of the two classes seek a judgment and order on common questions of fact and law against the respondents. In particular, the two classes seek a declaratory order that the respondents are liable for the damages suffered by the members of the two classes.

128 The existence of such a cause of action was confirmed by the Constitutional Court's judgment in the *Mankayi* case.

129 While the causes of action relied on by the applicants appear from the draft particulars of claim annexed to this affidavit, it is convenient to summarise certain aspects of the claims in this affidavit.

130 The applicants contend that respondents owed the members of the classes the following duties:

130.1 The respondents owed the members of the first class a duty to provide a safe and healthy work environment that was not injurious to the health of mineworkers; and



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130.2 The respondents owed the members of the second class and their breadwinners a duty to provide a safe and healthy work environment that was not injurious to the health of mineworkers.

131 The respondents owed such duties by virtue the fact that the respondents, during the class period, directly or via subsidiaries or via contractors:

131.1 Owned the mines at issue; and/or

131.2 Controlled the mines at issue; and/or

131.3 Employed the miners who worked on the mines at issue.

132 Such duties arose from:

132.1 the statutory duty owed by the respondents to the mineworkers to comply with the health and safety regulations:

132.1.1 stipulated in chapter 6 of the regulations to the Mines and Works Act 27 of 1956, as amended and promulgated under Government Notice R334 on 12 March 1965 ("the 1965 MWA regulations"), which remained in force from 12 March 1965 to 26 June 1970;

132.1.2 stipulated in chapter 10 of the regulations to the Mines and Works Act 27 of 1956, as amended and promulgated under Government Notice R992 on 26 June 1970 ("the 1970 MWA regulations"), which remained in force from 26 June 1970 to 2 July 2002; and



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132.1.3 stipulated in chapter 9 of the regulations to the Mine Health and Safety Act, 29 of 1996 ("the MHSA regulations"), promulgated under Government Notice R904 of 2 July 2002, and which came into force on 2 July 2002 and remain in effect.

132.2 the common law duty of care owed by the respondents to the mineworkers to provide a safe and healthy work environment that was not injurious to their health; and

132.3 the constitutional obligations on the respondents arising from the rights enshrined in sections 10, 11, 12, 24, and 27 of the Constitution of the Republic of South Africa, 1996 ("the Constitution").


The first class – mineworkers and former mineworkers

133 The causes of action that will be pursued by the first class are based on the following elements:

133.1 The members of the class worked in the mines listed in Annexure A to the notice of motion ("the mines").

133.2 The respondents owed the members of the first class a statutory and/or common law and/or constitutional duty to provide a safe and healthy work environment that was not injurious to the health of mineworkers.

133.3 The respondents breached these duties. They did so negligently, and in any event in respect of certain of the breaches there is strict liability.



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133.4 As a consequence of these breaches, members of the first class were exposed to harmful quantities of silica dust which caused them to contract, or materially contributed to their contracting, silicosis.

Breach of statutory duties

134 The respondents negligently, wrongfully and unlawfully breached the statutory duty of care that they owed to the members of the class, to comply with the regulations promulgated and which had application under the Mines and Works Act 27 of 1956, the Minerals Act 50 of 1991, and the Mine Health and Safety Act 29 of 1996.

135 The respondents were strictly liable for their failure to comply with the applicable regulations on the basis that:

135.1 The mine was declared '*a controlled mine*' in terms of Chapter II of the Occupational Diseases in Mines and Works Act, No 78 of 1973 ('ODIMWA');

135.2 Mineworkers performed '*risk work*' as defined in section 13 of ODIMWA;

135.3 Respondents were '*owners*' of mines as defined in terms of ODIMWA;

135.4 Respondents were '*employers*' as defined in the Mine Health and Safety Act, No 29 of 1996 ('MHTSA')

135.5 Mineworkers were '*employees*' as defined in the MHTSA; and



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135.6 The owners of such mines were bound to comply with the MWA and MSHA regulations.

135.7 The applicable regulations were intended to give a right of action;

135.8 The members of the class were the persons for whose benefit the duty was imposed;

135.9 The damage was of the kind contemplated by the applicable regulations;

135.10 The respondents' conduct constituted a breach of the regulations; and

135.11 The breach of the regulations caused or materially contributed to the members of the class contracting silicosis.

136 The regulations breached by the respondents include the following:

136.1 The 1965 MWA regulations, which applied from 12 March 1965 to 26 June 1970, and which provided *inter alia* as follows:

136.1.1 **Regulation 6.6(2)** The workings of every part of a mine where persons are required to travel or work shall be properly ventilated to maintain safe and healthy environmental conditions for the workmen and the ventilating air shall be such that it will dilute and render harmless any inflammable or noxious gases and dust in the ambient air.



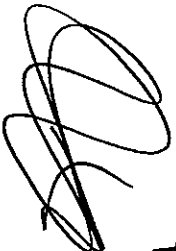
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136.1.2 **Regulation 6.6(4)** No person shall enter or remain in or be caused or permitted to enter or remain in any part of the workings of a mine if the air contains harmful smoke, gas, fumes or dust perceptible by sight, smell or other senses unless such person is wearing effective apparatus to prevent the inhalation of such smoke, gas, fumes or dust.

136.1.3 **Regulation 6.6(5)** If at any time it is found by the person for the time being in charge of the workings of a mine or any part thereof that, by reason of inflammable or noxious gases present in the workings or such part thereof, the workings or such part is dangerous, every workman shall be withdrawn by him from the workings or part so found dangerous and the matter immediately reported to the manager or mine overseer; who shall not allow any person to resume work in such working place until he has satisfied himself by personal inspection that the working place is safe.

136.1.4 **Regulation 6.6(6)(f)** In the general body of the air at any place where persons are required to work or travel, under normal working conditions the concentration of dust shall not exceed such standard as may from time to time be specified by the Government Mining Engineer.

136.1.5 **Regulation 6.10** At every controlled metalliferous or controlled diamond mine:



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(3) Blasting procedures shall be so arranged that no person is exposed to harmful dust, smoke, gas or fumes from blasting.

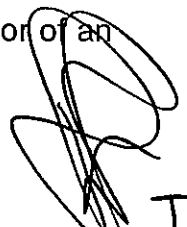
(4) After blasting has taken place in any part of the workings no person shall enter or be caused or permitted to enter such part or any place liable to be contaminated until a sufficient quantity of fresh air has been caused to flow through such part or place to clear it of harmful dust, smoke, gas or fumes from blasting.

(6) Every development end, such as a tunnel, drive, cross-cut, raise, box-hole, winze or shaft, and every working connected only with such development end and not with a second outlet shall be so ventilated by means other than a water-blast as will ensure that harmful dust, smoke and fumes from blasting are effectively expelled before the expiry of the interval fixed by the Inspector Mines in terms of sub-regulation (2) of this regulation.

136.1.6 **Regulation 6.19** In the workings of every controlled mine:—

(1) Every machine for ripping, picking, cutting, drilling or loading rock, coal or other mineral shall be fitted with means, or means shall be provided, either for applying water effectively to prevent dust being created by the operation of such machine, or for effectively trapping such dust by some suitable apparatus approved by the Inspector of Mines.

(3) Where rock, coal or other mineral is discharged at any main bin, ore-pass or at any transfer point of a conveyor belt or of an



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ore-pass system, a constant supply of clean water shall be applied by means of efficient atomisers or sprays which shall be kept at all times in good working order, or a dust extraction system shall be provided and operated, to prevent the escape of dust into the air while rock, coal or other mineral is being discharged at the openings of such bins, passes or transfer points.

(4) The floor of every main travelling road, as defined in sub-regulation (2) of regulation 55, shall be kept wet or otherwise treated to prevent the escape of dust into the air.

136.1.7 **Regulation 6.20** In the workings of every controlled mine no person shall—

(1) Perform or cause or permit to be performed work of any kind liable to create dust unless the floor, roof, sides and other surfaces where the work is to be performed and any broken rock, coal or other mineral which is being moved or discharged, are effectively wetted and kept wet so as to prevent as far as practicable the escape of harmful dust into the air; and

(2) Use, or continue to use, any machine for ripping, picking, cutting, drilling or loading rock, coal or other mineral unless the means provided for allaying dust are operating in apparent good working order.




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136.2 The 1970 MWA regulations, which were materially similar to the 1965 MWA Regulations and applied from 26 June 1970 to 2 July 2002. They provided *inter alia* as follows:

136.2.1 **Regulation 10.6.2** The workings of every part of a mine where persons are required to travel or work shall be properly ventilated to maintain safe and healthy environmental conditions for the workmen and the ventilating air shall be such that it will dilute and render harmless any flammable or noxious gasses and dust in the ambient air.

136.2.2 **Regulation 10.6.4** No person shall enter or remain in or cause any other person to enter or remain in any part of the workings of a mine if the air contains harmful smoke, gas, fumes or dust perceptible by sight, smell or other senses unless such person is wearing effective apparatus approved for the purpose by the Chief Inspector to prevent the inhalation of such smoke, gas, fumes or dust.

136.2.3 **Regulation 10.6.5** If at any time it is found by the person for the time being in charge of the workings of a mine or any part thereof that, by reason of flammable or noxious gases present in the workings or such part thereof, the workings or such part is dangerous, every workman shall be withdrawn by him from the workings or part so found dangerous and the matter immediately reported to the manager, mine overseer or shift boss, who shall not allow any person to resume work in such working place until



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he has satisfied himself by personal inspection that the working place is safe.

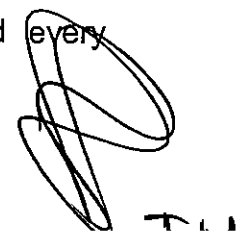
136.2.4 **Reg. 10.6.6(f)** In the general body of the air at any place where persons are required to work or travel, under normal working conditions, the concentration of dust shall not exceed such standard as may from time to time be specified by the Director-General.

136.2.5 **Regulation 10.7.1** In every metalliferous or diamond mine (unless exempted in writing by the Principal Inspector of Mines) the velocity of the air current along the working face of any stope shall average not less than 0,25 metre per second over the working height.

136.2.6 **Regulation 10.10.3** Blasting procedures shall be so arranged that no person is exposed to harmful dust, smoke, gas or fumes from blasting.

136.2.7 **Regulation 10.10.4** After blasting has taken place in any part of the workings no person shall enter, or cause or permit any other person to enter, such part or any place, liable to be contaminated until a sufficient quantity of fresh air has been caused to flow through such part or place to clear it of harmful dust, smoke, gas or fumes from blasting.

136.2.8 **Regulation 10.10.6** Every development end, such as a tunnel, drive, crosscut, raise, box-hole, winze or shaft, and every



working connected only with such development end and not with a second outlet, shall be so ventilated by means which will ensure that harmful dust, smoke and fumes from blasting are effectively expelled before the expiry of the interval fixed by the Regional Director in terms of regulation 10.10.2.

136.2.9 **Regulation 10.20.1** Every machine for ripping, picking, cutting, drilling or loading rock, coal or other mineral shall be fitted with means, or means shall be provided, either for applying water effectively to prevent dust being created by the operation of the machine, or for effectively trapping such dust by some suitable apparatus approved by the Regional Director.

136.2.10 **Regulation 10.20.2** Where rock, coal or other mineral is discharged into any main bin, ore-pass or at any transfer point of a conveyor belt or of an ore-pass system, constant supply of clean water shall be applied by means of efficient atomisers or sprays which shall be kept at all times in good working order, or a dust extraction system shall be provided and operated, to prevent the escape of dust into the air while rock, coal or other mineral is being discharged into the openings of such bins or ore-passes or at transfer points.

136.2.11 **Regulation 10.20.3** The floor of every main travelling road as defined in regulation 6.10, shall be kept wet or otherwise treated to prevent the escape of dust into the air.



136.2.12 **Regulation 10.21.1** In the workings of every mine no person shall perform, or cause or permit to be performed, work of any kind liable to create dust unless the floor, roof, sides and other surfaces where the work is to be performed and any broken rock, coal or other mineral which is being moved or discharged, are effectively wetted and kept wet so as to prevent as far as practicable the escape of harmful dust into the air.

136.2.13 **Regulation 10.21.2.** In the workings of every mine no person shall use, or continue to use, any machine for ripping, picking, cutting, drilling or loading rock, coal or other mineral unless the means provided for allaying dust are operating in apparent good order.

136.3 The MHSA regulations, which have applied from 2 July 2002 and remain in force, and which provide *inter alia* as follows:

136.3.1 **Regulation 22.9.2(1)** The employer must ensure that the occupational exposure to health hazards of employees is maintained below the limits set out in Schedule 22.9(2)(a) and (b).

136.3.2 **Schedule 22.9(2)(a)** stipulates an Occupational Exposure Limit, for respirable crystalline particulate (dust) of 0.1mg/m³.



Breach of the common law duty of care


137 The respondents owed a common law duty of care to the members of the first class to provide a safe and healthy work environment that was not injurious to their health.

138 The respondents negligently, wrongfully and unlawfully breached this duty of care in the following respects:

138.1 The respondents caused and/or allowed mineworkers to be exposed to levels of harmful dusts and gases above the reasonably safe levels at which nearly all mineworkers may be repeatedly exposed day after day without adverse health effects (these levels are referred to as "the safe levels");

138.2 The respondents failed to establish any programme, alternatively failed to establish any effective programme, to identify the potentially harmful dusts and gasses that may be encountered in the workplace and to assess the risk posed by such substances to mineworkers' health (a risk assessment programme);

138.3 The respondents failed to establish any programme, alternatively failed to establish any effective programme, for the regular assessment and measurement of the exposure of mineworkers to harmful dusts and gasses for the purposed of determining or confirming that mineworkers were not exposed to levels of harmful dusts and gasses above the safe



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levels, for the purpose of taking remedial action where such conditions were established (a dust sampling programme);

138.4 The respondents failed to establish any programme, alternatively failed to establish any effective programme, to monitor the health effects of workplace exposure to harmful dusts and gasses for risk assessment and prevention purposes (a medical surveillance programme);

138.5 The respondents failed to establish effective measures to prevent, alternatively to minimise, the release of harmful dust and fumes into the work environment from blasting, drilling, crushing, scraping, barring, lashing, tipping and loading activities;

138.6 The respondents failed to establish effective measures to prevent, alternatively to minimise, the release of harmful dust emissions at source, through the use of ventilation hoods, ducting and filters;

138.7 The respondents failed to ensure that sufficient clean air was supplied to dilute such harmful dusts and gasses as were released into the work environment to below the safe levels;

138.8 The respondents failed to ensure that blasting fumes had been thoroughly cleared before allowing mineworkers back into their workplaces after blasting;

138.9 The respondents failed to provide appropriate respiratory protective equipment to mineworkers who were exposed, or were likely to be exposed to harmful quantities of crystalline silica dust, gasses or fumes,



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alternatively failed to ensure that such respiratory protective equipment was properly used and maintained; and/or

138.10 The respondents failed to ensure that such engineering controls and systems as were put in place, to ensure that mineworkers were not exposed to harmful quantities of crystalline silica dust, were effective or adequately supervised or maintained.

139 In consequence of respondents' breaches of their duty of care, the members of the first class and the breadwinners of members of the second class were exposed to harmful quantities of silica dust which caused them to contract, or materially contributed to their contracting, silicosis.

The constitutional cause of action


140 The respondents failed to ensure that the conditions of work of the members of the class did not infringe the following constitutional rights:

140.1 The right to human dignity (section 10 of the Constitution);

140.2 The right to life (section 11 of the Constitution);

140.3 The right to bodily integrity (section 12(2) of the Constitution);

140.4 The right to an environment not harmful to health and well-being (section 24 of the Constitution); and



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140.5 The right to have access to adequate healthcare (section 27(1) of the Constitution).

141 Constitutional violations give rise to an independent cause of action for damages. The Constitution also serves as a basis for interpreting the common law and statute law to give effect to the constitutional protections and rights of all members of the class.

The liability of respondents as parent companies

142 The respondents are liable in this regard whether they acted directly or via subsidiary companies. In the latter case, the respondents exercised effective control and/or influence over the operations of the mines owned and/or controlled by their subsidiary companies, which control or influence gave rise to the relevant duties of care and liability.

143 As I have previously stated, the parent companies' direction, management and control over their mine owning subsidiaries was exercised on both a formal level pursuant to the so called "service agreements" entered into between them and their mine owning subsidiaries, and informally based upon their superior knowledge and authority.

144 The precise details of the service contracts are not presently known to the applicants.



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144.1 Since the late 1980s, the gold mining industry has undergone a substantial restructuring. Parent companies have divested themselves of their erstwhile subsidiaries. Erstwhile subsidiaries have merged with other mine owning companies or have acquired ownership of other mines or parts of mines (typically a shaft and surrounding ore body) which they own and control directly.

144.2 While some of the respondents still reflect in their annual reports that they still have subsidiary companies that were once mine-owners, it is not known whether those subsidiaries are still the holders of any mining authorisation or whether the parent company has become the holder.

144.3 The restructuring that has taken place is complex, and much of the information required to unravel it is not in the public domain and certainly not currently within the knowledge of the applicants.

145 By virtue of the control that they exercised over their mine-owning subsidiaries, the parent companies were aware of the environmental conditions to which mineworkers working on mines owned and/or controlled by their subsidiary companies were exposed and the measures that might reasonably be taken to prevent their exposure to harmful quantities of dust.

146 In consequence of service agreements and the superior knowledge and authority enjoyed by the parent companies over their subsidiary mine-owning companies, the subsidiaries were entitled to rely and did rely on such guidance and advice in the conduct of their mining activities.



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147 The parent companies were aware that their mine-owner subsidiary companies would rely upon their guidance and advice, and that the appropriate guidance and advice if given by them would materially impact upon the environmental conditions to which persons working on those mines would be exposed, and would prevent their exposure to harmful quantities of dust and thereby prevent or materially reduce the risk of their contracting silicosis..

148 The parent companies acted negligently, wrongfully and unlawfully and breached the common law duty of care that they owed to the members of the class, in failing to give their mine owning subsidiaries appropriate guidance and advice, alternatively by giving inappropriate guidance and advice in circumstances where they could through the exercise of reasonable care have given appropriate guidance and advice.

149 The parent companies' breach caused the members of the class to contract silicosis, alternatively materially contributed to the members of the class contracting silicosis, as set out above.

Damages

150 Damages are to be calculated in a second phase which will proceed if there is a declaratory judgment of liability in the first phase.

151 While the precise damages will vary from individual to individual, generally each member of the first class seeks the following damages:



151.1 past loss of earnings;

151.2 future loss of earnings;

151.3 past medical expenses;

151.4 future medical expenses; and

151.5 general damages for pain, suffering, loss of amenities of life, disablement and reduced life expectancy.

The second class – dependants of deceased mineworkers

152 The cause of action to be pursued by the members of the second class is similar to that pursued by members of the first class. The members of the second class suffer harm because they were dependant on a breadwinner who would have fallen into the first class, had he not died as a result of silicosis before the institution of the class action.

153 The primary difference is that the members of the second class did not personally suffer the physical harm complained of. Rather, it arises as a result of the loss of support caused by the death of a breadwinner due to silicosis and/or silico-tuberculosis.

154 The elements of the claims to be brought by the class of dependants include those discussed in respect of the first class. In addition the class members of

the second class will prove the elements required for a claim of loss of support. Their cause of action requires them to show that they were dependant on a person who would have been a member of the first class, had he not died from silicosis (whether or not accompanied by any other disease).

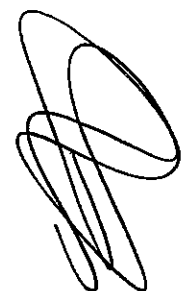
Damages

155 As with the first class, damages are to be determined in a second phase, if there is a declaratory judgment of liability in the first phase. As our law stands, the members of the second class cannot pursue claims for general damages, future loss of earnings, or future medical expenses. However, they can pursue claims for loss of support and actual patrimonial loss caused by the wrongful conduct of the respondents. This would include:

155.1 Loss of support due to the death of the breadwinner; and

155.2 Medical and funeral expenses incurred.

156 I emphasise again that this Court is not asked to adjudicate these causes of action. The test at the certification stage is only whether the applicants have established a *prima facie* cause of action that can suitably be pursued by means of a class action. I submit that this test has plainly been met.



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THE DEFINITION OF THE CLASS

157 The applicants seek certification of two classes defined by the following objective criteria.

158 The first class is defined as:


Current and former mineworkers who have silicosis (whether or not accompanied by any other disease) and who work or have worked on the gold mines listed on the attached annexure "A" at any time from 1 January 1965 to date.

159 The second class is defined as:

The dependants of mineworkers who died as a result of silicosis (whether or not accompanied by any other disease) and who worked on the gold mines listed on the attached annexure "A" at any time after 1 January 1965.

160 The difference between the two classes is that the members of the first class personally suffered damages as a result of the unlawful conduct of the respondents, while the members of the second class suffered damages by losing a breadwinner who would have fallen into the first class but for his death.

161 I submit that the classes have been defined with sufficient precision that a particular individual's membership can be objectively determined by examining their situation in the light of the class definitions, and that the classes have the requisite commonality and are not over-inclusive.



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STANDING

162 As indicated above, the applicants' causes of action arise from statutory provisions, the common law and the Constitution.

163 The applicants act in their own interest, as representatives and in the interests of persons who cannot act in their own name, as members of and on behalf of a group or class of persons, and in the public interest.


164 Section 38 of the Constitution expressly confers a right to bring a class action in respect of a breach of constitutional rights. The SCA has now held in the *Pioneer Foods* case that a class action is also available in respect of non-constitutional causes of action such as breaches of statute and breaches of the common law.

165 A class action is therefore permissible in the present context in respect of the statutory, common law and constitutional causes of action.

SUITABILITY FOR ADJUDICATION AS A CLASS ACTION

166 I submit that this matter is suitable for adjudication as a class action.

167 In considering the appropriateness of allowing a class action, I emphasise that – in the present context – this is the only way in which to ensure the right of access to justice under section 34 of the Constitution. By way of outline, the following considerations are pertinent in this regard:



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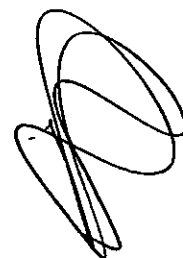
167.1 The classes are large and consist, for the most part, of people who are poor.

167.2 Unless class standing is granted to permit them to pursue those causes of action, they will not be pursued. The members of the class are widely dispersed, lack access to resources and are unable to obtain legal assistance on an individualised basis. The cost of litigating an individual claim is high.

167.3 It is only by way of a class action of the kind the applicants seek to institute, that the rights of the members of the classes can be enforced at all, and that effect can be given to their right of access to court in terms of section 34 of the Constitution.

168 In *Pioneer Foods*, Wallis JA held that at least the following requirements must be satisfied for a court to grant certification of a class action:

- the existence of a class identifiable by objective criteria;
- a cause of action raising a triable issue;
- that the right to relief depends upon the determination of issues of fact, or law, or both, common to all members of the class;
- that the relief sought, or damages claimed, flow from the cause of action and are ascertainable and capable of determination;
- that the proposed representative is suitable to be permitted to conduct the action and represent the class; and



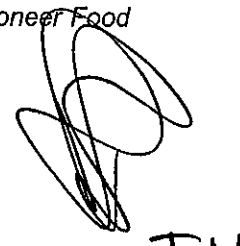
- whether given the composition of the class and the nature of the proposed action a class action is the most appropriate means of determining the claims of class members.²¹

169 The applicants in this matter meet all of the requirements for certification as a class.

170 The class of affected mineworkers is estimated to be very large, running into tens of thousands. The class of dependants of deceased mineworkers is also large. The number of potential claimants is so high that it would be impracticable for them to sue as named co-applicants in a single conventional action. I have instructions from some 17000 former gold miners who wish to participate in this class action. There must be many more who would wish to do so if they were given the opportunity.

171 Most of the members of both classes are very poor. Due to the migrant nature of mine labour, they are dispersed throughout the southern African region. Most of them come from rural areas, in South Africa and from neighbouring countries including Lesotho, Botswana, Swaziland and Mozambique. They do not have the capacity, much less the financial means to embark on this action in their own name. Without class litigation, and the publicity that will result from the notification requirements sought in the notice of motion, it is probable that many of them will never become aware of the fact that they have a claim for damages against their former employers.

²¹ *The Trustees for the Time Being of the Children's Resource Centre Trust & Others v Pioneer Food (Pty) Ltd & Others* (50/2012) [2012] ZASCA 182 (29 November 2012) at paragraphs 26-28.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, followed by the initials 'T L A' written in a simple, blocky font.


172 Even if all the affected mineworkers and dependants throughout southern Africa were made aware of their causes of action and decided to pursue them and had the means to do so, it would be more efficient and convenient to have the common issues of law and fact decided in a single piece of class litigation, rather than having the same matters determined in thousands of individual trials throughout the country. That would impose a significant burden on our court system. It would also increase the costs to the litigants.

173 There is no general system of legal aid for civil litigation (as opposed to criminal cases). It is inconceivable that Legal Aid South Africa would be able to fund civil litigation on the scale that would be required to bring these cases to court as individual actions for South African applicants, much less applicants from neighbouring states. This makes it even more unlikely that the members of the class could ever litigate their claims one at a time. The aggregation of their interests for the purpose of litigation means that they can all benefit from the representation provided to the class as a whole.

174 For these reasons, the applicants have resolved to bring a class action on behalf of the members of the class of affected mineworkers and the class of dependants. They do so in the public interest and in the interests of justice.

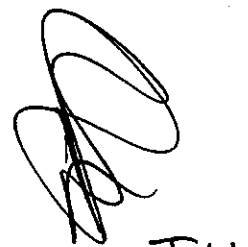
175 The class action procedure serves two primary objectives: improved access to justice, and judicial economy.

176 The class action advances access to justice in several ways:



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- 176.1 It enables persons who as a result of poverty, lack of information or lack of access to legal services cannot otherwise obtain legal redress, to obtain such redress through a representative action undertaken by others;
- 176.2 It ensures that parties litigate on a more equal footing: by aggregating their claims and proceeding as a class, represented by capable and adequately resourced legal representatives, they are better placed to litigate effectively against the large powerful and well resourced respondents, than they would be as individuals without those advantages;
- 176.3 It encourages timeliness in the determination of claims on their merits, which is essential to achieving fairness to the parties;
- 176.4 It prevents inconsistent or contradictory determinations of identical claims; and
- 176.5 As an economical and practical method of enforcing claims, it can provide the substantive law with teeth.
- 177 Unless the potential claimants have access to appropriate medical services, provided by their attorney, to determine their disease status it is unlikely that the vast majority of them will ever know that they have a disease attributable to their employment, and they will die undiagnosed.



178 I submit that this is a case in which access to justice can only be achieved through the mechanism of a class action. The members of the class are impoverished, vulnerable, geographically dispersed, and largely unaware of their rights and unable to access legal services. The respondents are powerful, well-resourced and able to access to lavish legal assistance. The possibility of litigating the tens of thousands of claims individually is for practical purposes non-existent. Even if it were possible to litigate these claims individually, the cost of doing so would be crippling and would significantly reduce any benefits even for successful claimants.

179 The rate at which former gold miners are dying is alarming. Permitting a class action will streamline the judicial process, permitting members of the class to have a timely adjudication of their claims.

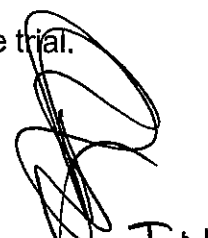
180 Class actions serve judicial economy because:

180.1 the common legal issues may be argued and decided in a manner which is binding on all parties;

180.2 discovery is produced and disputes regarding discovery are decided at one time;

180.3 expert and fact witnesses need only prepare reports and affidavits as well as give testimony one time; and

180.4 all common factual issues may be decided by the court in a single trial.



181 The claims to be brought by the members of the two classes involve certain common questions of fact. They include:

181.1 Whether exposure to silica dust while engaged in deep gold mining in the respondents' mines causes silicosis;

181.2 The causal nexus between silicosis and silico-tuberculosis;

181.3 The extent of the gold mining industry's knowledge regarding the cause of silicosis at the relevant times;

181.4 The technology and methods for reducing the risk of exposure to silica dust, reasonably available to the respondents, at the relevant times; and

181.5 The reasonable measures that ought to have been taken by gold mining companies at the relevant times to prevent the exposure of gold miners to harmful quantities of silica dust.

182 The claims also raise common questions of law, including:

182.1 The applicability of the doctrine of joint and several liability in respect of silicosis, where claimants have contracted the disease as a result of exposure at the mines of multiple respondents;

182.2 Whether the respondents' breach of their statutory duties is grounds for the application of the doctrine of strict liability;



182.3 Whether the conduct of respondents constituted common law negligence;

182.4 Whether the doctrine of res ipsa loquitur has application to silicosis which can only be caused by exposure to harmful quantities of harmful crystalline silica dust; and

182.5 Whether the applicants have an action for constitutional damages.

183 These are some of the common questions of fact and law that I anticipate will be raised by the class action. The issues between the parties will of course be defined by the pleadings, so it is not possible at this stage to provide an exhaustive or closed list of common issues. However, I submit that the above list suffices to demonstrate that there are sufficient common issues to render the matter suitable for adjudication in the form of a class action.

MANAGEMENT OF THE ACTION

The bifurcated proceeding

184 Applicants seek a bifurcated proceeding. The first phase will proceed as an opt out class, seeking declaratory judgment on common liability questions of fact and law. If applicants are successful in phase one, the second phase will consider individual causation and damages.



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185 It is in the interests of justice to establish an opt-out class for common liability questions of law and fact because the members of the class are so numerous and their health and economic situations so tenuous that meaningful justice may only be obtained through a class action.

186 No member of the class will be prejudiced because the declaratory judgment will resolve questions of fact and law shared equally by all class members. In fact, the class will benefit from the efficiency in terms of time and resources. As to those questions which may require, for some, a more individualised assessment of causation and damages, applicants propose those questions be answered in a subsequent proceeding if there is a finding of liability.

187 The second phase requires class members to opt in or affirmatively join the proceedings. Applicants do not suggest that causation and damages in all circumstances are so unique that certain common questions of law and fact cannot be decided on a class or consolidated basis. Applicants propose a bifurcated procedure and an opt-in class or consolidated damages phase to provide for individual differences in causation and damages.

188 I submit that in these circumstances, it is appropriate that the applicants be authorised to act on behalf of the members of the class on the basis that individual members may, if they so wish, choose to opt out of the class for the first liability phase. If a finding of liability is made on behalf of the class, damages will be determined on an individual basis in a second phase, on behalf of class members who opt in for this purpose.



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189 If however this Court finds that the bifurcated approach proposed is not appropriate for any reason, the applicants are prepared to proceed either by way of a bifurcated approach with collective damages sought at the second stage, or in terms of a unified class action (i.e. an action that is not bifurcated at all).

Notification to class members

190 The applicants will conduct both a direct mail campaign and a sufficiently widespread media campaign, making use of national and regional newspapers as well as radio advertisements. This notification campaign will have the effect of creating sufficient awareness amongst the relevant communities of the existence of the class action and the rights of each class member.


191 The applicants will give notice to all members of the class setting out:

191.1 the definition of the members of the classes;

191.2 the relief sought in the class action;

191.3 that those members of the classes who do not wish to be bound by the judgment must give written notice of their exclusion as members of the classes by a specified date;

191.4 that the judgment in the class action, whether favourable or not, will bind all members of the classes who do not request exclusion; and



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191.5 that any member of the classes who does not request exclusion may enter appearance in the class action by written notice to that effect by a specified date.

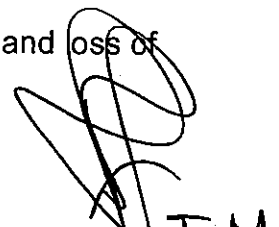
The determination of damages

192 The damages sought to be claimed are ascertainable and capable of determination. The heads of damages sought in respect of each class are described above.

193 The quantum of the individual claims will be determined at the second stage of the class action, The manner in which such damages are to be determined and allocated need only be decided by the Trial Court if and when it finds that the respondents are liable as alleged. It is not a matter which this Court is required to determine.

194 However, to demonstrate that the determination and allocation of damages is feasible, we identify three possible methods.

195 First, the quantum of the individual claims could be determined by an administrative process in accordance with a protocol that is determined either by the court or by agreement between the parties. That protocol would stipulate the standard of proof of the claimant's medical condition, most obviously a chest X-ray and lung function test, to confirm silicosis and the degree of lung function impairment, and a formula for determining quantum that would *inter alia* take into account the degree of disability, the age of the worker, and loss of



earnings. Subject to the court's ruling on the question of joint and several liability, and the divisibility of the injury sustained, as it has application to claimants with exposure to silica dust at the mines of different respondents, the protocol might provide for pro-rated contributions from the different respondents held to be liable.

196 If such a protocol could be determined or agreed upon, the determination of damages could be dealt with by the parties on an administrative basis. No prejudice would accrue to any member of the class if they had the option of participating or not. This is the approach that the applicants prefer.

197 Second, if a protocol cannot be agreed upon, and if the Court determines it to be unsuitable, the quantum of each individual claim could alternatively be determined by the court. This would however be a more costly route.

198 A third alternative is the statistical determination of damages, which are contributed to a Trust that assumes responsibility for processing the individual claims and allocating the damages.

199 The statistical determination would involve a determination of the size of the class, based on the employment records of the respondents and the prevalence of silicosis based on the scientific epidemiological studies that have been carried out to date and mortality rates amongst ex-mineworkers. The liability of the individual respondents would turn on the court's determination of the common questions of law and fact described above.



200 The Asbestos Relief Trust was established pursuant to litigation which I undertook against a number of asbestos mining companies. It provides a model of what might be achieved. The quantum of all reasonably foreseeable claims in respect of asbestos related diseases contracted by the claimants while employed on the respondents asbestos mines, was calculated on a statistical basis. The various respondents then contributed to a trust fund pro rata their calculated liability. The fund processes individual qualifying claimant's claims. To date, the Trust has paid out some R260 million to some 2600 qualifying claimants. The cost of administration is pegged at a percentage of the trust capital and a percentage of the income of the trust from its investments.

LEGAL REPRESENTATIVES

201 I submit that the applicants' attorneys of record and counsel are suitably qualified and experienced to act as the applicants' legal representatives and to lead the classes. There is no conflict of interest between the applicants' attorneys and counsel and the class.

Experience and capacity of attorneys and counsel

202 My firm has significant experience in its own right in occupational injury and disease cases involving large numbers of persons. In addition, I am working with a United States-based law firm, Motley Rice LLC, which is a respected litigation firm specialising in occupational disease and complex litigation.



203 Motley Rice LLC is well known for undertaking cases involving large numbers of occupational disease victims. Its founding member, Ron Motley, pioneered litigation against asbestos manufacturers in the United States more than 30 years ago, and today the firm continues to represent thousands of asbestos victims. In addition, Motley Rice has represented numerous other workers injured through exposures to harmful dusts and fumes, including silica dust. Moreover, Motley Rice has extensive class action experience, having represented the entire class (or one or more class representatives) in multiple personal injury and property damage class actions in the United States as well as in numerous securities and consumer fraud cases. Finally, Motley Rice has served in a leadership role in more than 30 multi-district litigations, including cases involving occupational disease, in the United States.²²

204 I have been practising as an attorney for some 28 years. In this time I have had significant experience in dealing with occupational injury and disease claims and claims involving large number of applicants.

205 I previously undertook litigation on behalf of several thousand former asbestos mineworkers, who worked on asbestos mines in the Northern Cape, Limpopo and Mpumalanga. This litigation resulted in the establishment of the Asbestos Relief Trust and the Kgalagadi Relief Trust, which were established pursuant to a settlement of those matters, in order to compensate former mine workers who

²² A multi-district litigation (commonly referred to in the U.S. as an "MDL") is an American mechanism, in addition to a class action, for trying masses of cases involving the common questions of law and fact in a consolidated proceeding.



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have contracted asbestos related diseases as a result of their work on the mines.

206 I have on several occasions represented large groups of miners and industrial workers in claims for compensation brought on behalf of workers who have been injured and the dependents of those who have been killed, in large mining and industrial accidents. These include the Middelbult coal mining disaster of 1993 and the Sasol Synfuels disaster in 2007. In both events large numbers of workers were injured or killed, and in both instances I was able to secure fair compensation.

207 The lead counsel whom we have employed, at this stage of proceedings, have appropriate experience to undertake this matter. They are Geoff Budlender SC, Alan Dodson SC and Steven Budlender. All three have extensive experience in public interest litigation. Alan Dodson SC was integrally involved in the *Mankayi* case, which cleared the way for this class action to take place. Geoff Budlender SC and Steven Budlender were both involved in the *Pioneer Foods* case in which the SCA upheld the contention that a class action was available for non-constitutional matters.

Managing the cost of the litigation

208 The costs associated with the litigation are substantial.

209 The principal costs incurred and to be incurred relate to the following:



- 209.1 The cost of establishing and maintaining staff and offices in the principal labour supplying areas where the overwhelming majority of the claimants reside, to serve our clients. Presently such offices have been established in Lesotho, the Eastern Cape and Botswana. Steps are being taken to establish such facilities in the Free State, Swaziland and Mozambique.
- 209.2 The cost of communicating with the clients through SMS and public meetings convened to provide feedback and information to the clients and to address queries and concerns that arise.
- 209.3 The cost of medical examinations of the clients, which involves the transportation of clients to nearby public or private health facilities for a clinical examination, chest X-ray and lung function test. It is intended to make use of mobile chest X-ray facilities, which will cut down on travel costs and improve efficiencies.
- 209.4 The cost associated with the employment of medical, mining and occupational health experts.
- 209.5 The cost associated with the employment of researchers and mining historians.
- 209.6 The cost associated with the establishment, maintenance and operation of the data processing systems required to manage the litigation.



209.7 The cost of travel associated with serving claimants in remote rural areas.


209.8 Costs of the employment of counsel.

209.9 Costs associated with the implementation of court directions regarding the communication with members of the class.

210 While the costs of experts, researchers and counsel are incurred as and when they are needed, the majority of the costs associated with the maintenance and support of the claimants are fixed costs that are broadly correlated with the number of claimants. The scale of fees applicable to individual actions, based as they are on individual attendances, is of limited application.

211 The cost of the litigation is largely dependent on its duration, which is unpredictable because of the number of claimants and respondents. The costs will, for example, depend on the positions taken by the various respondents, which may vary. To the extent that any settlement is achieved with any one or more respondents, that will significantly reduce the cost.

212 To date, the costs of the litigation exceed R9 million. On the basis of past experience, I expect that they will accrue at some R600 000 per month. There is no other South African law firm, agency or institution able or willing to incur such costs in relation to litigation of this nature. I and my US associates, having made a sober and careful assessment of the merits, are however able and willing to assume that risk.



No conflict of interest

213 The first and foremost objective of the legal representatives is to achieve justice for our clients, who would otherwise not be able to enforce their rights, to achieve a proportionate return having regard to the risk and the capital invested in this litigation.

214 I and my US based associates have a common interest in the achievement of a good outcome to this litigation. We have the skills and resources to prosecute the matter to a conclusion. I have pursued this particular litigation on behalf of my clients since approximately 2003, when I visited to Lesotho to meet with former gold miners in Lesotho and was appalled at their plight.

215 I have entered into a contingency fee agreement with each of my clients. The form of that agreement is annexed hereto marked X and X1 for living and dependant claims respectively.

216 The agreement is in broad accord with the provisions of the Contingency Fees Act 66 of 1997.

216.1 The agreement provides for a fee of 15% of the total amount awarded or any amount obtained by the client in consequence of the proceedings.

216.2 In the event that it were held that the agreement, in order to be valid, must provide for fees of twice the normal fees, I would accept such qualification.



PENDING APPLICATION FOR CERTIFICATION IN *JIBHANA*

217 I am aware that three further applications for certification of a class consisting of mineworkers suffering from silicosis and other occupational diseases have been lodged in this division under case numbers 31324/12, 31327/12 and 31326/12 ("the Jibhana matter"). Three of the respondents in the present application have been cited in those proceedings as well.

218 I have met with Mr Charles Abrahams, the attorney for the applicants in the Jibhana matter. We have agreed in principle to a consolidation of the matters in relation to the first class.

219 I am currently engaged in discussions with Mr Abrahams with regard to the form of such a consolidation. Once an agreement has been reached the applicants in this matter and the *Jibhana* matter will seek to file supplementary papers in which such consolidation is proposed.

CONCLUSION

220 South Africa's gold mines have been a source of enormous wealth for more than a century. But the devastating cost of extracting that wealth has been imposed, without compensation or recognition, on mineworkers and their families. The burden of silicosis and its related diseases has been borne by those who can least afford it, and who have historically been excluded from legal redress because of their vulnerable and marginalised position in society.



221 The Courts have recognised the concept of the class action to deal with precisely this sort of case. I respectfully submit that the applicants are entitled to an order certifying the existence of the classes for the purpose of pursuing their causes of action against the respondents.



RICHARD SPOOR

I hereby certify that the deponent stated that he knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at **SANDTON** on this the 21ST day of DECEMBER 2012, and the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



COMMISSIONER OF OATHS

Full names:

Address:

Capacity:

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