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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91162370
Party	Plaintiff De Boulle Diamond & Jewelry, Inc. De Boulle Diamond & Jewelry, Inc. De Boulle Diamond & Jewelry, Inc. 6821 Preston Road Dallax, TX 75205 UNITED STATES
Correspondence Address	SCOTT T. GRIGGS GRIGGS BERGEN LLP 901 MAIN STREET, SUITE 6300, BANK OF AMERICA PLAZA DALLAS, TX 75202 UNITED STATES
Submission	Motion to Compel Discovery
Filer's Name	Scott T. Griggs
Filer's e-mail	scott@griggslaw.com
Signature	/Scott Griggs/
Date	02/12/2007
Attachments	Exhibits A-M.pdf (199 pages)(7916224 bytes)

Exhibit A

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Atty. Ref. No.: 0820278.0103

DEBOULLE DIAMOND & JEWELRY, INC.,	:	
Opposer,	:	Consolidated Opposition
v.	:	No. 91165285
DE BEERS LV LTD.,	:	
Applicant.	:	

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Applicant De Beers LV Ltd., hereby responds to Opposer's First Set of Interrogatories to Applicant as follows:

GENERAL OBJECTIONS

Applicant hereby makes the following objections to Opposer's First Set of Interrogatories:

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Raleigh I.P.

A. Applicant objects to the instructions, definitions, and interrogatories to the extent that they seek to impose duties over and above those required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board.

B. Applicant objects to each interrogatory to the extent that it seeks the disclosure of privileged communications and documents, attorney work product, or trial preparation material, including material prepared by or for counsel in anticipation of, or after the commencement of this action.

C. Applicant objects to each interrogatory to the extent that it is vexatious or seeks information and documents irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to each interrogatory to the extent that it seeks information and documents which are unduly burdensome to obtain and to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

E. Applicant objects to each interrogatory to the extent that it is ambiguous, vague, logically flawed or otherwise incomprehensible.

F. Applicant objects to each interrogatory to the extent that it seeks a response which is duplicative of responses to one or more of Opposer's interrogatories.

G. Applicant objects to each interrogatory to the extent that it is overbroad, including each interrogatory which asks for "any and all" documents of a particular category.

H. Applicant objects to each interrogatory to the extent that it requests information pertaining to Application Serial No. 78/140,378 for D AND B, which is not the subject of this Opposition.

I. In addition to the Objections set forth above, Applicant will also state other specific objections to each interrogatory where appropriate, including objections that are not generally applicable to all of the interrogatories. By setting forth such specific objections, Applicant does not intend to limit or restrict the Objections set forth above. To the extent that Applicant responds to an interrogatory to which they object, such objections are not waived. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

J. Where Applicant has indicated that requested information is of a confidential nature, but has offered to produce the same, such production is offered subject to the entry of a protective order to be entered by the Trademark Trial and Appeal Board concerning confidential documents and information produced during discovery.

K. The responses given herein, or the production of documents or tangible things by Applicant in response to any one or more of the interrogatories, shall not waive any claim of privilege or immunity Applicant may have as to any response, document or thing, or any question or right of objection as to competency, relevance, materiality or admissibility, or any objection Applicant may have as to a demand for further response to these or other interrogatories.

L. Nothing contained herein may be construed as an admission relative to the existence or non-existence of any document, and no response is an admission respecting the relevance for admissible in evidence of any statement or characterization contained in any interrogatory.

M. The responses to interrogatories, when made, will be made without waiver of, or prejudice to, any objections herein made or hereafter made, and all such objections are hereby expressly reserved.

N. Applicant's responses to the interrogatories may not be complete since discovery in this matter is ongoing. Applicant will not be limited by its responses herein if, as this matter progresses, Applicant gathers additional information responsive to the interrogatories or any interrogatory set forth therein.

O. These general objections are made to and are incorporated in each specific response herein without further reference. The insertion of specific objections in the response to any interrogatory shall not be construed as a waiver of such objection in any other response.

RESPONSES

1. Identify the individual(s) responding to these interrogatories or to Opposer's First Set of Requests for Production of Documents and Things or who contributed information used in responding to these interrogatories or to Opposer's First Set of Requests for Production of Documents and Things.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant identifies Amanda Fogg, as responding to these Interrogatories.

2. For each Request for Admission served upon Applicant and denied, specify with particularity each and every fact that you rely on to support such denial and identify all documents that support or relate to such allegations.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome.

3. Indicate Applicant's country of incorporation, and any U.S. states or foreign countries where it intends to provide Applicant's Goods under Applicant's Marks.

Response:

Applicant objects to this interrogatory to the extent it seeks information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, Applicant De Beers LV Ltd. is a corporation organized and existing under the laws of the United Kingdom. Within the United States market (the only relevant market at issue in this proceeding), Applicant intends to use its Marks nationally.

4. Identify all individuals currently or formerly employed by the Applicant, who were involved in the decision to select and register each of Applicant's Marks for use with Applicant's Goods.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant hereby identifies Jean-Christophe Gaudon as being knowledgeable about the decision to select Applicant's Marks for use with Applicant's Goods.

5 Describe in detail the process by which the Applicant selected and applied to register each of Applicant's Marks for use with Applicant's Goods, including the following:

(a) the date (or approximate date) Applicant first considered adoption of the Mark;

(b) the date (or approximate date) Applicant decided to adopt the Mark;

(c) the date, location and attendees of any meetings or discussions held by Applicant at which the consideration, selection, approval or adoption of the Mark was discussed; and

(d) identify all documents relating or referring to the meeting or discussion.

Response:

Applicant objects to this interrogatory as overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant will provide documents sufficient to identify the information requested in Interrogatory No. 5.

6. Identify each mark, name or symbol ever considered by Applicant as an alternative to the selection, adoption, acquisition, or use of each of Applicant's Marks and for each such alternative:

(a) state the date and place when such alternative was considered;

(b) state the persons who were present at such consideration;

(c) state the persons who suggested such alternative;

(d) state the reasons why such alternative was not adopted; and

(e) identify all documents relating or referring to the alternative term, name or symbol

Response:

Applicant objects to this interrogatory as vexatious, overbroad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence.

7. Has any person ever recommended or advised against Applicant's acquisition, adoption or use of any of Applicant's Marks?

Response:

Applicant objects to this interrogatory to the extent it seeks the disclosure of privileged information. Notwithstanding the foregoing objection, Applicant was not so advised.

8. If the answer to Interrogatory 7 is anything by an unqualified negative, then:

(a) identify each such person;

(b) state the date, Mark, and substance of such advice or recommendation;

(c) identify each person receiving such advice or recommendation; and

(d) identify all documents referring or relating to such advice or recommendation.

Response:

See Response to Interrogatory No. 7, which is incorporated herein by reference.

9. Identify when each of Applicant's Marks were first used in interstate commerce in the United States; or if any of Applicant's Marks have not yet been used in commerce, when Applicant intends to use such Mark in interstate commerce in the United States.

Response:

Applicant commenced use of DB SIGNATURE in the United States on June 23, 2005. Applicant commenced use of SO DB in the United States on June 25, 2005. Applicant has not commenced use of DB LOGO, DB MONOGRAM or DB STAR in the United States. Applicant intends to use DB LOGO, DB MONOGRAM and DB STAR within the next two years.

10. Identify each type of Applicant Good(s) made, sold or offered for sale by Applicant using trademarks other than Applicant's Marks and what trademarks were used and the general or common name or term used to denote the Applicant's Good(s).

Response:

Applicant objects to this interrogatory as vexatious, confusing, overbroad, unduly burdensome and seeking information irrelevant to the subject matter of this action.

11. Identify each person who participated, participates or anticipates participating in any way in the sale, advertisement or marketing of Applicant's Goods under Applicant's Marks, and for each such person state:

(a) the Mark, and date upon which each such person began/will begin such participation; and

(b) the period of time by dates during which each such person performed/will perform said participation; and

(c) how such person participated/will participate in the sale, advertisement or marketing of products or services sold under the Mark.

Response:

Applicant objects to this interrogatory as vexatious, overbroad, unduly burdensome and seeking information irrelevant to the subject matter of this action. Notwithstanding the foregoing objection, Applicant identifies Fabrice Paget, Director of Marketing and Communcations, as generally knowledgeable about the sale, advertisement and marketing of Applicant's Goods under Applicant's Marks.

12. Identify all documents which comprise, relate to or refer to any plans, projections, market strategies or estimates of the number or dollar value of sale of Applicant's Goods under each of Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Notwithstanding the foregoing objections, responsive documents, to the extent Applicant is able to locate any following a reasonable search of its records, will be produced as indicated in Applicant's Response to Opposer's First Set of Requests for Production of Documents and Things to Applicant, subject to the entry of an appropriate protective order.

13. Describe in detail each and every reason why Applicant contends that use of each of Applicant's Marks are not likely to cause a likelihood of confusion with each of Opposer's Marks.

Response:

Applicant objects to this interrogatory to the extent that it seeks the disclosure of privileged communications, attorney work product, or trial preparation material. Notwithstanding the foregoing objection, there is no likelihood of confusion between Applicant's Marks and Opposer's Marks for reasons including, but not limited to, the differences in the Marks and channels of distribution, and the sophistication of purchasers of upscale jewelry items.

14. Identify the date Applicant first became aware of each of Opposer's Marks, how Applicant became aware of such Mark, and what steps Applicant took to avoid any likelihood of confusion that could potentially be caused by any Mark owned, claimed, or designed by Applicant, after becoming aware of such Mark.

Response:

Applicant first became aware of Opposer's Mark on August 4, 2005 when it received the Notice of Opposition to Application No. 78/245,779 for DB MONOGRAM.

15. Identify all applications filed by Applicant anywhere in the world which have sought trademark registration of any of Applicant's Marks.

Response:

Applicant objects to this interrogatory as vexatious, overbroad, unduly burdensome, seeking information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

16. Identify each federal or state registration or application by or on behalf of Applicant covering a mark consisting or including each of Applicant's Marks, and with respect to each such registration or application state:

(a) its serial, registration or application number, the date of filing, and any date of issue, and where applicable, indicate each state or geographical area of the application or registration;

(b) identify the goods or services specified therein;

(c) indicate its present status; and

(d) identify all documents relating thereto.

Response:

Applicant object to this request to the extent it seeks information readily available to the public on the United States Patent and Trademark Office web site. Applicant further objects to this request to the extent it is confusing, overbroad and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, Applicant will provide documents sufficient to identify the information requested in Interrogatory No. 16.

17. Describe in detail any instances of actual or possible confusion, mistaken identity or mistaken relationship between Opposer and Applicant or between Opposer's Marks and Applicant's Marks (including without limitation any such incidents involving persons inquiring or commenting about any relationship between Opposer and Applicant, and incidents involving persons inquiring about or requesting products where there is any indication that such persons were confused or mistaken about the source of such products or a relationship between Opposer and Applicant), and identify the dates and all persons Applicant is aware of that can offer any evidence, information and/or testimony of any such actual or possible confusion.

Response:

Applicant has not encountered any instances of actual or possible confusion.

18. Identify all persons with whom Applicant has entered into any agreements concerning authorization to use any of Applicant's Marks.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, seeks information and documents irrelevant to the subject matter of this action, is vague, overbroad and unduly burdensome. Notwithstanding the foregoing objection, Applicant has granted an oral license to De Beers LV (USA) to use Applicant's Marks in the United States.

19. Describe all communications, including but not limited to all telephone conversations, letters, or emails relating to any opinion from legal counsel that Applicant has obtained concerning its rights to use each of Applicant's Marks as a trademark in connection with fine jewelry, including diamonds, and timepieces.

Response:

Applicant objects to this interrogatory as seeking information subject to the attorney-client privilege. Notwithstanding the foregoing objection, Applicant will provide relevant non-privileged documents sufficient to identify the information requested in Interrogatory No. 19, to the extent there are any.

20. Identify each advertising, marketing or promotional item created by or on behalf of Applicant using or containing each of Applicant's Marks ever commissioned, produced, published, broadcast or displayed, including without limitation advertisements in newspapers and magazines, advertisements in trade journals, catalogs, handbills, promotion flyers, sales literature brochures, tags, labels, containers or other packaging materials, and for each such advertisement state the date on which such advertisement was commissioned, produced, published or displayed.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Notwithstanding the foregoing objections, Applicant will provide documents sufficient to identify the information requested in Interrogatory No. 20, to the extent Applicant is able to locate any following a reasonable search of its records.

21. With respect to the De Beers/LVMH Joint Venture, please identify with specificity and in detail:

(a) the parties, date and particulars of 'each deal, contract, agreement, or understanding pertaining or relating thereto;

(b) each constituent document or instrument (certificate of formation, or its equivalent, partnership agreement, or its equivalent, etc.) pertaining or relating to each entity formed or organized pursuant to its terms;

(c) name, address, telephone number, and relationship to you of each of each party or participant, of each of the documents or instruments identified in your response to (a) and (b);

(d) the parties, date and particulars of each modification or amendment to the documents or instruments identified in your response to (a) and (b);

(e) identify any and all documents or tangible things which evidence, refer, or relate to your answers to (a) through and (d) above;

(f) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (a) through (e) above.

Response:

Applicant objects to this interrogatory as vexatious, seeking information and documents irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

22. For De Beers LV Trade Mark Limited, please state:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV Trade Mark Limited;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV Trade Mark Limited;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV Trade Mark Limited;

(d) identify any and all documents or tangible things which evidence, refer, or relate to your answers to (a) through and (c) above;

(e) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (d) above.

Response:

Applicant objects to this interrogatory as vexatious, seeking information and documents irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

23. For De Beers LV Ltd. please state:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV;

(d) identify any and all documents or tangible things which evidence, refer, or relate to your answers to (a) through and (c) above;

(e) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (d) above.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, duplicative, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, Applicant herewith identifies Guy Leymarie, CEO and Amanda Fogg, Legal Counsel and Company Secretary as officers of De Beers LV Ltd.

24. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and N.W. Ayer, including but not limited to the dates of communication, the means of communication, the persons communicating, and the purpose of any such communication.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

25. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and JWT, including but not limited to the date of communication, the means of communication, the persons communicating, and the purpose of any such communication.

Response:

Applicant objects to this interrogatory to the extent it is vexatious, overbroad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

As to the Objections:

Kirkpatrick & Lockhart Nicholson Graham LLP
Attorneys for Applicant

Dated: New York, New York
October 3, 2005

By: Melanie Bradley
Darren W. Saunders
Melanie Bradley
599 Lexington Avenue
New York, NY 10022-6030
Tel. No.: (212) 536-4063

As to the Interrogatories:

De Beers LV Ltd.

Dated: October 3, 2005

By: A Fogg
Name: Amanda Fogg
Title: Legal Counsel & Company Secretary

NY-299395 v1

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES was served by First Class Mail, with sufficient postage prepaid, on this the 3rd day of October, 2005, upon applicant's attorneys:

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Dated: New York, New York
October 3, 2005

By Melanie Bradley
Melanie Bradley

Exhibit B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Atty. Ref. No.: 0820278.0103

DEBOULLE DIAMOND & JEWELRY, INC.,	x	
Opposer,	:	Consolidated Opposition No. 91165285
v.	:	
DE BEERS LV LTD.,	:	
Applicant.	x	

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Applicant De Beers LV Ltd., hereby responds to Opposer's First Set of Requests for Production of Documents and Things to Applicant as follows:

GENERAL OBJECTIONS

Applicant hereby makes the following objections to Opposer's First Set of Requests for Production of Documents and Things to Applicant:

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A. Applicant objects to the instructions, definitions, and document requests to the extent that they seek to impose duties over and above those required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board.

B. Applicant objects to each document request to the extent that it seeks the disclosure of privileged communications and documents, attorney work product, or trial preparation material, including material prepared by or for counsel in anticipation of, or after the commencement of this action, on the ground that such discovery is not permissible under the Federal Rules of Civil Procedure.

C. Applicant objects to each document request to the extent that it is vexatious or seeks information and documents irrelevant to the subject matter of this action and is not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to each document request to the extent that it seeks information and documents which are unduly burdensome to obtain and to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

E. Applicant objects to each document request to the extent that it is ambiguous, vague, logically flawed or otherwise incomprehensible.

F. Applicant objects to each document request to the extent that it seeks a response which is duplicative of responses to one or more of Opposer's requests.

G. Applicant objects to each document request to the extent that it is overbroad, including each document request which asks for "any and all" documents of a particular category.

H. Applicant objects to each request to the extent that it requests information pertaining to Application Serial No. 78/140,378 for D AND B, which is not the subject of this Opposition.

I. In addition to the Objections set forth above, Applicant will also state other specific objections to each document request where appropriate, including objections that are not generally applicable to all of the document requests. By setting forth such specific objections, Applicant does not intend to limit or restrict the Objections set forth above. To the extent that Applicant responds to a document request to which they object, such objections are not waived. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

J. Where Applicant has indicated that requested information is of a confidential nature, but has offered to produce the same, such production is offered subject to the entry of a protective order to be entered by the Trademark Trial and Appeal Board concerning confidential documents and information produced during discovery.

K. The responses given herein, or the production of documents or tangible things by Applicant in response to any one or more of the document requests, shall not waive any claim of privilege or immunity Applicant may have as to any response, document or thing, or any question or right of objection as to competency, relevance, materiality or admissibility, or any objection Applicant may have as to a demand for further response to these or other requests.

L. Nothing contained herein may be construed as an admission relative to the existence or non-existence of any document, and no response is an admission respecting the relevance for admissible in evidence of any statement or characterization contained in any document request.

M. The responses to document requests, when made, will be made without waiver of, or prejudice to, any objections herein made or hereafter made, and all such objections are hereby expressly reserved.

N. Applicant's responses to the document requests may not be complete since discovery in this matter is ongoing. Applicant will not be limited by its responses herein if, as this matter progresses, Applicant gathers additional information responsive to the document requests or any request set forth therein.

O. These general objections are made to and are incorporated in each specific response herein without further reference. The insertion of specific objections in the response to any document request shall not be construed as a waiver of such objection in any other response.

RESPONSES

1. All documents and things which reflect, refer to, or relate in any way to the first use in commerce and first use in interstate commerce in the United States of Applicant's Marks on or in connection with each of Applicant's Goods.

Response:

Applicant objects to this request to the extent it is vague, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

2. If Applicant has not yet sold any goods bearing or in connection with Applicant's Marks in the United States, then produce representative documents, specimens and things which indicate, reflect, refer to, or relate in any way to Applicant's use of Applicant's Marks to identify Applicant's products in countries other than the United States, including without limitation documents identifying the dates of said use.

Response:

Applicant objects to this response as overbroad, unduly burdensome, irrelevant to the subject matter of this dispute, and not reasonably calculated to lead to the discovery of admissible evidence.

3. All documents and things which illustrate, describe, discuss, document, chart or otherwise refer to or relate to the conception, development, selection, adoption, use or intended use of Applicant's Marks, including without limitation all representative drawings, photographs, blueprints and samples of all marks considered and documents created during the development and selection of Applicant's Marks and of all marks considered as replacements or alternatives for Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, seeks information and documents irrelevant to the subject matter of this action, is vague, overbroad and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

4. Representative samples of all different sales, advertising, marketing and promotional materials or items, including without limitation magazine and trade journal advertisements, brochures, reports, leaflets, print or broadcast advertisements, bulletins, point of purchase materials, trade letters, press releases or other documents or things relating to or displaying Applicant's Marks which have been distributed or displayed by or on behalf of Applicant to other persons or used in any way since the selection and adoption of Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, seeks information and documents irrelevant to the subject matter of this action, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

5. All documents and things which refer or relate to Applicant's application to register, or registration of, Applicant's Marks in any state of the United States or in the United States Patent and Trademark Office, and all amendments, office actions, examiner's amendments, responses to office actions, notices, declarations, specimens, or any other paper or document filed in connection with, or otherwise related to, said applications.

Response:

Applicant objects to this request to the extent it seeks information readily available to the public on the United States Patent and Trademark Office web site. Applicant further objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

6. All documents and things constituting, pertaining to, resulting from, referring to, or relating to, any study, search or investigation, opinion or request for opinion referring to or relating to Applicant's Marks, including without limitation all trademark and service mark search reports and results of any computer searches.

Response:

Applicant objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Applicant further objects to this request to the extent it is overbroad and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

7. All documents and things relating or referring to, or tending or relevant to show the registrability of Applicant's Marks.

Response:

Applicant objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Applicant further objects to this request to the extent it is vexatious, vague, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

8. All surveys, market studies, opinion polls or other sampling of attitudes or opinions concerning, referring to, or relating to Applicant's Marks or any of Applicant's Goods sold thereunder.

Response:

Applicant objects to this request to the extent it is vexatious, vague, overbroad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

9. All surveys, market studies, opinion polls, or other sampling of attitudes or opinions concerning, referring to, or relating to any of Opposer's Marks or products sold thereunder.

Response:

Applicant objects to this request to the extent it is overbroad and unduly burdensome. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

10. To the extent not otherwise produced, all documents and things showing, reflecting, referring or relating to Opposer or Opposer's Marks, including without limitation all documents relating to the circumstances surrounding Applicant becoming initially aware of Opposer's Marks.

Response:

Applicant objects to this request to the extent it is vague, ambiguous, overbroad and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

11. All documents which refer or relate to any and all investigations by Applicant into Opposer's Goods which are sold or provided under Opposer's Marks.

Response:

Applicant objects to this request to the extent it is overbroad and unduly burdensome. Notwithstanding the foregoing objection, documents responsive to this request will be produced to the extent Applicant is able to locate any following a reasonable search of its records.

12. All documents and things that were reviewed, considered, or discussed during the preparation or prosecution of Applicant's applications for United States trademark registration of Applicants Marks, or any foreign applications which correspond in whole or in part to said U.S. application.

Response:

Applicant objects to this request to the extent it seeks documents and things subject to the attorney-client privilege. Applicant further objects to this request to the extent it is vague, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

13. All documents and things showing, reflecting, representing, or relating to the number of units sold and dollar volume of sales of goods or services in connection with Applicant's Marks, including all summaries, abstracts and compilations thereof.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB, subject to the entry of an appropriate protective order. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

14. All documents and things showing, reflecting, referring, or relating to the advertising and marketing expenditures relating to the sale or offering for sale of goods in connection with Applicant's Marks has been or will be used, including summaries, abstracts and compilations thereof.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Notwithstanding the foregoing objections, Applicant will produce documents responsive to this request with respect to DB SIGNATURE and SO DB, subject to the entry of an appropriate protective order. Applicant does not possess documents responsive to this request with respect to DB LOGO, DB MONOGRAM and DB STAR as these marks are not yet in use in the United States.

15. Representative documents and things identifying the channels of distribution of the goods with which Applicant uses or intends to use Applicant's Marks, including without limitation the channels of trade through which Applicant offers, has offered or intends to offer same for sale under Applicant's Mark.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

16. Representative documents and things identifying the types or classes of potential or actual consumers, recipients and/or users of Applicant's Goods which are or will be sold under Applicant's Marks.

Response:

Applicant objects to this request to the extent it is confusing, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

17. To the extent not otherwise produced, all documents and things relating or referring to, showing, or reflecting Applicant's Goods with which Applicant uses or intends to use Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

18. All documents and things showing, reflecting, referring, or relating to the type or sophistication of Applicant's clients whom Applicant alleges are not likely to be confused by Applicant's Marks and Opposer's Marks.

Response:

Applicant objects to this request to the extent it is confusing, overbroad, and unduly burdensome. Applicant also objects to this request to the extent it is duplicative of Request No. 16.

19. All documents, agreements, correspondence, oppositions, complaints, pleadings, or other writings constituting, referring to, or relating to any assertions, interactions or claims by or against Applicant, or between Applicant and any other entity (other than Opposer), which in any way assert or claim that Applicant's Marks are similar to such entity's mark, that any such entity's mark is similar to Applicant's Marks, that Applicant's rights in Applicant's Marks are limited in any way due to the existence of such entity's mark, or that Applicant's rights in Applicant's Marks are extinguished in any way due to the existence of such entity's mark.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

20. All documents that refer or relate to any complaints related in any way to Applicant's goods bearing Applicant's Marks or to any of Applicant's Goods related thereto.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

21. All documents and things that refer or relate to any incidents of actual confusion between Opposer and Applicant or between Opposer's Marks and Applicant's Marks, including without limitation any such incidents involving persons inquiring or commenting about any relationship between Opposer and Applicant; incidents involving persons inquiring about or requesting products where there is any indication that such persons were confused or mistaken about the source of such products or the relationship of Opposer and Applicant; or any other incident involving a question about the relationship, source of goods, or other confusion of or between Opposer and Applicant or their respective marks.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

22. All documents disclosing persons to whom Applicant has sold Applicant's Goods under Applicant's Marks since the introduction of such goods.

Response:

Applicant objects to this request as vexatious, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects to this request as impermissibly seeking disclosure of confidential documents and information.

23. All documents which refer or relate to any plans of Applicant to expand, including, but not limited to, expansion of marketing lines, consumer base, or geographical areas served.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objection, Applicant will produce documents responsive to this request.

24. All documents which refer or relate to any acquisition of any rights in Applicant's Marks by Applicant.

Response:

Applicant objects to this request as ambiguous, vague, and otherwise incomprehensible. Notwithstanding the foregoing objections and to the extent Applicant understands this request, Applicant does not possess documents responsive to this request.

25. All documents which refer or relate to any authorization, license, franchise, contract, assignment or grant from Applicant to any other person or entity giving the other person or entity the right to use Applicant's Marks.

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

26. Representative documents which evidence the geographic extent to which Applicant has used or intends to use Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objections and to the extent Applicant understand this request, Applicant will produce documents responsive to this request.

27. All documents which refer or relate to any plans of Applicant to develop use of Applicant's Marks in connection with the sale of jewelry, watches and other items comprising Applicants' Goods.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

28. All documents, agreements, and correspondence constituting, referring to, or relating to any assertions, interactions, or claims by or between Applicant and any other entity which in any way involve, affect or purport to affect Applicant's ownership, title to, or rights in Applicant's Marks, including but not limited to any consent agreements relating to any oppositions to registration of Applicant's Marks.

Response:

Applicant objects to this request to the extent it is vague and ambiguous. Notwithstanding the foregoing objections, Applicant does not possess documents responsive to this request.

29. All documents not produced as part of your responses to these Requests, but which were referred in the preparation of, or otherwise identified in Applicant's answers to, Opposer's First Set of Interrogatories to Applicant in this cause.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Nothwithstanding the foregoing objections, documents responsive to this request will be produced.

30. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain DBCAG's Indictment in the United States District Court for the Southern District of Ohio, in Case No. CR-2-94-019 (the "Anti-Trust Indictment").

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

31. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any strategy, plan or design by, or the ability of, De Beers to directly conduct business in the United States prior to 2004.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

32. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), in or about 1945.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

33. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), in or about 1957.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

34. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), in or about 1973.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

35. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the investigation (including but not limited to any action or indictment brought or threatened pursuant thereto), by the United States Department of Justice of De Beers for violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance), other than those referred to in Requests no's 32 through 34 above.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

36. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to lawsuits against one or more of the De Beers Group brought in the United States based, in whole or in part, on allegations of human rights abuses against victims of South Africa's apartheid-era regimes.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

37. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to lawsuits against one or more of the De Beers Group brought in the United States based, in whole or in part, on allegations of violations of the Sherman Act (or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance).

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

38. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the source or origin of diamonds mined in Angola, purchased or otherwise acquired, directly or indirectly, by one or more of the De Beers Group.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

39. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the source or origin of diamonds or other gems mined in Sierra Leone, purchased or otherwise acquired, directly or indirectly, by one or more of the De Beers Group.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

40. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any deal, contract, agreement, or understanding, directly or indirectly, between De Beers and the Government of Botswana pertaining to the mining of diamonds and other gems in the Central Kalahari Gaming Reserve.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

41. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to contacts and communications, whether written or oral, between De Beers and the Government of Botswana pertaining to the mining of diamonds and other gems in the Central Kalahari Gaming Reserve.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

42. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any deal, contract, agreement, or understanding (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support), directly or indirectly, between De Beers and the Angolan UN1TA rebels.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

43. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to contacts and communications (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support) whether written or oral, directly or indirectly, between De Beers and the Angolan UNITA rebels.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

44. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to any deal, contract, agreement, or understanding (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support), directly or indirectly, between De Beers and the Revolutionary United Front ("RUF") in Sierra Leone.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

45. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to contacts and communications (including but not limited to pertaining or relating to the provision or supply of funding, other resources, or support), whether written or oral, between De Beers and The Revolutionary United Front ("RUF") in Sierra Leone.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

46. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the De Beers/LVMH Joint Venture.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

47. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV Trade Mark Limited;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV Trade Mark Limited;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV Trade Mark Limited;

(d) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (a) though (d) above.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. .

48. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to:

(a) the date, manner (for example, corporation, partnership, limited partnership, limited liability company), and state of organization of De Beers LV;

(b) the name, address, telephone number, of each person or entity that, at any time, was a shareholder, partner, limited partner, general partner, member, and/or otherwise beneficially and/or legally owned an equity or other ownership interest in De Beers LV;

(c) the name, address, telephone number, of each person or entity that, at any time, was an officer, director, and/or manager of De Beers LV;

(d) the name, address, and relationship to you of the persons or entities who have in their custody or control copies of the documents or tangible things referred to in (a) though (d) above.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objections, documents responsive to this request will be produced.

49. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain to the business policy or practice of De Beers as articulated by its Chairman, Nicky Oppenheimer to be "very careful not to have any business in the United States which would make it liable to American law."

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

50. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and N.W. Ayer.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

51. Please identify any and all information, facts or documents concerning or relating to all communications, whether written or oral, between Applicant, and/or de Beers, and JWT.

Response:

Applicant objects to this request to the extent it is vexatious, overbroad, and unduly burdensome. Applicant further objects to this request as seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

52. Any and all notes, writings, documents or tangible things which contain, evidence, refer, relate or pertain, directly or indirectly, to any claim or allegation that De Beers has violated the Sherman Act, or any similar or related United States antitrust or anti-monopolistic law, statute, rule, regulation, act, or ordinance.

Response:

Applicant objects to this request as vexatious and seeking information and documents irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

Kirkpatrick & Lockhart Nicholson Graham LLP
Attorneys for Applicant

Dated: New York, New York
October 3, 2005

By: Melanie Bradley

Darren W. Saunders
Melanie Bradley
599 Lexington Avenue
New York, NY 10022-6030
Tel. No.: (212) 536-4063

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF DOCUMENT REQUESTS was served by First Class Mail, with sufficient postage prepaid, on this the 3rd day of October, 2005, upon applicant's attorneys:

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Dated: New York, New York
October 3, 2005

By Melanie Bradley
Melanie Bradley

Exhibit C

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Atty. Ref. No.: 0820278.0103

DEBOULLE DIAMOND & JEWELRY, INC.,	:	
Opposer,	:	Consolidated Opposition
v.	:	No. 91165285
DE BEERS LV LTD.,	:	
Applicant.	:	

APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS TO APPLICANT

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Applicant De Beers LV Ltd., hereby responds to Opposer's First Set of Requests for Admissions to Applicant as follows

GENERAL OBJECTIONS

Applicant hereby makes the following objections to Opposer's First Set of Requests for Production of Documents and Things to Applicant:

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Raleigh I.P.

A. Applicant objects to the instructions, definitions, and requests for admissions to the extent that they seek to impose duties over and above those required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board.

B. Applicant objects to each request to the extent that it seeks the disclosure of privileged communications and documents, attorney work product, or trial preparation material, including material prepared by or for counsel in anticipation of, or after the commencement of this action.

C. Applicant objects to each request to the extent that it is vexatious or seeks information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

D. Applicant objects to each request to the extent that it seeks information that is unduly burdensome to obtain and to the extent that it is not reasonably calculated to lead to the discovery of admissible evidence.

E. Applicant objects to each request to the extent that it is ambiguous, vague, logically flawed or otherwise incomprehensible.

F. Applicant objects to each request to the extent that it seeks a response which is duplicative of responses to one or more of Opposer's requests for admissions.

G. Applicant objects to each request to the extent that it requests information pertaining to Application Serial No. 78/140,378 for D AND B, which is not the subject of this Opposition.

H. In addition to the Objections set forth above, Applicant will also state other specific objections to each request where appropriate, including objections that are not generally applicable to all of the requests. By setting forth such specific objections, Applicant does not

intend to limit or restrict the Objections set forth above. To the extent that Applicant responds to a request for admission to which they object, such objections are not waived. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

K. The responses given herein shall not waive any claim of privilege or immunity Applicant may have as to any response,or any question or right of objection as to competency, relevance, materiality or admissibility, or any objection Applicant may have as to a demand for further response to these or other requests.

L. Nothing contained herein may be construed as an admission relative to the existence or non-existence of any document, and no response is an admission respecting the relevance of any statement or characterization contained in any request.

M. The responses will be made without waiver of, or prejudice to, any objections herein made or hereafter made, and all such objections are hereby expressly reserved.

N. Applicant's responses to the requests for admissions may not be complete since discovery in this matter is ongoing. Applicant will not be limited by its responses herein if, as this matter progresses, Applicant gathers additional information responsive to the requests or any request set forth therein.

O. These general objections are made to and are incorporated in each specific response herein without further reference.

RESPONSES

1. Applicant has not yet used Applicant's Marks in interstate commerce in the United States.

Response: Admitted with respect to DB LOGO, DB MONOGRAM and DB STAR. Denied with respect to DB SIGNATURE and SO DB.

2. At the time of filing Applicant's Marks, Applicant was aware of Opposer's Marks.

Response: Denied.

3. Applicant intends to market fine jewelry, including diamonds, timepieces and other goods identified in International Class 14 under Applicant's Marks.

Response: Admitted.

4. Opposer markets fine jewelry, including diamonds, timepieces and other goods identified in International Class 14 under Opposer's Marks.

Response: Applicant admits that the records of the United States Patent and Trademark Office ("USPTO") show that the goods listed in Opposer's applications include jewelry, diamonds and timepieces, and otherwise denies the allegations set forth in Request No. 4.

5. The goods which Applicant intends to market under Applicant's Marks are related to the goods which Opposer markets under Opposer's Marks.

Response: Applicant objects to this request as vague. Notwithstanding the foregoing objection, Applicant admits that the goods listed in its subject applications before the the USPTO include, among several other things, jewelry, diamonds, and watches and the records of the USPTO show that the goods listed in Opposer's applications include jewelry, diamonds, and timepieces, and otherwise denies the allegations set forth in Request No. 5.

6. Opposer markets its products under Opposer's Marks to the general public and jewelry and watch specialty distributors.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request, Applicant admits that Opposer owns a jewelry store in Texas and markets its goods and services to consumers of jewelry in the Texas area, and otherwise denies the allegations set forth in Request No. 6.

7. Applicant intends to market its products under Applicant's Marks to the general public.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request, Applicant admits that it intends to market goods directly to consumers.

8. Applicant intends to market its products under Applicant's Marks to jewelry and watch specialty distributors.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Notwithstanding the foregoing objection, Applicant presently markets its products via Applicant's own stores, but admits that it may revise its marketing strategy in the future.

9. The target audience to whom Applicant intends to advertise its products under Applicant's Marks includes consumers and specialty distributors of fine jewelry, including diamonds, and timepieces.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Notwithstanding the foregoing objection, Applicant presently markets its products directly to consumers via Applicant's own stores, but admits that it may revise its marketing strategy in the future.

10. The target audience to whom Opposer advertises its products under Opposer's Marks includes consumers and specialty distributors of fine jewelry, including diamonds, and timepieces.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 10.

11. Applicant's products bearing Applicant's Marks and Opposer's products bearing Opposer's Marks may be used or received by the same person.

Response: Applicant objects to this request as vague, ambiguous, logically flawed, and otherwise incomprehensible.

12. Applicant's products bearing Applicant's Marks and Opposer's products bearing Opposer's Marks may be bought or sold by the same person.

Response: Applicant objects to this request as vague, ambiguous, logically flawed, and otherwise incomprehensible.

13. Applicant intends to market its products under Applicant's Marks through public advertising.

Response: Admitted.

14. Applicant intends to market its products under Applicant's Marks through specialty jewelry stores.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understands this request, Applicant admits that it presently intends to distribute its jewelry via Applicant's own jewelry stores.

15. Customers have come to identify Opposer's Marks with jewelry, including diamonds, and timepieces which are of the highest quality.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 15.

16. Customers have come to identify Opposer's Marks with fine jewelry, including diamonds, and timepieces which originate from Opposer.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 16.

17. Fine jewelry distributors have come to identify Opposer's Marks with jewelry, including diamonds, and timepieces which are of the highest quality.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 17.

18. Fine jewelry distributors have come to identify Opposer's Marks with fine jewelry, including diamonds, and timepieces which originate from Opposer.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 18.

19. Opposer's Marks are a valuable asset of Opposer.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 19.

20. Opposer's Marks carry considerable goodwill and customer and distributor acceptance of the goods offered under Opposer's Marks.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 20.

21. Opposer's customers and distributors and potential customers and distributors have come to recognize Opposer's Marks as representing the quality of Opposer's fine jewelry, including diamonds, and timepieces.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. To the extent Applicant understand this request and after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 21.

22. Applicant intends to market its products under Applicant's Marks to some of the same types or classes of purchasers as Opposer is marketing its products under Opposer's Marks.

Response: Applicant objects to this request as vague. Notwithstanding the foregoing objection, after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 22.

23. Applicant's Goods bearing Applicant's Marks will likely be offered in and through some of the same channels of commerce as Opposer's products bearing Opposer's Marks.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Notwithstanding the foregoing objection, after reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 23.

24. Applicant's Marks are visually similar to Opposer's Marks.

Response: Denied.

25. Applicant's Marks are similar in sound to Opposer's Marks.

Response: Denied.

26. The term "deB" contained within Opposer's Marks, is similar in appearance to the term "DB", contained within Applicant's Marks.

Response: Denied.

27. The term "deB" contained within Opposer's Marks, creates a commercial impression similar to that created by the term "DB", contained within Applicant's Marks.

Response: Denied.

28. Applicant's Marks create a commercial impression similar to that created by Opposer's Marks.

Response: Denied.

29. The similarity of Applicant's Marks to Opposer's Marks is likely to result in confusion, to cause mistake or to deceive users and purchasers.

Response: Denied.

30. When Applicant's Marks are used with Applicant's Goods, confusion is likely to result with respect to Opposer's goods provided under Opposer's Marks.

Response: Denied.

31. Purchasers and users of Opposer's products sold under Opposer's Marks are likely to assume that Applicant's Goods sold under Applicant's Marks originate with or are endorsed by Opposer.

Response: Denied.

32. Purchasers and users of Applicant's Goods bearing Applicant's Marks are likely to assume that Applicant is associated with or related to Opposer.

Response: Denied.

33. Purchasers and users of Applicant's Goods bearing Applicant's Marks are likely to assume that Applicant's Goods are associated with or related to the goods of Opposer.

Response: Denied.

34. Applicant's Marks are confusingly similar to Opposer's Marks.

Response: Denied.

35. Purchasers and users familiar with Opposer's goods provided under Opposer's Marks are likely to believe that Applicant's Goods provided under Applicant's Marks are associated with or related to the goods of Opposer.

Response: Denied.

36. Purchasers and users familiar with Opposer's goods provided under Opposer's Marks are likely to believe that Applicant's Goods provided under Applicant's Marks are actually the goods of Opposer.

Response: Denied.

37. Purchasers familiar with Opposer's Marks are likely to confuse Opposer's Marks with Applicant's Marks and purchase Applicant's Goods sold under Applicant's Marks in the mistaken belief that they are purchasing goods originating from the same source as the goods bearing Opposer's Marks.

Response: Denied.

38. Purchasers familiar with Opposer's Marks are likely to confuse Opposer's Marks with Applicant's Marks.

Response: Denied.

39. Purchasers familiar with Opposer's Marks are likely to confuse Opposer's Marks with Applicant's Marks and purchase Applicant's Goods sold under Applicant's Marks in the mistaken belief that they are purchasing goods associated with, endorsed by or related to Opposer.

Response: Denied.

40. Purchasers and users of Applicant's Goods provided under Applicant's Marks are likely to assume that Opposer has expanded its fine jewelry, including diamonds, and timepiece lines to include Applicant's Goods.

Response: Denied.

41. Applicant's Marks are derived from the mark or trade-name "De Beers".

Response: Admitted.

42. De Beers LV's mission is to expand and develop the global consumer brand potential of the "De Beers" name, including in the United States.

Response: Applicant objects to this request as vague, ambiguous, and otherwise incomprehensible. Applicant also objects to this request as seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

43. DBSA has transferred and assigned to De Beers LV the worldwide rights to use the "De Beers" name and mark for luxury goods in consumer markets.

Response: Applicant objects to this as vague, ambiguous, and otherwise incomprehensible. Applicant also objects to this request to the extent it is overbroad, seeks information irrelevant to the subject matter of this action, and is not reasonably calculated to lead to the discovery of admissible evidence.

44. Applicant's Marks are designed to connote and build upon the history, goodwill, and business reputation of De Beers.

Response: Applicant objects to this as vague, ambiguous, and otherwise incomprehensible. Applicant also objects to this request as seeking information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

45. Applicant's Marks were not used in trade or commerce in the United States prior to 2002.

Response: Admitted.

46. Opposer has conducted business under the name "De Boulle" in the United States since 1989.

Response: After reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 46.

47. Opposer has used the mark "De Boulle" in trade or commerce in the United States since 1989.

Response: After reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 47.

48. Opposer has derived considerable commercial prestige and goodwill from the use of the mark "De Boulle" in trade or commerce in the United States.

Response: After reasonable inquiry, Applicant cannot at this time admit or deny the allegations set forth in Request No. 48.

49. Opposer has used the mark "De B" in trade or commerce in the United States since 2001.

Response: Applicant admits that Opposer has claimed before the USPTO that it has used its "De B" designation since 2001, and otherwise denies the allegations set forth in Request No. 49.

50. Opposer has used the mark "DB" in trade or commerce in the United States since 2001.

Response: Applicant admits that Opposer has claimed before the USPTO that it has used its "DB" designation since 2001, and otherwise denies the allegations set forth in Request No. 50.

51. The mark "De Beers" was not used in trade or commerce, in association with the sale of any goods or services in the United States prior to 2004.

Response: Applicant objects to this request as seeking information irrelevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence

52. The mark "De Boulle" is similar to the mark "De Beers".

Response: Denied.

53. The similarity of the marks "De Boulle" and "De Beers" is likely to result in confusion, to cause mistake or to deceive users and purchasers.

Response: Denied.

54. In 2004, DBCAG pled guilty to an Indictment pending in the United States District Court for the Southern District of Ohio, Case No. CR-2-94-019, admitting that it formed, joined and participated in a criminal conspiracy in violation of Title 15 U.S.C. § I (the "Anti-Trust Indictment").

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

55. DBCAG was sentenced to pay a $10,000,000.00 fine for its conduct described in the Anti-Trust Indictment.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

56. Prior to DBCAG's 2004 guilty plea to the Anti-Trust Indictment, De Beers was unable to directly conduct business in the United States.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

57. De Beers did not conduct business in the United States until after DBCAG's 2004 guilty plea to the Anti-Trust Indictment.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

58. In or about 1945, the United States Department of Justice brought an action against De Beers for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

59. In or about 1957, the United States Department of Justice brought an action against De Beers for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

60. In or about 1973, the United States Department of Justice convened a grand jury to investigate criminal charges against De, Beers for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

61. In 1994 DBCAG was indicted in the United States for its participation in a criminal conspiracy in violation of Title 15 U.S.C. § 1.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

62. For approximately thirty (30) years prior to 2004, De Beers was under investigation by the United States Department of Justice for violating the United States antitrust laws.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

63. For approximately thirty (30) years prior to 2004, De Beers had a policy not to do business in the United States.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

64. For approximately thirty (30) years prior to 2004, De Beers did not conduct business in the United States.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

65. The *United Nations Report of the Panel of Experts on Sierra Leone. Diamonds and Arms, December 2000,* found that De Beers must accept some responsibility for the trade in so-called, "conflict diamonds," or "blood diamonds".

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

66. DBCM was incorporated in South Africa more than a century ago, and De Beers has had a long-standing business presence in South Africa.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

67. De Beers was associated with the apartheid-era regimes in South Africa.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

68. One or more of The De Beers Group has been sued in the United States for human rights abuses against victims of South Africa's apartheid-era regimes.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

69. De Beers has within the past fifteen years purchased so-called, "conflict diamonds," "blood diamonds", and/or other illicit diamonds which were mined in Angola.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

70. Within the past fifteen years, De Beers has been accused of purchasing so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds which were mined in Angola.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

71. De Beers has within the past fifteen years purchased so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds which were mined in Sierra Leone.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

72. Within the past fifteen years, De Beers has been accused of purchasing socalled, "conflict diamonds," "blood diamonds" and/or other illicit diamonds which were mined in Sierra Leone.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

73. Gary Ralfe Managing Director of the De Beers Group has publicly declared in 2005, that "De Beers is in no hurry to start doing business in America."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

74. Nicky Oppenheimer, has publicly declared: "I am chairman of De Beers, a company that likes to think of itself as the world's best known and longest running monopoly."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

75. Nicky Oppenheimer publicly declared in October 1999 that De Beers sets out, as a matter of policy, to break the commandments of the Sherman Act, and that De Beers makes no pretense that it is seeking to manage the diamond market, to control supply, to manage prices and to act collusively with its partners in the business.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

76. Nicky Oppenheimer has publicly declared that over the years De Beers has "been very careful not to have any business in the United States which would make it liable to American law."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

77. The legal issues facing De Beers in the United States have been extensively broadcast and published in interstate commerce over the past approximately 30 years.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

78. The legal issues facing De Beers in the United States have received extensive coverage in TV, broadcast and print media in the United States over the past 30 years.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

79. De Beers' alleged association with so-called, "conflict diamonds," "blood diamonds" and/or other illicit diamonds has received extensive coverage in TV, broadcast and print media in the United States since approximately 2000.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

80. Since 2002, De Beers has been accused of causing the relocation of thousands of Gana and Gwi 'Bushmen' from their ancestral land in the Central Kalahari Gaming Reserve as part of its mining practices.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

81. Public protests accompanied the opening of De Beers LV's first store in London.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

82. DBSA owns 100% of DBCM and controls its operations.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

83. DBSA owns 100% of DBCAG and controls its operations.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

84. The *Human Rights Watch Angola Report. 1994* found that: "The De Beers diamond cartel and other international dealers are buying gems mined in rebel-held territory in violation of Angolan law."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

85. Global Witness, the London-based human-rights group, published a report in October 1998 that showed - citing De Beers' own annual reports - how the cartel had pumped large amounts of money into the coffers of the Angolan UNITA rebels as the war escalated.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

86. Gary Ralfe Managing Director of the De Beers Group publicly declared at a press conference with Alrossa Company and De Beers on or about October 21,1997: "You are absolutely right to say that in fact it is Unita that has over the recent few years been responsible for most of the production in Angola. One of the essential jobs that we De Beers (sic) carry out worldwide is to ensure that diamonds coming onto the markets do not threaten the overall price structure and therefore although we know (sic) direct relationship with Unita, there is no doubt that we buy many of those diamonds that emanate from the Unita-held areas in Angola, second hand on the markets of Antwerp and Tel Aviv. And as the diamond markets have weakened recently (inaudible)... in buying up this Angolan production which otherwise will be threatening the overall price structure has increased."

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

87. That De Beers has purchased diamonds sourced by The Revolutionary United Front ("RUF") in Sierra Leone.

Response: Applicant objects to this request as vexatious, seeking information irrelevant to the subject matter of this action, and not reasonably calculated to lead to the discovery of admissible evidence.

Respectfully submitted,

Kirkpatrick & Lockhart Nicholson Graham LLP
Attorneys for Applicant

Dated: New York, New York
October 3, 2005

By: Melanie Bradley

Darren W. Saunders
Melanie Bradley
599 Lexington Avenue
New York, NY 10022-6030
Tel. No.: (212) 536-4063

NY-299395 v1

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS was served by First Class Mail, with sufficient postage prepaid, on this the 3rd day of October, 2005, upon applicant's attorneys:

To: David A. Harlow
Christopher M. Kindel
Nelson Mullins Riley & Scarborough LLP
4140 Parklake Avenue
GlenLake One/Second Floor
Raleigh, NC 27612

Peter J. Tredoux
300 Park Avenue, Suite 1700
New York, N.Y. 10022

Dated: New York, New York
October 3, 2005

By Melanie Bradley
Melanie Bradley

Exhibit D

De Beers Consd/De Beers CentenaryAG
16 January 2001

De Beers Consolidated Mines Limited ('DBCM')
Company Registration No. 1888/000007/06
Incorporated in the Republic of South Africa

De Beers Centenary AG ('DBCAG')
Incorporated under the laws of Switzerland

(collectively the 'De Beers Group')

JOINT PRESS RELEASE

LVMH MOET HENNESSY LOUIS VUITTON AND THE DE BEERS GROUP TO ESTABLISH A NEW COMPANY TO UNLOCK THE VALUE OF THE DE BEERS BRAND

The De Beers Group, the world's premier diamond group, and LVMH Moet Hennessy Louis Vuitton, the world's leading luxury products group, have agreed to establish an independently managed and operated company to develop the global consumer brand potential of the De Beers Name.

* The De Beers Group will transfer to the independent company the world-wide rights to use the De Beers brand for luxury goods in consumer markets.

* The new company's immediate focus will be on premium diamond jewellery and it is envisaged that it will become a key part of the LVMH luxury goods portfolio.

* The investment is expected to create long-term value for both Groups and will become a catalyst for brand competition in the sale of diamond jewellery. The two groups have agreed to invest an equal contribution of capital to establish the new company in which they will share equal ownership.

* The new company will benefit from LVMH's extensive experience in both developing luxury brands and rolling out premium retail concepts.

* It is intended that Myron Ullman, Group Managing Director of LVMH, will be appointed Chairman of the Board of the new independent company.

* The De Beers Group will have no day-to-day operational involvement in the running of the company.

* A technical services agreement has been developed for a one-off transfer of technical diamond expertise from the De Beers Group to the independent company.

* The new company will work closely with leading polished diamond suppliers world-wide to source diamonds to the exacting standards demanded by the brand. It will not buy rough diamonds or source polished diamonds from the De Beers Group.

* The new entity will bring a new customer into the market creating a new source of demand for both Sightholders(1)and non-Sightholders alike.

* The core business of the De Beers Group remains the mining and marketing of rough diamonds.

SRATEGIC RATIONALE

The De Beers Group's core business is the mining and marketing of rough diamonds and its core strategy one of driving demand for rough diamonds. It has been established that the De Beers brand has very strong consumer awareness and credibility. The De Beers Group therefore believes that the De Beers brand has the potential to be one of the leading jewellery brands in a multi-brand environment. The DTC, the sales and marketing arm of the De Beers Group, will increase expenditure on its global generic marketing campaigns to drive overall consumer demand for diamonds and support all of its clients, jewellery manufacturers and retailers around the world. The DTC will invest approximately US$180 million in consumer marketing campaigns in 2001 using the world famous strapline 'A Diamond is Forever'.

Expanding demand for diamond jewellery and creating this multi-brand environment is a focal point of the 'Supplier of Choice' strategy announced by the De Beers Group in July 2000 and designed to modernise business practices and encourage its Sightholders to innovate and work more closely with their downstream partners to stimulate demand. The establishment of this new company represents a bold and imaginative step in realising this strategy.

LVMH is the world's leading luxury products group and is therefore the ideal partner for developing the consumer potential of the De Beers brand. LVMH brings extensive experience in both developing luxury brands and rolling out premium retail concepts. This combination of LVMH's retail and luxury branding skills with the strong recognition of the De Beers' name among consumers will create an exciting new luxury products brand.

The Watch & Jewellery division of LVMH was created in November 1999 following the acquisitions of complementary brands, comprising Tag Heuer, the leading sports watches company; Ebel, the luxury Swiss watch brand; Zenith, the highly-renowned watch and mechanical movement specialist and Chaumet, the prestigious Place Vendome jeweller. The famous Italian writing instruments company, Omas, which was acquired in May 2000, is also part of this division. LVMH is already active in jewellery through Fred Joaillier, acquired in 1995. The new division forms a coherent entity of strong, differentiated and well-managed brands, benefiting from synergies particularly in controlled product distribution.

BUSINESS VISION

The De Beers Group and LVMH have agreed that the De Beers brand will be positioned as a premium brand in the sale of diamond jewellery and associated luxury goods. The development of a specific business plan, including product assortment and channel strategy, will be the responsibility of the management team. It is anticipated that, subject to regulatory approval, the business will commence within the next 12-18 months with a small number of flagship retail stores located in the world's most prestigious cities. These flagships will provide the consumer with the opportunity to experience the De Beers brand in full.

FINANCIAL IMPACT

For both partners, the financial effects of the transaction on earnings for the year ended 31 December 2001 will not be material. Consistent with the start-up nature of this company, the transaction will be earnings dilutive in the short-term.

COMMENTING ON THE AGREEMENT:

Nicky Oppenheimer, Chairman of the De Beers Group, said, 'The De Beers Group will continue to focus on the growth and development of our core business - the mining and marketing of rough diamonds. This dynamic initiative is another step in the 21st Century transformation of the De Beers Group. It follows the introduction of our Supplier of Choice strategy in July to modernise business practices and encourage DTC Sightholders to innovate and work more closely with their downstream partners to stimulate demand. The expertise of LVMH will not only help realise the value inherent in the De Beers brand but also create a more competitive market for diamond jewellery.'

Bernard Arnault, Chairman of the LVMH Group, said, 'This initiative with the De Beers Group is a natural extension of our strategy to seek out opportunities to create quality products and harness our world renowned designers and distribution expertise to bring luxury to our customers. The De Beers brand will be at the heart of our growing jewellery activities where LVMH is already famous for creativity and innovation.'

Myron Ullman, Group Managing Director of LVMH said, 'We are delighted to include the world's premier diamond brand in our expanding portfolio. With the creation of the Watch and Jewellery business in 1999, LVMH has clearly shown its determination to play a leading role, on a worldwide basis, in one of the fastest growing segments of the luxury goods industry. By contributing our established strengths in brand management and retail marketing, the De Beers brand has the means to achieve its very strong potential.'

Gary Ralfe, Managing Director of the De Beers Group, said, 'Diamonds are the ultimate luxury product and as the world's leading luxury goods group, LVMH is the ideal partner to develop the great potential of the De Beers name among consumers. Brands are powerful catalysts for growth, and there is an untapped opportunity for all of us in the diamond industry to grow our businesses and match the growth rates enjoyed by the leading companies in the rest of the luxury goods sector. In five years time we envisage an industry with multiple and competitive brands and we expect that the De Beers brand will be one of these.'

(1) Sightholders are those world class cutters, polishers and dealers who purchase rough diamonds from the Diamond Trading Company (DTC), the marketing arm of the De Beers Group. The majority are based in the cutting centres of Antwerp, Johannesburg, Tel Aviv, Mumbai and New York. There are ten Sights held approximately every five weeks in London, Lucerne and Johannesburg when the DTC sells rough diamonds to its Sightholders.

FURTHER INFORMATION

MEDIA

De Beers Group (UK)
Andrew Lamont +44 20 7430 3515 / 07775 855279 (mobile)
Joan Braune +44 20 7430 3505 / 07775 855278 (mobile)
Roger van Eeghen +44 20 7430 3507 / 07740 910595 (mobile)
Kate Evan-Jones +44 20 7430 3531 / 07720 350234 (mobile)
Lynette Hori +44 20 7430 3509 / 07740 393260 (mobile)

or

De Beers Group (South Africa)
Tom Tweedy +27 113747173 / 083 3080083 (mobile)

LVMH (UK): Financial Dynamics
Hugh Morrison/Alison Hughes +44 20 7831 3113/ 0385 347311(mobile)

or

LVMH (France): DGM
Michel Calzaroni/Olivier Labesse +33 1 40 70 11 89/ +336 16263358 (mobile)

or

LVMH (US): Kekst and Company
James Fingeroth/Jessica Barist +1 212 521 4800

or

LVMH (Italy): D&C Financial Communications
Fabio Raineri/Paola di Raimondo +39 02 438 11 41/+39 335 696 0904(mobile)

ANALYSTS & INVESTORS

De Beers Group (UK)
Richard Chetwode +44 20 7430 3102/ 07788 108819 (mobile)

or

De Beers Group (South Africa)
Mark Irvine +27 113747174 / 083 468 8889 (mobile)

LVMH
Christopher Hollis +33 1 44132222/ +336 7276 4018 (mobile)

NOTES TO EDITORS

Further information and a selection of images relating to this announcement can be obtained by visiting

www.lvmhdebeers.netcoms

. Images will be available
on the site from 14h00 GMT.

LVMH

Moet Hennessy Louis Vuitton, is the world's leading luxury products group. In addition to its fashion brands the Group is represented in Wines and Spirits by a portfolio of brands that includes Moet & Chandon, Dom Perignon, Veuve Clicquot Ponsardin, Krug, Pommery, Chateau d'Yquem, Chandon, Hennessy and Hine.
LVMH's Fashion and Leather Goods division, includes Louis Vuitton, the world's leading luxury brand, as well as Celine, Loewe, Kenzo, Givenchy, Christian Lacroix, Thomas Pink, Fendi and Pucci.
In addition, LVMH recently announced plans to acquire Donna Karan. LVMH is also present in the Fragrances and Cosmetics sector with Parfums Christian Dior, Guerlain, Givenchy and Kenzo, and has recently acquired six promising cosmetic companies, Bliss, Hard Candy, BeneFit Cosmetics, Urban Decay, MAKE UP FOR EVER and Fresh.
LVMH is active in selective retailing through DFS, Sephora and Le Bon Marche and Eluxury. The Group has established a Watches and Jewellery division comprising TAG Heuer, Ebel, Chaumet, Zenith, Fred, as well as Omas, the prestigious Italian writing instruments company.
Phillips, the international fine art auctioneers, which recently announced plans to merge with dePury & Luxembourg Art, is also part of the LVMH Group. Connaissance des Arts and Art & Auction Magazine, two specialised publications, have recently joined the Group.
LVMH shares (LVMH.PA) are listed on the Paris Stock Exchange and NASDAQ in the United States (LVMHY).

The De Beers Group was advised on the transaction by N M Rothschilds & Sons.

Exhibit E

TECHNICAL & FINANCIAL REPORT FOR THE DIAMOND BUSINESS INTERESTS OF DE BEERS AND ITS PARTNERS

The Independent Directors
De Beers Consolidated Mines Ltd
36 Stockdale Street
KIMBERLEY
South Africa
8301

The Independent Directors
De Beers Centenary AG
Langensandstrasse 27
CH – 600 Luzern 14
Switzerland

TECHNICAL AND FINANCIAL REPORT

1. Executive Summary

1.1 Introduction

This Technical and Financial Report ("TFR" or "report") has been prepared by the De Beers Responsible Persons at the request of the Independent Committee of Directors of De Beers and provides relevant technical and financial information on the entire De Beers group of companies. The report has been written in order to assist the independent Linked Unit holders of De Beers in their evaluation of the scheme of arrangement proposed by DBI between DBCM and its shareholders, the resolutions to be considered at an extraordinary general meeting of DBCM, and the resolutions to be considered at the meeting of holders of depositary receipts.

With respect to De Beers' mining assets, the basis for this report is the De Beers Strategic Business Plans ("SBPs") prepared in mid-2000. These plans cover the extraction of mineral resources and mineral reserves for the life of each of De Beers' mining operations.

De Beers' diamond business includes some operations which are wholly-owned and some operations, principally in Botswana (Debswana) and Namibia (Namdeb), that are jointly owned between De Beers and the respective governments of these countries. The financial analysis and NPV calculations contained in this report reflect the revenues and cash flows attributable to De Beers' wholly-owned operations and De Beers' share of these joint ventures.

This report addresses the following issues:

- the mineral resources and mineral reserves to support the projections and NPV calculations contained herein;
- the capacity and equipment to mine and recover diamonds according to the production forecasts;
- the political, social, environmental and legal stability required to conduct De Beers' business; and
- the marketing of production from its own and contracted partners.

There are many aspects of the diamond business which make it unique. The particulate nature of diamonds affects the processes of exploration, evaluation, mining and metallurgy and especially the way in which diamonds are valued, sorted and marketed. Descriptions of these processes are therefore included in this report. A discussion of each operating mine is also included.

The associated financial projections are presented on a consolidated basis.

1.2 Professional Qualifications and Responsible Persons

This report incorporates elements of a Competent Person's Report. The report has been prepared and signed off by the delegated heads of the technical, financial and marketing

disciplines within De Beers, all of whom qualify as Responsible Persons. This report contains all materially important technical, legal and financial information to meet the objectives stated above.

This report has been prepared under the direct supervision of Dr W.J. Kleingeld, Group Manager Mineral Resources. Dr Kleingeld has over 25 years experience in the estimation and assessment of mineral resources and mineral reserves in numerous commodities, but specifically diamonds and is a Competent Person with respect to mineral resources and mineral reserves. Dr Kleingeld is a member of the South African Mineral Resource Committee ("SAMREC") and Chairman of the Diamond Sub-Committee of SAMREC. The Responsible Person in respect of Finance is Mr M.L.S. De Sousa-Oliveira, Head of De Beers Corporate Finance and a member of the De Beers Executive Committee. Mr De Sousa-Oliveira is both a Chartered Accountant and a Chartered Management Accountant and has extensive experience in mergers, acquisitions, new company flotations and project financing. He was appointed Head of De Beers' newly established Corporate Finance Department in January 1998. The role of Responsible Person in respect of DTC Sales and Marketing is Mr G.P.H. Penny. Mr Penny was a Rhodes Scholar at Oxford where he obtained an MA in Philosophy, Politics and Economics. He is a 'director' of the DTC and a member of the De Beers Executive Committee, and will assume overall responsibility for De Beers' worldwide sales and marketing activities with effect from July 2001.

Dr Kleingeld, Mr De Sousa-Oliveira and Mr Penny have assumed joint and several responsibility for this report and its contents.

Other contributors to this report were:

Group Manager Exploration	W.F. McKechnie
General Manager Mining	A.P. Guthrie
General Manager Metallurgy	A.C. Rowan
General Manager Engineering	G.D. Scott
Manager Producer Relations and Legal Services	J.G. Hughes
Group Manager Human Resources	L.J. Gatherer
Manager Environmental Services	Dr M. Berry

The professional qualifications of all the contributors are set out in Appendix I.

1.3 Terminology and Abbreviations

The specialised nature of the diamond industry has necessitated the creation of a large number of technical terms and abbreviations which are either unique to the business or may have specific application or meaning which differ from their usage elsewhere in the minerals industry. De Beers has established standard terminology for many aspects of its business, which has been used herein. A list of abbreviations and glossary of technical and financial terms is contained in Appendix II. The metric system has been used throughout this report. A particularly important unit of mass is the carat (ct) which is 0.2g in mass. Grade has been expressed as carats per hundred tonnes (cpht) for kimberlite deposits and carats per square metre (cpsm or cts/m^2) or carats per cubic metre (cpcm) in placer deposits. Currency units used are US dollars (US$ or $) or South African Rand (ZAR or R).

1.4 Overview of De Beers

1.4.1 Company Profile

Cecil John Rhodes formed DBCM in March 1888 as an amalgamation of diamond mining interests in the Kimberley area of South Africa. Generally, DBCM represents De Beers' South African interests, whilst DBCAG covers De Beers' activities throughout the rest of the world. De Beers is an integrated company whose core business is the mining and marketing of rough diamonds.

Through exploration and acquisitions, De Beers has grown annual production to a total of 36.5 million carats of rough diamonds in 2000. De Beers and its partners conduct mining operations in South Africa, Namibia, Botswana and Tanzania. The DTC is headquartered in London and is responsible for marketing De Beers' and certain other producers' diamonds. In the year 2000, diamond sales by the DTC reached a record US$5.7 billion. De Beers' own earnings in 2000 were US$1,289 million.

De Beers and its partners are the largest diamond producers by value in the world. De Beers continuously develops and implements new technology to discover and manage its mineral resources and mineral reserves in a cost-effective manner. It has grown the market for gem diamonds through active marketing and advertising strategies.

Since 1997 when management of De Beers and Anglo American was separated, a number of important changes have taken place. Stakes in investments made jointly with Anglo American were sold to Anglo American in exchange for Anglo American shares prior to their listing on the LSE in 1999, and the policy of joint investments was discontinued. This has helped to simplify the valuation of De Beers from that time. In 1999, the last outstanding minorities were bought out in the diamond trading companies, allowing full control of their operations and cashflow. In 2000, the Venetia royalty was acquired from Anglovaal Mining Limited and Industrial & Commercial Holdings Group Limited in order to acquire a 100% economic interest in that operation. An unsuccessful bid was made for Ashton Mining Limited of Australia, and a successful bid was made for Winspear Diamonds Inc of Canada to acquire a 67% interest in the Snap Lake prospect. The remaining interest in the Snap Lake prospect was purchased from Aber Diamond Corporation in February 2001.

Starting in 1998, a strategic review of De Beers' global diamond business was undertaken with Bain & Company in an attempt to address the inadequate return on capital generated by De Beers' diamond business. This resulted in, amongst other initiatives, the As Is Plus programme which is focused on operational efficiency improvements to lower De Beers' cost base. A Supplier of Choice initiative was launched in mid-2000 with the aim of formalising relationships between the DTC and its sightholders and increasing their respective efforts to grow the diamond jewellery business.

De Beers has played a leading role in proposing and implementing controls to distinguish diamonds as having come from conflict-free areas. In support of this effort and recognising the uncertain origins of diamonds bought in the open market, De Beers ceased open market purchases in late 1999.

World-wide, De Beers and its partners have 23,000 employees. They pursue proactive human resources development programmes and provide equal opportunities to all personnel.

1.4.2 Exploration

De Beers carries out diamond exploration in 17 countries on five continents for both kimberlite pipe and placer deposits. Extensive research has identified the environments favourable for the deposition of diamonds, and specific technology has been developed to efficiently explore for and sample diamond deposits. Exploration expenditure in 2000 was approximately US$69 million.

De Beers' exploration division has had notable successes in the past, including the discovery of the Orapa and Jwaneng pipes in Botswana and the Venetia pipes in South Africa. Jwaneng is the most valuable kimberlite diamond occurrence in the world. De Beers is also pioneering the development of deep-sea diamond exploration and mining off the West Coast of Southern Africa.

De Beers is currently fast-tracking the evaluation of the Victor (Attawapiskat) diamond project in Ontario, Canada. This project is currently at the desktop study stage and thus,

for the purposes of this report, is not sufficiently advanced to fulfil the necessary requirements for inclusion in the financial model referred to in this report.

1.4.3 Mineral Resources and Mineral Reserves

1.4.3.1 General Overview

The particulate nature of diamonds, their size, shape, quality, colour and value are important factors in the accurate estimation and evaluation of diamond deposits. De Beers has developed specific methodologies that take these factors into account, as well as two other aspects:

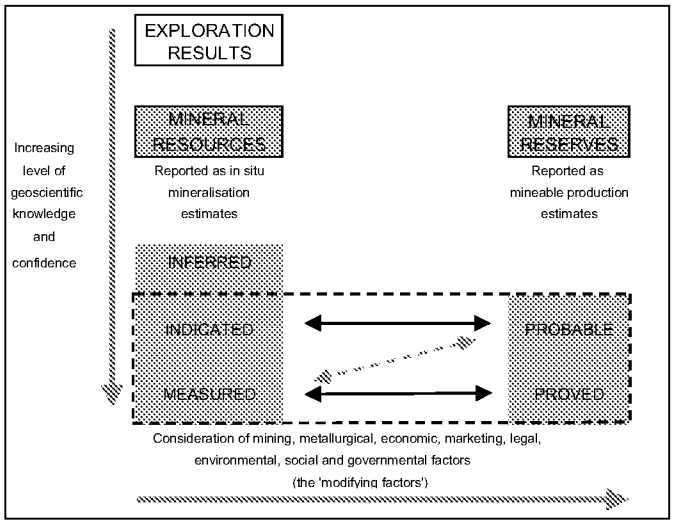
- diamond occurrences in nature are rare and are usually measured in parts per billion, whereas most other mineral commodities are measured in parts per thousand or parts per million; and
- in placer deposits, diamonds may be concentrated in trapsites that are relatively small and difficult to statistically predict and sample.

De Beers' methodologies for sampling and estimation of diamond deposits have been recognised and implemented throughout the world. In 2000, the South African Mineral Resource Committee ("SAMREC") implemented a diamond-specific code based on these methodologies.

1.4.3.2 Estimation Methodologies

De Beers' methodology used in estimating mineral resources and reserves is as follows:

- When a potentially economic deposit is discovered, an in-situ mineralisation resource estimate is developed using appropriate sampling techniques and sampling density. Empirically derived conversion factors are applied to the estimated grades to allow for the bottom or lower diamond size cut-off which might be used in a commercial scale metallurgical plant, also taking into account the difference in the degree of diamond liberation between the sampling and commercial recovery processes.
- The baseline category for resource classification, which requires a minimum level of geological knowledge and confidence, is the inferred mineral resource. Increased sampling of the resource will lead to an improved level of geoscientific knowledge and confidence, and upgrading of the resource to an indicated category and ultimately to a measured status. However, diamond resources rarely achieve this level of classification because of the complex nature of diamond deposits and the large expenditure that would be required to achieve the high level of confidence stipulated in the SAMREC Code.
- Mineral reserves are a modified sub-set of indicated and measured resources where mining, metallurgical, economic, marketing, legal, environmental, social and governmental factors are applied as appropriate to define that part of the resource that is economically mineable.



Framework for classifying tonnage and grade estimates reflecting different degrees of geoscientific confidence and technical and economic evaluation

As at 31st December 2000, mineral reserves and mineral resources of De Beers and its partners were as follows:

- *In kimberlite mines and alluvial deposits where measured in tonnes:* probable mineral reserves were 523Mt @ 55cpht containing 290Mcts; indicated mineral resources were 528Mt @ 44cpht containing 234Mcts; and inferred mineral resources were 1,528Mt @ 42cpht containing 634Mcts; and

- *In alluvial, coastal and marine placer mines:* probable mineral reserves were 24 million m^2 at 0.31cpsm containing 7Mcts; indicated mineral resources were 37 million m^2 @ 0.14cpsm containing 5Mcts; and inferred mineral resources were 40 million m^2 @ 0.24cpsm containing 10Mcts.

1.4.4 Operations

The operations forecast forming the basis for the financial evaluation calls for existing mines to produce 38Mcts from 87Mt of ore in 2001. Production is projected to increase to 45Mcts by 2010 with a slight reduction in tonnage to 82Mt.

The operations forecast takes into account the assumed successful completion of the following major capital projects:

- *Kimberley Mine CTP:* The construction of a new combined treatment plant is in progress. The plant is expected to improve recovery efficiencies and turn previously uneconomic resources both on surface and underground into mineable resources.

- *Finsch Mine Block 4:* Work has commenced on the establishment of a block cave to replace tonnage from the current block 3 cave when it is finally depleted.

- *Premier Mine C-cut:* The project will increase the depth of underground operations, and build new and increased plant capacity extending the life of mine by 17 years to 2025.

- *Snap Lake:* The project provides for the establishment of a complete mine and treatment facility initially to treat 3,000 tpd.

- *Debswana Damtshaa Mine (previously known as BK 9):* Construction is underway to provide a new mine and treatment facility east of Orapa in Botswana.

1.4.5 Marketing through the DTC

The companies that form the DTC represent the marketing arm of De Beers. They purchase, sort, value and market rough diamonds mined by De Beers as well as those from contracted third-party sources.

In addition to its sorting, valuation and sales activities, the DTC has for many years made significant investment by way of generic diamond marketing and promotional expertise. This year it will spend approximately US$180 million promoting diamond jewellery.

The DTC is pursuing several initiatives to increase the sales of its diamonds, notably through its Supplier of Choice initiative. The focus of this programme is to drive growth in consumer demand for diamond jewellery. The DTC will develop business relationships in a manner that will encourage its clients (sightholders) to pursue a more proactive role in promoting diamonds at the retail level. The DTC may offer marketing and technical assistance and expertise to enable sightholders to realise this goal.

The DTC has developed a new trademark, the 'Forevermark' from which it intends sightholders and retail customers to benefit. The 'Forevermark' will symbolise De Beers' commitment to integrity by the promotion of the highest professional and ethical standards throughout the diamond business.

To aid the determination of the sales target for 2001, a proprietary De Beers Supply/Demand model has been used. This model uses as inputs a number of assumptions about the factors that affect the diamond business. For the purposes of this report, three main scenarios have been evaluated:

- 'Consensus' – based on consensus forecasts of GDP growth, and the historic relationship between the economy and demand for diamonds. Consensus economic forecasts currently assume a slowdown, but not outright recession, this year, with some recovery in 2002.
- 'Upside' – based on the same economic forecasts as the consensus scenario but with more optimistic market expansion targets. This scenario also assumes a more optimistic view for contract third-party purchases by the DTC.
- 'Downside' – based on a more negative economic outlook, with recession in the US during 2001/2 and correspondingly lower growth in the rest of the world, with a further cyclical slowdown in 2007/8.

The DTC has set a target of US$4.8 billion under the 'consensus' scenario for its sale of rough diamonds in 2001. Thereafter, the Supply/Demand model indicates an increase in sales between 2001 and 2010 at a CAGR of 4.5% in nominal terms. However, due to the limits on the availabilities of certain ranges of goods, this indicative percentage growth in DTC sales does not flow into the valuation model in which DTC sales have been capped at levels commensurate with forecast diamond availabilities.

1.4.6 De Beers/LVMH Branding Initiative

One of De Beers' latest initiatives is the establishment of an equally funded new company with LVMH Moët Hennessy Louis Vuitton ("LVMH"). De Beers will (subject to regulatory approvals) transfer to the newly formed independent company the world-wide rights to use the De Beers name for luxury goods in consumer markets.

1.4.7 Debid

Debid (De Beers Industrial Diamonds) was established in 1946 to concentrate on the production, processing and marketing of natural diamonds and subsequently synthetic diamonds for industrial purposes. Debid currently produces and markets synthetic industrial diamonds, and buys and markets natural industrial diamonds.

1.4.8 Other Investments

De Beers holds investments (other than its investment in Anglo American) in certain JSE listed companies. These are not core assets and could be disposed of should conditions require.

Income from unlisted diamond industry investments has been included in the financial model referred to in this report.

1.5 Valuation Methodology

The methodology used to value the various assets of De Beers is set out below.

1.5.1 General Principles

De Beers' core diamond business has been valued on a going concern basis, with all the mines in which De Beers has an interest, the DTC and their related capital assets and working capital assets being treated as an integral and non-divisible part of that core business.

The nature of De Beers' core diamond business and factors such as pre-emption rights and marketing rights relating to various parts of the business make it inappropriate to value the business on a break-up basis.

The valuation has been prepared as at 31 December 2000 and, where appropriate, cash flows have been discounted back to this date.

1.5.2 Operating Mines and DTC Sales

De Beers' operating mines have been valued using discounted cash flow methodology. A financial model has been constructed which incorporates the life of mine cash flows for each mine and extends out to the year 2030. The production rates and costs for the mines have been based on the SBPs, as refined by De Beers' three-year rolling forecasts.

DTC sales, which include sales of diamonds produced from De Beers' and its partners' mines as well as sales of diamonds purchased under third party contracts, and changes in diamond prices have been estimated using the De Beers Supply/Demand forecasting model, capped by forecast limits on the availabilities of certain ranges of goods. Three supply/demand scenarios have been computed; 'upside', 'downside' and 'consensus'. A detailed description of these scenarios is set out in Section 11.

It should be noted that the De Beers Supply/Demand model seeks to forecast DTC sales and changes in diamond prices over a 10-year period but not specifically on a year by year basis. Accordingly, this impacts on the financial projections set out in this report which are not therefore intended to be year by year specific but intended to cover a period of years. The financial projections have been prepared by De Beers on the basis of current assumptions and have not been reported on independently.

1.5.3 Exploration

A valuation range of between US$0 and US$100 million has been placed on De Beers' exploration activities. The range indicated takes account of the three scenarios computed in this report. A maximum value of US$60 million was assumed for advanced exploration projects and a maximum of US$40 million for all other assets.

1.5.4 De Beers/LVMH Branding Initiative

Although a business plan remains to be fully developed (pending regulatory approvals) in respect of the enterprise, it has been valued using discounted cash flow methodology on the basis of initial and preliminary cash flow projections estimated by De Beers.

Given the current conceptual nature of the venture, the cash flow projections have not been incorporated into the financial model and a separate, stand-alone NPV has been estimated.

1.5.5 Debid

Debid has been valued using discounted cash flow methodology. The estimated future cash flows for Debid have been incorporated into the financial model.

1.5.6 Listed Investments

De Beers' interest in listed investments (other than its investment in Anglo American) have been valued based on market values as at 31 December 2000.

1.5.7 Other Assets

With the exception of adjusted net cash, De Beers' working capital, including diamond stocks and cash, has been valued on the basis that it is an integral part of De Beers' gem diamond and industrial diamond businesses and has therefore been incorporated into the financial model. De Beers' current diamond stocks are considered strategic and necessary for the ongoing conduct of its business as is its cash (other than adjusted net cash).

The adjusted net cash has been estimated having regard to the current level of De Beers' working capital and its future needs (and includes cash resulting from the exercise of options).

De Beers' other diamond industry investments have been valued on the basis of future estimated dividend streams and such dividend streams incorporated into the financial model.

1.5.8 Discount Rates

NPVs have been calculated using real discount rates ranging between 10% and 15% having regard to De Beers' weighted average cost of capital ("WACC") for its diamond business (adjusting for the impact of its shareholding interest in Anglo American), the estimated WACCs of other mining companies, implied discount rates estimated for comparable transactions and academic papers on the estimation of discount rates.

1.6 Strengths, Opportunities and Risks

Strengths, opportunities and risks with respect to De Beers' diamond business are set out below.

1.6.1 Strengths and Opportunities

General: De Beers and its partners are the largest diamond producer by value in the world. The DTC is the world's leading marketer of rough diamonds.

De Beers benefits from a sound operating base, efficient use of assets, good relationships with its major stakeholders, and a management team aimed at growing the diamond business to a value of US$10 billion by the year 2004, in line with a carefully considered strategy.

As a fully integrated group focused wholly on the diamond business, De Beers believes it possesses the strengths required to maximise the opportunities that present themselves, while being aware of the risks that exist.

Workforce: De Beers has a dedicated and loyal workforce which takes great pride in its work, De Beers and De Beers' company values. This workforce is motivated and

capable of growing the company, and has contributed significantly to the increase in profits realised over the last three years and to the strategic transformation of the company. De Beers continues to invest in the development of staff at all levels.

As Is Plus: As a result of the strategic review started in 1998, De Beers has implemented a number of initiatives that have reduced unit costs and improved efficiencies. Further progress in this area continues to be made in the Southern African operations. The threat of AIDS and the employment equity issue, and their associated financial costs do, to an extent, limit the potential gains from these initiatives.

Technical Ability: De Beers has invested heavily in research and development of new, leading edge technology in many areas of the diamond business. For example, this has led to the successful implementation of deep-water mining of marine placer deposits off the coast of Namibia. De Beers is the only mining company involved in large-scale underground mining of kimberlite pipes and has unrivalled expertise in large, block cave excavations. Ongoing research and development has resulted in cutting edge plant design with a high degree of automation. The newly commissioned Aquarium Plant at Jwaneng contains the Completely Automated Recovery Plant ("CARP") for the recovery of diamonds from x-ray concentrate and the Fully Integrated Sort House ("FISH") where the sorting and acid cleaning processes have been automated.

Exploration: De Beers has an extensive exploration programme both on existing mines and in extensive greenfield sites on five continents and is committed to securing new sources of supply through exploration on its own and in joint ventures with others.

Resource Base: De Beers and its partners have a large mineral resource base, unrivalled by any other diamond mining company, currently standing at approximately 2.6 billion tonnes amounting to some 1.2 billion carats. The majority of these resources occur in large scale, low cost mines where the current life of mine expectation is in excess of 20 years.

Supplier of Choice: In July 2000, De Beers announced the launch of the DTC's Supplier of Choice initiative, a move away from the market perception of the CSO as custodian of the market in its role as supplier of last resort. The focus of the initiative, which will be subject to review by the European Commission, is to drive long-term growth in consumer demand for diamond jewellery by developing the DTC's business relationships with its sightholders. Successful implementation of this long-term strategy will result in a sustainable increase in rough diamond demand. An important component of Supplier of Choice is the subscription of the DTC and its sightholders to a set of best practice principles to promote and encourage high industry, ethical and business standards.

Client base: The DTC sells its goods to approximately 120 client companies or sightholders. These companies represent the highest levels of expertise in diamond manufacture and distribution, in addition to proven financial strength. The Supplier of Choice initiative is designed to enable clients to grow their own businesses through successful marketing strategies. Supplier of Choice will also ensure that sightholders subscribe to the highest professional and ethical standards.

Brand Power: De Beers recognises the latent power of branding, and is encouraging the development of a competitive multi-brand jewellery consumer market. It believes that this will significantly increase consumer choice and re-invigorate the diamond jewellery category.

In January 2001 De Beers signed an agreement with LVMH Moët Hennessy Louis Vuitton, the world's leading luxury goods company, to establish an independently managed and operated company to develop the global consumer brand potential of the De Beers name.

1.6.2 Risks

Mining Titles: Currently, De Beers owns or leases from the state all of its South African mineral rights in perpetuity. However, the South African government has publicised its intention to take all mineral rights into state ownership. The resulting uncertain issues of tenure and fiscal regime may have an influence on the viability of present and future operations and new projects. De Beers is actively involved in discussions with the South African government to provide sound minerals legislation and to ensure that the economic viability of its future investments in operations is not jeopardised.

In Botswana and Namibia, the Debswana and Namdeb mining rights are held by way of 25-year mining leases. Upon lease expiry, there is no obligation on these states to renew the existing licenses on similar terms. The Jwaneng mining lease falls due for renewal in 2004.

Political: All of De Beers' current producing mines are situated in Southern Africa. Accordingly, De Beers is subject primarily to Southern African political risk and to risk of disruption as a result of localised events. This would also include ongoing differences of opinion and interpretation with various authorities with regard to the valuation and export of De Beers' diamonds from South Africa.

Dependence on Botswana: A substantial proportion of De Beers' production and profits is sourced from Debswana's mines located in Botswana, exposing De Beers to any actions which impinge upon Debswana's ability to recover and deliver diamonds to the DTC.

Legal: An indictment, issued in 1994 by the United States District Court for the Southern District of Ohio, remains unserved upon DBCAG. Two related private class action lawsuits have been filed in the Southern District of New York. De Beers believes that these suits do not subject it to significant legal risks and, having managed its business so as to avoid undue legal risk arising out of US antitrust laws, is not aware of any other material exposure to its business under US law.

Investment Portfolio: In the past, De Beers has raised debt finance to finance stocks and to exploit opportunities at difficult times in the diamond market. The raising of this debt finance has been facilitated by the existence of De Beers' shareholding in Anglo American. Without the portfolio, De Beers' ability to raise capital could be restricted and growth prospects limited.

Earnings Cyclicality: Retail demand in the diamond business responds to changes in economic activity. The lag in the diamond pipeline's response to changes in consumer demand has tended to accentuate the cyclical nature of the rough diamond business. The single product nature of De Beers' business and the volatile nature of the rough diamond business has been cushioned to an extent by the investment in Anglo American and the income stream relating thereto.

Health: HIV/AIDS is prevalent in Southern Africa. De Beers has developed education and prevention programmes.

Workforce: There has been a steady emigration of skilled personnel from Southern Africa in recent years. De Beers has developed innovative programmes to recruit, train and retain personnel. Parts of the diamond industry require advanced technological skills, and De Beers has developed an aggressive development and remuneration strategy, directly tied to individual performance, in order to retain core competencies. The retention of people will be dependent on the financial, economic and political stability of the region.

Contractual Agreements: De Beers' diamond purchase agreements with Russia and with BHP (in respect of the Ekati mine in Canada) expire in December 2001 and December 2002 respectively and are therefore subject to negotiated renewal. In

addition, sales agreements with Namdeb and Debswana are subject to five-yearly negotiated renewal.

As is usual in mining industry practice, pre-emption rights and change of control clauses exist between De Beers and its joint venture partners. De Beers' joint venture agreements provide for sharing of expenditure. These agreements tend to limit choices available to De Beers while introducing uncertainty as to the terms of contract renewal.

Additional Diamond Supply: As evidenced in 1992 in Angola, additional unexpected supply of diamonds has the capacity to disrupt the industry. Additional diamond supply from African alluvial sources could occur as a result of the exploitation of new deposits and changes in the socio-political climate in certain of these countries.

Market: The market for diamonds, a high-fashion luxury product, is sensitive to changes in the global economic climate, affected particularly by the US economy. The US currently accounts for approximately half of world-wide consumer consumption of diamond jewellery in value terms. In 2001 De Beers, through the DTC, plans to spend approximately US$180 million world-wide on generic diamond advertising.

Conflict diamonds: De Beers has taken a strong stance on this issue to ensure that the diamonds it markets are conflict-free. It has adopted a code of practice that also requires its sightholders to adopt the same policy. In the future, the DTC Forevermark may be used to distinguish diamonds as being sourced from conflict-free areas.

Cuttable Synthetic Diamonds: Synthetic diamonds, particularly industrial grit products, have been produced since the late 1950s. The technology to manufacture synthetic diamonds of sufficient size and quality for cutting and polishing has existed since 1970. However, production costs are high and it is only in the last few years that cuttable synthetics have been produced in commercial quantities albeit small: a few thousand carats (cf 30 Mcts per annum of polished natural gem diamonds). Nevertheless, any suggestion of synthetic diamonds being fraudulently sold as natural diamonds could have a disproportionate effect on consumer confidence. For this reason the DTC has an on-going research programme investigating the characteristic features of synthetic diamonds that can be used for identification and communicating this information to leading gem grading laboratories.

Exchange Controls: De Beers' operations in South Africa and Namibia fall within the Common Monetary Area ("CMA"). Although the South African government has committed to easing exchange controls, restrictions remain in force and any movement of funds outside the CMA remains subject to South African Reserve Bank approval. As a result, surplus cash flows from the South African and Namibian operations are not freely available for use in growing the business internationally.

Taxation: For over a year, the revenue authorities in South Africa and the UK have been engaged in general enquiries into the tax affairs of De Beers in their respective jurisdictions. These enquiries are general and wide ranging and include matters such as deductibility of expenses and transfer pricing.

1.7 Economic Evaluation

1.7.1 Diamond Business

The NPVs, at real discount rates of 10%, 12.5% and 15% of the estimated future cash flows generated by De Beers' core diamond business, industrial diamond business and other assets incorporated into the financial model are set out in the table below. The NPVs have been prepared on the basis of the 'consensus', 'upside' and 'downside' supply/demand scenarios and appropriately factored inferred mineral resources.

REAL DISCOUNT RATES	10%		12.5%		15%	
Description of scenario	US$M	RM	US$M	RM	US$M	RM
'Consensus' scenario	7,159	55,352	6,117	47,296	5,329	41,204
'Downside' scenario	4,967	38,403	4,246	32,829	3,699	28,598
'Upside' scenario	8,736	67,547	7,355	56,869	6,321	48,877

1.7.2 Other Assets

With respect to assets not incorporated into the financial model and valued separately, the estimated value of these assets is as follows:

Assets	US$M
Exploration Properties	0-100
De Beers/LVMH Branding Initiative	200-500
Listed Investments	300
Adjusted Net Cash	750
TOTAL	**1,250-1,650**

1.7.3 Aggregate Asset Evaluation

The aggregate values of the gem and industrial diamond businesses and De Beers' other assets excluding its shareholding interest in Anglo American on the basis of the various scenarios are as follows:

	Value Range	
Scenario	US$M	RM
'Upside' scenario at 10%-15% real discount rate range	7,971-10,386	61,912-80,582
'Consensus' scenario at 10%-15% real discount rate range	6,779-8,609	52,659-66,807
'Downside' scenario at 10%-15% real discount rate range	4,949-6,217	38,473-48,278

On the basis of a real discount rate of 10.5% to 11.5% which N M Rothschild & Sons Limited ("Rothschild"), independent financial adviser to the Independent Committee, has advised is an appropriate basis on which to value the gem and industrial diamond businesses, the value of the gem and industrial diamond businesses and De Beers' other assets excluding its shareholding interest in Anglo American is as follows:

	US$M	RM
Gem and Industrial Diamond Businesses	6,498-6,925	50,239-53,545
Other Assets	1,450-1,450	11,455-11,455
TOTAL	**7,948-8,375**	**61,694-65,000**

1.7.4 Sensitivity Analysis

The NPVs stated in Section 1.7.1 above are not particularly sensitive to variations in mine operating costs, capital expenditure and exchange rates. Sensitivity of the NPVs to diamond pricing, diamond production and demand is reflected in the scenarios in the table in Section 1.7.1.

On the basis of the 'consensus' scenario comprising only probable mineral reserves and indicated mineral resources, the NPV at a 10% to 15% real discount rate range

amounts to US$4,460 million to US$5,638 million (or ZAR34,483 million to ZAR43,597 million).

1.8 Conclusion

A copy of this report has been provided to the committee of independent directors of De Beers and the committee's independent financial advisors, Rothschild. A copy of the financial model together with supporting working papers and relevant documentation has also been provided to Rothschild, which has used this report and the financial model as part of the basis of preparation of its fair and reasonable opinion prepared in relation to the offer by DBI for De Beers.

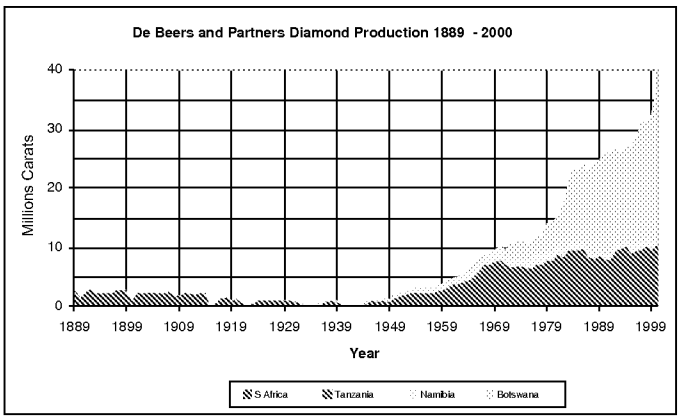
Signed	Signed	Signed . . . . .
Dr W.J. Kleingeld	Mr M.L.S. De Sousa-Oliveira	Mr G.P.H. Penny

2. Corporate Profile

2.1 History

Two prominent diamond mining companies emerged from the diamond rush in and around Kimberley in the late 19th century: Barney Barnato's Kimberley Central Company and Cecil John Rhodes' De Beers Company, named after the De Beer brothers, on whose farm its mine was established. Following a protracted battle for overall control, Barnato agreed to a merger and DBCM was formed on 12 March 1888, with Rhodes as the founding Chairman. De Beers was granted an official listing on the JSE in August 1893.

South African and Namibian production was cyclical until about 1950 with interruptions resulting from influenza (1915-1916), the economic crises of the 1930s and the Second World War. Thereafter production increased with the operation of both kimberlite and placer mines. Namibian production expanded until 1980, as placer deposits and subsequently marine deposits were brought on stream. The Williamson pipe in Tanzania was a significant contributor in the 1960s and early 1970s. However, production has declined since then and today the mine is a minor contributor. Production from Botswana has grown spectacularly since 1970 with the opening of kimberlite mines at Orapa (1971), Letlhakane (1977) and Jwaneng (1982).

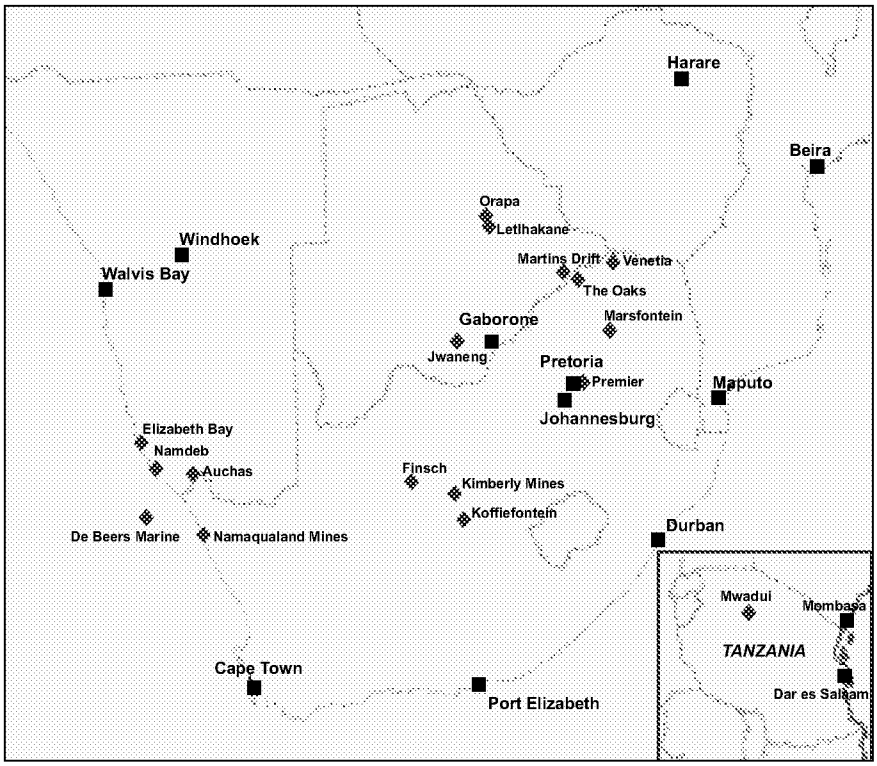


In February 1890, De Beers signed a sales contract with the newly formed London Diamond Syndicate, which agreed to purchase the entire production from all the De Beers mines. This syndicate was the model on which Ernest Oppenheimer was to establish the Diamond Corporation in 1930, which, in turn, formed the basis of the Central Selling Organisation, the single channel marketing structure. Today, the DTC is De Beers' marketing arm which sells rough diamonds, achieving distribution efficiencies to meet modern market conditions.

In 1990 to lend visibility and coherence to the international assets owned by the company, DBCAG was registered in Switzerland to hold all of De Beers' non-South African assets. Thus was born the 'De Beers Linked Unit', which secures the rights and interests of shareholders simultaneously in the two De Beers companies: DBCM and DBCAG.

Broadly speaking, the history of De Beers falls into three stages. In its early years, the company produced over 90% of the world's diamonds. Then, in the early 1930s (when the diamond industry was close to collapse as a result of the Great Depression following the Wall Street collapse in 1929), the Central Selling Organisation ("CSO") was established to market rough diamonds produced by De Beers, diamonds bought from third party producers on a contractual basis and those purchased on the open market. Whilst the CSO was highly successful when it was first established, market conditions have now changed significantly (including the emergence of many new sources of rough diamonds, the increasing importance of diamonds sold outside traditional channels of distribution and strong competition from other luxury goods.) In response to these changes, De Beers introduced strategic and innovative programmes including its Supplier of Choice initiative (announced on 12 July 2000) in order to drive growth in consumer demand for diamond jewellery.

Today, De Beers and its partners are the largest diamond mining group in the world, producing over 40% by value of the world's gem diamonds from its mines in Southern Africa and through its partnerships with the governments of Botswana (Debswana – 50%), Namibia (Namdeb - 50%) and Tanzania (Williamson Diamonds Limited - 75%).



De Beers and its partners' operations in Southern Africa

The 'Diamond Pipeline' is a term that refers to the system by which diamonds are discovered, extracted, marketed, cut, polished and sold to the consumer. De Beers' gem mining operations span every category of diamond mining – open-pit, underground, alluvial, coastal and deep-sea – while its exploration programme extends across five continents.

Based in London, the DTC sorts, values and currently sells about two-thirds of the world's annual supply of rough diamonds, which it sources from the mines of De Beers and its partners and from the sales agreements De Beers has in place with other producers. Over the last 60 years, De Beers has also undertaken the generic advertising and promotion of diamond jewellery around the world.

De Beers has always operated in ways appropriate to the times, and has responded to the ever-changing and now increasingly competitive business environment.

In the late 1990's De Beers recognised that it needed to transform the way it conducted business in order to benefit from the opportunity to grow the diamond business and to match the growth rates enjoyed by the leading companies in the luxury goods sector.

From this was born the Supplier of Choice initiative, which is ultimately about the DTC working more closely with its clients and equipping them to service their downstream partners to drive consumer demand and to put the industry in a more robust position to face the challenges of the 21st century.

Whilst the core business of De Beers remains the mining and marketing of rough diamonds and its core strategy one of driving demand for rough diamonds, the De Beers name has very strong consumer awareness and credibility. The creation of a multi-brand environment remains a focal point of the Supplier of Choice strategy, and consistent with this, the company believes that the De Beers name has the potential to become one of the leading jewellery brands. It was for this reason that De Beers and LVMH agreed to establish an independently managed and operated company to unlock the value of the De Beers name as a premier consumer brand.

2.2 Debid

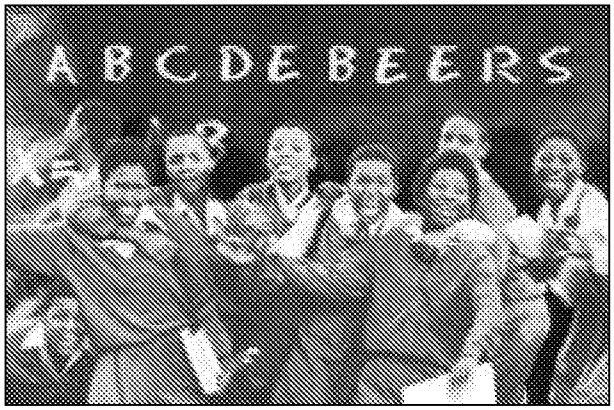
De Beers Industrial Diamonds ("Debid") is part of the De Beers group of companies and is the world's leading supplier of high quality super abrasives and industrial diamond materials, including synthetic and industrial-grade natural diamonds used in industry for their unique and extreme properties.

In 1946, former De Beers Chairman, the late Sir Ernest Oppenheimer, spearheaded De Beers' interests in industrial diamonds. Shortly thereafter, the Diamond Research Laboratory ("DRL") was established in South Africa to support the use of diamonds in industry.

Debid has been central to the evolution from conventional abrasives to more cost-effective diamond solutions, and provides the basis for continual developments in diamond technology.

2.3 Benefits to countries in which De Beers operates

Contracted producers marketing their rough diamonds through the DTC benefit from guaranteed regular payments that bring financial stability and confidence to invest in long-term development projects. Revenue from diamonds has helped to provide schools, hospitals, civic amenities, roads and railways, building a stronger infrastructure and more prosperous society.



One must recognise the important role of 'Development' diamonds in countries such as South Africa, Botswana and Namibia. A strong and secure diamond industry creates jobs, generates tax revenue and foreign exchange earnings, and promotes economic growth in the Southern African countries in which De Beers and its partners operate.

2.3.1 South Africa

South Africa was the birthplace of the modern diamond industry, following the discovery of the first diamond in the Kimberley area in 1866, which very soon thereafter contributed to the industrialisation of the country. The sound management of South Africa's diamond resources has meant that whilst South Africa was the leading diamond producing country in Africa until Botswana came on stream in the 1970s, De Beers, a company with its roots firmly in South Africa and still responsible for just under 90% of South Africa's diamond production by value, nevertheless remains the leading institution in the world's diamond industry. This is a source of pride for the company and a source of international empowerment for South Africa itself.

De Beers has committed itself to the mining industry in South Africa, evidenced through its prospective investment in the order of R11 billion (US$1.3 billion) in its South African operations over the next five to ten years, in projects which aim to extend the life of older operations and perhaps even revive others.

De Beers is also committed to a number of job creation and economic empowerment projects which seek to include those previously excluded from the industry.

Diamond is the most beneficiated mineral in South Africa. Last year, the equivalent of more than half of De Beers' South African production, by value, was sold to the South African cutting and polishing industry. The industry contributes significantly to the

training of young diamond workers in South Africa, and skilled artisans are given the opportunity to become fully-fledged entrepreneurs through the Velani Hive, an initiative which provides affordable working space to experienced diamond workers on contract.

2.3.2 Botswana

Botswana was amongst the world's poorest countries when it became independent in 1966. Today, Botswana has the highest international credit rating in Africa, and the capital city of Gaborone is a flourishing city. Prudent management of the country's diamond resources within a stable democratic environment has allowed Botswana to become one of the world's economic success stories.

Diamonds contribute 75% of foreign exchange earnings, 45% of government revenue and 33% of GDP in Botswana. Diamond wealth has been distributed throughout the country, providing the major source of funding for schools, hospitals and other infrastructure. Debswana is the largest employer after the government, and 96% of its employees are Botswana citizens. Significant investment in education by the company has improved skills and productivity in the country.

2.3.3 Namibia

Diamonds play a vital role in the economy of Namibia. Diamond revenue (the largest portion of it contributed by Namdeb) contributes approximately 35% of Namibia's foreign exchange earnings, and Namdeb is second in size only to the government as an employer.

Revenue from diamonds funded the construction and initial development of the University of Namibia, a maternity clinic in the north of the country, and the Namibian Institute for Educational Development, an institution that is making a valuable contribution to the future of Namibia and young Namibians.

2.4 Important developments in the last five years

- Announcement at the end of 1997 that De Beers was separating its management ties from Anglo American.
- Nicky Oppenheimer was appointed as Chairman and Gary Ralfe appointed as Managing Director of De Beers from 1 January 1998.
- The company moved to its new corporate headquarters in Crown Mines (South Africa) in June 1998.
- At the end of 1998 De Beers announced a strategic review of its business, motivated by the under-performance of the company, measured by financial returns, investment ratios, and as reflected in De Beers' share price history.

  From the strategic review four focus areas emerged which formed a new strategic plan:

  - ***As Is Plus:*** Ensuring the business runs more efficiently and more economically.
  - ***Becoming the preferred supplier for our customers:*** Moving away from the seller of last resort to becoming the supplier of choice to our clients.
  - ***Growing demand by at least 5% per year:*** De Beers must work with its clients and the whole diamond industry to generate real incremental demand for diamond jewellery.
  - ***Exploiting the value of the De Beers brand:*** Although the core business of De Beers remains the mining, sorting and selling of rough gem diamonds, additional value could be generated by the De Beers brand.

- De Beers renewed its sales agreement with Alrosa, the Russian state diamond company, for a further three-year period from December 1998. This was partly responsible for the increase in industry optimism at the end of 1998.

- In March 1998 De Beers signed a three-year agreement with BHP (which came into effect during 1999) to purchase 35% of the run-of-mine production of the Ekati mine in Canada's Northwest Territories.

- Two important projects were completed in Debswana:

  – The Orapa 2000 project was opened in May 2000, which at a cost of US$300 million doubled the production at Orapa from six million carats to 12 million carats per annum from the year 2000; and

  – The US$50 million Aquarium project – a new high-tech, high-security recovery and sort-house facility – was completed at Jwaneng Mine.

- De Beers reached agreement in 1999 to acquire Anglovaal Mining's 87.5% interest and Industrial and Commercial Holdings' 12.5% in the Saturn partnership, which had a right to a 50% royalty of pre-tax profits earned by the Venetia Mine in South Africa.

- In 1999 the last outstanding minorities in the diamond trading companies were bought out, allowing De Beers full control of the operation and cashflow of the companies.

- De Beers announced in October 1999 that it would close down its buying operations in Angola and would be reviewing other buying operations in Central and West Africa. Since the end of that year, the DTC has ceased buying diamonds on the open market. From March 2000, De Beers issued a guarantee to its clients on all invoices stating, *inter alia*, that diamonds purchased from the company do not originate from areas of conflict.

- Following on from the strategic plan, De Beers announced its Supplier of Choice programme in London on 12 July 2000, which effectively addresses focus areas two and three of the strategic plan. The initiative is designed to stimulate long–term change in the diamond industry and to modernise business practices so as to encourage sightholders to innovate and work more closely with their downstream partners to stimulate demand for diamond jewellery. Part of the Supplier of Choice programme is the introduction of a set of Best Practice Principles to which both the company and its customers are expected to commit and adhere. The Best Practice Principles address, amongst other things, the issue of dealing in diamonds from conflict areas and have been adopted to ensure that the industry is run in an ethical and professional way.

- In November 2000, the DTC renewed its sales agreements with Debswana and Namdeb for a further five years.

- De Beers acquired a 67.76% interest in the Snap Lake project in Canada's Northwest Territories through a take-over bid for Winspear Diamonds Inc in July 2000, and the remaining interest in Snap Lake from Aber Diamond Corporation in February 2001. The project may be De Beers' first Canadian diamond mine.

- On 16 January 2001, De Beers and LVMH Moët Hennessy Louis Vuitton, the world's leading luxury products group, announced an agreement to establish an independently managed and operated company to develop the global consumer brand potential of the De Beers name.

8. De Beers/LVMH Branding Initiative

8.1 Overview

On 16 January 2001, the De Beers Group signed an agreement with LVMH Moët Hennessy Louis Vuitton ("LVMH"), the world's leading luxury products group company to establish an independently managed and operated company to develop the global consumer brand potential of the De Beers name.

The new independent company will have the global rights to use the De Beers name in consumer markets and will position itself as a premium jewellery and associated luxury goods brand. The immediate focus will be on premium diamond jewellery and it is anticipated that, subject to regulatory approval, the business will commence within the next 12-18 months with a small number of flagship retail stores located in the world's most prestigious cities.

De Beers and LVMH will invest equal amounts of capital to establish the independent company, that they will own equally.

The expertise of LVMH both in developing luxury brands and rolling out premium retail concepts, combined with technical diamond expertise from a one-off transfer from the De Beers Group will help realise the value inherent in the De Beers brand and is expected to act as a catalyst for brand competition in the sale of jewellery products.

8.2 Evaluation

Although De Beers/LVMH has not yet fully developed the business plan, De Beers has prepared initial and preliminary estimates for the venture which may or may not correspond to the finally agreed upon business plan. The net present value range of the initial and preliminary estimates of the future cash flows is approximately US$200 million to US$500 million for De Beers' 50% interest in the company, and is based on the following assumptions and factors:

- The total global retail market for diamond jewellery (i.e. jewellery pieces containing at least one diamond) is currently estimated at approximately US$56 billion and is estimated to grow over the next 10 years at an average annual rate of 2.5% in real terms. Of this total market, approximately two-thirds is represented by the United States and Japan.
- It will take the new company up to 10 years to achieve a share of 1.4% of the global retail market for diamond jewellery.
- Its principal markets will be in the United States and Japan and diamond jewellery sold by the joint venture will command a premium of 25% to 30% over diamond jewellery sold by unbranded, high-end independent diamond jewellery retailers.
- A probability factor has been applied to the preliminary estimate of future cash flows to reflect the fact that regulatory approvals has not been obtained, a business plan has not yet been fully developed and, at this stage, the new enterprise represents a concept yet to be launched as opposed to an ongoing business.
- A real discount rate of approximately 9% has been used reflecting the weighted average cost of capital of luxury goods companies.

10.2.1.2 Legal Risk

De Beers has managed its business so as to avoid any undue legal risk arising out of US antitrust laws in the United States since its business policies have not required systematic contacts with the United States. De Beers is therefore not aware of any material exposure to its business under the laws of the United States. However, in 1994 the United States District Court for the Southern District of Ohio issued an indictment alleging that DBCAG and the General Electric Company conspired to fix the prices of industrial diamonds for a nine month period between 1991 and 1992. While the indictment has never been served upon DBCAG, the case against General Electric was dismissed. There have also been two private class action lawsuits filed in the US District Court for the Southern District of New York relating to the same claims. De Beers believes that with respect to both the indictment and the private suits that the US courts lack jurisdiction over the company and that therefore these suits do not subject De Beers to significant legal risks. Except as referred to De Beers is not aware of any material litigation or material pending litigation.

10.2.1.3 Taxation

For over a year, the revenue authorities in South Africa and the UK have been engaged in general enquiries into the tax affairs of De Beers in their respective jurisdictions. These enquiries are general and wide ranging and include matters such as deductibility of expenses and transfer pricing. De Beers has answered all questions promptly and has responded to and supplied all requests for information, and has no reason to believe that any material exposure exists in this regard.

10.2.2 Environmental

10.2.2.1 Introduction

In caring for the environment and the communities in which it operates, De Beers requires all of its mines to attempt to meet the ISO 14001 Environmental Corporate Governance Management System. This covers the legal obligation to have a governmental approved environmental management programme (EMP) that covers construction, operating and closure phases of the mine. The issuing of a South African mining authorisation is subject to an approved EMP report (EMPR).

The EMP includes the bio-physical and social environments and would include land disturbance, water management, mining waste (waste rock, tailings and slimes), industrial and domestic waste disposal, infrastructure and associated (access, power supply) impacts.

10.2.2.2 Environmental risk and liability

The approval of the EMPR (RSA mines) and issuing of a Mining Authorisation are subject also to the ability to undertake rehabilitation of surface disturbances, and the financial provision for the rehabilitation of such disturbances after closure of the mine. Chapter 6 of the EMPR requires that a closure plan be formulated, costed and that a financial guarantee for this amount be lodged with the DME.

The requirements for closure and pecuniary provisions for all South African mines are reviewed and updated annually and the provision adjusted accordingly. In addition, environmental management and rehabilitation are being addressed continually under annual operating and capital budgets. This covers staffing, consultants, pollution control, water and energy management, waste management and rehabilitation.

Closure provision is not a legal requirement in Namibia or Botswana. However, estimates for closure have been determined for Namdeb operations and are being prepared for Debswana operations.

10.2.2.3 Rehabilitation

The goals for closure are to leave a safe, stable and self-sustaining post-mining environment ("zero aftercare") and restore the land to a productive land use. The major challenges are making safe the open-pits and rehabilitating and revegetating mining residues and disturbances.

Towards these goals at every mine a number of initiatives are in progress. For example:

- At Kimberley Mines redundant treatment plant has been removed; concrete structures have been demolished; and the slopes of the slimes dam wall are being flattened, topdressed and vegetated. Most of the old kimberlite tailings dumps will be removed, retreated in the CTP and the residues deposited in the open pits. This will reduce considerably the environmental liability and risk.

- At Koffiefontein, the Eskom dump has been regraded and topsoiled. The slopes of the waste rock dump are being flattened, topsoiled and revegetated.

- At Finsch Mine redundant treatment plant has been removed. Special attention has been given to improving industrial waste management. The slopes of the waste rock dump are being regraded, and the entire dump will be topsoiled and revegetated.

- At The Oaks Mine, innovative dump development makes use of waste rock to establish paddocks into which the processed kimberlite is deposited. This method enables a stable pollution-free slope to be constructed which is easily revegetated and allows for rehabilitation and revegetation concurrent with mining operations, reducing the closure cost and liability.

- At Premier Mine the focus has been on formulating an emergency response strategy in the unlikely event of a failure of No. 7 dam. The stability of the dam is carefully monitored and subject to independent external audit. The probability of such a failure is extremely low.

- At Venetia, special attention has been given to topsoil requirements for life of mine. Topsoil is pre-stripped within the footprint of future waste and tailings dumps and stockpiled for later use. Water is a precious resource, and storage of flood water from the Limpopo River ensures the sensitive Limpopo riparian system is not damaged during periods of no surface flow in the river.

occur in large scale, low cost mines where the current life of mine expectation is in excess of 20 years.

Supplier of Choice: In July 2000, De Beers announced the launch of the DTC's Supplier of Choice initiative, a move away from the market perception of the CSO as custodian of the market in its role as supplier of last resort. The focus of the initiative, which will be subject to review by the European Commission, is to drive long-term growth in consumer demand for diamond jewellery by developing the DTC's business relationships with its sightholders. Successful implementation of this long-term strategy will result in a sustainable increase in rough diamond demand. An important component of Supplier of Choice is the subscription of the DTC and its sightholders to a set of best practice principles to promote and encourage high industry, ethical and business standards.

Client base: The DTC sells its goods to approximately 120 client companies or sightholders. These companies represent the highest levels of expertise in diamond manufacture and distribution, in addition to proven financial strength. The Supplier of Choice initiative is designed to enable clients to grow their own businesses through successful marketing strategies. Supplier of Choice will also ensure that sightholders subscribe to the highest professional and ethical standards.

Brand Power: De Beers recognises the latent power of branding, and is encouraging the development of a competitive multi-brand jewellery consumer market. It believes that this will significantly increase consumer choice and re-invigorate the diamond jewellery category.

In January 2001 De Beers signed an agreement with LVMH Moët Hennessy Louis Vuitton, the world's leading luxury goods company, to establish an independently managed and operated company to develop the global consumer brand potential of the De Beers name.

11.4.2 Risks

Mining Titles: Currently, De Beers owns or leases from the state all of its South African mineral rights in perpetuity. However, the South African government has publicised its intention to take all mineral rights into state ownership. The resulting uncertain issues of tenure and fiscal regime may have an influence on the viability of present and future operations and new projects. De Beers is actively involved in discussions with the South African government to provide sound minerals legislation and to ensure that the economic viability of its future investments in operations is not jeopardised.

In Botswana and Namibia, the Debswana and Namdeb mining rights are held by way of 25-year mining leases. Upon lease expiry, there is no obligation on these states to renew the existing licenses on similar terms. The Jwaneng mining lease falls due for renewal in 2004.

Political: All of De Beers' current producing mines are situated in Southern Africa. Accordingly, De Beers is subject primarily to Southern African political risk and to risk of disruption as a result of localised events. This would also include ongoing differences of opinion and interpretation with various authorities with regard to the valuation and export of De Beers' diamonds from South Africa.

Dependence on Botswana: A substantial proportion of De Beers' production and profits is sourced from Debswana's mines located in Botswana, exposing De Beers to any actions which impinge upon Debswana's ability to recover and deliver diamonds to the DTC.

Legal: An indictment, issued in 1994 by the United States District Court for the Southern District of Ohio, remains unserved upon DBCAG. Two related private class action lawsuits have been filed in the Southern District of New York. De Beers believes

that these suits do not subject it to significant legal risks and, having managed its business so as to avoid undue legal risk arising out of US antitrust laws, is not aware of any other material exposure to its business under US law.

Investment Portfolio: In the past, De Beers has raised debt finance to finance stocks and to exploit opportunities at difficult times in the diamond market. The raising of this debt finance has been facilitated by the existence of De Beers' shareholding in Anglo American. Without the portfolio, De Beers' ability to raise capital could be restricted and growth prospects limited.

Earnings Cyclicality: Retail demand in the diamond business responds to changes in economic activity. The lag in the diamond pipeline's response to changes in consumer demand has tended to accentuate the cyclical nature of the rough diamond business. The single product nature of De Beers' business and the volatile nature of the rough diamond business has been cushioned to an extent by the investment in Anglo American and the income stream relating thereto.

Health: HIV/AIDS is prevalent in Southern Africa. De Beers has developed education and prevention programmes.

Workforce: There has been a steady emigration of skilled personnel from Southern Africa in recent years. De Beers has developed innovative programmes to recruit, train and retain personnel. Parts of the diamond industry require advanced technological skills, and De Beers has developed an aggressive development and remuneration strategy, directly tied to individual performance, in order to retain core competencies. The retention of people will be dependent on the financial, economic and political stability of the region.

Contractual Agreements: De Beers' diamond purchase agreements with Russia and with BHP (in respect of the Ekati mine in Canada) expire in December 2001 and December 2002 respectively and are therefore subject to negotiated renewal. In addition, sales agreements with Namdeb and Debswana are subject to five-yearly negotiated renewal.

As is usual in mining industry practice, pre-emption rights and change of control clauses exist between De Beers and its joint venture partners. De Beers' joint venture agreements provide for sharing of expenditure. These agreements tend to limit choices available to De Beers while introducing uncertainty as to the terms of contract renewal.

Additional Diamond Supply: As evidenced in 1992 in Angola, additional unexpected supply of diamonds has the capacity to disrupt the industry. Additional diamond supply from African alluvial sources could occur as a result of the exploitation of new deposits and changes in the socio-political climate in certain of these countries.

Market: The market for diamonds, a high-fashion luxury product, is sensitive to changes in the global economic climate, affected particularly by the US economy. The US currently accounts for approximately half of world-wide consumer consumption of diamond jewellery in value terms. In 2001 De Beers, through the DTC, plans to spend approximately US$180 million world-wide on generic diamond advertising.

Conflict diamonds: De Beers has taken a strong stance on this issue to ensure that the diamonds it markets are conflict-free. It has adopted a code of practice that also requires its sightholders to adopt the same policy. In the future, the DTC Forevermark may be used to distinguish diamonds as being sourced from conflict-free areas.

Cuttable Synthetic Diamonds: Synthetic diamonds, particularly industrial grit products, have been produced since the late 1950s. The technology to manufacture synthetic diamonds of sufficient size and quality for cutting and polishing has existed since 1970. However, production costs are high and it is only in the last few years that cuttable synthetics have been produced in commercial quantities albeit small: a few

thousand carats (cf 30Mcts per annum of polished natural gem diamonds). Nevertheless, any suggestion of synthetic diamonds being fraudulently sold as natural diamonds could have a disproportionate effect on consumer confidence. For this reason the DTC has an on-going research programme investigating the characteristic features of synthetic diamonds that can be used for identification and communicating this information to leading gem grading laboratories.

Exchange Controls: De Beers' operations in South Africa and Namibia fall within the Common Monetary Area ("CMA"). Although the South African government has committed to easing exchange controls, restrictions remain in force and any movement of funds outside the CMA remains subject to South African Reserve Bank approval. As a result, surplus cash flows from the South African and Namibian operations are not freely available for use in growing the business internationally.

Taxation: For over a year, the revenue authorities in South Africa and the UK have been engaged in general enquiries into the tax affairs of De Beers in their respective jurisdictions. These enquiries are general and wide ranging and include matters such as deductibility of expenses and transfer pricing.

11.5 Discount Rates

11.5.1 Weighted average cost of capital

De Beers has calculated its weighted average cost of capital ("WACC") for its diamond business adjusted to reflect the impact of its investment in Anglo American. As the level of gearing in the business is currently low, this calculation is heavily weighted by the cost of equity. The calculation utilises the Capital Asset Pricing Model ("CAPM") and assumes a global equity market risk premium of 6%.

De Beers' level of risk (beta) when compared to the market as a whole is statistically derived for the listed De Beers Linked Unit. However, as De Beers' investment in Anglo American makes up a substantial proportion of De Beers' market capitalisation, a 'diamond beta' must therefore be derived in order to remove the impact of the Anglo American investment in the De Beers beta. On this basis, De Beers estimates that its 'diamond beta' ranges between 1.3 and 1.5.

11.5.2 Mining company discount rates

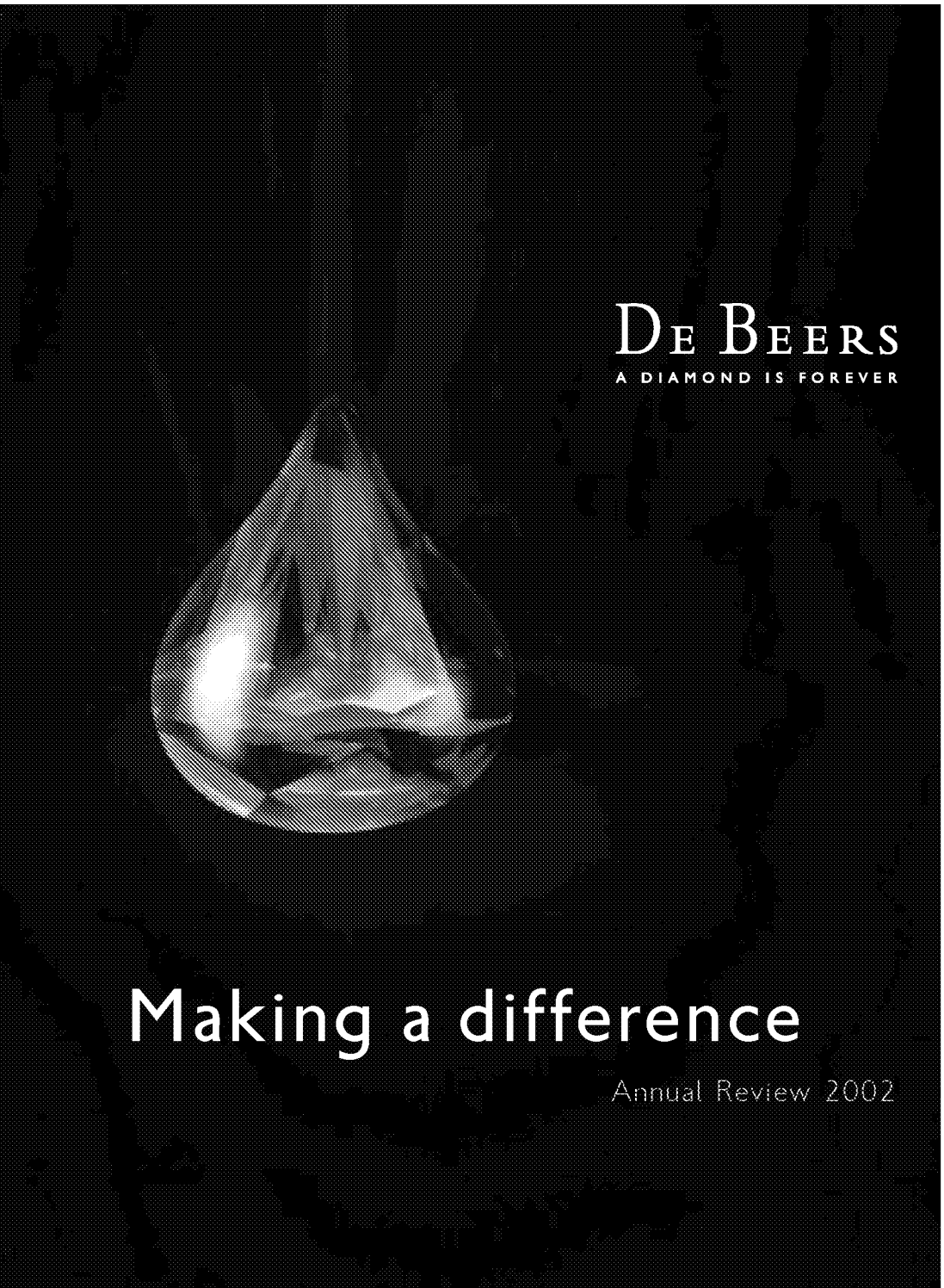
The recommended real discount rate for an operating base metal mine mid-life is 8% in an environment deemed to have little or no country risk (L. D. Smith: 'Discounted cash flow analysis methodology and discount rates'; CIM – PDAC Mining Millennium, 2000). It is felt that where discount rates are concerned, a base metal mine can be used as a proxy for a diamond operation.

11.5.3 Country risk premium

Country risk can be assessed in a number of ways, such as through the analysis of bank forfaiting rates, and through surveys of persons involved in international mineral economics and project assessment. L. D. Smith conducted such a survey of Canadian Institute of Mining and Metallurgy Mineral Economics Society members for his 2000 paper. He found consensus for a 6% country risk premium for South Africa, and a 10% country risk premium for Africa in general.

A country risk premium should be added to discount rates used for investments in environments considered to have little or no country risk. Assuming the correct country risk premium for a mining company with most of its producing assets in Southern Africa is 6%, and adding the accepted discount rate for mid-life mining operations of 8%, a discount rate of 14% is derived.

Exhibit F



DE BEERS

A DIAMOND IS FOREVER

Making a difference

Annual Review 2002

DE BEERS ANNUAL REVIEW 2002

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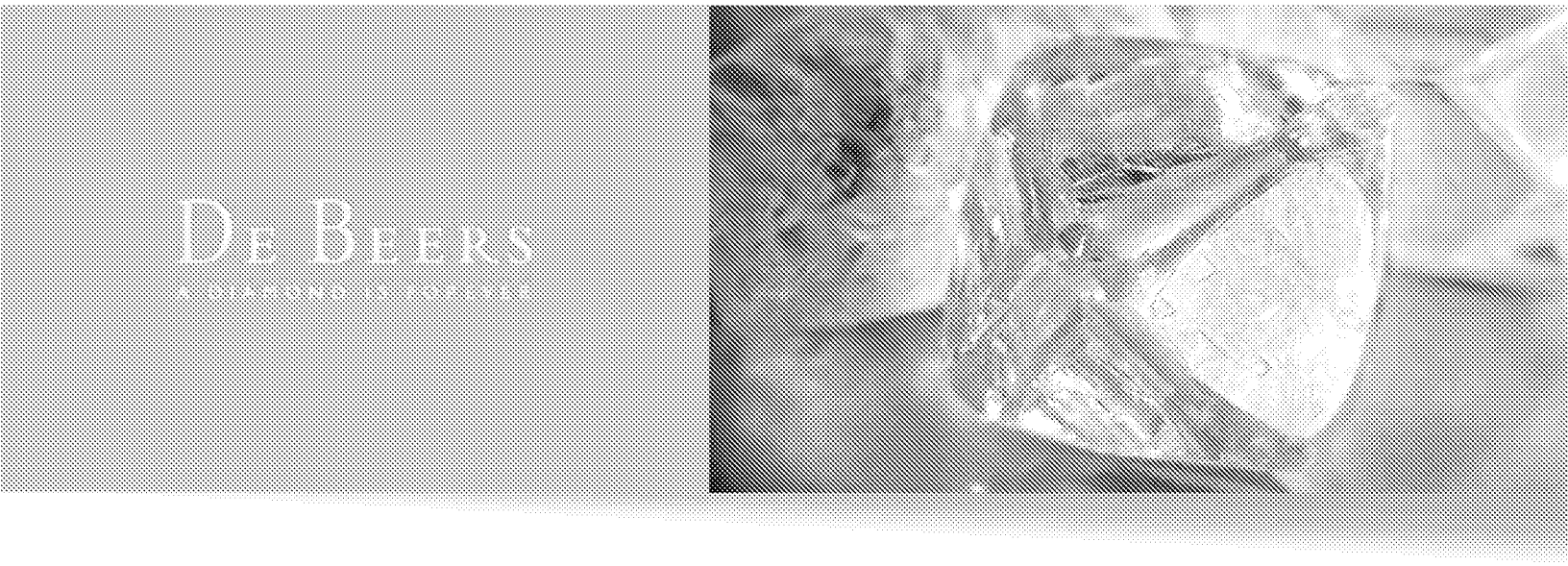
De Beers Société Anonyme (DBsa) is the holding company of De Beers Consolidated Mines Limited and De Beers Centenary AG. The following shortened forms are used throughout this review:

De Beers	De Beers Société Anonyme
DBCM	De Beers Consolidated Mines Limited
DBCAG	De Beers Centenary AG
DTC	Diamond Trading Company

Cover: a diamond contained in a drop of water from the advertising campaign for the 2002 World Summit on Sustainability (page 26)

More information is available on our website (see site map on page 66)

www.debeersgroup.com



We are increasing confidence and demand in the diamond industry

Over the past few years De Beers has undergone a significant transformation to meet the challenges and opportunities of business in a more competitive global market. We believe that the key to our continued leadership and growth is our commitment to three areas of excellence: Miner, Supplier and Employer of Choice.

This year's theme, *Making a Difference*, demonstrates not only our company's commitment to the principles of sustainability – the triple bottom line of financial, social and environmental development – but also highlights our philosophy of ethical accountability, ways in which we are striving to ensure the purity and protect the image of our special product.

The Review also focuses on areas in which we are building capacity where we operate, particularly in southern Africa, our birthplace.

Although we now talk of a new De Beers, it is perhaps important to emphasise that the character of the company, first imprinted by Sir Ernest Oppenheimer many decades ago, remains as true today as it did then: to make a profit, but in such a way that it makes a real and lasting contribution to the countries and the communities in which we operate.

Nicky Oppenheimer

Gary Ralfe

compared with US$509 million in the previous year (on a like-for-like basis after stripping out the impact of De Beers' investment in Anglo American plc). As privatisation only took place in June 2001 De Beers continued to receive income from its investment in AAplc during that year.

Good sales in 2002 enabled De Beers to reduce its diamond stocks by nearly US$1 billion. Operating cash flow at US$1 611 million was exceptionally strong and as a result, the company had no problem in meeting its first scheduled debt repayment of US$355 million in March 2002 and in December was able to make a voluntary prepayment to the banking consortium of a further US$710 million. **There can be few companies, who in the difficult world trading conditions of 2002, were able to repay their banks over US$1 billion. At the end of the year, De Beers' net interest bearing debt had been reduced to US$1 716 million.**

Important as these achievements have been, however, there is widespread recognition that while we may have risen to the challenges of 2002, **the group – in common with companies around the world – faces a testing time in 2003**. With every member country in the OECD downscaling its growth forecasts, with the United States, the major market for our product and the engine which will drive global recovery, still struggling to revive consumer confidence, and in a world beset by political as well as economic uncertainty, De Beers is not about to rest on its laurels.

Supplier of Choice the key to stimulating demand

Key to the start of this year has been the approval for our Supplier of Choice strategy by the European Commission. As the strategy unfolds it will stimulate competition and drive consumer demand for diamonds. Already several "head lamp" initiatives by the DTC's reorganised sales and marketing department have helped to stimulate a major increase in marketing spend by our clients which in turn has led to innovative marketing throughout the diamond retail sector.

A further, if unrelated, example of the benefits of competitive brands in enhancing consumer awareness was the increased advertising by major diamond jewellery retailers which greeted the opening by De Beers LV of its first store in London in December. This venture between De Beers and the world's largest luxury goods retailer, LVMH, will look to expand further during 2003.

If the full implementation of Supplier of Choice in 2003 will bring about a major and transforming change in the world diamond industry, it is only one element in the "troika of excellence" to which the De Beers group has committed itself. The others are to become both the partner and employer of choice in all the countries in which we operate around the world. Our success in this will depend on our ability to create, nurture and enhance the expertise and the skills which have kept De Beers at the forefront of the industry for 114 years and on the group's sensitivity and responsiveness to its host communities.

countries as mandated by the United Nations General Assembly. The World Diamond Council affirmed the industry's undertaking to implement simultaneously the self-regulation, or system of warranties, as contained within the Scheme. In addition, individual members of the international diamond industry and trade will instruct their independent auditors to verify that records of warranties are being created and maintained. The new Scheme is working well despite initial difficulties following full implementation on 1 January 2003.

Congratulations to all the nations involved, particularly South Africa, Botswana, Namibia, Tanzania and Russia. We are under no illusion that the KPCS will need to be refined and monitored in the years ahead, but we have no doubts about its eventual success.

World Summit on Sustainable Development

A valuable showcase for our leadership in this area

This international conference, which brought thousands of visitors to South Africa last year, was a valuable showcase for our pioneering efforts in sustainable development. We exhibited at the conference's Ubuntu Village, hosted VIP visits to our operations, gave briefings, distributed literature and ran a striking advertising campaign. We also established a sustainable investment team supported at operational level by dedicated specialists.

Independently-managed assets

De Beers LV

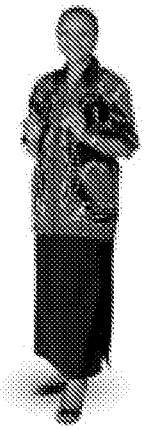
Our luxury goods joint venture off to good start

De Beers LV, the independently-managed and operated company set up by De Beers and LVMH Moët Hennessy Louis Vuitton, the world's leading luxury products group, began its first year of operation focusing on jewellery design and diamond selection.

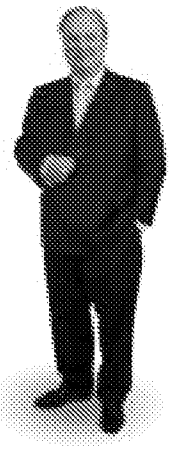
African-born supermodel Iman, the wife of musician David Bowie, was chosen to be the source of inspiration and face of the brand, and Reema Pachachi, a graduate of Central St Martin's and the Royal College of Art, was appointed design director.

In May 2002, De Beers LV made headlines at the Cannes Film Festival when it unveiled some of its designs, including the 203 carat *Millennium Star*, the largest, flawless pear-shaped diamond in the world.

And when the company's first store opened in London's Bond Street a few months later, *Retail Jeweller*, Britain's leading industry publication, called it "arguably the best retail shop in the world". It sells over 400 different styles of diamond-based products, from rings to diamond-studded leather chokers. Initial sales have been very encouraging, with high in-store traffic and average purchase values above industry standards. Two new stores are planned for Japan this year and another in the US in 2004.



Barbara Masekela
head public and corporate affairs, Johannesburg



Rory More O'Ferrall
head public and corporate affairs, London

Exhibit G

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REV. SEPTEMBER 06, 2002

DEBORA SPAR

Forever: De Beers and U.S. Antitrust Law

"As a worldwide dealer in enchanting illusions, Disney has nothing on De Beers."
- *The Economist*[1]

In 1999, a series of spectacular advertisements adorned the bus-sides and billboards of major American cities. Set against a lush black background, the ads displayed a perfect set of diamond earrings, or a single sparkling solitaire. The lettering, in white, was sparse and to the point: "What better time to celebrate the timelessness of love?" they asked. Or, "What are you waiting for, the year 3000?" Some were even more direct: "This wouldn't exactly be the year," they noted, "to give her a toaster oven."

Coyly, the ads captured a joint fascination with the new millennium and the enduring allure of diamonds. How better to capture time than with a diamond, they urged. How better to herald eternal love? Indeed. According to analysts, U.S. diamond sales (30% of which occurred during the Christmas season) were expected to surge by more than 10%, hitting a high of over $20 billion for 1999.[2] A significant portion of this windfall would flow to De Beers, one of the world's most successful corporations and the controlling force of the international diamond market.

There were many ironies behind De Beers's millennial campaign, not least of which was that diamonds — those eternal gifts — had only been sold on the mass market for a hundred years. And that their allure was largely a creation of advertising. There also, though, were many stories buried behind the campaign — stories which ran to the core of the global diamond market and De Beers's position within it. The millennial campaign, for example, was part of the company's first attempt to brand gems, to sell a "De Beers diamond" rather than a regular diamond. This was revolutionary in a market where stones had always been centrally mixed and distributed, where De Beers's power, in fact, stemmed from its ability to collect the world's rough diamonds and send them out again, anonymously and bereft of origin. The millennial campaign also occurred at a time of rapid change at the closely-held corporation. While the ads purred of luxury and langour, De Beers was facing turmoil on all fronts: in western Africa, where illicit diamonds were flowing from the war-torn fields

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[1] "Glass With Attitude," *The Economist*, December 20, 1997, p. 113.

[2] SG Frankel Pollak Securities, Ltd., *De Beers: Interim Forecasts*, March 1999, p.1; HSBC Simpson McKie, *Morning Meeting Notes: De Beers*, August 10, 1999, pp. 3-4.

Research Associate Jennifer L. Burns prepared this case under the supervision of Professor Debora Spar. HBS cases are developed solely as the basis for class discussion. Cases are not intended to serve as endorsements, sources of primary data, or illustrations of effective or ineffective management.

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of Sierra Leone and Angola; in Russia, where post-Soviet strongmen were carving out their own diamond fiefdoms; and in their home state of South Africa, roiling with the impact of apartheid's end.

De Beers was accustomed to chaos. The company thrived on it, and had long ago learned to master it. But the millennium posed new challenges — serious challenges with the potential to undermine De Beers's legendary power and compel a rethinking of its strategy. The millennial campaign was the beginning of this change, an elegant tiptoe into a new kind of diamond market. It was also, though, an innovative legal and political move. For the millennial campaign was centered in the United States, a market that absorbed nearly half the world's diamond jewelry but also forbade the kind of selling practices upon which De Beers relied. Legally, the entire De Beers group — its officers, its operations, its marketing structure — was in violation of U.S. antitrust law. Legally, then, De Beers was prohibited from directly selling any diamonds at all in the U.S. market. De Beers executives, of course, were aware of this contradiction and had managed adroitly around it for decades. But now, for a host of intricate reasons, it appeared that all their maneuverings might not be sufficient. Either the law or De Beers would have to change.

History: De Beers and the Diamond Cartel[3]

For centuries, diamonds have been regarded as one of the most valuable commodities in the world. They have been the stuff of legend and the privilege of royalty, the symbol of romance and of greed. They have been treasured for their beauty, their hardness, and their unique ability to capture and transform light. Most of all, however, diamonds have been treasured because they are rare. In ancient times, this scarcity was real. Known to exist only in the riverbeds of India and jungles of Brazil, diamonds were the most exclusive of stones and only a tiny portion of the world's people had ever seen one, much less worn one. By the end of the nineteenth century, however, the discovery of the South African diamond mines had brought an avalanche of stones into the market. Suddenly diamonds were transformed from a privilege reserved for the elite into a commodity for the mass market. Surprisingly, though, after an initial period of adjustment, the vast change in the supply of diamonds had little effect on their price, or the way in which the public perceived them. The allure that had surrounded diamonds for centuries had not been tarnished at all.

Part of this allure was due, no doubt, to a deeply ingrained perception of scarcity that lingered even as diamonds were cascading into the markets of Europe. Most of it, though, was the result of a conscious effort by the new diamond producers to regulate the production of the stones and keep prices as high as possible. Realizing that South Africa's diamonds would be virtually worthless once they appeared commonplace, a young Englishman named Cecil Rhodes worked to consolidate the entire industry and keep the supply of gemstones sharply limited. Under his guidance, the international diamond cartel was born. Following his philosophy it became one of the world's most tenacious business operations and one of the most successful cartels of all time.

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[3] The word "cartel" carries many complicated political, legal, and economic connotations. Economically speaking, a cartel cannot exist without the collaboration of three or more firms. Internally, members of the diamond trade do not consider themselves part of a cartel, but instead refer to the practice of maintaining "orderly marketing arrangements." While recognizing the complexity of the term, the authors of this Case have nonetheless chosen to rely upon the word "cartel" as a term of subjective description.

This section is a modified excerpt from Debora L. Spar, *The Cooperative Edge: The Internal Politics of International Cartels* (Ithaca: Cornell University Press, 1993), pp. 39-87.

Since then, the international diamond cartel has regulated the market for diamond gemstones and maintained the fragile illusion of their scarcity. The cartel's reach is legendary. It controls a significant number of the world's diamond mines; it sorts and classifies a large percentage of the world's rough stones; and through its Central Selling Organization (CSO) in London, it determines who can buy which stones and how much each buyer must pay. Its tactics are varied and complex. Its strategy, though, is as simple now as it was in Rhodes's time: to balance the number of diamonds released into the market in any given year and thus to perpetuate the illusion of diamonds as a scarce and valuable commodity.

Cecil Rhodes and the Discovery of Diamonds in South Africa

In 1866 the accidental discovery of diamonds in South Africa changed the diamond industry forever. The first stone, picked up on the banks of the Gariep River[4] by a thirteen-year-old boy, was generally dismissed as a geological fluke; the second find, though, a stone of 83½ carats, was too tempting to ignore. By 1869, diamond fever had hit South Africa and some ten thousand diggers from around the world had rushed to the arid plains of the Cape Province to stake their claims and make their fortune.

By the end of 1872, five separate mines had been established in the Cape Province, producing an avalanche of gem-quality stones. Initially, the mines were rough-hewn affairs, agglomerations of individual prospectors, each scratching away at the yellow ground that lays atop most primary diamond deposits. As the diggers delved deeper and deeper into the kimberlite (diamond producing) ore they began to trip over each other's claims and tumble, quite literally, into the expanding chaos of the mines. At a certain level, the miners also tapped into underground water tables, flooding the claims and rendering them virtually unworkable. Fruitlessly, the diggers fought back the seepage with hand-held pumps. In 1874 a more effective steam-powered pump arrived at the Kimberley mine, hauled in and rented out by a sickly English youth named Cecil Rhodes. Within a year Rhodes was servicing all of the mines in the area. With this new-found wealth, he then started to buy small claims in the newly formed De Beers Mine and other holdings. In 1880, Rhodes formed the De Beers Mining Company to control his growing stake in the mine; by 1887 he had bought out all the other claim holders.

From the start, Rhodes realized that success in the diamond trade was contingent on the resolution of two serious problems. First, the very productivity of the South African diamond fields posed a threat to the long-term profitability of the diamond industry. If all the new South African gems were suddenly to sweep into Europe, the market would be flooded and prices would plummet. Secondly, there was an inherent conflict between buyers and sellers. The sellers (in this case, the diggers) have little control over the types and qualities of stones they produce; thus, they need to secure an indiscriminate buyer, one willing to purchase the smaller and less attractive stones as well as the large and flawless ones. The buyers, meanwhile, know that profitability rests with the ability to obtain a constant stream of stones and sell them at consistently high prices. The only relationship that serves both sides' interests is an ongoing arrangement between a single producer and a single distributor in which both benefit by keeping supplies low and prices high.

The solution Rhodes devised was ingenious. After having achieved full control over production at the De Beers Mine, he formed a coalition of merchants in Kimberley to whom he sold the full output of the mine. In 1890 this merchants' association was formalized as the "Diamond Syndicate," with all its members pledged to buy diamonds from Rhodes's mines and sell them in specific

[4] Formerly named the Vaal River.

quantities and at set prices. By the end of the decade, Rhodes had completed his consolidation of the diamond industry by purchasing all the major South African mines. And just as he had predicted, diamond prices rose from eighteen shillings in 1889 to thirty-two shillings in 1890. The diamond cartel was in place.

Evolution of the Cartel

After Rhodes's death in 1902, his vision of a diamond empire was taken up by Ernest Oppenheimer, a German who had come to South Africa to work as a diamond buyer and quickly maneuvered himself into a position of power within the industry. Even more than his predecessor, Oppenheimer realized that control of the diamond trade entailed a monopoly of distribution as well as of supply. Unlike many commodities, diamonds vary tremendously in quality. Yet the diamond industry cannot survive on the top end of its market; it needs to sell the full range of stones, especially the lower-end goods that constitute the vast bulk of its production. Thus it needs to ensure that the diamond merchants will take the mediocre along with the spectacular and that all the links in the network commit themselves to selling the stones that together provide the mainstay of the industry. Similarly, because diamond prices bear no relation to the cost of production, Oppenheimer understood the necessity of ensuring uniform prices across the industry and straight down to the retail level. In an industry where mass perceptions of value and scarcity are critical, any undercutting would be disastrous.

With these concerns in mind, Oppenheimer worried that the Diamond Syndicate formed by Rhodes was too independent and that it might eventually be tempted to break away from the producers. Thus he resolved to create a "new syndicate," intimately linked to his own diamond interests and designed to exert unbearable pressure on the existing group of distributors. His scheme worked, and in 1925, Oppenheimer bought out the old syndicate and replaced it with a new one joined by corporate links to his own company, Anglo-American, and pledged to comply with the distribution levels desired by the diamond producers. At this point, the links between De Beers and the Diamond Corporation, between producers and distributors, had been permanently forged. By 1929, Oppenheimer was presiding as chairman of both organizations, positions he held until his death in 1957.

The Cartel in Action

In Rhodes's day, of course, the company could contain the supply of diamonds merely by regulating its own production; with the exception of several small outposts in Brazil, South Africa was the only source of diamonds in the world, and De Beers controlled all the diamonds in South Africa. In the mid-1950s, though, the yield from the once miraculous pipes at Kimberley, Dutoitspan, and Bultfontein began to decline, while discoveries in Siberia and different parts of Africa opened up rich new fields for exploration. De Beers was no longer alone in the market. By 1960, South African diamonds accounted for only 19 percent of the total world gemstone production and by 1999, 11 percent.[5]

To maintain its grip on the market, therefore, De Beers was obliged to reach out to the other major producers of rough diamonds, urging them to sell their production to De Beers. Generally, its entreaties were well received: realizing the benefits of cooperation and the dangers of oversupply, most diamond-producing states signed contracts with De Beers, agreeing to sell their rough

[5] De Beers also handles the production from Debswana, a De Beers company in which the Botswana government has a 50% interest. The Debswana mines include three large kimberlite pipes that together produce 30% of the world's gem diamonds.

diamonds solely to De Beers and its agents. While the precise terms of these contracts were highly secretive, most countries apparently agreed to a common set of arrangements. The country would promise to sell its rough diamonds only to De Beers, at a price that De Beers set. Although there were exceptions to this rule, countries generally also agreed to accept lower sales during times of slack demand and to refrain from polishing any of their own stones. In exchange for complying with these rather rigid restrictions, the other producers would reap the traditional returns of a cartel: stable prices, guaranteed purchases, and a buffer against the cold winds of competition.

The power of the cartel, however, did not rest simply with its control of diamond supplies; rather, it extended throughout the length of the "diamond pipeline" and into the distribution and marketing of rough diamonds. After De Beers obtained its diamonds — either from its own mines or purchased from outside sources — it sent them to the London office of the Central Selling Organization, known in the trade as the Syndicate. Located in a nondescript London office building, the CSO acted as the central distribution point for the world diamond trade.

Ten times a year, the CSO held diamond sales (known as "sights") to which only an elite group of diamond merchants (the "sightholders") were invited. About five weeks before each sight the sightholders would inform the CSO of their preferences — how many stones they wanted, what quality, what colors, and so forth. The CSO then tried to match these preferences with its own needs and supplies, determining what stones would be offered to which sightholder and how much the entire package would cost. After this analysis, it would divide the gem stones into individual parcels, place them in plain brown shoeboxes, and offer them to the predetermined distributors. No cherry picking was permitted: either the buyers took the entire contents of their allotted parcel or they turned the stones back. Generally they took the parcel. The effect of these policies was obvious: they enabled De Beers to regulate, down to the carat, exactly what stones entered the diamond market and at what price. It was a legendary level of market control, one that repeatedly astonished outsiders and confounded those who tried to fight against it.

Stockpiling

Not all of the cartel's benefits, however, redounded to De Beers. On the contrary, one of the cartel's strongest attributes was De Beers's ability to act as the buyer of last resort, using its own financial resources to stockpile excess diamonds during economic downturns. Thus whenever the market for luxury goods threatened suddenly to weaken, De Beers and the CSO would buy up the "excess" stones and add them to their stockpiles; whenever "outside" diamonds found their way to market, De Beers would buy again, always ensuring that the basic balance between supply and demand was not permitted to falter. Stockpiling was thus the final tool in De Beers's box, a last-ditch way to keep diamond prices high and convince the public that diamonds were indeed special and precious and scarce. But it could also be extremely costly. In 1981, for instance, the CSO responded to rising interest rates and slumping commodity prices with its normal strategy of witholding stones from the market. By the end of the year, the CSO's sales had slipped to 46% below their 1980 level, leaving De Beers with a stockpile estimated to equal a normal year's worth of sales. In the process, the company spent between $700 million and $1 billion of its own cash reserves to support diamond prices.

For most companies, that kind of financial blow would be devastating. Yet De Beers, clearly, wasn't like most companies. It had an exceedingly long-term view and a deep-seated commitment to market stability. It was also very much a family company, run by the Oppenheimers, their relatives and long-time associates. Even the shareholders were tightly interlocked, linked by a complex web to a series of firms that together composed the "Oppenheimer empire." De Beers was, to be sure, a publicly-owned corporation, but about half of its shares had historically been held by

Anglo American, E. Oppenheimer and Son, and other friendly members of South Africa's commercial elite. They were an eminently patient lot, content to let De Beers sacrifice short-term financial gain in exchange for the long-term stability and prosperity of the international diamond trade.

For over a century, then, De Beers had presided over one of the world's most amazing commercial structures. In over a hundred years of operations, the corporation had only suffered two minor financial losses, in 1915 and 1932. It enjoyed absolute dominance in its market and an unparalleled reputation for quality and reliability. There was only one small downside: it was illegal in its largest market. Almost every single aspect of De Beers violated U.S. anti-trust laws, from its lion-sized market share to its unabashed price fixing scheme. In the United States, the company had been unsuccessfully prosecuted in 1945, 1974, and 1994, and was still under standing criminal indictment. Indeed, within the U.S. Justice Department, dislike of De Beers approached a religion: De Beers, government lawyers insisted, was in clear violation of U.S. law. It was a monopolist, a restraint on trade, a criminal entity. And it had gotten away with it.

U.S. Antitrust Law

History and Motivation

The U.S. antitrust laws that De Beers violated were not simple laws regulating commerce, but rather the fundamental underpinnings of capitalism as practiced in the United States. In a 1972 decision, the Supreme Court stated that, "The Antitrust laws... are the Magna Carta of free enterprise. They are as important to the preservation of economic freedom and our free enterprise system as the Bill of Rights is to the protection of our fundamental freedoms."[6]

The original legislation regulating the establishment of commercial monopolies was passed at the end of the nineteenth century, when the power of big businesses seemed to threaten American ideals of free enterprise and the small stakeholder. In 1890 the Sherman Act laid out the fundamental principles that would underpin antitrust law through the next century: it made illegal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce."[7] Later, the 1914 Clayton Act strengthened antitrust laws even further, broadening the definition of unacceptable behavior and prohibiting any illegal behavior that might "[substantially lessen] competition or tend to create a monopoly in any line of commerce."[8] Thus even the apparent attempt to create a monopoly was deemed illegal.

Over the years, a series of decisions and interpretations developed a dual, and sometimes conflicting, focus to the antitrust legislation. The original Sherman Act contains language that seems to stress the well-being of the consumer as an important goal of anti-trust law, and subsequent court decisions have emphasized the loss in consumer welfare caused when monopolies or cartels eliminate competition. Some recent scholars have even argued that the sole purpose of antitrust law is to promote consumer well being. However, other interpretations of the same laws have given equal or greater weight to the social and political goods that result when monopolies are constrained. In this view, even if a monopoly is the most efficient means of production or distribution it still

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[6] As cited in John H. Shenefield and Irwin M. Stelzer, *The Antitrust Laws: A Primer* (Washington, D.C.; American Enterprise Institute Press, 1993), p. 1.

[7] *United States Code 1994 Edition, Vol. 6 Title 15,* (Washington: United States Government Printing Office, 1995), p. 114.

[8] Ibid., p. 119.

imposes unfair burdens on society. By preventing competition, for example, a monopoly may constrain technological innovation in an industry. It might also result in a dangerous concentration of power and wealth in the hands of a few, preventing opportunities for individual enterprise.

Depending on the national situation and the interests of those in political power, the Justice Department's enforcement efforts have ranged from fervent prosecution of monopolies and cartels to half-hearted exploration of anti-competitive behavior. During the Depression, principles fell by the wayside as the U.S. government allowed firms in the coal industry to collude in support of the faltering economy.[9] But only two decades earlier, the enforcement of antitrust laws had been a powerful campaign issue, giving birth to the iconography of Teddy Roosevelt and his trust-busters. Despite the controversy that surrounds antitrust laws and the occasional periods when the laws are laxly enforced, they remain philosophically vital to the American tradition. As legal analysts John Shenefield and Irwin Stelzer point out, even with all the various interpretations over the years, no one has ever doubted their importance: "Almost all agree that the antitrust laws are of central significance to our economy. They do no less than establish the economic framework within which most Americans and their businesses operate."[10]

Extraterritoriality

Despite the fact that De Beers retained no U.S. presence and was completely run by South African nationals, it was still subject to the reach of U.S. law. This is a tricky element of U.S. law and an infuriating one to many foreign nationals. It comes from the original wording of the Sherman and Clayton Acts, which make no reference to nationality and thus allows U.S. courts to extend their jurisdiction beyond U.S. companies and citizens. In a 1995 document, the Justice Department made its interpretation clear: "The reach of the U.S. antitrust laws is not limited, however, to conduct and transactions that occur within the boundaries of the United States. Anti-competitive conduct that affects U.S. domestic or foreign commerce may violate the U.S. antitrust laws regardless of where such conduct occurs or the nationality of the parties involved."[11] Recent court decisions have supported this approach. In a 1993 case, for example, the Supreme Court ruled that, "The Sherman Act applies to foreign conduct that was meant to produce and did in fact produce some substantial effect in the United States."[12]

Armed with this rather broad legal infrastructure, the Justice Department had tried on several occasions to prosecute De Beers for violating U.S. antitrust law. In 1945, after a dispute over the wartime usage of De Beers's diamond stockpile, President Roosevelt's administration requested that the Justice Department investigate De Beers.[13] The suit failed when the court found that De Beers's existing contacts with the United States, such as hiring an advertising agency, visits, making occasional sales, and maintaining a U.S. bank account did not constitute sufficient "doing of business" to warrant jurisdiction.[14]

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[9] Shenefield and Stelzer, p. 12.

[10] Shenefield and Stelzer, p. 10.

[11] U.S. Department of Justice and the Federal Trade Commission, "Antitrust Enforcement Guidelines for International Operations," April 1995, http://www.udoj.gov/atr/public/guideline/internat.txt [accessed 10/21/99], p. 10.

[12] Ibid., p. 10.

[13] Stefan Kanfer, *The Last Empire*, (New York: Farrer Straus Giroux, 1993), pp. 227 – 230.

[14] James R. Atwood and Kingman Brewster, *Antitrust and American Business Abroad*, 2nd Edition, Volume 1 (Colorado Springs: Shepard's-McGraw Hill, 1981), p. 120.

Another attempt came in 1976, when the Department of Justice filed a civil and criminal suit against De Beers, ANCO Diamond Abrasives Corporation, and Diamond Abrasives Corporation for engaging in price fixing and customer and territorial allocation in the market for diamond "grit." ("Grit" is used primarily as an industrial abrasive.) Pleading no contest, De Beers Ireland (representing De Beers South Africa) and its co-defendants each paid a small fine and signed a consent degree agreeing to forego monopolistic practices. This settlement was the slim remains of an earlier and farther reaching action against the company. In 1973, acting off an anonymous tip, the Justice Department had discovered that De Beers held 50% of Christensen Diamond Products, an American company that made diamond drill bits for oil rigs and consistently received shipments of De Beers's best industrial diamonds. Before the Justice Department could act on this discovery, though, De Beers swiftly divested itself of all holdings in Christensen.[15]

In 1994 the Justice Department tried again, filing a suit against De Beers and General Electric for price fixing in the industrial diamonds market. The lawsuit against GE went to trial and was dismissed in a scant *six weeks*, when the court ruled it was impossible to determine whether Phillippe Loitier, one of the individuals charged, had in fact acted in De Beers's interests. Loitier was the managing director of the Belgian company Diamant Boart, a customer of both GE and De Beers. Through other business dealings, he had allegedly been in repeated contact with De Beers board members. In the spring of 1992, both GE and De Beers raised their prices on industrial diamonds, the first increase in five years. Prior to that, Loitier had reportedly informed GE of De Beers's intended price increase, and GE had responded with information about its price increase. The government argued that this exchange was part of a conspiracy to fix prices, and that because Loitier's actions benefited De Beers, he had thus acted on behalf of the company. Disagreeing, the court ruled that this contact alone was not evidence of collusion, and what was alleged to be price fixing could merely have been legitimate information sharing between a firm and its customers. GE was acquitted. However, because De Beers had never appeared in court to defend itself, its criminal indictment remained outstanding.

These repeated failures did not dampen Justice's enthusiasm for prosecuting De Beers. In fact, they only reinforced the intolerable idea that the company was getting away with something, and had to be brought to heel. According to a government official close to the Justice Department, there was little the company could do, short of reinventing itself that would make it legal in the United States. "Clearly, De Beers is a classic monopolist," said the official. "As long as De Beers continues to set the prices for both mined and rough stones, diamonds cannot be considered a legal, competitive market."

But if De Beers galled Justice with each day it continued to prosper, Justice was largely ignored at De Beers. Indeed, over the years, De Beers had simply come up with a series of ingenious strategies for remaining beyond the Department's grasp. It had no legal presence in the U.S. market, no U.S. directors, and — remarkably — no sales on U.S. soil. Instead, it sold all of its diamonds in London and then let its sightholders export them, perfectly legally, to the United States. By the time De Beers's diamonds reached the U.S. market they were no longer De Beers's diamonds — just an anonymous bundle of stones, mined and cut at some unknown location. With no direct U.S. presence, then, and no identifiable sales, De Beers remained at arms' length from the actual process of selling diamonds, dancing infuriatingly just beyond the grasp of U.S. law.

[15] Kanfer, pp. 317 – 318.

Challenges

Despite the diamond cartel's success, reports of its decline have endured nearly as long as the cartel itself. Indeed, throughout most of this century, reports have surfaced every few years that chart the assaults on the cartel's power and predict an immediate shake-out. In 1977 trouble came from the Israeli dealers, stunned by Israel's soaring inflation, who hoarded their diamonds and drove prices up. The company popped this speculative bubble through a combination of strong-arm tactics, including what may described as a "purge" of over 100 Israeli sightholders who were stripped of their sights.[16] In 1981 it was Zaire that threatened to destabilize the industry, when the cash-starved Zairian government struck a deal with three independent Belgian diamanataires for its small, industrial grade stones. De Beers retaliated by letting loose a storm of its own small, industrial grade stones, driving prices down and crippling Zaire's diamond industry. Next, it was the Soviets and then the Russians who threatened periodically to withdraw from the De Beers structure and establish one of their own. This was a bigger threat to De Beers (and remains so),[17] but De Beers nevertheless managed to pay the Russians enough to sate their appetite for defection. In 1990, just as the Soviet Union was breaking apart, De Beers struck a particularly sensational deal, loaning the tottering Gorbachev government $1 billion in hard currency and taking in exchange a significant chunk of the Russians' vast stockpile of diamonds. The sight of this transplanted stash was enough, reportedly, to squash the independent hopes of several other producers.[18]

In the late 1990s, however, De Beers found itself facing a new rash of problems. None of the problems was particularly dramatic; none suggested a direct threat to De Beers's power or an attack on its embedded business model. But together they began to hint at a very different structure for the world's diamond market and maybe even for De Beers. In retrospect, the problems really began in 1992, when De Beers suffered the double blow of Russian and Angolan defections. Caught in political turmoil, both countries began to leak diamonds on to the world market, Russia from its stockpile, Angola from its war-torn Cuango Valley. These flows came, moreover, right on the heels of a newly independent diamond development in Australia, which had already forced De Beers to load diamonds into its stockpile. When the Russian and Angolan floods hit, De Beers loaded even more. The stockpile continued to grow.

Then, in 1997 the Asian crisis swept through the Far East, leading to a massive decline in consumer confidence and luxury purchases. Diamonds were among the hardest hit; between 1997 and 1998 De Beers watched diamond sales in Japan fall from 33% to 18% of the total world market. The impact of this fall was three-fold. First, it greatly enhanced the relative importance of the U.S. market, which grew from its customary level of 30%, to account, in 1998, for a full 46% of retail diamond sales.[19] Second, it depressed De Beers's sales and thus its share price. By the start of 1998, De Beers was selling at 98 Rand, down 45% from a high of 178 Rand achieved just six months earlier.[20] And third, it brought a new wave of value investors from the United States, who saw in De Beers's depressed share price a glimmering opportunity for financial gain.

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[16] According to De Beers, with the end of the speculative bubble, many of its sightholders went bankrupt and thus lost their sights.

[17] For more on the Russian threat, see Spar, pp. 64 – 73, 78 – 87.

[18] Spar, pp. 58-63, 83-85.

[19] Casewriter interview with Tim Capon, London, November 29, 1999.

[20] Andrew McNulty, "Investment," *Financial Mail Corporate Report: De Beers*, April 24, 1998.

By 1999, American investors held nearly 21% of De Beers's stock. This was a fundamental change for the closely held De Beers, and would never have been possible during the long years of apartheid, when U.S. investors shied away from South African companies. But it was possible in 1999, and suddenly the company was faced with demanding shareholders, people who had little concern for the long-term stability of the diamond market or personal relations within the diamond trade. Suddenly accountants were prying into De Beers's financial management and scrutinizing the ever-growing weight of its stockpiles. For De Beers, of course, the stockpiles were a strategic asset, the final means by which supply and demand could be held in a perpetual delicate balance. For this new breed of investors, though, the stockpiles were a dead weight loss, a non-income producing asset that was actually destroying economic value.

Within De Beers, meanwhile, a new team of management was also pondering the company's strategic and financial position. In March 1998 De Beers and Anglo-American had ended their decades-long attachment, separating into two distinct firms. While the two companies would remain closely associated through cross holdings (Anglo-American and De Beers each owned 33-35% of the other, and the Oppenheimer family owned 8% of Anglo, and 3% of De Beers), this restructuring was described by company insiders as a significant step. Previously the bulk of De Beers management had been paid by Anglo-American, and a typical De Beers career path started at Anglo-American. Yet according to Investor Relations Manager Mark Irvine, shareholders in both companies had grown dissatisfied with this arrangement during the late 1990s, worrying that the arrangement obscured accountability in both companies, and that De Beers's legal situation might impede Anglo-American's strategic objectives.[21] The changes, too, were an attempt to make both De Beers and Anglo-American into more transparent, modern companies. After the isolation of apartheid, De Beers was anxious to shed its image as a secret, sinister organization and instead move into the world as a cosmopolitan, world-class firm. Simultaneously, there was a turnover in De Beers's top management. Nicky Oppenheimer (Ernest's grandson) assumed the helm as chairman and Gary Ralfe became the firm's first managing director.

The Strategic Review

This changing of the guard brought significant changes to De Beers. In a move that seemed to signal an end to the company's secretive insiders-only style, Oppenheimer and Ralfe hired management consultants Bain and Company to conduct a wide-ranging strategic review. According to Financial Director Paddy Kell, "only a few years ago the use of external consultants would have been heresy."[22] But now, he recounted, there was a clear sense at De Beers that the company needed to refocus and decide why it was in business — for itself, or for the diamond industry as a whole? Oppenheimer himself seemed quite philosophical about the changes occurring in his family's business. "For any company that is long lived, there comes a time where you have to change, and cast your skin off," he said. "It seemed very natural to do this now, with all these personnel shifts. They were all new beginnings."[23]

The strategic review also highlighted concerns expressed by De Beers's new and aggressive American shareholders. Unaccustomed to dealing with either diamonds or South African firms, the new breed of investors lambasted De Beers with a litany of criticisms: its accounting methods could not be understood; it was "all cash and no dash," a stodgy company that refused to make bold

[21] Casewriter interview with Mark Irvine, Johannesburg, November 30, 1999.

[22] Casewriter interview with Paddy Kell, Johannesburg, December 2, 1999.

[23] Casewriter interview with Nicky Oppenheimer, Johannesburg, December 1, 1999.

acquisitions; it was far too heavily invested in Anglo-American; and it had significant legal issues in the United States. While such an outside perspective was new to De Beers, few company insiders could question the fact that the diamond market was changing rapidly. Although De Beers no longer controlled 80% of the world's rough production — generous estimates put the figure somewhere over 60% — the company continued to follow its traditional business model. As CSO Executive Director Tim Capon joked, "None of us have had to think for 100 years. It's been: 'what do we do? We control the diamond industry. How do we control it? We do what we've always done.' But clearly, the old model was creaking."[24]

Creaking loudest, of course, was the stockpile. Over ten years, the cost of these excess diamonds — with a book value of $4.8 billion at the end of 1998 — had eaten away at De Beers's profits. According to Bain, the company had consistently destroyed shareholder value throughout the 1990s, with returns on capital employed consistently below its weighted average cost of capital. Since so much of its profit was shared by other industry players, the company was only capturing a fraction of the very large diamond profit pool it had created. As a result, Bain argued, the company's stock price was undervalued.

However, Bain's analysis also revealed several nascent strengths within the company. Research revealed that De Beers was a tremendous brand name — one of the world's best recognized. It also had a phenomenally strong slogan ("a diamond is forever") and a brilliant history of marketing.[25] Moreover, De Beers had achieved this prominence while spending only a fraction of the advertising money other luxury brands did. Bain's analysis stressed the fact that while other luxury goods makers, such as high-end whiskey manufacturers, spent 10% of consumer sales revenue on advertising, the diamond jewelry industry (and De Beers, by far its heaviest advertiser) spent less than 1%. Further, De Beers did not even advertise its own products. For all the 111 years of its existence, De Beers had shied away from its own name, preferring instead to advertise diamonds on behalf of the entire industry. Now, perhaps, it was time to change.

The Power of the Brand

With mounting excitement, De Beers managers began to contemplate an innovative branding strategy. They started to emphasize the De Beers name in advertisements, and even etched a microscopic logo onto some of their stones. In England, a small pilot project revealed that not only were customers interested in buying De Beers branded diamonds — they were willing to pay a 15% retail premium on jewelry bearing the De Beers name. And so, cautiously, the company began to raise its public profile. In honor of the approaching millennium, De Beers displayed in London a stunning 203-carat stone named the De Beers Millennium Star and crafted a high-end line of carefully selected, limited edition "millennium" branded stones. The day they went on sale in Japan, one dealer found a line of waiting customers outside his shop; before lunch, he had sold 68 out of his available 72 branded diamonds.[26]

To De Beers, branding offered a seductive route out of its financial troubles. Analysts estimated that the De Beers brand could be worth anywhere from $175 million in rough stones up to $1.25 billion at the retail jewelry level.[27] By branding, De Beers could carve out a newly lucrative niche in

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[24] Casewriter interview with Tim Capon, London, November 29, 1999.

[25] In 1999, the magazine *Advertising Age* voted De Beers's tagline the "Slogan of the Century."

[26] Casewriter interview with Capon.

[27] Andrew Jackson, "De Beers: 'Y' The Strategic Review?" Deutsche Bank Securities, November 11, 1999, p. 15.

the diamond industry. It could capture the unquestionable cachet it had never exploited, and it could differentiate its diamonds from the Australian, Russian and Angolan stones that now haunted the market. Potentially, branding also promised to help reduce its stockpile. If the company could increase demand for this new tier of diamonds, it could begin at last to draw down some of its reserves. Over the long run, it might even be possible to extend the brand farther downstream, creating a De Beers luxury store or a line of high-end fashion accessories.

If De Beers had been nearly any other company, and diamonds nearly any other industry, the strategy would have been simple: brand the stones, exploit the name, forge retail alliances, and push the stock price to a more satisfactory level. But De Beers, of course, was not an average company and diamonds were hardly an ordinary business. As Finance Director and long-term employee Paddy Kell put it, "We could be an anachronism. Or, it could be that there is something different about diamonds."[28] What would happen to the firm if it moved away from the trade it had supported and controlled for over a century? What would happen to prices if De Beers started to compete instead of collaborate? And what would all of this turmoil do to the industry's carefully nurtured vision of luxury and scarcity? No one knew.

Even more troubling were the potential legal ramifications. If De Beers was going to make branding a success, then it had to move aggressively into the U.S. market — the homeground of branding and the largest market by far for high-end diamonds. But each step closer to actually selling a product in consumer markets threatened to raise the ire of the Justice Department. A November 1999 report by Deutsche Bank Securities touched on this point, reminding readers that "[the Antitrust] ruling is indeed a poison pill... The impact of a resolution of the Anti-Trust issue should not be underestimated." The report further surmised, "Given the significant limitations posed by the current stand-off with the U.S. Justice Department, we would find it surprising if De Beers had not formulated a plan to resolve the Anti-Trust problem."[29] For years, U.S. antitrust laws had just been a basic condition of reality for De Beers. But now, for the first time, they threatened to put a serious crimp in the company's business model.

In a remarkable March, 1999 speech to alumni of the Harvard Business School, De Beers chairman Nicky Oppenheimer directly addressed the conflict between his company and U.S. antitrust law. "We make no pretence that we are not seeking to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in the business," he told the audience. But Oppenheimer argued that De Beers's "single channel marketing" also brought social goods and benefits to all involved in the diamond industry and in particular to the African continent, which continued to produce 75% of the world's diamonds. He continued boldly:

> It is always hard to argue that you are the exception to the rule but in the case of De Beers and the ultimate luxury – diamonds – I believe a review of U.S. anti-trust laws should form part of a new framework for engagement with Africa. Indeed it would be in line with the spirit of the African Growth and Opportunity Act, which reflects the fact that the U.S. is now trying to develop a policy towards Africa by recognizing its importance and the need to overcome Africa's image as a lost continent. De Beers supports any initiative that can break the mold of U.S.-Africa ties that were shackled historically by post-colonial and Cold War relations. We have a contribution to make in moving Africa from a past understanding based on aid and dependence, towards African trade, investment, sustainable prosperity and independence.

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[28] Casewriter interview with Kell.

[29] Jackson, p. 16.

Perhaps. But as the millenium drew to a close it wasn't clear how Oppenheimer's argument would be greeted by U.S. policymakers and what, if anything, De Beers could do to affect the tone of debate.

Appendix: Nicky Oppenheimer's Speech at Harvard Business School Global Alumni Conference, March 1999

[This excerpt is from an off-the-record speech prepared for a closed audience of HBS alumni. Speaking as a private citizen, Mr. Oppenheimer made his opening remarks intentionally dramatic and provocative, as suitable for a keynote address. This speech should in no way be construed as an official statement of the De Beers Group.]

Ladies and Gentlemen,

It is with some surprise that I find myself addressing you today. In jest, but as with all good jests with a healthy serving of truth, I have always thought of American commercial life as being, in effect, a religion. There are certain fundamental beliefs and the Moses of that religion is Mr. Sherman, who in his act of 1890 set out some of the commandments:

1. Thou shalt not seek to monopolise.
2. Thou shalt not restrict competition.
3. Thou shalt not seek to fix prices.
4. Thou shalt not restrict production.
5. Thou shalt not divide markets.
6. Thou shalt not deny a competitor access to markets.
7. Thou shalt honor the consumer.

The torquemada of this religion is the head of the anti-trust division of the Department of Justice, who through Grand Juries conducts the equivalent of the Spanish Inquisition, routing out heresy wherever it may be found. No one is safe from the process, so that even the most successful and wealthy American businessman, Bill Gates, is going through trial by ordeal at this time.

I assume that you, as graduates of the Harvard Business School, have worshipped at the Temple of this religion and are no doubt fervent converts. Therefore in your eyes I must be the devil incarnate, the anti-Christ. For I am chairman of De Beers, a Company that likes to think of itself as the world's best known and longest running monopoly. We set out, as a matter of policy to break the commandments of Mr. Sherman. We make no pretence that we are not seeking to manage the diamond market, to control supply, to manage prices and to act collusively with our partners in the business. It seems that the only commandment of the ones I have set out that we do believe in is we do seek to honor the consumer. Despite all this we believe that what we do is not only good for us, and all producers of diamonds, but is also in the interests of the consumer.

How then am I bold enough to stand here before you and risk the rotten tomatoes? My confidence rests on two tenets. Firstly diamonds are unique; they are the ultimate luxury and yet they are desired and owned by a vast number of people. They are seen as the ultimate gift that lasts forever

and has a store of value. But dealing in a complete luxury that lasts forever and has a store of value lays on some very firm disciplines. We at De Beers never dare forget that the material quality of a person's life would not be changed if they never bought a diamond. The purchase of a diamond at engagement, is a mixture of commitment, beauty and store of value — a heady cocktail of emotion and practicality. Certainly anyone who makes that investment becomes a supporter of the single channel marketing with its aim of preserving value.

The second factor is that for De Beers to continue to play its traditional role in the industry it must be able to clear the market of all rough diamond production. We do try (with some success) to even out the effects of economic cycles but we are not in a position to abandon economic reality. Indeed any company dealing in a total luxury cannot behave as an evil monopoly exploiting the masses because at the end of the day they do not have a compelling need to purchase.

The moment De Beers Consolidated Mines was incorporated by Cecil Rhodes some 110 years ago it became the largest and most successful diamond company in the world, and so it has remained. I always feel longevity must mean we are doing something right and fulfilling a need. What we have done is particularly important for growth and development in Africa. Diamonds have a special place in the economy of South Africa, and of many other African countries.

Until the discovery of diamonds along the Vaal River in the late 1860 South Africa was just another poor African colony with only Table Mountain and some grapes to attract the tourists. All that changed with diamonds — suddenly the country was full of young people heading for the diamond fields in order to make their fortunes, and with them came money, skills and capital. In today's politically correct atmosphere it can be argued that these newcomers paid no heed to the indigenous people and that the capital realised in the diamond fields was often lost to the emerging South Africa. But that is only part of the answer for from the diamond fields flowed the skills, expertise and wealth which enabled the gold fields of the Witwatersrand to be exploited. And on these two strong pillars, diamonds and gold, is built the modern South Africa, the economic powerhouse of the continent.

In the region diamonds have not only been important to South Africa. In 1908 deposits were discovered in what is now Namibia. Even today, 90 years later, diamonds account for 40% of the country's foreign exchange earnings.

The story in Botswana is even more dramatic. Prior to the discovery of diamonds by De Beers Botswana was one of the poorest countries in Africa with minimal infrastructure and a subsistence agricultural economy. The most important source of revenue was via remittances from Botswana working in South Africa as migrant labor. Once production of diamonds started there was a dramatic change — in the ten years immediately following the start up of the Orapa mine the economy grew at an average rate of 14.5% per annum and continued at an average of 11% for the next decade. The Government of Botswana has been careful to harbor the benefits flowing from their diamonds and their country is one of Africa's success stories. The only other country in Africa so endowed with a single mineral is Nigeria — there the product is oil. Interestingly the oil industry tries to regulate itself in much the same way as the diamond industry. One would have thought that OPEC had a major advantage over De Beers in that oil is an essential. But there can be little doubt which has worked the better!

Blackie Marole, Permanent Secretary in the Ministry of Mineral and Energy Affairs in the Government of Botswana and a director of De Beers said:

> *"Diamonds have been the engine of our economic growth for a quarter of a century and through them our economy has become the envy of many in Africa .... Therefore our actions and role in the (diamond) market are always geared to promoting stability in the market.*

From the time we became part of this industry we have consistently subscribed to the concept of orderly marketing through a single channel system ....."

Currently South Africa, Botswana and Namibia account for 50% of the world's diamond production, by value. If you include Angola, Democratic Republic of the Congo, Tanzania and West African producers, then Africa produces 75% of the world's diamonds. Almost all diamonds produced in Africa are exported and the export earnings of these diamond mines are critical to the economies of many African countries.

Now it could be easy to say that all this is very fine and that no one could have an argument with De Beers and what it has done for Africa as a producer but that the argument would come over its marketing activities. But the production and marketing of diamonds are inextricably linked in a virtuous circle.

Cecil Rhodes first enunciated the need for a symbiotic relationship between production and sale. To attain the first objective of being the major producer he created De Beers Consolidated Mines, by amalgamating the major producing companies in Kimberley. To attain the second, he sold the output of the mines to a group of diamond merchants in Kimberley, which subsequently became the Diamond Syndicate...

This form of single channel marketing has exercised an extraordinary beneficial influence upon the whole of the diamond industry and particularly to many of the economies of Africa. This is best illustrated by how rough diamond prices, measured in dollars, have moved over time. Overall, between 1985 and 1996, the CSO's prices rose on average 5.4% per annum, compared with the average U.S. Consumer Price Index of 3.5% per annum, while production for the same years rose from 66 million to 109 million carats. In the past two decades, rough diamonds have out-performed commodities such as gold, oil and aluminium, all the more remarkable an achievement given that gem diamonds fulfil a purely emotional, rather than a practical need. It is no accident that diamond prices have been more stable when compared than other commodities. The positive trend in rough diamond prices is due to De Beers' marketing efforts. And this is an effort which is in the interest of both the producer and the consumer; a strange and illogical coming together of opposites.

The De Beers marketing strategy for diamonds is endorsed by our partners in Botswana and Namibia, and other major producers such as Russia, as well as those producers who do not sell through De Beers but are happy to shelter in its shadow. Stable prices are essential for the maintenance of confidence and the wellbeing of the industry...

It is ironic that 46% of the world's diamonds are sold in the United States, where De Beers cannot do business, although we do indirectly advertise there. In this case I believe the attitude of the Justice Department is at odds with American foreign policy which seeks to support the reconstruction and development of Africa and to contribute to the awakening of Africa and the African Renaissance. As President Clinton stated in his recent visit to South Africa: "America wants a strong South Africa; America needs a strong South Africa. And we are determined to work with you as you build a strong South Africa." This statement was further underlined by the President when he "borrowed" the word "Masakhane" or "building together," to characterise the relationship he would like to see emerge between the U.S. and South Africa. In fact the sub-theme of President Clinton's visit was "trade, not aid," and this is realised in the pending African Growth and Opportunity Act.

It is always hard to argue that you are the exception to the rule but in the case of De Beers and the ultimate luxury — diamonds — I believe a review of U.S. anti-trust laws should form part a new

framework for engagement with Africa. Indeed it would be in line with the spirit of the African Growth and Opportunity Act, which reflects the fact that the U.S. is now trying to develop a policy towards Africa by recognising its importance and the need to overcome Africa's image as a lost continent. De Beers supports any initiative that can break the mould of U.S.-Africa ties that were shackled historically by post-colonial and Cold War relations. We have a contribution to make in moving Africa from a past understanding based on aid and dependence, towards African trade, investment, sustainable prosperity and independence.

Diamonds can have a key role to play in stopping Africa continuing to dig itself into a hole. Aid only increases the speed of the shovels, what is needed is trade and investment which will allow the digging to stop and the building to start. Two countries north of South Africa could particularly benefit from their diamond assets. These are Angola and the Congo. Both are currently meshed in violent conflict but both have considerable diamond deposits that should be used for their reconstruction and development. Both will need these assets to be used in the most efficient way possible.

De Beers, a truly African company, can and should be part of any effort involving by the USA to use diamonds to help the renaissance of Africa. To African countries endowed with diamond resources De Beers brings unparalleled mining expertise and a unique marketing mechanism. In countries like Botswana and Namibia, with democratic systems of government and an open economy, this partnership has proved its worth. In addition to a lasting skills and technology transfer, diamond mining has provided a revenue base for those countries to develop their economy.

Diamonds are a unique product and De Beers has, over the years, demonstrated how best to utilise this product in a way which enhances value to producers and consumers alike. I feel it deserves the support of the U.S. Government in its endeavors in Africa not their hindrance.

Source: De Beers

Exhibit 1 De Beers Financial Results

Rand millions			US$ millions	
1997	1998		1998	1997
29,280	**24,845**	**Turnover**	**4,492**	6,418
3,871	**3,237**	Diamond account	**585**	849
1,061	**1,267**	Investment income	**229**	233
279	**158**	Interest income	**29**	61
7	**583**	Other income	**105**	1
5,218	**5,245**		**948**	1,144
1,157	**1,914**	**Deduct:**	**346**	252
663	**776**	Prospecting and research	**140**	145
266	**516**	Interest payable	**93**	58
208	**622**	Other expenditure	**113**	45
20		Exceptional items		4
4,061	**3,331**	**Net income before taxation**	**602**	892
		Deduct:		
1,148	**1,005**	Taxation	**182**	252
2,913	**2,326**	**Net income after taxation**	**420**	640
94	**256**	**Deduct:**	**46**	21
92	**254**	Attributable to outside shareholders in subsidiaries	**46**	20
2	**2**	Dividends on preference shares		1
2,819	**2,070**	**Own earnings**	**374**	619
		Add:		
		Retained earnings of associated companies		
1,852	**1,526**	Current trading	**276**	405
936	**(183)**	Exceptional and non-trading	**(33)**	205
5,607	**3,413**	**Total net earnings**	**617**	1,229

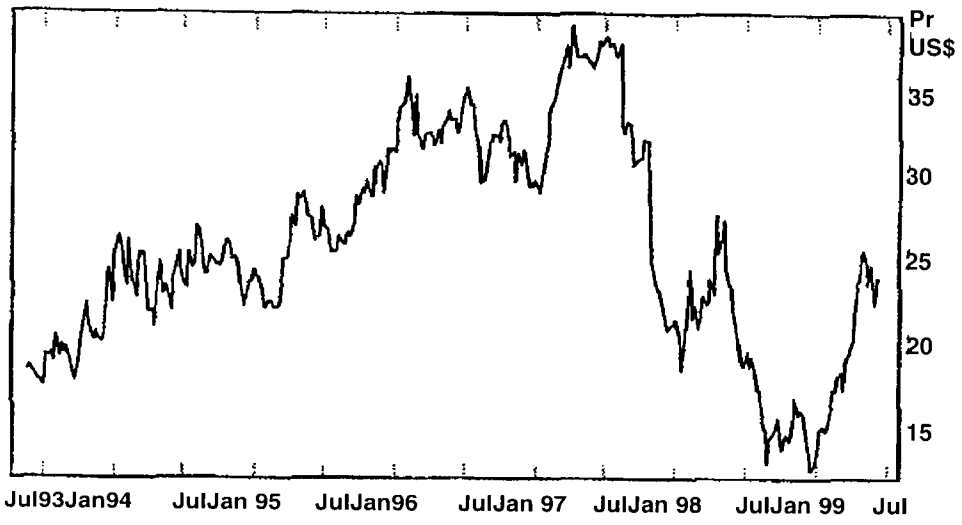
Source: De Beers Annual Report 1998

Exhibit 2a De Beers Financial Results

	1998	1997	1996	1995	1994	1993	1992	1991	1990	1989
Diamond stocks										
$ million	4,816	4,439	4,703	4,673	4,439	4,124	3,765	3,034	2,684	2,476
Rand millions	28,231	21,599	22,002	17,058	15,753	14,020	11,502	8,324	6,879	6,291
Investments outside the diamond industry										
Listed at market value										
$ millions	4,253	5,644	7,491	8,768	8,170	6,863	2,615	4,984	3,845	4,136
Rand millions	24,933	27,468	35,041	32,005	33,210	29,458	12,944	15,973	13,034	14,747

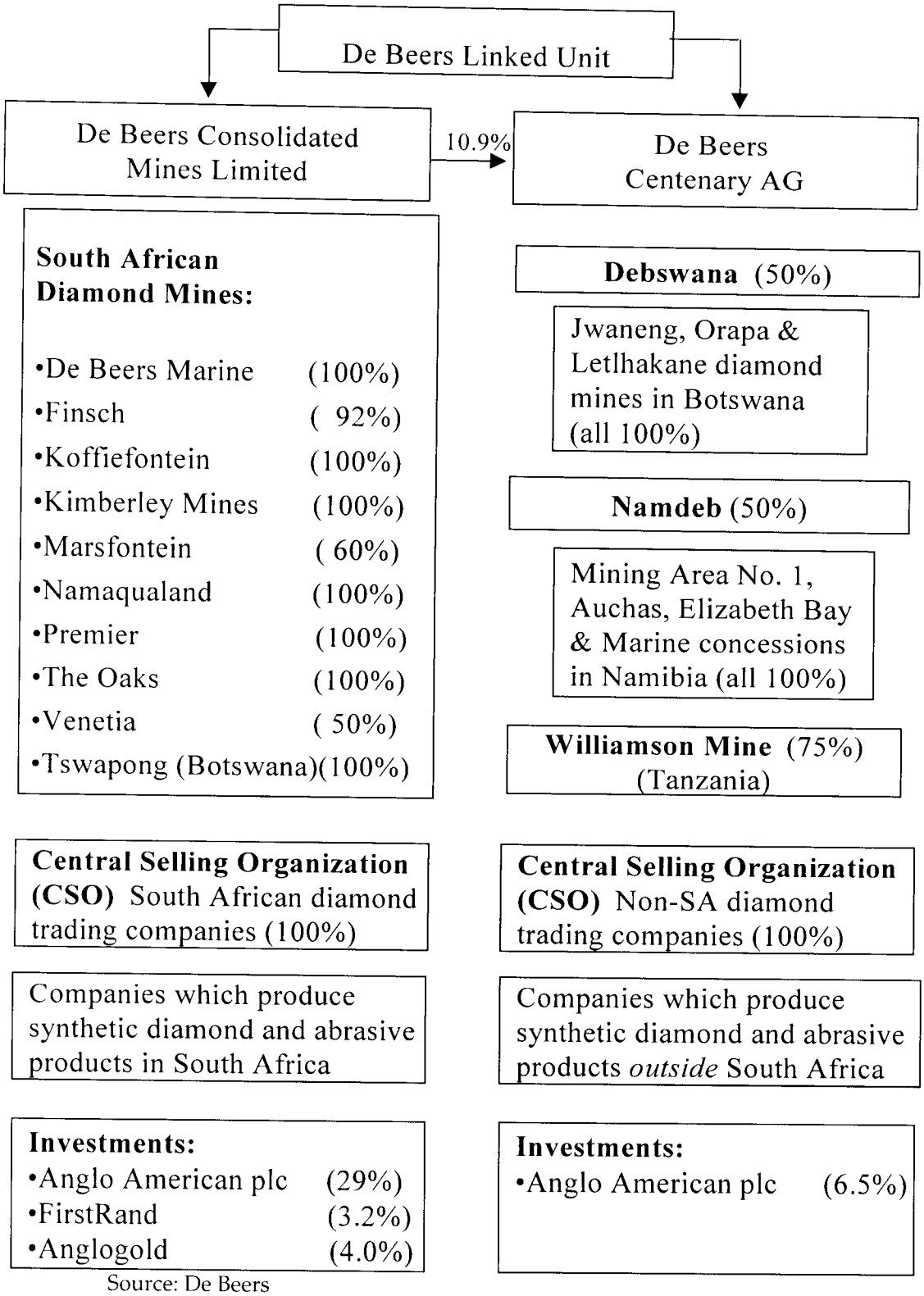
Source: De Beers Annual Report, 1998.

Exhibit 2b De Beers Share Price



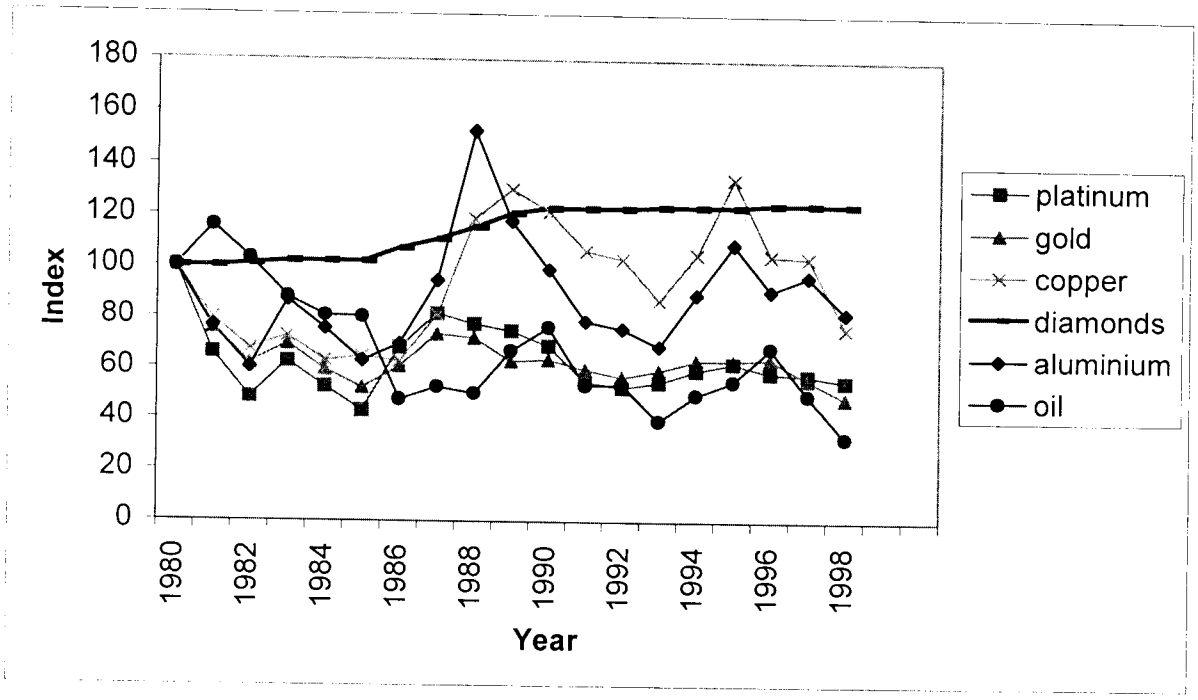
Source: CIBC World Markets

Exhibit 3 De Beers Corporate Structure



Source: De Beers

Exhibit 4 Commodity Prices, 1980-1998



Source: De Beers

Exhibit 5 U.S. Antitrust Law: The Sherman and Clayton Acts

Sherman Act, Section 1.

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.

Clayton Act.

It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce...

Source: *United States Code 1994 Edition, Vol. 6 Title 15,* (Washington: United States Government Printing Office, 1995), p. 114, 119.

Exhibit 6 Diamond Industry Operating Profit, 1997 (Total = U.S.$8.5 billion)

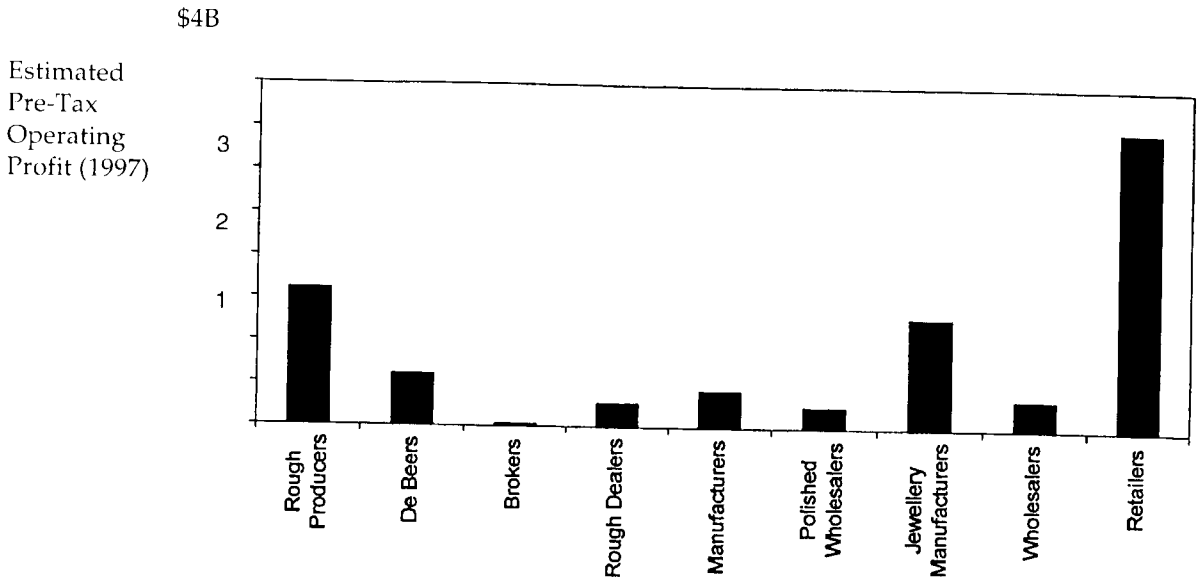
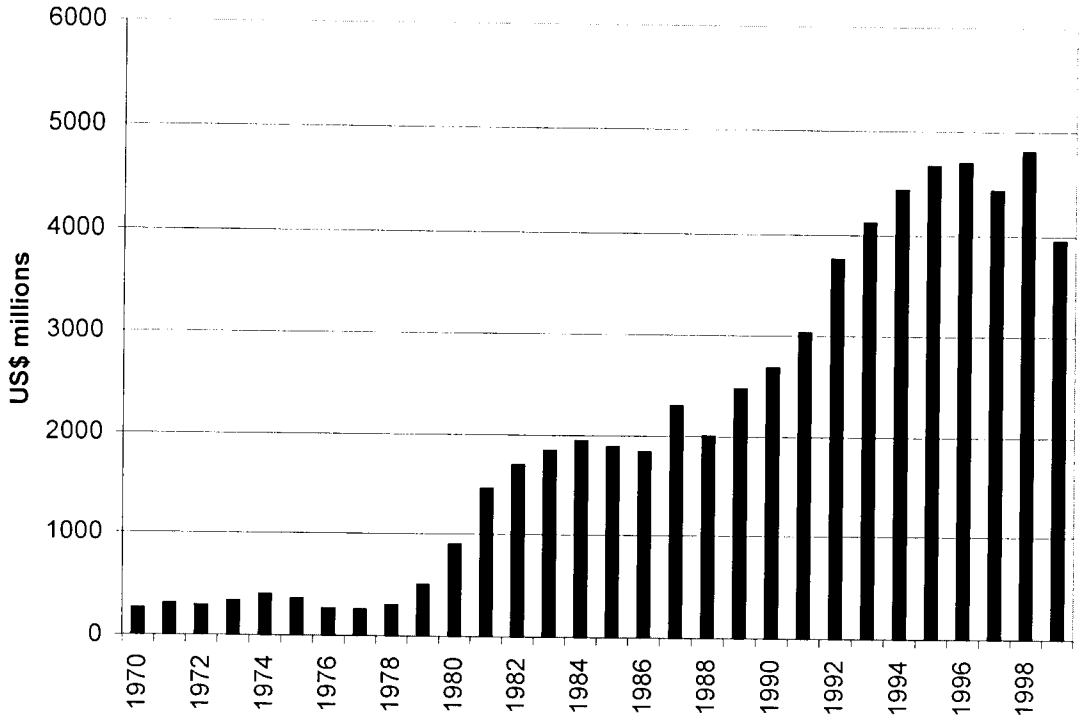
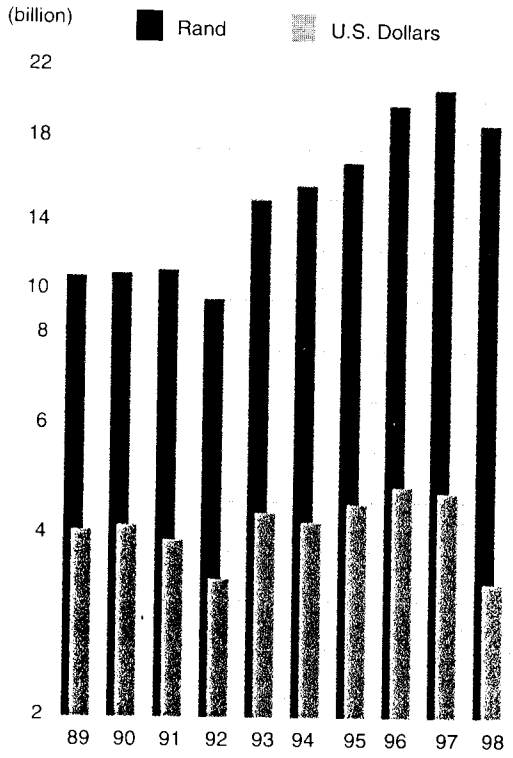


Exhibit 7 Value of De Beers's Rough Diamond Stockpile



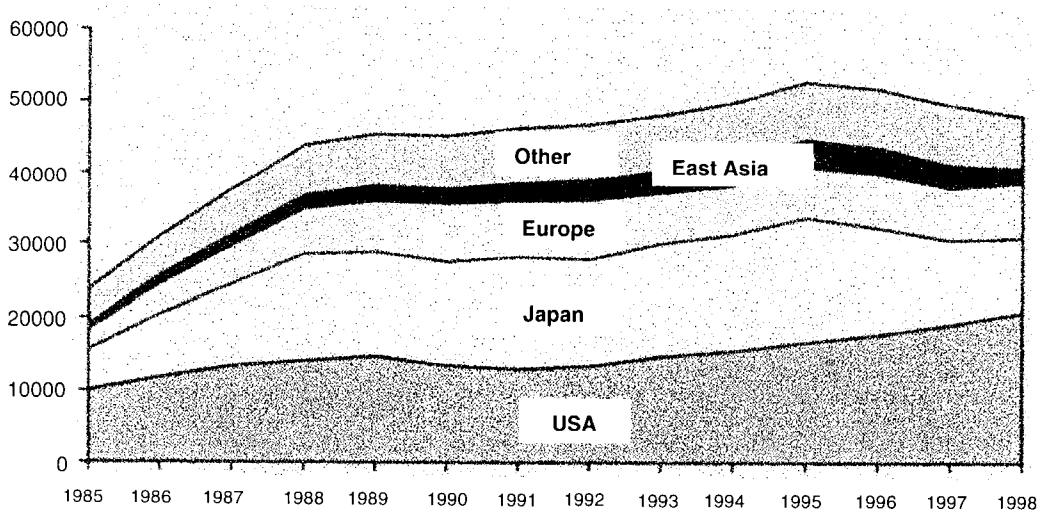
Source: De Beers

Exhibit 8 CSO Rough Diamond Sales, 1989-1998



Source: De Beers Annual Report, 1998

Exhibit 9 Retail Diamond Sales by Region ($million)



Source: De Beers

Exhibit 10 Diamond Jewelry Market in the United States, 1996 – 1998

Total Diamond Jewelry Market—by Pieces

	1996		1997		1998		
Pieces (000)	# Pieces	% Pieces	# Pieces	% Pieces	# Pieces	% Pieces	% Chg 1997-98
Total Women's	**23,367**	**75%**	**25,007**	**77%**	**26,415**	**78%**	**6%**
Married women	14,513	47%	15,368	47%	16,264	48%	6%
Single women	8,854	28%	9,639	30%	10,151	30%	5%
Bridal	**3,133**	**10%**	**3,051**	**9%**	**3,134**	**9%**	**3%**
Engagement Ring	1,675	5%	1,663	5%	1,659	5%	--
Wedding Band	977	3%	889	3%	963	3%	8%
Men's Wedding Band	481	2%	499	1%	512	1%	3%
Teens	**1,582**	**5%**	**1,736**	**5%**	**1,649**	**5%**	**-5%**
Men's	**3,046**	**10%**	**2,834**	**9%**	**2,697**	**8%**	**-5%**
Total	**31,128**	**100%**	**32,628**	**100%**	**33,895**	**100%**	**4%**

Total Diamond Jewelry Market—by Value

	1996		1997		1998		
Value ($ million)	$ Value	% Value	$ Value	% Value	$ Value	% Value	% Chg 1997-98
Total Women's	**$13,158**	**69%**	**$14,631**	**72%**	**$16,234**	**73%**	**11%**
Married women	$9,404	49%	$10,573	52%	$11,970	54%	13%
Single women	$3,754	20%	$4,058	20%	$4,263	19%	5%
Bridal	**$4,025**	**21%**	**$3,919**	**19%**	**$4,329**	**20%**	**10%**
Engagement Ring	$3,022	16%	$2,998	15%	$3,318	15%	11%
Wedding Band	$761	4%	$688	3%	$715	4%	4%
Men's Wedding Band	$242	1%	$233	1%	$296	1%	27%
Teen's	**$302**	**2%**	**$290**	**1%**	**$284**	**1%**	**-2%**
Men's	**$1,496**	**8%**	**$1,564**	**8%**	**$1,340**	**6%**	**-14%**
Total	**$18,981**	**100%**	**$20,405**	**100%**	**$22,186**	**100%**	**9%**

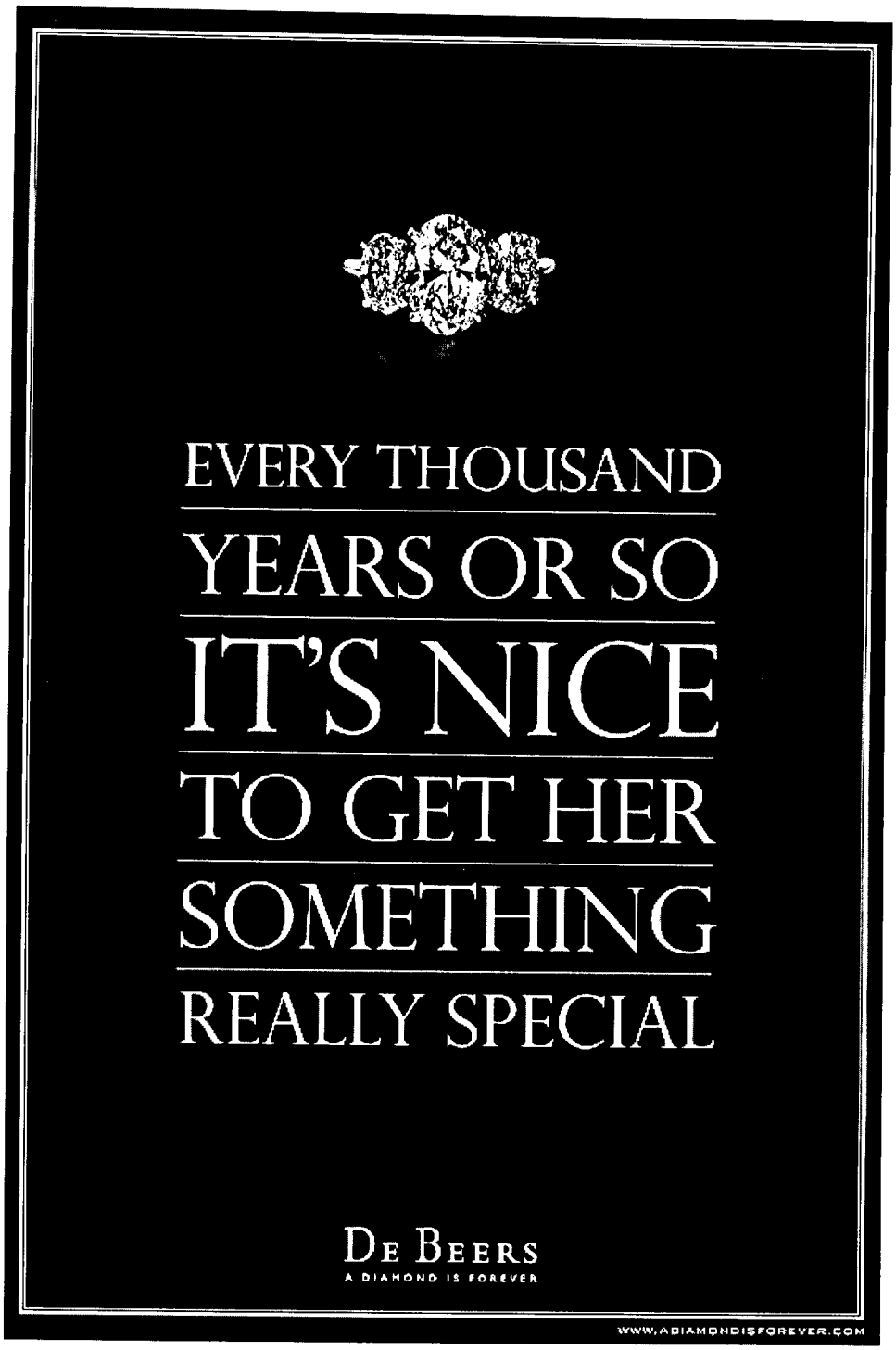
Total Diamond Jewelry Market—by Average Price

Average Price ($)	1996	1997	1998	% Chg 1997-98
Total Women's	**$563**	**$585**	**$615**	**5%**
Married women	$648	$688	$736	7%
Single women	$424	$421	$420	--
Bridal	**$1,285**	**$1,284**	**$1,381**	**8%**
Engagement Ring	$1,804	$1,803	$2,000	11%
Wedding Band	$779	$774	$742	-4%
Men's Wedding Band	$503	$467	$578	24%
Teen's	**$191**	**$167**	**$172**	**3%**
Men's	**$491**	**$552**	**$497**	**-10%**
Total	**$610**	**$625**	**$655**	**5%**

1 Diamond jewelry is defined as any jewelry piece with at least one real new diamond, regardless of the diamond's size or value.

Source: J. Walter Thompson, Inc.

Exhibit 11 De Beers Millennial Campaign Advertisement



Source: J. Walter Thompson, Inc.

Exhibit H

Rich and Rare are the Gems They War:

Holding De Beers Accountable for Trading Conflict Diamonds

Lucinda Saunders *

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INTRODUCTION

The insurgents n1 broke through the gate to Alpha's house in Freetown, the capital of Sierra Leone. n2 They had cuts on their faces covered with adhesive strips. n3 The insurgents put cocaine [*1403] into their bloodstreams through these incisions. n4 They entered Alpha's house and demanded money from his parents. n5 Alpha's father handed over all the money he had in his possession. n6 The fighters then abducted Alpha and his two younger brothers, along with many other young people in the area. n7 They took their captives up a nearby hill where a young combatant named Tommy chopped off the captives' arms with an axe. n8 Alpha and his brother, Amadu, survived the amputations and were taken in by a family that cared for them. n9 Alpha later found out that his other brother, Dawda, died from loss of blood and that the insurgents burned his parents and sister alive in their house. n10

This incident stands as one of many in an ongoing civil conflict in Sierra Leone. n11 Experts claim that political ideologies do [*1404] not motivate this insurgent group. n12 Instead, they argue that control of diamond production is a root cause behind the war in Sierra Leone. n13

RICH AND RARE ARE THE GEMS THEY WAR

Observers note that in several African nations insurgent groups use diamonds to fund civil wars. n14 The revenue that insurgents [*1405] obtain from smuggling diamonds across borders allows them to buy more arms and to continue fighting. n15 The fighting [*1406] in these nations has led to extensive human rights abuses by these insurgent groups. n16 The insurgents would not have the money to buy arms and commit human rights abuses without the willingness of diamond buyers to trade with them. n17 For these [*1407] diamond buyers, the practice of indirectly funding human rights violations represents a possible violation of international law. n18

This Note focuses on the accountability of corporations for indirectly fueling civil wars by purchasing diamonds from insurgent groups. While many corporations are involved in the diamond industry, n19 De Beers n20 controls a majority of the uncut diamond n21 [*1408] market, including mining, buying, and selling uncut diamonds. n22 Therefore,

this Note will analyze whether De Beers may be held liable for knowingly funding war criminals under the Alien Tort Claims Act ("ATCA"). n23

Part I of this Note examines the trade in conflict diamonds n24 in Angola and Sierra Leone and De Beers's involvement [*1409] in this trade. Part II examines case law developments under the ATCA and obstacles to recovery against multinational corporations n25 ("MNCs") under the ATCA. Part II also outlines efforts made by international organizations, the U.S. government, and MNCs to regulate the activities of MNCs in host countries. n26 Part III argues that De Beers should be liable under the ATCA for complicity in war crimes and crimes against humanity by funding insurgent groups engaged in human rights violations. n27 This Note concludes that the ATCA should be amended and offers a proposal for legislation to make MNCs liable for their involvement in human rights abuses. Under an amended ATCA, De Beers could be held accountable for its part in the conflict diamond trade.

I. THE HEART OF THE MATTER: DIAMONDS, DESTRUCTION, AND DE BEERS

A. Conflict Diamonds: The Setting

Observers note that the conflict diamond trade occurs in regions where diamonds are mined by insurgent groups and then sold for arms or cash. n28 While commentators claim that ending the conflict diamond trade may be an important element [*1410] of ending the civil wars in Angola and Sierra Leone, there are serious difficulties with stopping these exchanges. n29 Particularly, no technology currently exists that can identify diamonds by their source once they are on the market. n30 Additionally, smuggling and trading through multiple intermediaries present obstacles to determining where a diamond originated. n31

1. Clarifying the Terms

Conflict diamonds are diamonds mined or stolen by insurgent forces in opposition to the legitimate government. n32 Insurgent [*1411] groups sell diamonds to buy arms and obtain cash flow for their war effort. n33 Commentators speculate that the conflict diamond trade comprises between four and fifteen percent of the world trade in diamonds. n34 Presently, conflict diamonds come from Angola, Sierra Leone, and the Democratic Republic of Congo. n35 Until recently, international law has not deterred traders from engaging in trade with rebels groups. n36

[*1412]

2. A Rock in a Hard Place

The United States has responded to the trade in conflict diamonds by proposing that all diamonds imported into the United States have certificates of origin. n37 Because many nations' economies profit from legitimate diamond trade, and only certain countries

produce conflict diamonds, determining the origin of diamonds is preferable to a total ban on diamonds. n38 Thus, identification of a diamond's source is essential to stopping the conflict diamond trade in these countries. n39

Representatives from the diamond industry have asserted the impossibility of identifying the source of individual rough diamonds without destroying the diamond. n40 Commentators allege, [*1413] however, that experts can identify diamonds from different regions through a variety of techniques, including simply looking at their surface features. n41 Although identifying diamonds by surface features is not a precise science, a combination of identification techniques could be used to determine a diamond's origin. n42 At least one commentator argues that these methods may be equally useful to exclude those regions from where a diamond did not originate. n43

3. Dealer in the Rough

Commentators note that tracing the origin of conflict diamonds is further complicated by the smuggling culture in the diamond business. n44 A recent U.N. report on the Angolan conflict diamond trade explains the complex organizational structure of modern day diamond smuggling. n45 Diamonds are susceptible [*1414] to smuggling because they are small and easy to conceal. n46 Observers state that the diamond industry's lack of transparency makes it difficult to combat smuggling. n47 Smuggling usually involves trading diamonds through multiple buyers, or intermediaries, which presents further difficulties in tracing diamond trade routes. n48

B. The Civil Wars: The Carat and the Stick

The civil wars in Angola and Sierra Leone are examples of insurgent movements using diamonds to finance wars against official governments. n49 The civil war in Angola has continued on [*1415] and off since the 1960s, n50 and diamonds are essential to maintaining the insurgent war effort there. n51 The civil war in Sierra Leone is more recent, beginning in 1991, n52 and insurgent groups there also use diamonds to buy weapons for use in the fighting. n53 Commentators assert that the trade in conflict diamonds has prolonged the length of the violence in Angola and Sierra Leone. n54

[*1416]

1. Angola

The Portuguese colonized Angola and controlled the region until 1975 when the Portuguese government granted Angola's independence. n55 Since Angola's independence, civil war has engulfed Angola as insurgent forces struggle against the Popular Movement for the Liberation of Angola n56 ("MPLA"), the ruling party in Angola. n57 The insurgent forces, called the National Union for the Total Independence of Angola n58 ("UNITA"), occupied a majority of the diamond producing areas in Angola in the 1990s n59 and have used revenues from diamond mining and trading to buy more arms for continued fighting. n60

a. History of Angola

For most of the twentieth century, the Portuguese controlled [*1417] Angola. n61 Although the first Portuguese explorer arrived in Angola in 1483, n62 the Portuguese did not establish a colony in Angola until 1576 when they founded their first town in Angola, called Luanda. n63 Portugal subsequently used Angola as its primary source of slaves in the seventeenth and eighteenth centuries. n64 Portugal continued to gain control over Angolan territory throughout the nineteenth century and by 1930, Portugal considered Angola an important Portuguese colony. n65

The war in Angola began in 1961 as a war of independence against Portuguese colonialism. n66 In the 1950s and 1960s, anti-colonialist sentiment gave rise to three nationalist movements. n67 [*1418] The MPLA, founded in 1956, n68 drew support from urban dwellers n69 and professed a Marxist ideology. n70 The National Front of Liberation of Angola n71 ("FNLA"), originally known as the Union of the Peoples of Northern Angola and subsequently the Union of Angolan Peoples, n72 was composed mostly of Kikongo, or Bakongo, people and had significant ties to Zaire. n73 The third nationalist group in Angola is UNITA, founded by Jonas Savimbi in 1966. n74 UNITA drew most of its support from the [*1419] Ovimbundu people, the largest ethnic group in Angola. n75 Commentators note that the ideology of UNITA is largely an expression of Savimbi's own ideals, which have changed over the years from Maoist to anti-communistic. n76

After years of war between Angolan nationalist groups and Portuguese colonialists, Portugal granted independence to Angola on November 11, 1975. n77 In the time preceding the date of independence, the three nationalist groups turned against each other in a struggle to gain control over Luanda, the capital, by November 11. n78 The MPLA eventually gained control. n79 The FNLA joined forces with UNITA, realizing that neither group could defeat the MPLA alone, and the combined forces declared [*1420] full-scale civil war against the Angolan government. n80

Angola had democratic elections in 1992 as a result of a short-lived peace agreement. n81 The war resumed after Savimbi rejected the election results. n82 In November 1994, UNITA and the government signed the Lusaka Protocol, n83 attempting to end the war, but fighting continues. n84

b. Two Months Salary: Funding a Civil War

Commentators claim that UNITA controlled the majority of diamond production and exportation in Angola in the 1990s. n85 UNITA used the revenue generated from the sale of diamonds [*1421] extracted from their occupied territory to fund the war effort. n86 Commentators speculate that UNITA made several billion dollars in revenue in the 1990s in diamond trade alone. n87

In June 1998, the U.N. Security Council passed Resolution 1176, n88 accelerating Resolution 1173, responding to the conflict diamond trade. n89 These resolutions

combined to prohibit the export of diamonds from Angola that are not certified by the government. n90 Nevertheless, there are significant loopholes, through which conflict diamonds may still reach the outside market. n91 [*1422]

2. Sierra Leone

The British colonized Sierra Leone as a settlement sight for freed slaves. n92 In 1961, Sierra Leone achieved independence from the British n93 and functioned as a one party state for many years. n94 The civil war in Sierra Leone began in 1991 as a coup d'etat organized by the Revolutionary United Front ("RUF"). n95 The RUF insurgents have occupied many of the diamond producing areas in Sierra Leone n96 and they use the profits from diamond sales to finance their continued fighting. n97

a. History of Sierra Leone

The history of Sierra Leone is unique because Britain's initial involvement with the nation was an effort to repatriate slaves [*1423] from the Western World. n98 These repatriated slaves, known as Creoles, n99 settled in and around Freetown, a city in Sierra Leone, in the late 1700s. n100 The British claimed the Freetown area as a Crown Colony in 1808, n101 and later extended their control over inland areas, declaring the larger region a British Protectorate in 1896. n102 The British maintained control of Sierra Leone until 1961 when Sierra Leone achieved independence. n103

Initially after independence, Sierra Leone experienced a brief period of democratic rule. n104 Siaka Stevens, representing the All People's Congress, n105 was elected prime minister in [*1424] 1967, n106 and he established a one party state in 1978. n107 In 1985, Stevens handed power over to his chosen successor, Major General Joseph Saidu Momoh. n108

The civil war in Sierra Leone started in 1991 as an attempted coup d'etat by the Revolutionary United Front n109 ("RUF"). n110 The RUF never clearly expressed the political objectives of the insurgency. n111 Fighting continued in Sierra Leone [*1425] throughout the 1990s n112 and, in May 1999, the RUF and the Sierra Leone government signed a cease-fire agreement called the Lome Peace Accord. n113

Under the peace agreement terms, Foday Sankoh, the leader of the RUF, became Chairman of the Commission on the Management of Strategic Resources, National Reconstruction and Development, n114 which officially gave him control over the diamond mines that his forces were already controlling. n115 Additionally, the Lome agreement granted Sankoh and his insurgent fighters amnesty for their crimes. n116 Violence continues in Sierra [*1426] Leone n117 and the peace agreement has broken down. n118 The U.N. is establishing a war crimes tribunal for Sierra Leone since the failure of the Lome agreement. n119

b. Two Months Salary: Funding a Civil War

During the 1990s, RUF forces controlled the major diamond mines in Sierra Leone. n120 Commentators discuss that some RUF fighters were illicit diamond miners and traders before becoming combatants. n121 Some observers speculate that control of the diamond mines in Sierra Leone is an important [*1427] underlying reason for the insurgency. n122 On July 6, 2000, the U.N. Security Council imposed an embargo on diamonds from Sierra Leone. n123 This resolution called on nations to take all necessary measures to prevent direct or indirect importation of diamonds from Sierra Leone that are not officially certified by the Sierra Leone government. n124

C. De Beers: Diamonds Scar Forever

Corporate actors facilitate the conflict diamond trade by buying illicit diamonds directly or indirectly from insurgent groups. n125 De Beers's control of the diamond trade makes its involvement with conflict diamonds particularly relevant. n126 For [*1428] years, De Beers has set the price of diamonds for the entire diamond industry by acquiring the majority of diamonds before they reach the market. n127 De Beers is able to acquire these diamonds both through its own mining activities and by purchasing diamonds from sellers outside the organization. n128 Although De Beers no longer operates any buying activities in Angola or Sierra Leone, n129 commentators claim that the organization acquires diamonds from these areas by buying from outside dealers. n130 De Beers has recently guaranteed that their diamonds do not originate in conflict areas. n131

1. Corporate Structure

De Beers is a corporation controlled by the Oppenheimer family. n132 Commentators note that De Beers's corporate structure [*1429] is complex. n133 For the past decade, two closely related public companies, De Beers Consolidated Mines Limited, incorporated in South Africa, and De Beers Centenary AG, incorporated in Switzerland, have controlled the De Beers syndicate. n134 In addition to these two large corporations, the De Beers syndicate controls many other subsidiary companies. n135 Prior to February 2001, De Beers maintained a thirty- five percent interest in the Anglo American Corporation, a large mining company. n136 Some observers have criticized De Beers's corporate structure as lacking transparency. n137 De Beers recently announced its decision to change its organizational form and create a new private company with Anglo [*1430] American. n138 Under the new arrangement, a consortium called DB Investments, with most shares controlled by the Oppenheimer family and Anglo American, will buy out De Beers shareholders. n139 Although the new company will be private, representatives claim that De Beers will not retreat into secrecy. n140

2. Buying Habits

De Beers controls about sixty percent of the world's uncut diamond sales. n141 De Beers has recognized its past position as "custodian of the market," n142 and commentators note that this role has led to a policy of buying all of the diamonds on the market in an effort to control and stabilize the price of diamonds. n143 De Beers recently announced its intention to [*1431] abandon its policy of acquiring all diamonds on the market. n144

Before its change in policy, De Beers obtained diamonds both through production from its own mines and from outside markets, also known as the open market. n145 De Beers does not operate any mines in conflict areas, n146 thus, if De Beers obtains conflict diamonds, the company acquires them through the outside market buying process. n147 This system creates problems of accountability because there are a number of intermediaries involved. n148 In the past, when a government has been unable to [*1432] effectively prevent smuggling, experts argue that De Beers knowingly bought diamonds from smugglers or other third parties in order to maintain its control over the supply of diamonds. n149

3. Rules of Engagement

De Beers's involvement with diamonds from Angola and Sierra Leone reflects their old policy of acquiring the majority of diamonds produced in world in an effort to keep the diamond supply steady and diamond prices stable. n150 De Beers bought diamonds from Angola in the 1990s when UNITA occupied most diamond mines in the country. n151 Additionally, commentators assert that De Beers acquired diamonds from Sierra Leone through outside dealers. n152

a. Angola

Commentators state that De Beers openly bought diamonds [*1433] that originated in Angola in the 1990s, when the UNITA forces controlled the large majority of the diamond mines in the country. n153 Such individuals conclude that De Beers was engaged in trade with UNITA insurgents and thereby provided funds to combatants, who perpetuated strife in the region. n154 The United Nations also reports that De Beers was involved in the Angolan conflict diamond trade. n155 In the late 1990s, De Beers responded with a decision to refrain from buying Angolan diamonds. n156 [*1434]

b. Sierra Leone

Experts discuss that De Beers's involvement in conflict diamonds from Sierra Leone is linked with smuggling into Liberia. n157 Liberia has few diamond mines within its own borders and is a transit country for Sierra Leone diamonds. n158 De Beers asserts that their offices in Sierra Leone and Liberia have been closed for fourteen years. n159 Commentators allege that it is conceivable that De Beers bought illicit Sierra Leone diamonds through intermediaries given De Beers's policy of buying from outside markets combined with its extensive use of intermediaries. n160

4. "I Don't"

In June 2000, De Beers announced its intention to sign formal written contracts with its trading partners to ensure that [*1435] their diamonds do not originate in conflict zones. n161 The World Diamond Council, composed of the industry's two largest groups, also committed itself to ending the trade in conflict diamonds by setting up a global system of

identification for all diamonds on the market. n162 These steps to reform the industry are in response to an increase in public awareness about this issue. n163

II. MULTI-FACETED APPROACHES TO CORPORATE LIABILITY

With the increased influence of MNCs in the twentieth and twenty-first centuries, international organizations, national politicians, [*1436] and private actors have developed various techniques for holding MNCs accountable. n164 In the past decade, private individuals have invoked the ATCA as a method for demanding corporate responsibility for human rights violations. n165 More traditionally, international organizations, the United States, and private industry initiatives have developed codes of conduct to guide MNCs in their activities abroad. n166 Although these efforts are meaningful for drawing attention to the need for corporate accountability, no court has found an MNC liable under the ATCA n167 and codes of conduct are generally voluntary and rarely [*1437] enforced. n168

A. Alien Tort Claims Act

The ATCA acts as a tool for holding human rights violators liable to victims seeking redress when options in their own countries are limited. n169 Although the statute is over 200 years old, it [*1438] existed in relative obscurity until the plaintiffs in Filartiga v. Pena- Irala n170 used it to hold a Paraguayan state official liable for torture. n171 Since then, plaintiffs have attempted to use the ATCA against private individuals and MNCs, alleging violations of the "law of nations." n172 Nevertheless, plaintiffs utilizing this approach face many obstacles, making recovery unlikely. n173

1. General Background

The ATCA, initially passed as part of the Judiciary Act of 1789, n174 grants jurisdiction to U.S. district courts over any civil action brought by an alien for a tort committed in violation of the "law of nations" n175 or a U.S. treaty. n176 Commentators speculate [*1439] that the framers of the statute designed the legislation in order to avoid conflicts with other nations over mistreatment of non-U.S. citizens. n177 Although commentators hypothesize as to the possible purpose of this statute, little legislative history exists to indicate the framers' actual intent. n178 For almost 200 years, courts rarely used the ATCA. n179 This changed in 1980, when the Second Circuit court relied on the ATCA in the landmark case Filartiga v. Pena-Irala. n180 [*1440]

2. Case Law Development Under the ATCA

In 1980, the Court in Filartiga v. Pena-Irala found that State- sponsored torture constituted a part of the "law of nations" under the ATCA. n181 Over fifteen years later, a Second Circuit court in Kadic v. Karadzic found that private individuals can be liable under the ATCA where the allegations include war crimes and genocide. n182 Subsequently, plaintiffs began filing suits against MNCs under the ATCA alleging various human rights abuses related to MNC activity. n183 These suits have often

targeted MNCs involved in extractive industries, such as oil and mining, n184 but recently, plaintiffs have also attempted to hold banking institutions liable for knowingly profiting off of human rights abuses. n185

a. Filartiga

Filartiga involved a wrongful death suit against a Paraguayan police officer, Americo Norboerto Pena-Irala. n186 The plaintiffs alleged that Pena-Irala kidnapped, tortured, and killed Joelito Filartiga on May 29, 1976. n187 The District Court dismissed the [*1441] case for lack of subject matter jurisdiction, n188 but the Second Circuit Court of Appeals reversed and allowed recovery under the ATCA. n189 The Court looked to international treaties and accords, as well as national laws, to determine whether torture formed a part of customary international law. n190 The Court [*1442] found that State-sponsored torture violates international customary law, n191 and therefore, if the allegations were proved, Pena-Irala could be liable under the ATCA. n192 The Court limited its holding to the issue of State-sponsored torture, recognizing that few other issues are as universally prohibited by the nations of the world. n193 [*1443]

b. Kadic

In 1995, the Second Circuit expanded the ATCA with the ruling in Kadic v. Karadzic. n194 In Kadic, the Court found that acts committed by non- state actors also fell within the realm of the ATCA. n195 The plaintiffs in Kadic, Croat and Muslim citizens of Bosnia-Herzegovina, brought suit against the leader of the rebel military forces that engaged in systematic violations of international human rights law. n196

The District Court held that the ATCA does not extend liability to private individuals and found that Karadzic was a private actor. n197 On appeal, the Court of Appeals held that certain violations of the "law of nations" do not require State action and, thus, private individuals may be held liable under the ATCA for these crimes. n198 The Court found that violations involving genocide [*1444] or war crimes do not require State action and, since these violations were among the allegations, the defendant faced liability as a private actor under the ATCA. n199

The Kadic court's extension of liability for certain crimes to non- State actors has significance. n200 Commentators argue that this expansion of the ATCA has left the application of the ATCA open to further enlargements. n201 Indeed, after Kadic, courts went on to recognize the possibility of extending ATCA liability to MNCs. n202

c. Beanal

In 1996, Tom Beanal, an Indonesian citizen and leader of an indigenous group there, brought suit under the ATCA against Freeport-McMoRan, a U.S. mining MNC operating in Beanal's town. n203 Beanal alleged human rights violations as well [*1445] as environmental abuses committed by Freeport-McMoRan. n204 Although the Court recognized the potential for MNCs to be liable under the ATCA, n205 it dismissed the

case for failure to state a claim under Rule 12(b)(6) of the Federal Rules of Civil Procedure. n206

Beanal alleged cultural genocide as a basis for finding a violation of international law. n207 Although private actors are liable for genocide without a showing of state action, n208 the Court found that Beanal's allegation did not amount to genocide. n209 Therefore, the Court would not find Freeport-McMoRan liable for acts committed in furtherance of genocide under the facts pled by Beanal. n210

Beanal also alleged other human rights abuses, including torture, arbitrary detention, and destruction of property. n211 [*1446] Freeport-McMoRan's liability for these violations requires State action since these acts were not committed in furtherance of genocide. n212 After examining relevant tests for determining whether a private actor engaged in State action, n213 the Court found that Freeport-McMoRan did not have sufficient connections with the State to establish liability for these allegations. n214

d. Unocal

In 1997, a district court in the Ninth Circuit heard another ATCA case against an MNC. n215 In Doe v. Unocal, farmers from Myanmar sued Unocal and Total S.A., two large oil companies [*1447] operating in Myanmar. n216 The plaintiffs alleged a variety of human rights abuses, including forced labor, torture, and rape, committed by the repressive regime in Myanmar. n217 The claim revolves around Unocal's funding of, knowledge of, and benefit from human rights abuses committed by the State Law and Order Restoration Council n218 ("SLORC") in furtherance of a joint pipeline project between Unocal and SLORC. n219

The Court held that private corporations could be held liable under the ATCA for joint action in complicity with the State. n220 The Unocal Court asserted that joint action is found [*1448] where there is a considerable amount of cooperation between the government and private entities in depriving people of their rights. n221 Furthermore, because the plaintiffs alleged forced labor, the Court found that Unocal might be liable without State action since forced labor can be considered within the ambit of slave trading. n222 The Court denied Unocal's motion to dismiss. n223

At trial in Doe v. Unocal n224 ("Unocal II"), the Court held that Unocal was not liable for the violations because Unocal did not have the necessary degree of connection to the State to establish joint action. n225 The Court acknowledged that Unocal knew of the practice of using forced labor, but it did not take active steps to further such a practice, and, therefore, the Court dismissed the case against Unocal. n226 Although, the initial District Court opinion in Unocal provides a framework for holding corporations [*1449] accountable for their complicity with repressive regimes, n227 the final decision of the Unocal Court reveals that establishing a case against an MNC under this framework will be extremely difficult. n228

e. Swiss Bank Litigation

In late 1996 and early 1997, Holocaust survivors and their descendants filed three suits against Swiss banks alleging that the banks knowingly profited from slave labor and stolen property during the Nazi reign in Germany. n229 They alleged participation and complicity with the Nazi regime in perpetrating crimes against humanity, crimes against the peace, and war crimes, and claimed liability under the ATCA. n230 The Eizenstat Report, n231 officially [*1450] ordered by the U.S. government, speculates that Swiss banks prolonged the war by providing funds to the Nazis. n232

The Holocaust plaintiffs invoked the Nuremberg Principles n233 to prove liability on the part of the banks. n234 The Nuremberg Principles are a restatement of the legal principles developed by the International Law Commission and recognized in the Nuremberg Charter, the decisions of the International Military Tribunal n235 ("IMT") that convicted Nazi war criminals ("Nuremberg Tribunals"), and customary international law. n236 Principle VI of the Nuremberg Principles defines crimes against the peace, war crimes, and crimes against humanity. n237 Principle VII provides that complicity in committing a crime against the [*1451] peace, a war crime, or a crime against humanity violates international law. n238 These Principles are accepted as precedent in international law. n239

At the Nuremberg Tribunals, Frederick Flick, a German industrialist, was convicted of spoliation and plunder for his takeover of a cement plant in France. n240 Although the IMT was hesitant to equate property crimes to crimes against humanity, the IMT found Flick guilty for accepting and retaining property that he knew the Nazi regime had obtained unlawfully. n241 Thus, [*1452] knowingly supporting and accepting looted property from war criminals is a violation of international law under the Nuremberg precedent. n242

The Nuremberg trials in general, and the Flick conviction in particular, strengthen the Holocaust plaintiffs' claims. n243 The Unocal II summary judgment decision, however, required a high degree of cooperation between a State and private actor to find individual liability under the ATCA, presenting a potential problem for the Holocaust plaintiff's claims. n244 The parties to the Holocaust litigation eventually settled, and therefore, no judicial opinion was ever made regarding the legitimacy of the claims under international law. n245

3. Criticisms of ATCA

Courts' willingness to entertain claims n246 against MNCs under the ATCA reveals a changing sentiment towards such suits. n247 Commentators generally agree, however, that the ATCA [*1453] is a weak method of holding corporations accountable for their activities in nations outside their home country. n248 ATCA plaintiffs face several obstacles in bringing suit against an MNC, including meeting the high factual threshold, n249 overcoming a forum non conveniens motion, n250 obtaining personal jurisdiction over the defendant, n251 and showing State action for most human rights allegations. n252

a. High Factual Threshold

The first potential problem with utilizing the ATCA to hold [*1454] MNCs accountable is that the plaintiff must meet a high threshold of factual evidence. n253 Often, a judge will grant a defendant's failure to state a claim motion in ATCA cases. n254 The plaintiff will struggle to satisfy this requirement because evidence of an MNC's participation in violations of international law is often difficult to obtain. n255 Although in some instances courts have allowed limited discovery for the plaintiff to establish the requisite facts, n256 generally courts demand a highly developed factual basis for the continuation of a case under the ATCA. n257

b. Forum Non Conveniens

Defendants also will likely object to an ATCA suit based on forum non conveniens. n258 Forum non conveniens is granted when a case can be pursued more effectively and fairly in another country. n259 The events giving rise to an ATCA claim often [*1455] occur in another nation, and because of this, defendants argue that the United States is not the proper place for a trial. n260

For example, in Wiwa v. Royal Dutch Petroleum, Nigerian plaintiffs brought suit against Shell and Royal Dutch Petroleum, two oil companies, for their direct and indirect involvement in human rights abuses perpetrated by the Nigerian State. n261 The defendants moved to dismiss the case on forum non conveniens grounds. n262 The Second Circuit held that the defendants failed to establish that the claims would be more appropriately addressed in a court outside the United States. n263 The Court also set out additional factors for a forum non conveniens analysis, n264 such as the principle that there should be increased deference to the plaintiff's choice of forum when the plaintiff has substantial ties to that forum. n265 The Court found that since the plaintiffs lived in the United States, changing the forum of the suit would impose a significant hardship on them. n266

Additionally, where the United States has an interest in litigating the claim, courts should strive to maintain the suit in U.S. court. n267 The plaintiff in Wiwa argued against a forum non conveniens dismissal by appealing to the U.S. policy interest in litigating [*1456] human rights claims. n268 The Court recognized that forum non conveniens represents a major setback for victims of human rights abuses seeking redress. n269 The Court claimed that the passage of the Torture Victims Protection Act n270 ("TVPA") in 1991 is acknowledgement by Congress that victims of gross human rights violations need an accessible forum. n271 Allowing defendants to avoid law suits by claiming forum non conveniens would run contrary to Congress's policy reflected in the TPVA. n272

c. Personal Jurisdiction

Another obstacle to an ATCA suit against an MNC is personal jurisdiction, particularly when the MNC is not based in the United States. n273 Courts apply the minimum contacts test to determine whether exercising jurisdiction over the defendant is in

accordance with principles of "fair play and substantial justice." n274 The minimum contacts test requires that the court assess [*1457] the degree of contact of the party with the forum state as well as the relatedness of the contacts to the claim at issue. n275

In Asahi Metal Industry Co. v. Superior Ct., the Supreme Court held that where a non-U.S. company simply places a product in the stream of commerce in the United States, minimum contacts have not been met and jurisdiction is improper. n276 The Asahi Court provided examples of activities that may subject a non-U.S. defendant to personal jurisdiction, including advertising in the particular jurisdiction. n277 Jurisdiction over a corporation also is available where the level of activity in the forum state is "continuous and systematic." n278 Notably, in a suit against a defendant that is not a U.S. entity, the court may find that the corporation has sufficient minimum contacts with the United States, rather than any particular state. n279

A possible exception to the minimum contacts test arises if the alleged violation is a "universal offense," n280 such as slave trading, [*1458] hijacking planes, genocide, and war crimes. n281 Any state has jurisdiction over these claims, regardless of the nationality of the parties or the place where the event giving rise to the suit occurred. n282 In an ATCA claim, it is often possible that the allegations will include universal offenses. n283

d. State Action

Traditionally, international law binds States rather than individuals or corporations. n284 To hold a private individual liable under principles of international law, a showing of State action is often necessary. n285 Although courts have held that genocide, war crimes, slavery, and piracy do not require State action, n286 the vast majority of human rights violations will require State action for the ATCA to apply. n287

[*1459] The Unocal II decision applied a joint action test n288 to ascertain whether the corporation had sufficient connections with the State to be liable. n289 The joint action test requires that the State and the MNC work together for the specific purpose of depriving people of their rights. n290 The standard established by Unocal II requires that the private entity actually commit the alleged acts in cooperation with the State or exercise control over the State's action. n291

This standard presents difficulties in holding MNCs liable under the ATCA because often MNCs and States develop a relationship for mutually beneficial business purposes. n292 MNCs that partner with governments, who commit human rights abuses, do so for financial reasons. n293 Similarly, governments enjoy the prominence associated with large MNCs and the money generated by MNC operations in their country. n294 The MNC need not directly commit human rights abuses nor unduly influence an already corrupt government to realize its profits because the government is willing to engage in these practices to maintain the business relationship. n295 The MNC's main goal is profit, [*1460] not violating human rights. n296

Furthermore, State actors are often shielded from liability under the Foreign Sovereign Immunities Act n297 ("FSIA"). n298 One strategy utilized by corporate defendants in ATCA litigation is to win a dismissal for State actors in the suit under the FSIA and then plead indispensable parties under Rule 19 of the Federal Rule of Civil Procedure. n299 If a court finds that a party is essential to the litigation but cannot be joined to the suit, the court then must analyze whether the case should proceed with the remaining parties considering the potential prejudice to any party, the possible relief available without the absent party, and alternative locations for trial. n300 When a government is dismissed under the FSIA and an MNC successfully claims that the [*1461] government actor is an indispensable party, the MNC avoids liability through the benefit of the State partner's sovereign immunity. n301

B. Methods of Regulating MNCs

Little uniform binding law exists to regulate MNC activity when they operate outside their country of incorporation. n302 International organizations, governments, and private industry actors have recognized the need for corporate accountability in MNC activities outside their home country and have responded to this need with corporate codes of conduct. n303 Codes of conduct are helpful to MNCs operating in countries other than their home nation because they provide standards and guidelines for respecting human rights. n304 Codes of conduct, however, are often criticized for being unenforceable due to their voluntary nature. n305

[*1462]

1. General Background

While some scholars have claimed that the only responsibility of a business is to use its resources to the fullest extent to raise profits while staying within the bounds of the law, n306 others argue that MNCs have increasing social obligations. n307 Presently, MNCs do not have many legal obligations with respect to the countries in which they are operating. n308 Corporate regulations are particularly necessary for MNCs operating in countries engaged in civil war, since absence of rule of law often creates an economic opportunity for MNCs that can be detrimental to the [*1463] local citizens who live in the instability. n309 In response to the lack of regulation, there have been several attempts to design codes for the protection of both foreign investment and host countries. n310

2. Approaches

The Organisation for Economic Co-operation and Development ("OECD"), International Labour Organisation ("ILO"), and the United Nations all have developed guidelines for MNCs operating in countries other than their home country. n311 The U.S. government also has encouraged MNCs to observe certain minimum standards in their operations abroad with respect to fundamental rights. n312 Additionally, turbulent political

situations in certain regions, such as South Africa and Northern Ireland, have given rise to private efforts to develop standards for MNC activities in those areas. n313

a. International Efforts

Recognizing the growing importance of international investment, the OECD developed their Declaration on International [*1464] Investment and Multinational Enterprises ("Declaration"). n314 The ILO developed standards for MNC activities with respect to treatment of workers in 1978. n315 The United Nations similarly has attempted to develop a code of conduct for MNCs, but the General Assembly never adopted the proposed draft. n316

i. Organisation for Economic Co-operation and Development

In 1976, the OECD introduced their Declaration. n317 This Declaration calls on MNCs to respect the policy choices of the nation in which they are operating, to provide any information requested by national authorities while taking account of business confidentiality, to work closely with local businesses and communities, to refuse bribes in all circumstances, and to refrain from participation in political activities. n318 These standards are voluntary and unenforceable. n319

ii. International Labour Organisation

The ILO developed international standards for MNCs with the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy ("Tripartite Declaration"). n320 The Tripartite Declaration urges MNCs to create employment opportunities in the countries where they operate, promote [*1465] equality of opportunity, ensure stable employment, provide vocation training in cooperation with national government, guarantee favorable work conditions and workplace safety, and protect freedom of association and the right to collective bargaining. n321 These standards, like the OECD Guidelines, are also voluntary and they lack an enforcement mechanism. n322 Acknowledging the deficiencies of the principles, the ILO initiated a new Declaration on Fundamental Principles and Rights at Work ("Fundamental Principles"). n323 At least one commentator claims that since the Fundamental Principles are relatively new, their potential to ensure observance of human rights is still unclear. n324

iii. United Nations

More recently, the United Nations developed the United Nations Code of Conduct on Transnational Corporations ("Draft U.N. Code"). n325 The Draft U.N. Code makes explicit reference [*1466] to human rights and encourages MNCs to respect the sovereignty of the nations in which they operate. n326 The U.N. General Assembly never officially adopted the Draft U.N. Code and, therefore, the code remains a hortatory document, with no means of enforcement. n327

b. United States Efforts

In May 1995, President Clinton revealed the Model Business Principles n328 ("Model Principles"). n329 The Model Principles set [*1467] standards for the treatment of workers and encourage a corporate atmosphere that values freedom of expression, condemns political oppression, contributes to the local community, and [*1468] promotes ethical conduct. n330 The Model Principles are voluntary and non- binding. n331

c. Private Efforts

Another method of regulating MNCs is through self-imposed codes of conduct. n332 In response to public pressure, some MNCs have individually adopted their own codes of conduct. n333 These efforts vary in specificity and degree. n334 Corporations that have recognized the value of corporate codes of conduct include Levi Strauss, Nike, Gap, and Sears. n335 Occasionally, where a particular nation has consistent human rights problems, companies will adhere to industry- wide codes of conduct, such as the Sullivan Principles in South Africa and the MacBride Principles in Northern Ireland. n336

i. Sullivan Principles

Reverend Leon Sullivan, a General Motors board member, first initiated the concept of an industry-wide code of conduct in [*1469] response to the public outcry against apartheid in South Africa in the 1970s and 1980s. n337 Reverend Sullivan created the Sullivan Principles, establishing standards of corporate responsibility for MNCs operating in South Africa. n338 The Sullivan Principles not only called for the eradication of discrimination in the workplace, but also required MNCs to use their influence to work for the end of apartheid. n339 The MNCs that signed on to the Sullivan Principles also agreed to external audits and public reports to guarantee compliance. n340 Although the Sullivan Principles cannot claim to have caused the demise of apartheid, they served as a basic model for other codes of conduct aimed at corporate responsibility. n341 [*1470]

ii. MacBride Principles

The MacBride Principles address the corporate responsibilities of U.S. MNCs in Northern Ireland. n342 Named after Dr. Sean MacBride, an Irish nationalist and the founder of Amnesty International, n343 these principles attempt to ensure non-discrimination in employment and oblige MNCs to protect the safety of their workers not only at work, but also during their commute to and from work. n344 In February 1995, the MacBride Principles had thirty-two MNC signatories out of the eighty U.S. MNCs operating in Northern Ireland. n345

3. Lack of Legal Enforcement as Criticism to Corporate Codes of Conduct

Codes of conduct often fail to be effective because they are not enforced. n346 Past international efforts have proven ineffective because they lack power to punish those who

do not comply. n347 Commentators also criticize Clinton's Model Principles as [*1471] being vague and inadequate because they are voluntary and unenforceable. n348 Additionally, private initiatives are often self- imposed, making it difficult to assess whether a corporation is actually complying with its own code. n349

III. DE BEERS'S LIABILITY UNDER THE ATCA

As governments and the United Nations seek permanent solutions to end these civil wars, n350 attempts will be made to rebuild these societies. In this century, countries have addressed war crimes by setting up tribunals to hold the perpetrators accountable. n351 Still, these tribunals suffer from multiple problems, inhibiting their overall effectiveness. n352

There is no court of human rights in Africa and national courts are not likely to provide a fair forum for the victim. n353 [*1472] The ATCA provides an alternative method for victims of human rights abuses to hold their violators accountable. n354 Therefore, plaintiffs may seek redress in American courts under the ATCA. n355

Although a cause of action against the insurgent groups may seem logical, these groups may be unavailable for suit. n356 Thus, plaintiffs may institute a suit against De Beers for its involvement in the trade in conflict diamonds. The plaintiffs will assert that De Beers knowingly funded war crimes and crimes against humanity. n357 Since complicity in war crimes and crimes against humanity are possible violations of the "law of nations," n358 and the plaintiffs are likely to be aliens, the ATCA provides a cause of action for these plaintiffs in U.S. court.

De Beers will likely object to a suit in U.S. court, claiming forum non conveniens and that the court does not have personal jurisdiction over the company. Given the recent trend of forum non conveniens motions in ATCA cases, n359 the court will probably not accept this objection. Angola and Sierra Leone do not provide adequate forums for these claims. n360 Furthermore, South Africa, De Beers's headquarters, does not present an appropriate forum because of the burden it imposes on plaintiffs, who probably do not reside in South Africa. n361 Courts also have recognized that the United States has an interest in adjudicating [*1473] human rights claims. n362 Thus, De Beers will probably not succeed on a forum non conveniens motion.

Although De Beers is not a U.S. corporation, a court may be able to exercise jurisdiction over the company. Applying the minimum contacts test to De Beers, the plaintiff must establish that De Beers has a high degree of contact with the United States and that the claim is sufficiently related to those contacts. n363 De Beers is not subject to U.S. jurisdiction simply because its diamonds reach the U.S. market. n364 Nevertheless, De Beers's contacts may be established by examining whether De Beers's advertising campaign in the U.S. shows that the company can reasonably expect to be hailed into U.S. court and whether these contacts rise to the level of "continuous and systematic." n365

The second part of the test requires that the claim be related to the contacts. n366 In this situation, the claim revolves around illicit diamonds that De Beers bought from insurgent groups and then marketed to U.S. customers, amongst others. De Beers's advertising campaign in the United States is inherently related to the diamonds that De Beers buys and sells.

To recover under the ATCA against De Beers, the potential plaintiffs must establish that the MNC committed a violation of the "law of nations." n367 First, the Nuremberg Principles establish that complicity in war crimes violates international law. n368 The case against Frederick Flick confirms that knowingly profiting off of war crimes and accepting looted property from known war criminals violates international law. n369 The Holocaust plaintiffs [*1474] also rely on this theory of liability, amongst other theories, in their suit against the Swiss banks. n370

De Beers's policy of buying and controlling all of the diamonds on the market means that they buy both official, legal diamonds and illicit diamonds from the black market. n371 Given De Beers's history of trading with smugglers, it seems likely that De Beers bought diamonds smuggled out of Angola and Sierra Leone by insurgent groups. n372 This trade provided the insurgent groups with the money to continue their wars, subjecting the civilian populations to human rights violations. n373 De Beers's policy of valuing profits and control of the diamond market above all else allowed these terrible crimes to happen in a systematic fashion.

War crimes are included amongst universal offenses, which are punishable anywhere. n374 Although complicity in committing war crimes violates international law, n375 this offense is not a universal offense according to the Restatement. n376 Additionally, complicity to commit war crimes suggests that the plaintiff must show a connection between the war criminals and the entity acting in complicity. The test for complicity may be similar in construction to the joint action test for State action. n377

Plaintiffs will encounter difficulties in showing a substantial connection between De Beers and the insurgent groups because [*1475] of De Beers's use of multiple middlemen in the acquisition of its diamonds. n378 De Beers has dealt with smugglers in the past, particularly where the black market proved more profitable than official trade routes. n379 Due to the lack of transparency in De Beers's operations and the diamond industry as a whole, n380 it is difficult to ascertain exactly how much the company knew about the diamonds it acquired. Although many inferences can be drawn about De Beers's participation in the conflict diamond trade, it is doubtful that a plaintiff will establish the requisite degree of proof necessary to show complicity between De Beers and the insurgent groups. Additionally, since plaintiffs will likely fail to allege the necessary facts to show complicity, a court may dismiss a claim against De Beers on a 12(b)(6) motion for failure to state a claim upon which relief can be granted. n381

Given the increasing influence of MNCs, many commentators claim that MNCs should observe international human rights standards. n382 Efforts by international organizations to regulate MNCs have been ineffective, as have government initiatives. n383 The

voluntary nature of these principles and codes is their fatal flaw. n384 Therefore, these initiatives need legally binding force.

The ATCA is a potentially useful tool for preventing human rights abuses by MNCs, but in its present form, the ATCA presents many obstacles for plaintiffs to overcome. n385 As of yet, [*1476] no ATCA case against an MNC has been successful. n386 The ATCA should be re- examined and amended to reach the conduct of MNCs.

Commentators have recognized the limitations of the ATCA and have suggested that new federal legislation called the Foreign Human Rights Abuse Act should be adopted. n387 This proposed legislation should prohibit MNCs from engaging in practices that cause or facilitate human rights abuses, including complicity in war crimes by funding war criminals. The legislation should call on the U.S. government to develop standards that MNCs can use as guidelines in achieving compliance with the new legislation. Violation of the proposed law should give rise to civil and criminal liability. Amending the ATCA in this way to target MNCs will assist aggrieved individuals bringing suit in U.S. court and hold MNCs to higher standards of accountability.

CONCLUSION

Imposing liability on MNCs for knowingly profiting off of human rights abuses will deter MNCs from these unethical practices and encourage states to be more observant of human rights. If states know that they will not attract foreign investment with a bad human rights record, perhaps they will make concerted efforts to improve their practices. Furthermore, MNCs will be forced to take account of human rights when considering its business choices.

The trade in conflict diamonds can be stopped, and could have been stopped years ago if De Beers had decided that human life was more important than profits. The threat of litigation would have made De Beers contemplate the results before engaging in this trade. Amending the ATCA and adopting more comprehensive legislation will make this threat a real possibility, thereby forcing MNCs to carefully consider the lives at stake in their business choices.

*J.D Candidate 1992. In loving memory of George V. Comfort. Much appreciation to Professor Chantal Thomas for her feedback on this Note, and to my family and friends for their support and patience during many long lectures on conflict diamonds.

Exhibit I

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA NO. CR-2-94-C19

v. : 15 U.S.C. § 1
18 U.S.C. § 2

GENERAL ELECTRIC COMPANY
DE BEERS CENTENARY AG
PETER FRENZ
PHILIPPE LIOTIER

Filed: 2/17/94

INDICTMENT

Judge: Smith

THE GRAND JURY CHARGES:

1. GENERAL ELECTRIC COMPANY, DE BEERS CENTENARY AG, PETER FRENZ and PHILIPPE LIOTIER are indicted and made defendants herein.

OFFENSE CHARGED

2. Beginning at least as early as 1991 and continuing through at least sometime in 1992, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators formed, joined, and participated in a conspiracy to raise list prices of various industrial diamond products worldwide. The conspiracy restrained interstate and foreign trade and commerce.

DEFENDANTS AND CO-CONSPIRATORS

3. Defendant GENERAL ELECTRIC COMPANY (GE) is a Delaware corporation headquartered in Fairfield, Connecticut. GE operates worldwide and had approximately $61 billion in sales in 1993. At all times relevant to this

Indictment, defendant GE manufactured, distributed, and sold industrial diamond products through GE Superabrasives, an operating unit of GE's Plastics division. GE Superabrasives is headquartered in Worthington, Ohio.

4. Defendant DE BEERS CENTENARY AG is a Swiss corporation headquartered in Lucerne, Switzerland. Defendant DE BEERS CENTENARY AG has linked corporate ownership with De Beers Consolidated Mines, Ltd., a South African corporation. At all times relevant to this Indictment, defendant DE BEERS CENTENARY AG and De Beers Consolidated Mines, Ltd. owned or controlled various companies that manufactured, distributed, and sold industrial diamond products (collectively referred to as DE BEERS).

5. DE BEERS manufactures industrial diamond products in South Africa, Ireland, and Sweden through a 50/50 joint venture with Sibeka Société d'Enterprise et d'Investissements, S.A. (SIBEKA), a Belgian corporation. Defendant DE BEERS CENTENARY AG has approximately a 20% ownership interest in SIBEKA. The majority of the shares of SIBEKA are indirectly owned by Société Générale de Belgique (Société Générale), a Belgian corporation. Defendant DE BEERS CENTENARY AG markets, distributes, and sells, through De Beers Industrial Diamonds (Ireland), an Irish corporation, all of the industrial diamond products manufactured through the joint venture with SIBEKA.

6. Defendant PETER FRENZ (FRENZ) was, at all times relevant to this Indictment, the Managing Director of GE Superabrasives Europe, GmbH. FRENZ

oversaw the European operations of GE Superabrasives and reported directly to GE Superabrasives management in Worthington, Ohio.

7. Defendant PHILIPPE LIOTIER (LIOTIER) held several positions during the time period relevant to this Indictment. By approximately mid-1990, LIOTIER was the Director in Charge of Industrial Holdings and Strategy at Société Générale, a Director of SIBEKA, and a Director of SIBEKA's wholly-owned subsidiary, Diamant Boart, S.A. (Diamant Boart), a Belgian corporation. Diamant Boart is a diamond tool manufacturer that purchases industrial diamond products from both GE and DE BEERS. From approximately mid-1990 until January 1, 1992, LIOTIER served as the chief executive of Diamant Boart. LIOTIER's tenure as chief executive of Diamant Boart ended on January 1, 1992; LIOTIER assumed other duties with Société Générale and continued to serve as a Director of SIBEKA. In early November 1993, LIOTIER left Société Générale to join Compagnie Financière de Suez, a French company that is the majority shareholder of Société Générale.

8. Whenever this Indictment refers to any act, deed, or transaction of a corporation, the allegation means that the corporation engaged in the act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of the corporation's business or affairs.

9. Various persons and firms, not made defendants in this Indictment, participated in and performed acts and made statements in furtherance of the charged conspiracy.

THE INDUSTRIAL DIAMOND INDUSTRY

10. GE and DE BEERS are the two dominant manufacturers of industrial diamond products in the world. Industrial diamond is manufactured by applying extremely high pressure and temperature to carbon-rich material to transform it into diamond.

11. Industrial diamond products are generally sold to diamond tool manufacturers. DE BEERS sells almost all of its industrial diamond products through distributors. GE sells most of its industrial diamond products directly to diamond tool manufacturers. Diamond tool manufacturers incorporate industrial diamond products into cutting and polishing tools that are used for a variety of manufacturing and construction applications, including road construction, stone cutting and polishing, automobile manufacturing, mining, and oil drilling.

12. The list price increases that GE and DE BEERS implemented in early 1992 that are the subject of this Indictment affected three separate industrial diamond products: saw diamond, compacts tooling, and drilling products.

(a) Saw diamond is manufactured and sold in single crystal form in various grades and mesh sizes. Diamond tool manufacturers bond the saw diamond to cutting edges for industrial saw blades and other cutting

tools. GE's saw diamond is trademarked Metal Bond Sawing (MBS). DE BEERS' saw diamond is trademarked Saw Diamond Abrasive (SDA).

(b) Compacts tooling is manufactured by bonding diamond onto a tungsten carbide base to form a cutting surface. Compacts tooling is manufactured as round discs that can be cut to numerous specific shapes and sizes by either the industrial diamond manufacturer or the diamond tool manufacturer. Compacts tooling is used in various machining tools. GE's compacts tooling is trademarked Compax. DE BEERS' compacts tooling is trademarked Syndite.

(c) Drilling products are manufactured by bonding diamond onto a tungsten carbide base. Drilling products are than incorporated into drill bits to form the cutting surface used for oil drilling and mining. GE's drilling products are trademarked Stratapax and Geoset. DE BEERS' drilling products are trademarked Syndrill.

DESCRIPTION OF THE CONSPIRACY

13. The charged conspiracy consisted of a continuing agreement, understanding, and concert of action among the defendants and co-conspirators to raise list prices of industrial diamond products. To coordinate and carry out the conspiracy to raise list prices, GE and DE BEERS provided each other with advance, detailed information reflecting their future list prices and pricing plans.

MEANS AND METHODS OF THE CONSPIRACY

14. Beginning at least as early as 1991, the defendants and co-conspirators used the following scheme and mechanism to raise list prices for industrial diamond products:

(a) FRENZ provided DE BEERS, through LIOTIER, with advance, detailed information reflecting GE's future list prices and pricing plans. FRENZ provided the GE future pricing information to LIOTIER under the pretext and cover that LIOTIER was receiving the information for the sole benefit of Diamant Boart, an industrial diamond customer, rather than for the benefit of the industrial diamond manufacturing interests of SIBEKA and DE BEERS; and

(b) LIOTIER provided GE, through FRENZ, with advance, detailed information reflecting DE BEERS' future list prices and pricing plans. LIOTIER provided the DE BEERS' future pricing information to FRENZ under the pretext and cover that LIOTIER was providing the information to GE for the sole benefit of Diamant Boart, rather than for the benefit of the industrial diamond manufacturing interests of SIBEKA and DE BEERS.

15. In furtherance of the charged conspiracy, the defendants and co-conspirators did the following things, among others:

(a) In or around mid-November 1991, FRENZ provided LIOTIER with detailed written information regarding GE's future list prices and pricing plans for saw diamond. FRENZ did not provide any other person or company with these detailed GE pricing plans at the time that he provided them to LIOTIER.

(1) On or about November 13, 1991, FRENZ faxed to LIOTIER written details of GE's plans for a future saw diamond price increase, including GE's proposed price list for saw diamond. FRENZ obtained the information that he faxed to LIOTIER from preliminary drafts of GE's future price lists and pricing plans that: (a) had not been circulated among GE management; (b) had not been finalized; and (c) even when finalized, directed that the price lists and pricing plans not be disclosed either to other GE personnel or to customers.

(2) On or about November 13, 1991, FRENZ received a finalized internal GE memo detailing GE's saw diamond price increase plans. The memo was sent only to select GE managers, and directed that the pricing information be kept strictly confidential and not be disclosed either to other GE personnel or to customers. Following receipt of the memo, on or about November 14, 1991, FRENZ faxed to LIOTIER a complete future price list for saw diamond, and corrections to the GE future pricing plans that he had faxed to LIOTIER the previous day.

(b) In or around mid-December 1991, LIOTIER provided FRENZ with detailed written information regarding DE BEERS' future list prices and pricing plans for saw diamond, compacts tooling, and drilling products. LIOTIER did not provide other people or companies with these detailed DE BEERS pricing plans at the time that he provided them to FRENZ.

(1) On or about December 13, 1991, LIOTIER provided FRENZ with written details of DE BEERS' plans for future price increases for saw diamond, compacts tooling, and drilling products. The DE BEERS plans included future list prices for saw diamond that would be announced on February 3, 1992 and implemented on March 2, 1992. The plans also specified the percentage by which prices for compacts tooling and drilling products would be increased, and stated that these increases would be announced on January 8, 1992 and implemented on February 3, 1992.

(2) On or about December 16, 1991, FRENZ faxed the information that he had received from LIOTIER on or about December 13, 1991 to the GE Superabrasives International Sales Manager in Worthington, Ohio. FRENZ's cover memorandum states, in part:

> Ph. Liotier of DIAMANT BOART (SOCIETE GENERALE) informed me about planned price increases of DE BEERS early 1992. The attached information was given to him confidentially. Please treat the information carefully.
>
> * * *
>
> . . . Liotier is supporting a price increase and would like to know by December 18, 1991, 18.00 hours European time whether GES [GE Superabrasives] is going to follow.

On or about December 18, 1991, at 18.00 hours European time, FRENZ met with LIOTIER.

(3) On or about December 19, 1991, LIOTIER faxed DE BEERS' future list prices for certain compacts tooling and drilling products to FRENZ. The English translation of the fax cover sheet from LIOTIER states: "Enclosed [is] the information requested on Syndite and Syndrill." On or about December 20, 1991, FRENZ faxed the DE BEERS future list prices for compacts tooling and drilling products to the GE Superabrasives International Sales Manager in Worthington, Ohio.

(c) On or about January 6, 1992, FRENZ received GE's formal announcement to its sales force detailing GE's saw diamond price increase. GE had intentionally omitted its medium-grade saw diamond (MBS-70) from the saw diamond price increase. Upon receiving the announcement,

FRENZ immediately requested that GE increase prices for MBS-70 because DE BEERS was planning to raise the price of its comparable medium-grade saw diamond. Based on FRENZ's request, GE added MBS-70 to its price increase.

(d) On or about January 6, 1992, FRENZ requested and received a fax from GE Superabrasives containing GE's revised future price list for saw diamond, modified by hand to reflect the addition of an increase for MBS-70. That evening, FRENZ met privately with LIOTIER. Other than FRENZ, GE's sales force did not receive the revised future price list with the addition of MBS-70 until January 9, 1992.

(e) On or about January 6, 1992, at FRENZ's request, the GE Superabrasives product manager for compacts tooling sent FRENZ draft written details of GE's plans for a future compacts tooling price increase. These plans: (i) had not been circulated among GE management; (ii) had not been finalized; and (iii) even when finalized, directed that the price lists and pricing plans not be disclosed to customers until January 20, 1992.

(f) On or about January 8, 1992, LIOTIER provided DE BEERS' comprehensive future price lists for compacts tooling and drilling products to FRENZ.

(g) On or about January 17, 1992, FRENZ faxed to LIOTIER the final version of GE's compacts tooling price list, containing handwritten

notes showing the changes to the compacts tooling price list that FRENZ had previously provided to LIOTIER.

(h) On or about January 24, 1992, at FRENZ's request, the GE Superabrasives product manager for drilling products prepared and sent to FRENZ an advance draft of GE's proposed future list prices for drilling products for FRENZ's private meeting with LIOTIER on January 27, 1992. These plans had not been circulated among GE management and had not been finalized.

(i) On or about February 18, 1992, FRENZ faxed to LIOTIER a confidential, internal GE memo to reassure DE BEERS that GE had increased list prices for drilling products in accord with the price list FRENZ had previously provided to LIOTIER.

(j) In or around late February 1992, GE decided to delay for two weeks the effective date of its price increases for compacts tooling and drilling products. On or about February 26, 1992, after FRENZ learned of the delay, he informed GE Superabrasives managers that a delay in the effective date for the compacts tooling and drilling products price increases would "jeopardize [GE's] entire price increase including saw diamond." On or about February 27, 1992, GE rescinded the delay, and FRENZ informed LIOTIER that the delay would not occur.

(k) GE issued new saw diamond and compacts tooling price lists to customers and distributors on or about January 20, 1992. The saw diamond increase was effective on February 17, 1992, and the compacts tooling increase was effective on March 2, 1992. GE issued a new drilling products price list on or about January 29, 1992, effective March 2, 1992.

(l) DE BEERS' distributors issued new compacts tooling and drilling products price lists to customers on or about January 23, 1992, effective February 1, 1992. DE BEERS' distributors issued a new saw diamond price list on or about February 17, 1992, effective March 9, 1992.

(m) The advance, detailed information reflecting GE's future list prices and pricing plans for saw diamond, compacts tooling, and drilling products that FRENZ provided to LIOTTER starting in November 1991 was not provided to GE distributors or customers at the time FRENZ gave LIOTTER this information.

(n) The advance, detailed information reflecting DE BEERS' future list prices and pricing plans for saw diamond, compacts tooling, and drilling products that LIOTTER provided to FRENZ in December 1991 was not provided to DE BEERS' distributors or customers at the time LIOTTER gave FRENZ this information.

TRADE AND COMMERCE

16. At all times relevant to this Indictment, the defendants and co-conspirators were the dominant manufacturers of industrial diamond products worldwide.

17. At all times relevant to this Indictment, the defendants and co-conspirators sold and distributed industrial diamond products in a continuous and uninterrupted flow of interstate and foreign commerce to customers located in states and countries other than the state and countries in which the industrial diamond products were manufactured.

18. In particular, GE manufactured industrial diamond products in Worthington, Ohio, and sold and shipped them to customers in states other than Ohio and countries other than the United States.

19. DE BEERS' industrial diamond products were not manufactured in the United States, but they were sold and shipped throughout the United States by a distributor located in New York, New York.

20. The activities of the defendants and co-conspirators that are the subject of this Indictment were within the flow of, and substantially affected, interstate and foreign trade and commerce.

JURISDICTION AND VENUE

21. The conspiracy charged in this Indictment was carried out, in part, within the Southern District of Ohio and within the five years preceding the return of this Indictment.

ALL IN VIOLATION OF TITLE 15, UNITED STATES CODE, SECTION 1, AND TITLE 18, UNITED STATES CODE, SECTION 2.

A TRUE BILL.

FOREPERSON

ANNE K. BINGAMAN
Assistant Attorney General

MAX L. GILLAM

JOSEPH H. WIDMAR

DAVID A. BLOTNER
ARNOLD C. CELNICKER
JAMES T. CLANCY
JOËLLE A. MORENO
JULIA O. LYNCH

ANTHONY V. NANNI

Attorneys
Antitrust Division
United States Department of Justice

Attorneys
Antitrust Division
United States Department of Justice
1401 H Street, N.W., Suite 4000
Washington, D.C. 20530
202-307-1188

EDMUND A. SARGUS, JR.
United States Attorney
Southern District of Ohio

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

FILED
TIME:
JUL 13 2004
JAMES BONINI, Clerk
COLUMBUS, OHIO

UNITED STATES OF AMERICA v. DE BEERS CENTENARY AG, Defendant.	Case No. CR-2-94-019 JUDGE SMITH

PLEA AGREEMENT

The United States of America and De Beers Centenary AG ("defendant"), a company organized and existing under the laws of Switzerland, hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure ("Fed. R. Crim. P."):

RIGHTS OF DEFENDANT

1. The defendant understands its rights:

(a) to be represented by an attorney;

(b) as a company organized and existing under the laws of Switzerland, to decline to accept service of the Summons in this case, and to contest the jurisdiction of the United States to prosecute this case against it in the United States District Court for the Southern District of Ohio;

(c) to plead not guilty to any criminal charge brought against it;

(d) to have a trial by jury, at which it would be presumed not guilty of the charge and the United States would have to prove every essential element of the charged offense beyond a reasonable doubt for it to be found guilty;

(e) to confront and cross-examine witnesses against it and to subpoena witnesses in its defense at trial;

(f) to appeal its conviction if it is found guilty at trial; and

(g) to appeal the imposition of sentence against it.

AGREEMENT TO PLEAD GUILTY AND WAIVE CERTAIN RIGHTS

2. The defendant waives the rights set out in Paragraph 1(b)-(f) above, including all jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the jurisdiction of the United States solely to prosecute this case against it in the United States District Court for the Southern District of Ohio. The defendant also waives the right to appeal the imposition of sentence against it, so long as the sentence imposed is consistent with the recommendation in Paragraph 8(a) of this Plea Agreement. Nothing in this paragraph, however, shall act as a bar to the defendant perfecting any legal remedies it may otherwise have on appeal or collateral attack respecting claims of ineffective assistance of counsel or prosecutorial misconduct.

3. The defendant, pursuant to the terms of this Plea Agreement, will plead guilty to the Indictment pending in the United States District Court for the Southern District of Ohio, No. CR-2-94-019, which charges it with forming, joining and participating in a conspiracy to raise list prices of various industrial diamonds worldwide, beginning at least as early as 1991 and continuing through at least sometime in 1992, in violation of Title 15 U.S.C. § 1, and will make a factual admission of guilt to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

FACTUAL BASIS FOR OFFENSE CHARGED

4. Had this case gone to trial, the United States would have presented evidence to prove the following facts:

(a) For purposes of this Plea Agreement, the "relevant period" is that period beginning at least as early as 1991 and continuing through at least sometime in 1992. During the relevant period, the defendant was a company organized and existing under

the laws of Switzerland. The defendant has its principal place of business in Lucerne, Switzerland. Defendant's common shares were linked with respect to certain economic rights to shares of De Beers Consolidated Mines, Ltd., a South African corporation. During the relevant period, the defendant and De Beers Consolidated Mines, Ltd., owned or controlled various companies that manufactured, distributed and sold industrial diamonds in the United States and elsewhere. Industrial diamonds are manufactured by applying extremely high pressure and temperature to carbon-rich material to transform it into diamond. Industrial diamond products are generally sold to diamond tool manufacturers. The relevant industrial diamond products are saw diamond, compacts tooling and drilling products.

(b) During the relevant period, the defendant, through its officers, employees and agents acting on its behalf, participated in a conspiracy with another manufacturer of industrial diamonds, the primary purpose of which was to raise list prices of saw diamond, compacts tooling and drilling products sold in the United States and elsewhere. In furtherance of the conspiracy, the defendant, through its officers, employees and agents acting on its behalf, had communications and discussions with, attended meetings with, and transmitted detailed future pricing information and plans to its co-conspirator. From time to time, defendant and its co-conspirator used the cover of an officer of a customer, who was actually acting on behalf of defendant, to transmit detailed future pricing information and plans to each other. Through these communications, discussions and meetings, defendant and its co-conspirator reached agreements to raise list prices of saw diamond, compacts tooling and drilling products to be sold in the United States and elsewhere.

(c) During the relevant period, industrial diamonds sold by one or more of the conspirator firms, and equipment and supplies necessary to the production and distribution of industrial diamonds, as well as payments for industrial diamonds, traveled

in interstate and foreign commerce. The business activities of the defendant and its co-conspirator in connection with the manufacture, distribution and sale of industrial diamonds affected by this conspiracy were within the flow of, and substantially affected, interstate and foreign trade and commerce.

(d) Acts in furtherance of this conspiracy were carried out within the Southern District of Ohio, Eastern Division. Conspiratorial communications described above originated in, or terminated in, this District.

POSSIBLE MAXIMUM SENTENCE

5. The defendant understands that the maximum penalty which may be imposed against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in an amount equal to the greatest of:

(a) $10 million (15 U.S.C. § 1);

(b) twice the gross pecuniary gain the conspirators derived from the crime (18 U.S.C. § 3571(c) and (d)); or

(c) twice the gross pecuniary loss caused to the victims of the crime by the conspirators (18 U.S.C. § 3571(c) and (d)).

6. In addition, the defendant understands that:

(a) pursuant to § 8B1.1 of the United States Sentencing Guidelines ("U.S.S.G."), the Court may order it to pay restitution to the victims of the offense;

(b) pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, the Court is required to order the defendant to pay a $200 special assessment upon conviction for the charged crime; and

(c) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of probation of at least one year, but not more than five years.

SENTENCING GUIDELINES

7. Sentencing for the offense to be charged will be conducted pursuant to the U.S.S.G. Manual in effect on the day of sentencing.

SENTENCING AGREEMENT

8. (a) Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the defendant agree that the appropriate disposition of this case is, and agree to recommend jointly that the Court impose, a sentence requiring the defendant to pay to the United States a criminal fine of $10 million, pursuant to 15 U.S.C. § 1 and U.S.S.G. § 8C3.1(b), payable in full before the fifteenth (15th) day after the date of judgment ("the recommended sentence").

(b) In addition to any fine imposed, the defendant understands that the Court will order it to pay a $200 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1.

(c) The United States and the defendant will recommend against the imposition of a term of probation, but the defendant understands that the Court is free to impose a term of probation.

(d) The United States and the defendant jointly submit that this Plea Agreement, together with the record that will be created by the United States and the defendant at the plea and sentencing hearings, will provide sufficient information concerning the defendant, the crime charged in this case, and the defendant's role in the crime to enable the meaningful exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States and defendant agree to request jointly that the Court accept the defendant's guilty plea and impose sentence on an expedited schedule as early as the date of arraignment, based upon the record provided by the defendant and the United States, under the provisions of Fed. R. Crim. P. 32(c)(1)(A)(ii) and U.S.S.G. § 6A1.1. The Court's denial of the request to impose sentence on an expedited schedule will not void this Plea Agreement.

9. The United States and the defendant understand that the Court retains complete

discretion to accept or reject the recommended sentence provided for in Paragraph 8(a) of this Plea Agreement.

(a) If the Court does not accept the recommended sentence, the United States and the defendant agree that this Plea Agreement, except for Paragraph 9(b) below, shall be rendered void.

(b) If the Court does not accept the recommended sentence, the defendant will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the defendant withdraws its plea of guilty, this Plea Agreement, the guilty plea, and any statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the guilty plea or this Plea Agreement or made in the course of plea discussions with an attorney for the government shall not be admissible against the defendant in any criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In addition, the defendant agrees that, if it withdraws its guilty plea pursuant to this subparagraph of the Plea Agreement, the statute of limitations period for any offense referred to in Paragraph 10 of this Plea Agreement will be tolled for the period between the date of the signing of the Plea Agreement and the date the defendant withdrew its guilty plea or for a period of sixty (60) days after the date of the signing of the Plea Agreement, whichever period is greater.

GOVERNMENT'S AGREEMENT

10. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the recommended sentence, the United States agrees that it will not bring further criminal charges against the defendant, related companies as listed on pages 113 and 116 of the 2000 De Beers Annual Report, or any of their current or former directors, officers, employees and agents for any act or offense committed in furtherance of the antitrust conspiracy charged in the Indictment. The nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

11. In light of the court-approved settlement by defendant's affiliate of In re Industrial Diamonds Antitrust Litigation, No. MDL-948 (WCC), (S.D.N.Y., Oct. 19, 2001), a class action brought on behalf of purchasers of relevant industrial diamond products in the United States during the relevant period, the United States agrees that it will not seek a restitution order with respect to the offense charged.

REPRESENTATION BY COUNSEL

12. The defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

VOLUNTARY PLEA

13. The defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

VIOLATION OF PLEA AGREEMENT

14. The defendant agrees that, should the United States determine in good faith that the defendant has violated any provision of this Plea Agreement, the United States will notify counsel for the defendant in writing by personal or overnight delivery or facsimile transmission and may also notify counsel by telephone of its intention to void any of its obligations under this Plea Agreement (except its obligations under this paragraph), and the defendant shall be subject to prosecution for any federal crime of which the United States has knowledge including, but not limited to, the substantive offenses charged in the Indictment resulting in this Plea Agreement.

ENTIRETY OF AGREEMENT

15. This Plea Agreement constitutes the entire agreement between the

United States and the defendant concerning the disposition of the criminal charge in this case. This Plea Agreement cannot be modified except in writing, signed by the United States and the defendant.

16. The undersigned is authorized to enter this Plea Agreement on behalf of the defendant as evidenced by the Resolution of the Board of Directors of the defendant attached to, and incorporated by reference in, this Plea Agreement.

17. The undersigned attorneys for the United States have been authorized by the Attorney General of the United States to enter this Plea Agreement on behalf of the United States.

18. A facsimile signature shall be deemed an original signature for the purpose of executing this Plea Agreement. Multiple signature pages are authorized for the purpose of executing this Plea Agreement.

DATED: July 13, 2004

Respectfully submitted,

BY: _____
Glenn Turner
General Counsel
De Beers Centenary AG

BY: _____
Lisa M. Phelan
David A. Blotner
Arnold C. Celnicker
Attorneys
U.S. Department of Justice
Antitrust Division
City Center Building
1401 H Street, N.W., Suite 3700
Washington, D.C. 20530
202-307-1166

BY: _____
Steven C. Sunshine
Tai H. Park
Matthew P. Hendrickson
Maria A. Raptis
Shearman & Sterling LLP
801 Pennsylvania Ave., N.W.
Washington, D.C. 20004
202-508-8022
Counsel for De Beers Centenary AG

DE BEERS CENTENARY AG

Certified extract of the minutes of a meeting of the Board held on Monday, 2 February 2004.

Plea Agreement : United States Department of Justice

Resolved that the Company hereby authorizes the execution, delivery and performance of the Plea Agreement between the Company and the United States Department of Justice, substantially in accordance with the draft submitted.

Resolved further that Glenn E. Turner, General Counsel for the De Beers Group, is hereby authorized, directed and empowered:

to execute and deliver, in the name and on behalf of the Company, the Plea Agreement;

to represent the Company at any hearing in order to plead guilty in accordance with the provisions of the Plea Agreement and

to take any and all actions reasonably required or appropriate in order to carry out the intent and purpose of this resolution.

R W Ketley
Secretary of the meeting

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

UNITED STATES OF AMERICA

-vs- Case No. CR-2-94-19(2)

DE BEERS CENTENARY AG

COURTROOM MINUTES
GUILTY PLEA AND SENTENCING HEARING

COURTOOM MINUTES JUDGE:	George C. Smith	DATE AND TIME:	July 13, 2004 2:00 PM
DEPUTY CLERK:	Lisa V. Wright	COUNSEL FOR GOVT:	Arnold Celnicker
CT. REPORTER:	Gina Wells	COUNSEL FOR DEFT(S).	Steven Sunshine Tai Park Maria Raptis Drew Campbell
INTERPRETER:		PRETRIAL/PROBATION:	David Walden

Defendant waived arraignment on indictment.

Parties waived reading of indictment. Defendant pled guilty to count 1 of the indictment. Court accepted plea and plea agreement. Presentence Report previously prepared upon agreement of all parties. Court will proceed to sentencing.

Defendant sentenced to $10,000,000.00 fine and $200.00 special assessment. All monetary penalties to be paid within 15 days of the date of sentence.

Defendant waived right to appeal pursuant to the plea agreement.

UNITED STATES DISTRICT COURT

SOUTHERN District of OHIO

UNITED STATES OF AMERICA
V.
DE BEERS CENTENARY AG

JUDGMENT IN A CRIMINAL CASE

Case Number: CR-2-94-19(2)

USM Number: n/a

Steven C. Sunshine
Defendant's Attorney

THE DEFENDANT:

x pleaded guilty to count(s) ONE OF AN INDICTMENT

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☐ was found guilty on count(s) _____
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
15:1 and 18:2	Conspiracy to Violate Antitrust Law	1992	ONE

The defendant is sentenced as provided in pages 2 through 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

July 13, 2004
Date of Imposition of Judgment

George C. Smith
Signature of Judge

GEORGE C. SMITH, UNITED STATES DISTRICT JUDGE
Name and Title of Judge

July 13, 2004
Date

DEFENDANT: DE BEERS CENTENARY AG
CASE NUMBER: CR-2-94-19(2)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 200.00	$ 10,000,000.00	$

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case*(AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS $ _____ $ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: DE BEERS CENTENARY AG
CASE NUMBER: CR-2-94-19(2)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A X Lump sum payment of $ 10,000,200.00 due immediately, balance due

X not later than 15 days from sentencing , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

JUSTIFICATION

This case required the Court to consider three sentencing components: the fine, restitution, and probation. The Court imposes a fine of $10 million, which is the maximum fine allowable under the applicable statute, and is also within the guideline range.

The government and the probation officer agree that full restitution has been made through a civil settlement in a separate action and, therefore, a restitution order would be inappropriate.

The Court also carefully considered the imposition of a term of probation. After conducting an investigation into the matter, the Probation Officer concluded that a term of probation is not necessary. Notably, the government not only does not seek probation in this case, it actively opposes it.

United States Sentencing Guidelines § 8D1.1 requires the Court to order probation in certain circumstances, none of which appear to be present in the instant case. The Court specifically finds that pursuant to § 8D1.1(a)(3), there is no evidence in the record contradicting the Probation Officer's finding that defendant recently adopted an effective program to prevent and detect violations of law.

Section 8D1.1 indicates only those circumstances in which probation is ***required.*** It does not limit the Court's authority to impose probation as a matter of ***discretion.***

The Court, however, is not inclined to take upon itself the mantle of becoming a regulatory agency overseeing the worldwide distribution of diamonds. The enormous burden on judicial resources, which would be present regardless of the appointment of independent experts, would outweigh any slight value probation might have in detecting or deterring future misconduct. The goal of deterrence is better served by existing mechanisms. For example, defendant is already subject to rigorous regulation by the European Union. Furthermore, defendant apparently plans to do business directly in the United States. Hence, in contrast to the circumstances that existed ten years ago, defendant will be subject to the jurisdiction of Courts in the United States should the Department of Justice bring criminal charges in the future.

For these reasons the Court, in its discretion, declines to order probation.

Exhibit J

DE BEERS
A DIAMOND IS FOREVER

De Beers Société Anonyme
(Incorporated under the laws of Luxembourg)

MEDIA RELEASE

30 November 2005

It was announced today that agreement has been reached, and a preliminary approval order issued, to settle the majority of civil class action suits filed against De Beers in the United States. This settlement does not involve any admission of liability on the part of De Beers and will bring an end to a number of outstanding disputes.

"We believe that settling these suits is the most sensible and responsible course of action for the company to take. It is consistent with the other steps we have taken in both the US and Europe to restructure and modernise both our operations and business model, and is in the best interests of De Beers' partners and stakeholders in southern Africa and elsewhere in the world" said Gary Ralfe, De Beers Managing Director.

"With this settlement behind us, De Beers can now focus greater attention and resources on being a leader in all of our markets and playing a leading role to address humanitarian issues such as the fight against HIV/AIDS. We will continue to work on these issues in consultation with the international community", he added.

The settlement is subject to final approval by the Honourable Stanley R. Chesler, District Court Judge for the United States District Court for the District of New Jersey. De Beers hopes that the settlement will be approved during 2006.

De Beers believes that a successful conclusion to these suits will allow the company to more effectively pursue its global interests by removing the cost, risk, reputational impact and distraction from the company's core activities required to defend multiple class actions and possible further litigation.

We do not wish to comment or speculate on the approval process itself, or the issues under consideration by the court. Therefore, for the time being, we have nothing further to add to this statement.

De Beers
A DIAMOND IS FOREVER

De Beers Société Anonyme
(Incorporated under the laws of Luxembourg)

Note to Editors

The settlement agreements relate to claims brought by a nationwide class of indirect purchasers in Sullivan v. DB Investments, INC., et. al., Hopkins v. De Beers Centenary AG, et. al, Cornwell v. D.B. Investments, Inc., and Null v. DB Investments, et. al. for $250 million.

It is important to note that the settlement of the US class action litigations against the international business of De Beers will not be financed from, nor will it have any material impact on, any of the company's mining operations in southern Africa. Indeed, we believe that the settlement will be beneficial to De Beers' partners and stakeholders in southern Africa as well as elsewhere in the world.

Exhibit K

brandchannel.com
The world's only online exchange about branding, produced by Interbrand

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It may be past but it's not over. A previous lead story.

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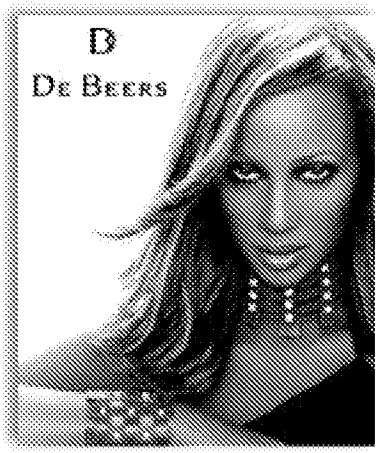


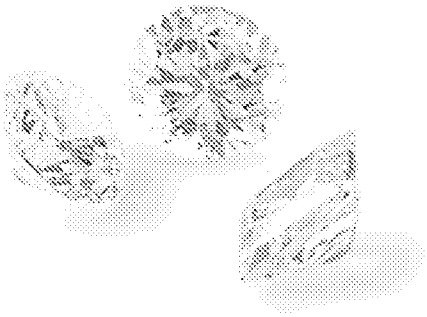
Is De Beers Forever?

By Ron Irwin

What happens when your brand gets embroiled in a very public scandal? De Beers LV and fashion model Iman recently parted ways after Survival International used the two names in a publicity stunt to bring attention to its cause for indigenous peoples. Does that damage the De Beers brand? Does it help Survival International's cause?

more...

In May of 2004, former supermodel Iman parted ways with the two-year-old luxury retail brand De Beers LV. This might not seem unusual but Iman once referred to herself as "not a model but an icon and inspiration" in regard to her work with the high-end diamond retailer. What happened to cause De Beers not to be forever?



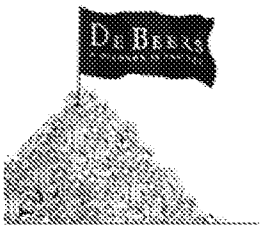
In 2002, De Beers LV, the namesake of the famous South African mining corporation, pledged to put a hundred million dollars into a retail chain that would see the establishment of 100 stores throughout the world by 2012. Iman's famous image had been significantly attached to this massive initiative.

She claimed in 2002 that she chose to work with De Beers LV after seeing the company's hi-tech mining productions in South Africa and "speaking to Nelson Mandela and Thabo Mbeki." Like most high profile break-ups, this one is fraught with miscommunication, innuendo, and a disruptive third party that ended the two-year honeymoon between the legendary gem giant and the Somali-born beauty.

That third party is an activist group called Survival International, which campaigns for the rights of indigenous peoples around the world. Shortly after De Beers's May 2002 announcement of its union upon the famed catwalks of Cannes, Survival informed Iman that, in its opinion, De Beers was partly to blame for the relocation of the Gana and Gwi people (often referred to as bushmen in southern Africa) from their native land in the Central Kalahari Game Reserve in Botswana. According to Survival, this forced relocation is happening because De Beers's joint mining operations with the Botswana government require it. Soon after, Survival embarked on a campaign to break up the relationship between Iman and De Beers. In August of 2002, *Women's Wear Daily* reported that Iman was "frantically educating herself" about the issue of bushmen rights.

Also of interest

De Beers is in need of some savvy branding techniques.



Things came to a head just before the opening of the De Beers LV flagship store in London's Old Bond Street on October 30, 2002. The opening itself had to be postponed due to a lack of diamonds, and, embarrassingly, because activists professionally altered the billboard outside the store by plastering Iman's face with that of a bushman and replacing the De Beers slogan "A diamond is forever" with a new one in De Beers' elegant typography that read, "The bushmen aren't forever."

Fiona Watson, a representative of Survival International, is cagey about who exactly was responsible for this defacement but the company gleefully posted pictures and a story about it the next day on its website; most news agencies that covered the story lay credit for the episode at Survival's doors. At the party soon after the Bond street store inauguration, Iman, whose famous visage had been changed from an icon of diamond-studded hope for the sub-continent into a symbol of human deprivation, was conspicuously absent.

The story illustrates the tenuous links between celebrities, high profile brands and low profile causes. More importantly, it illustrates the new challenge that activism poses to the brand manager. Activist groups interested in injustices ranging from environmental destruction to child labor have learned that they gain far more exposure for their efforts by linking them to famous brands than by simply spreading the word themselves.

Brands like Nike, Coke and McDonald's find themselves embroiled in non-business related controversies that have, at times, garnered more attention from consumers than the company's own brand initiatives. Some brands, like Ben & Jerry's and Avon (which, respectively, are involved in save the rainforest work and the fight against breast cancer) have linked themselves to causes successfully and benefited from the association. Those who have been linked to causes against their will, however, often face disaster.

De Beers has denied, time and again, having anything to do with the forced removals of the bushmen in Botswana. In an interview with brandchannel, international marketing director for De Beers LV Jean-Christophe Gandon starts out by reiterating, as he had in a De Beers LV press release posted on the company website, that the company simply decided not to renew Iman's contract when it came to an end because it "did not want to be limited by using one face" in association with the brand.

Survival, Gandon claims, "jumped on the opportunity to claim victory" when the contract between the two ended, where as the reality was much more mundane. "The contract between an icon and a brand is usually only for a limited period of time," he says, and it seems Iman's time had come.

Gandon indicates that in De Beers LV, Survival had found the perfect brand to promote a "very worthy" cause. "But the issue about the Bushmen in Botswana has nothing to do with De Beers selling jewelry. It is about a situation between the government of Botswana and the local population, and it's not our duty to get involved in such a situation." He further pointed out that he feels "people who understand the issue," as well as loyal De Beers LV customers, understand De Beers has nothing to do with [forced removals]."

Gandon further says "Survival used De Beers because it makes their case more sexy. From a marketing point of view, Survival understood that trying to draw attention to De Beers made their cause more interesting to people."

According to De Beers LV, as a retail subsidiary of the De Beers' mining operations, there is not a lot it can do to affect change. "When it comes to the reputation of De Beers as far as issues like conflict diamonds and the removal of the bushmen, it becomes a matter of concern of the De Beers Corporation," says Gandon. "We are not involved in mining. We are retailers who buy diamonds from the market with the guarantee they come from the

right sources.

"We are ourselves," says Gandon distancing his brand from De Beers at large, "and we know we conduct business in the right way: with integrity and respect for others. If we get drawn into an argument with Survival International we have to explain our position in regard to the structure of the De Beers companies and reiterate that the issue has nothing to do with us. Instead, we believe companies have to communicate what they do well to be less of a target for rumors. De Beers is about quality and expertise, and at the end of the day that is stronger than any false claim by a third party."

Stephen Correy, Director of Survival International, begs to differ. By email, he writes, "We remain convinced that diamonds are the root cause of the evictions," and refers to a paper on the subject entitled "Bushmen aren't forever" posted on the Survival website.

According to Correy, the managing director of De Beers mining operations in Botswana informed Survival, it "would not support the concept of indigenous rights in Africa.... [De Beers] now appear to be rapidly backtracking from that position (which would also be a success for the campaign, if true)." Clarifying De Beers LV's role in the fracas, Correy says, "We limit our concern solely to the role diamonds have played in the violation of bushman rights. We are not opposed to diamonds or diamond mining."

Correy added that Survival International had targeted "dozens of companies," in their efforts on behalf of indigenous peoples. And here lies the rub. The people whom Survival fights on behalf of—tribes such as the Mboboro in West Africa, the Amungme in Papua, Indonesia, and the Khanty in Siberia—are faceless to most of the Western world. The brands that the organization targets, however, are extremely high profile, and by making the association between them and the worldwide travails of marginalized tribal groups, Survival makes its cause known worldwide.

Brand managers probably read about the damage to the De Beers billboards and shuddered, but Gandon himself was philosophical about the alteration of his Old Bond Street billboard, which made the newspapers across the world. "It's very hard to say [if the activism has done harm to the brand]. This type of thing is hard to measure." Yet, it seems, at least at first blush, that activism against a brand on behalf a good cause, be it the rights of a downtrodden people or a virgin rainforest, *must* do damage to the brand.

Kalle Lasn is founder and self-proclaimed "creative mastermind" behind Adbusters.org, a notorious online resource for anti-branding efforts on the part of political activists and a group Lasn refers to as "mental environmentalists": people who are tired of the amount of brand imagery they are confronted with on a daily basis and who are prepared to do something about it. Made famous by Naomi Klein in her best-selling anti-brand book *No Logo*, the "jams" within Adbusters' pages attack well-known brands ranging from McDonald's to Coke to Ralph Lauren. Yet Lasn admits that he had personally spent "years in the ad game," and thus knows branding from the point of view of an insider. His main efforts are now centered around promoting exactly the same kind of brand activism that Survival appears to have spearheaded against De Beers.

Lasn says that the "billboard liberation" of De Beers on Old Bond Street represents "the lowest form of culture jamming," mainly because it only reaches a "few thousand people."

"It's the most ineffective kind of activism because it's not much good to either side," he says. "By and large it's just not much for anyone to worry about." In fact, Lasn points out, "some managers actually *like it*. Their brand is actually enhanced by jammers' paying attention to it, and it gives them a kind of 'rebel edge.' "

The liberation of the De Beers billboard, according to Lasn, is indicative of "the never-ending cat and mouse game [between activists and branders] that has gone on for years."

The real activism against brands, from Lasn's perspective, are activities designed to discourage stars like Iman to "sell their souls" to big brands. "My mission," he says, "is to make it increasingly uncool for celebrities to sell themselves to these corporations."

As far as Iman is concerned, Lasn says, "She was fighting for the wrong side. Increasingly, political radicals have more and more celebrities coming out of the woodwork to *support* them." He hopes that anti-branding efforts worldwide as well as

celebrities supporting good causes outright will make it harder for an icon like Iman to become the face of a major brand like De Beers for "just a few million dollars."

"By doing this, people will see they are being inauthentic prostitutes for the ad industry." Lasn says, adding a final warning aimed at brandchannel readers: "Tell them this: we're coming after you, watch out!"

Iman herself did not answer emails requesting an interview during the researching of this story. She has been thrust into the center of what seems to be the changing, and very risky business of branding, where being the public face of a major brand makes you just as susceptible to the company's enemies as the company itself. Survival claims that her final words on the subject came in an April 2004 interview with the British based magazine *Radio Times* when she reportedly said, "It was clear that the Bushmen were being destroyed—you take people from their element and you end up with AIDs, drugs and alcohol in the guise of advancement."

[22-Nov-2004]

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Ron Irwin lectures at the University of Cape Town School of Management Studies in South Africa.

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Exhibit L

DIAMONDS.NET

Megascope GIA Facetware Database Included OGI

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News Item

Wednesday, Dec 21, 2005

09:54 New York

Opposing Words Mark De Beers LV Opening

By Jeff Miller

Posted: 6/23/2005 7:06 AM

ISTANBUL JEWELRY SHOW 22 -26 MARCH 2006

(Rapaport...June 23, 2005) Most Manhattanites (New Yorkers) have passed paper-covered windows of De Beers' retail store on the corner of 55th Street and Fifth Avenue for months. But by evening of June 22nd, the paper was scraped away by a team of window washers revealing the newest New York luxury jewelry store. Police barricades, tight security, and rain-soaked carpeting on the store front sidewalk greeted guests attending the opening reception.

Across the street however, barricades were set up for a gathering of Survival International -- an organization that says De Beers and the government of Botswana are responsible for displacing Bushmen from the Central Kalahari Game Reserve (CKGR) in order to mine diamonds.

The opening of De Beers LV in New York marks the second store opening protest against De Beers by Survival International, the first of which occurred at a London store in November 2002.

De Beers along with luxury retail partner LVMH Moët Hennessy Louis Vuitton planned to open two stores in the United States during 2005 -- the second of which is scheduled for the fourth quarter in Beverly Hills, California.

Finishing crew remove window paper in preparation for opening night of De Beers LV in New York.

The De Beers Group has "neither sought, nor requires the removal of anyone from the Central Kalahari Game Reserve," said Lynette Hori, on behalf of De Beers. Survival International however claims that De Beers is in part responsible for "the eviction of the last remaining Gana and Gwi Bushmen and Bakgalagadi from their homes" in the Botswana game reserve.

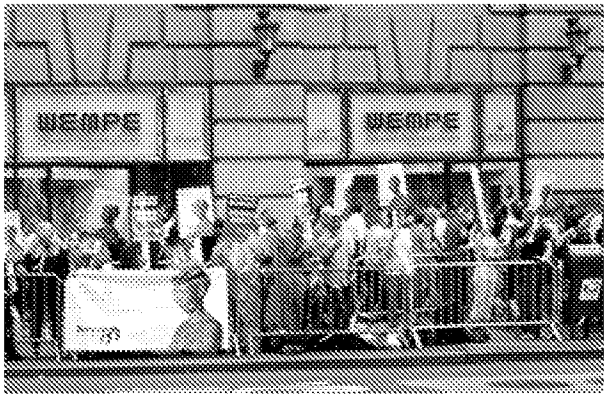
But De Beers LV, is an independently managed retail venture with no involvement in mining issues, Hori told Rapaport News. Claims by Survival International are misleading, dishonest, and "De Beers challenges them to provide any credible evidence to support their claims," she said.

As Miriam Ross of Survival International

Breaking News

- **Signet Steps-up Direct Diamond Sourcing Strategy** Signet Jewellers is taking steps towards securing supplies of diamonds ...
- **Whitehall Board Urges Rejection of Newcastle Bid** The board of directors at Whitehall Jewellers Inc., recommended that ...
- **'Knack' Disparages Antwerp** The Flemish magazine Knack, one of the most popular Flemish weekly magazines, ...
- **Namakwa Gets Exclusive Mining Rights in N.E. Angola** Australia's junior diamond producer Namakwa Diamond signed a Memorandum ...

More News



Survival International and supporters gather across the street from De Beers LV on opening night.

handed colored maps of diamond concessions and brochures about the Bushmen to passersby on Fifth Avenue, she explained how diamond mining has affected the indigenous people. The government started relocating Bushmen outside of the reserve in 1997, which eventually led to 243 Bushmen taking Botswana to court, a case that is currently underway. Botswana contends that the reserve is a boost to tourism, and yet does not deny that mining for diamonds in the reserve would be illegal.

While De Beers holds concessions on a large diamond deposit in Botswana, Hori stated that "the De Beers Group, which is a shareholder in De Beers LV, does mine diamonds elsewhere in Botswana in partnership with the government....There is no mining activity --current or planned-- in the CKGR."

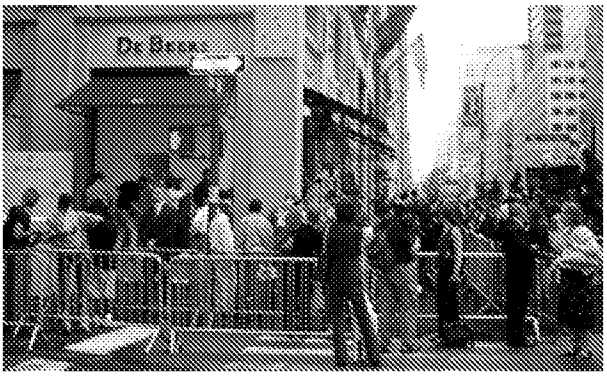
"Good," Ross told Rapaport, "It doesn't mean [De Beers] will not mine in the future. They hold concessions in the reserve now." Paperwork Ross provided shows that De Beers is no where near a majority concenssion holder. BHP Billiton Inc., owns the majority of concessions across the reserve, followed by Botswana and De Beers partnership (Debswana,) TNK Resources, and AMPAL Ltd.

When Rapaport asked Ross whether or not it was "fair" to target De Beers exclusively, she did not reply.

De Beers took out a retention license on Gope Settlement in November 2000, Survival International says, which was valid for three years and renewed in 2003, and it is the only retention license in Botswana. Gope is now the region where the High Court of Botswana will decide to investigate for diamond mining activity on August 2, 2005.

"Yes we do hold retention licences and we are prospecting, along with others, but so far we have not found a deposit that is economic to mine," Hori told Rapaport.

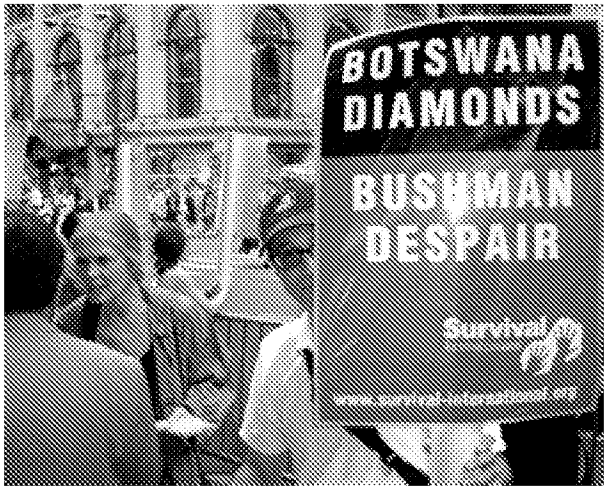
"Ironically, the best thing for the Bushmen would be for us to find a deposit that we could mine as that would provide jobs and an infrastructure for them offering up all sorts of new opportunities," Hori said. Any boycott of Botswana diamonds too, could "inflict untold damage on one of Africa's success stories," citing a negative revenue impact upon one of the world's top diamond producing nations.



Barricades separate journalists from pedestrians at the corner of 55th Street and Fifth Avenue.

"De Beers calls upon Survival International, and its director, Stephen Corry, to desist from their present, divisive campaign, based on unfounded allegations, and engage positively with interested parties to seek a secure future for all the people of Botswana, including the Bushmen of the Central Kalahari Game Reserve," Hori said.

Survival International said De Beers was not forthcoming with policies on indigenous peoples. However, according to a company statement, De Beers says its policy takes "seriously the rights and interests of communities living in the areas it operates." And where operations may impact a community's rights or interests,



Author Gloria Steinem, left, speaks to reporters on behalf of Survival International as unidentified man holds placard on Fifth Avenue in New York.

"we are committed to engaging with them transparently and openly with a view to seeking to secure their free and informed consent before initiating operations."

While a war of words continued behind the scenes, the lights of the new De Beers LV store twinkled at arriving guests. And those few pedestrians able to avoid being shooed away for loitering by store security watched the event from sidewalk view as dusk set in across midtown Manhattan.

One woman who was visiting New York from Pennsylvania tried to look past the curious crowd into a window display, and she remarked that the store opening was fascinating to watch, "but we leave tonight and I wanted to go inside to see their diamonds."

De Beers LV opens for regular business on June 23, 2005.

Email us about this article

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Exhibit M

So DB Launch UK

Concept

A collection of modern rings featuring the De Beers logo

- Create an iconic, recognisable De Beers line as a best seller
- Widen our offer of rings beginning with an accessible price of £650
- White and Yellow Gold rings with varying degrees of diamond intensity

Sales Points

- Unexpected logo position "off center" - trademark of De Beers innovative design.
- Iconic logo design
- Features De Beers 'DB Monogram' with or without pave.
- Features De Beers Signature Sparkle Diamond
- Unisex
- From subtle understated version to more glamorous version
- From £650 to £2500
- Can be worn as a pinky ring.

Launch Plan

Launching in the UK on 22 November supported by:

- "Diamonds are a girl's best Christmas" Newspaper advertising from Saturday 22nd November in the FT (please see attached schedule for De Beer's Christmas presence).
- Christmas Mailer: 3000 for store, 12000 to be mailed out.
- Visual Merchandise in exterior window as well as Fixture No 1 and try on counter. One Leather display to be replaced with So DB and Christmas photographs to feature product.
- Stock should arrive in OBS by Monday 17 November. Please ensure that the store is merchandised in advance of Saturday 22nd November.

Visual Merchandising

- Please show pricing using Perspex block as 'So DB' Rings from £650 - £2,500.
- Try to merchandise all 6 models together if there is space; If not, at least show all 3 styles across metal colours.
- Try to avoids displaying only amongst rings. I.e it should not get lost within say Drum/Saucer.
- House it with the slightly 'plainer' Collections such as Boardwalk.
- Ensure that the entry price models are featured in the 'accessible' counter at the entrance.

So DB Launch UK
Product Range and Technical Details

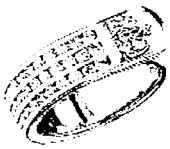
Model	Description	Metal (g)	Dia. Qty	Cut	Carat	Price
J1CI01Z00W	Sparkle Ring	12.9	1	Brilliant	0.01	£700

Collection: So DB
Standard Size Range: 47 - 60
Adjustable: +/- 2 Sizes
Technical Details: Pavé set De Beers signature diamond

J1CI02Z00W	Pavé B Ring	12.6	6	Brilliant	0.08	£1,000

Collection: So DB
Standard Size Range: 44 - 60
Adjustable: +/-2 Sizes
Technical Details: Pavé set

J1CI03Z07W	Full Pavé Ring	11.0	36	Brilliant	0.78	£2,500



Collection: So DB
Standard Size Range: 48 - 57
Adjustable: +/- 1 Sizes
Technical Details: Pavé set B with Channel set diamonds on the band

J1CI01Z00Y	Sparkle Ring	13.5	1	Brilliant	0.01	£650

Collection: So DB
Standard Size Range: 47 - 60
Adjustable: +/- 2 Sizes
Technical Details: Pavé set De Beers signature diamond

J1CI02Z00Y	Pavé B Ring	13.2	6	Brilliant	0.08	£950

Collection: So DB
Standard Size Range: 44 - 60
Adjustable: +/- 2 Sizes
Technical Details: Pavé set

J1CI03Z07Y	Full Pavé Ring	11.8	36	Brilliant	0.78	£2,300

Collection: So DB
Standard Size Range: 48-57
Adjustable: +/- 1 Sizes
Technical Details: Pavé set with Channel set diamonds on the band

All metal and diamond information is approximate. All prices are subject to change without notice.
Images are approximately actual size. * Information unavailable at the current time.

DB 00002

So DB Launch UK

So DB Newspaper visual
Newspaper visuals begin on Saturday 22 November in the Weekend FT

All metal and diamond information is approximate. All prices are subject to change without notice.
Images are approximately actual size. * Information unavailable at the current time.

So DB Newspaper Advertising Schedule Christmas 2003

Newspaper visuals begin on Saturday 22 November in the Weekend FT

TITLE	SIZE	CLR	NO.	POSITION	w/c 10-Nov	17-Nov	24-Nov	01-Dec	08-Dec	15-Dec
Financial Times	25cmx17cm	Colour	2	Section 1 Back page	FRI 14	SAT 22				
					Bridal	So DB				
	25x4	Colour	2	Early Section 1				X	X	
								DB Signature	Pendants	
The Times	20x2	Colour	1	Front Page News			TUE 25			
							DB Signature			
	20x2	Colour	2	Front Page Business		THU 20		MON 01		
						Flowers		Pendants		
	25x4	Colour	3	Section 1 Back page			MON 24	TUE 02	WED 10	
							Leather	Flowers	So DB	
Daily Telegraph	25x4	Colour	3	Section 1 Back page		THU 20		THU-SAT OPT	THU-SAT OPT	
						Leather		So DB	Flowers	
	25x4	Colour	3	Early Section 1/Business		TUE 18	WED or FRI	X		
						DB Signature	Pendants	Leather		
Evening Standard	20x2	Colour	4	Page 5 or 7		MON 17		XX	X	
						Pendants		Flowers, Leather	Pendants	
TOTAL NUMBER OF INSERTIONS			20							

All metal and diamond information is approximate. All prices are subject to change without notice.
Images are approximately actual size. * Information unavailable at the current time.

Diamonds are a girl's best Christmas

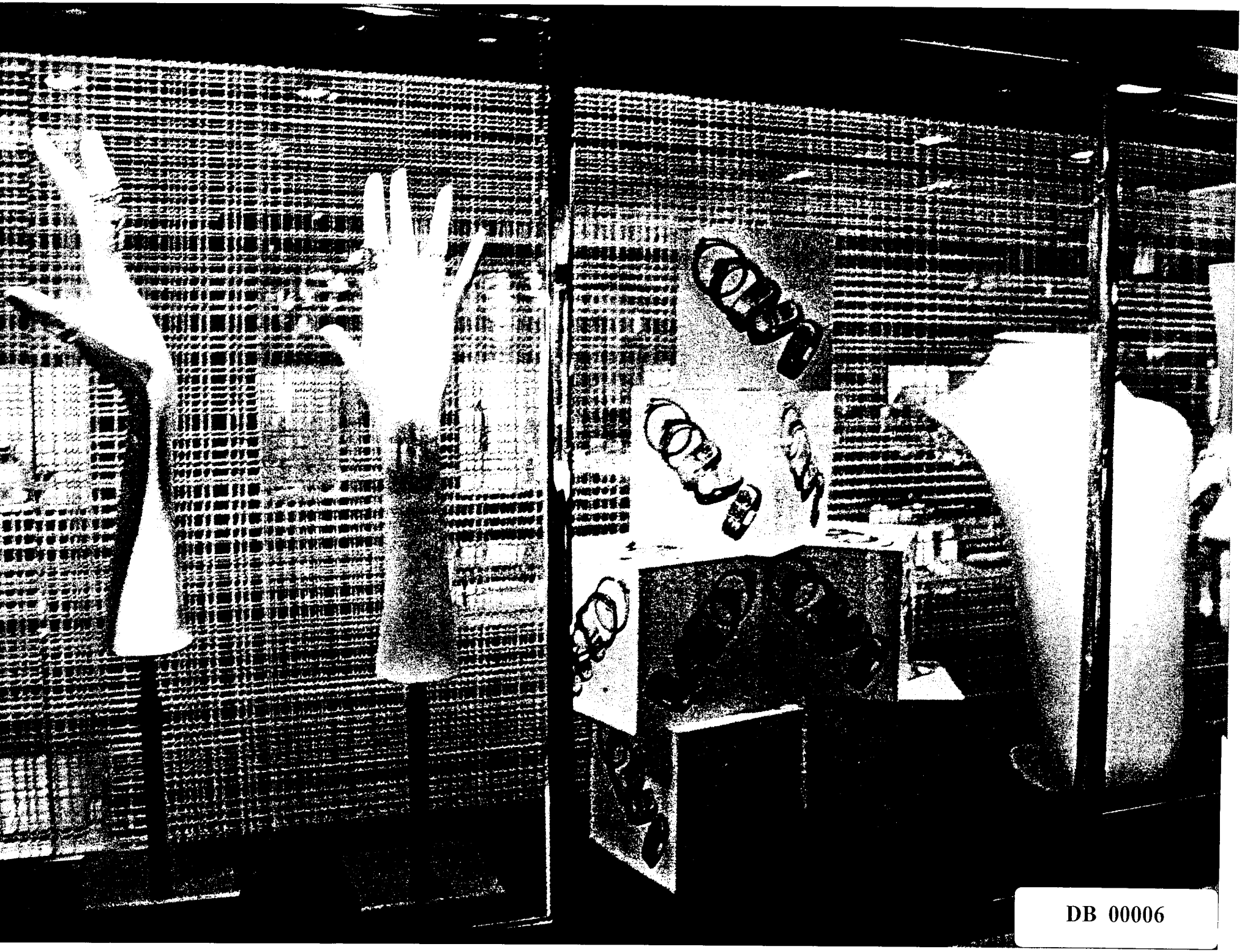
"So DB" Rings £650 - £2,500

DE BEERS

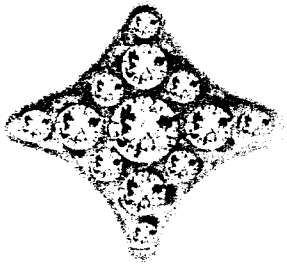
We are diamonds

50 Old Bond Street, London

Open Sundays 7, 14, 21 December, 11.00 - 4.00
For further information please call 020 7758 9700
www.deberes.com

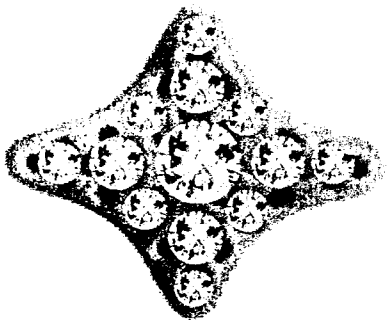


DB 00006



1x 2.7mm (0.07ct)
4x 1.6mm (0.02ct)
6x 1.2mm (0.01ct)
2x 1mm (0.004ct)

Small Star

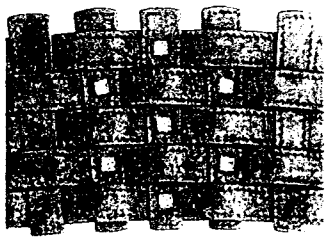


1x 3.4mm (0.15ct)
4x 2.1mm (0.04ct)
6x 1.6mm (0.02ct))
2x 1.5mm (0.01ct)

Large Star

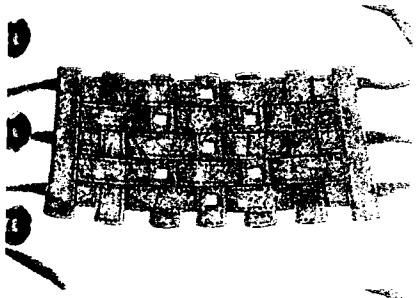
Bracelets - White Gold

Model	Description	Metal (g)	Dia Qty	Cut	Carat	Price
	Lm Multi Stud Cuff	43.75	5	Princess	0.75	$7,700 £4,950 ¥995,000



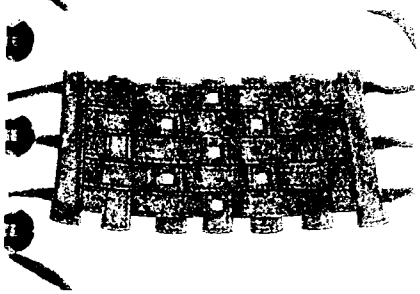
Collection: Leather
Standard Size Range:
Adjustable:
Technical Details: Bead set.
5 diamond studs and 2 metal studs. Mirror polished
Lamb leather. Length measured at smallest closure
This style is discontinued. Please do not order

	Tie 7 PC Stud Cuff	29.4	7	Princess	1.05	$10,000 £6,450 ¥1,420,000



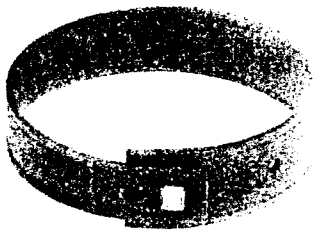
Collection: Leather
Adjustable:
Technical Details: Bead set
Calf leather. Length measured at smallest closure

	Tie 7 PC Stud Cuff	29.4	7	Princess	1.06	$10,000 £6,450 ¥1,420,000



Collection: Leather
Adjustable:
Technical Details: Bead set
Calf leather. Length measured at smallest closure

	Red Leather with RB Stud	5.57	1	Brilliant	0.15	$850 £580 ¥130,000

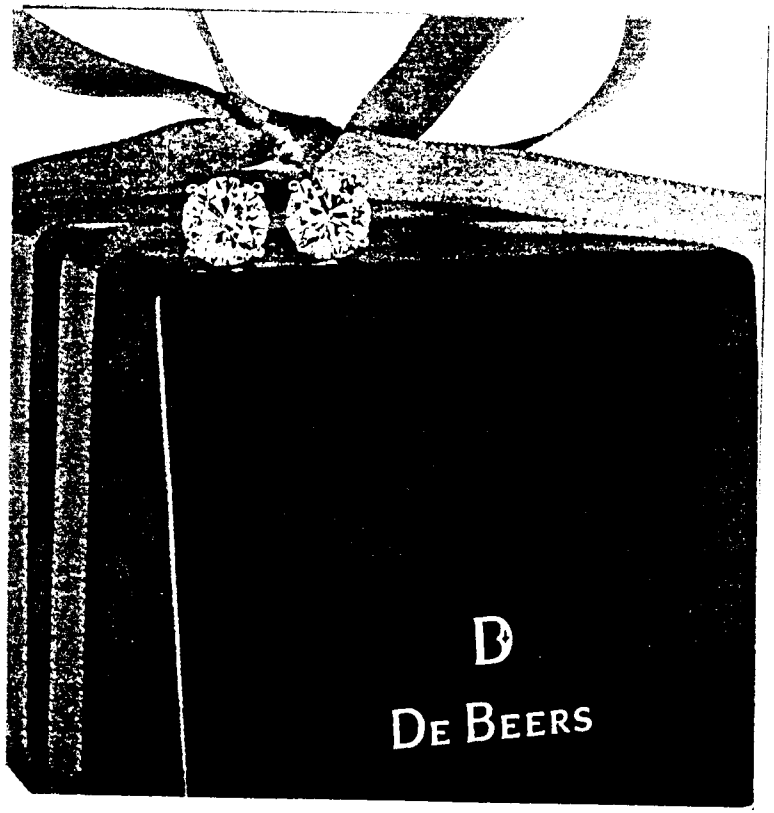


Collection: Leather
Adjustable:
Technical Details: Bead set
Calf leather. Length measured at smallest closure

J3CS01Z00W	DB Logo Leather Bracelet	4.19	1	Brilliant	0.06	$800 £530 ¥120,000

Collection: Leather
Standard Size Range: 15, 17 cm
Adjustable:
Technical Details: Rub-over set
Calf leather. Length measured at smallest closure

All metal and diamond information is approximate. All prices are subject to change without notice.
Images are approximately actual size. * Information is unavailable at the current time.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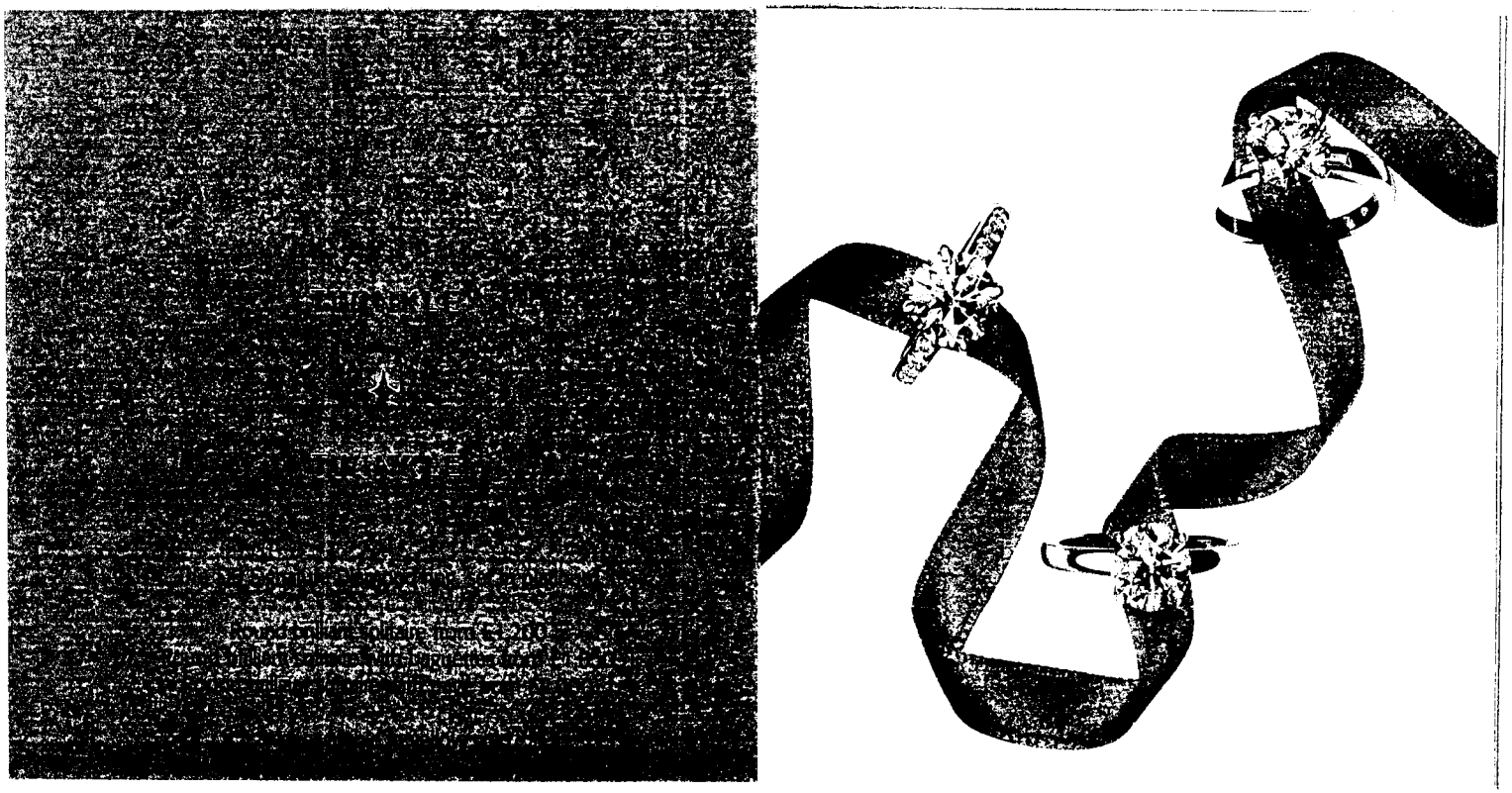

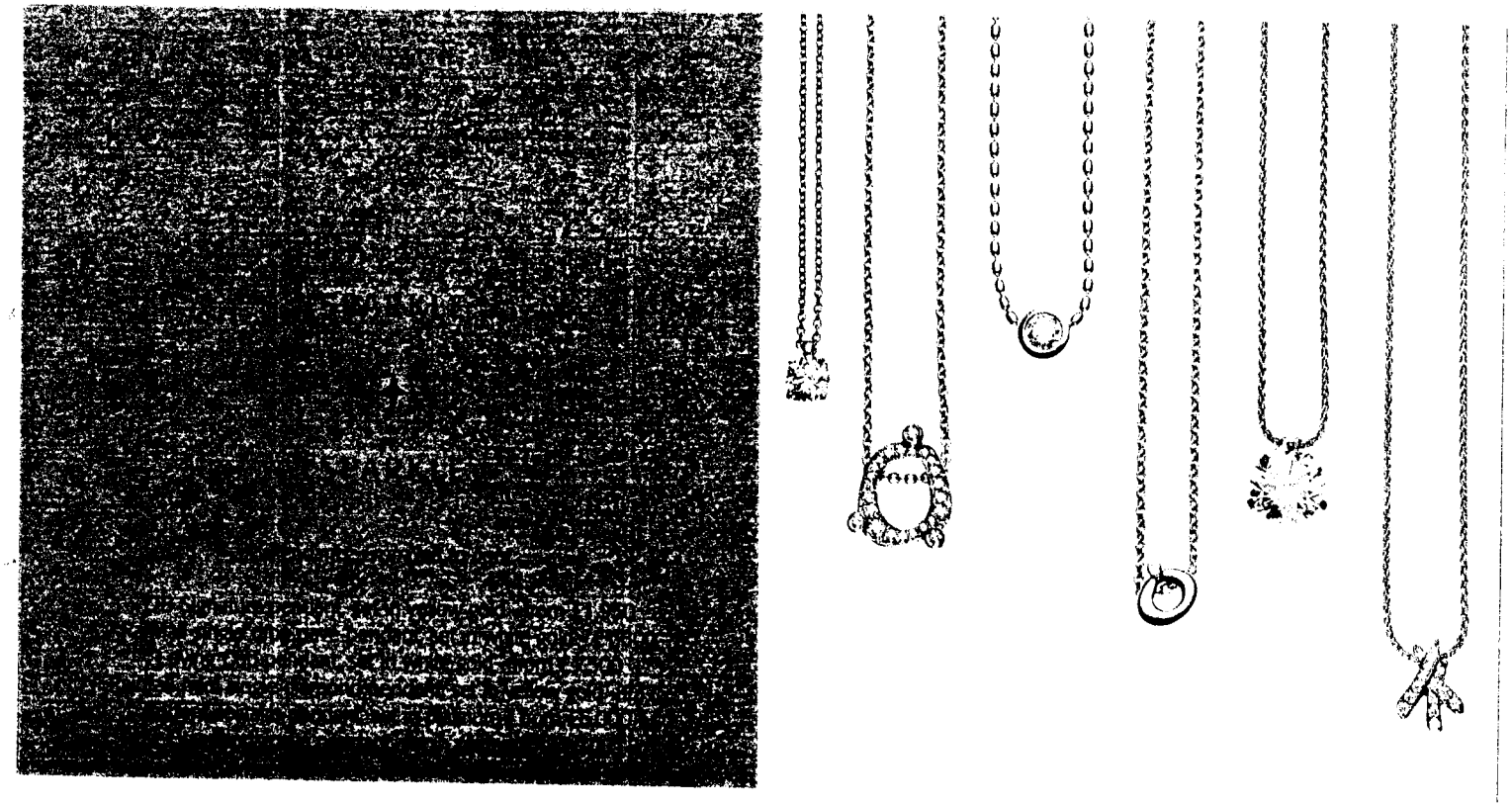

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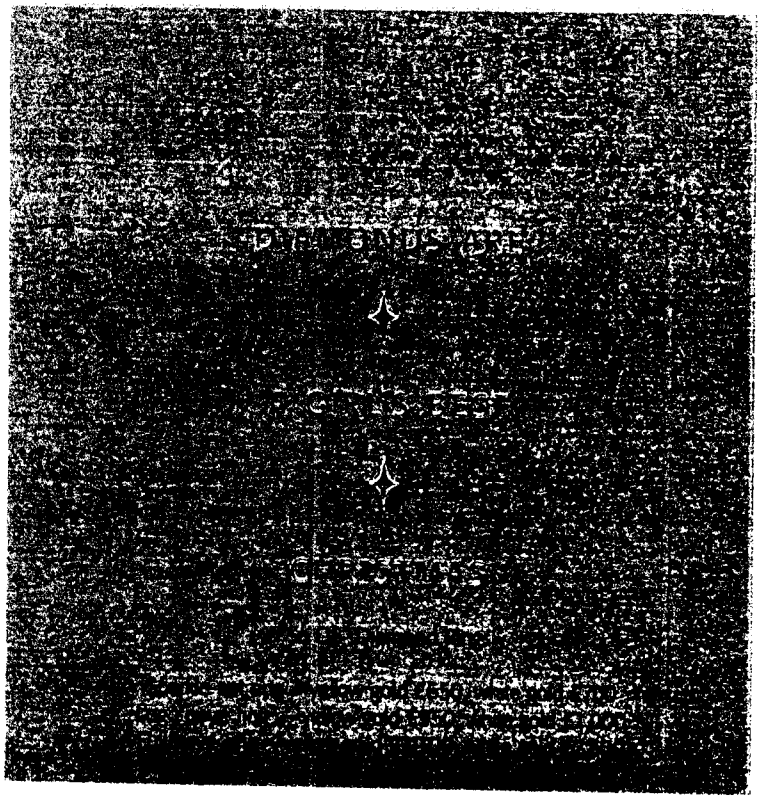

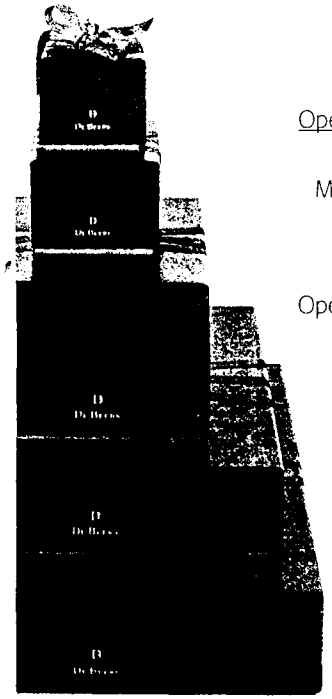

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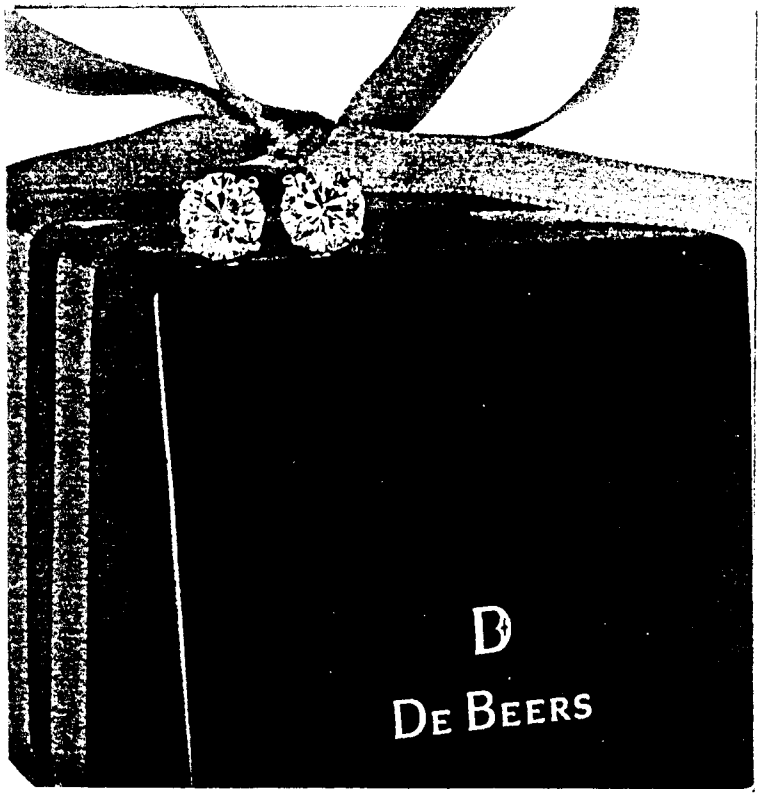
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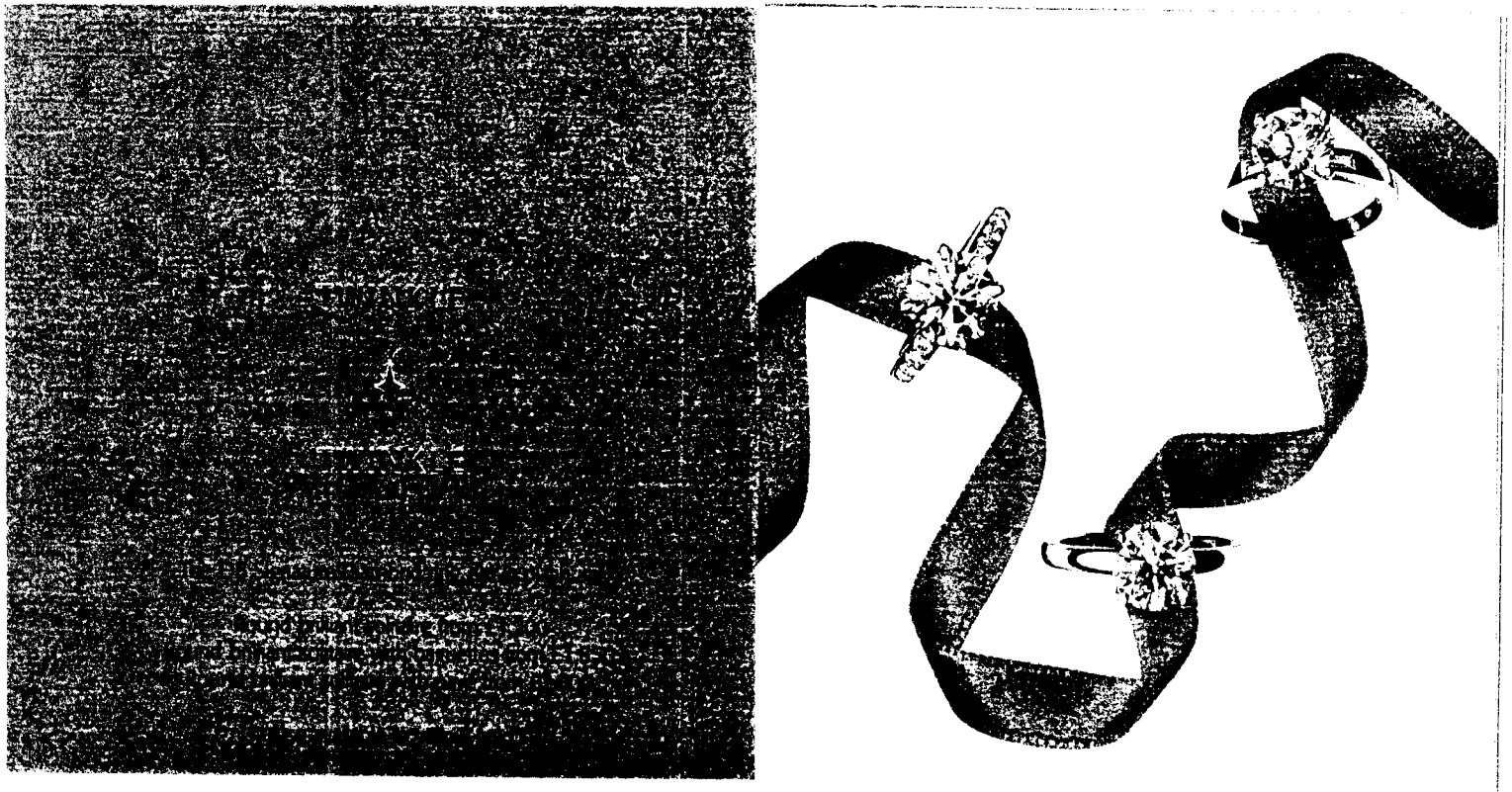

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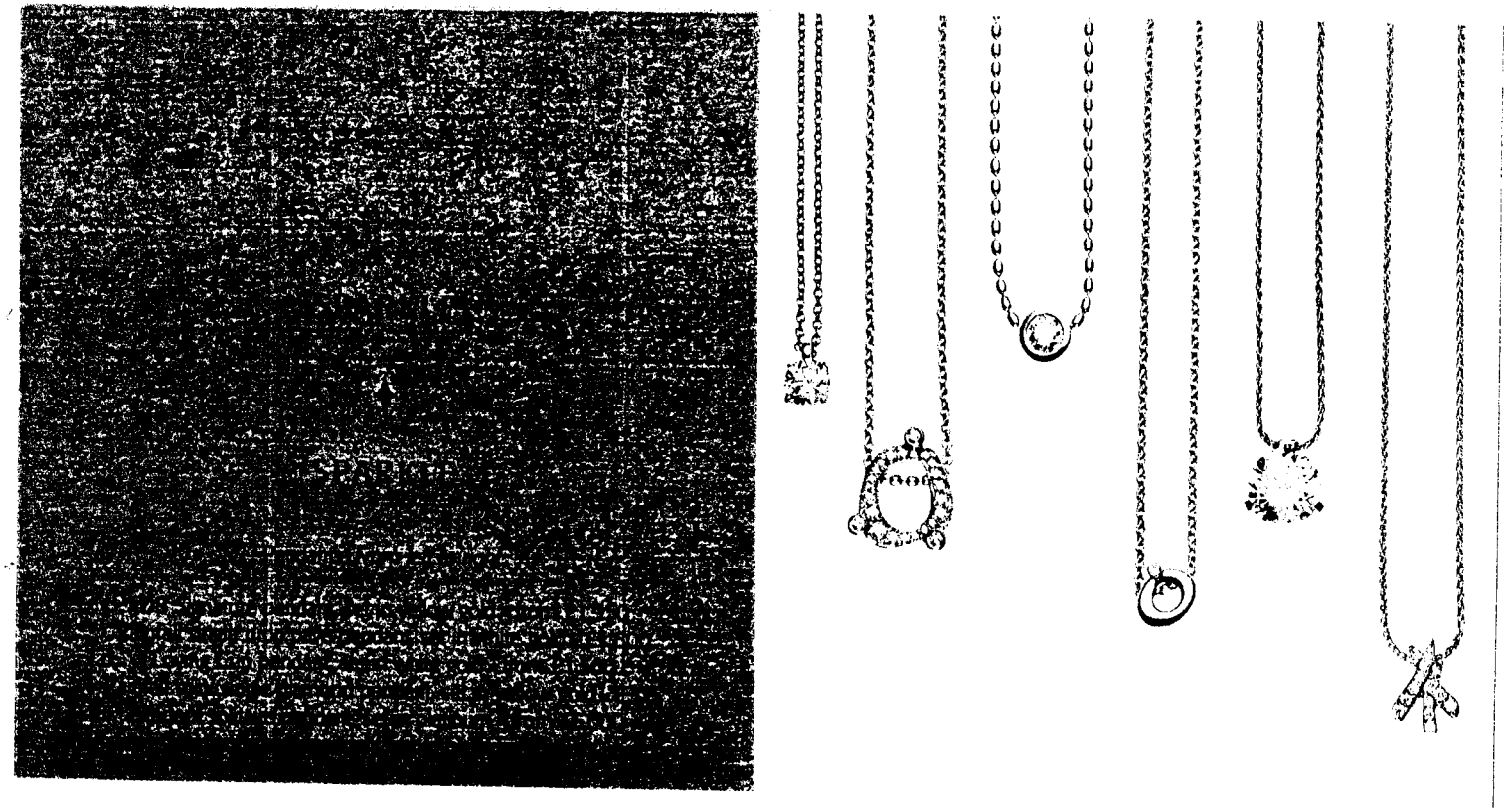

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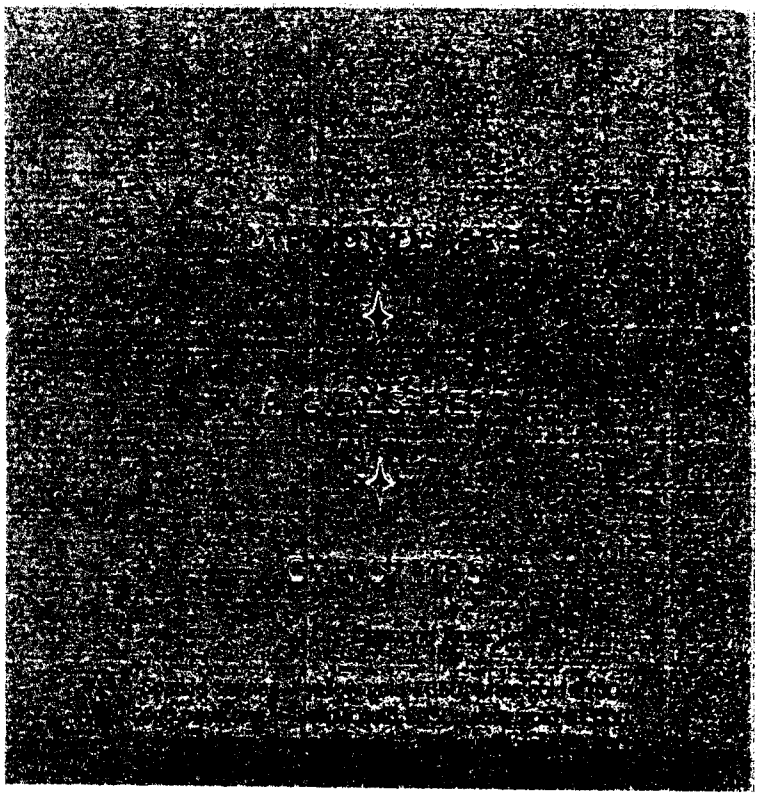

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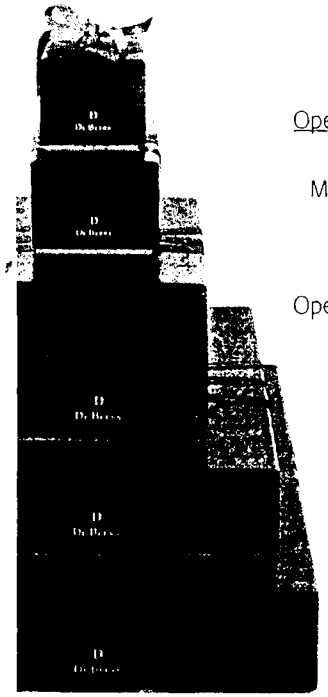

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