

KIRKLAND & ELLIS LLP  
Richard M. Cieri  
Jonathan S. Henes  
Colin M. Adams  
153 East 53<sup>rd</sup> Street  
New York, New York 10022-4611  
Telephone: (212) 446-4800  
Facsimile: (212) 446-4900

Additional Counsel Listed On Signature Block

*Attorneys for Tronox Incorporated, Tronox  
Worldwide LLC, and Tronox LLC*

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re	)	Chapter 11
	)	
TRONOX INCORPORATED, <i>et al.</i> ,	)	Case No. 09-10156 (ALG)
	)	
Debtors.	)	Jointly Administered
	)	
TRONOX INCORPORATED, TRONOX	)	
WORLDWIDE LLC f/k/a Kerr-McGee	)	
Chemical Worldwide LLC, and TRONOX	)	
LLC f/k/a Kerr-McGee Chemical LLC,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Adversary Proceeding No. 09-_____
	)	
ANADARKO PETROLEUM	)	
CORPORATION and KERR-MCGEE	)	
CORPORATION,	)	
	)	
Defendants.	)	
	)	

**ADVERSARY COMPLAINT**

Plaintiffs Tronox Incorporated, Tronox Worldwide LLC f/k/a Kerr-McGee Chemical  
Worldwide LLC, and Tronox LLC f/k/a Kerr-McGee Chemical LLC (collectively, “Tronox”),

for their Adversary Complaint against Defendants Anadarko Petroleum Corporation (“Anadarko”) and Kerr-McGee Corporation (“New Kerr-McGee”), allege as follows:

### **INTRODUCTION**

1. This case is about a successful oil and gas exploration and production company, Kerr-McGee Corporation, that created massive actual and contingent environmental, tort, retiree, and other liabilities during its more than 70-year history (the “Legacy Liabilities”) and then dumped them on Tronox so that Kerr-McGee’s senior executives could obtain windfall profits during a wave of lucrative consolidation in the oil and gas industry. In the process, however, Kerr-McGee left Tronox grossly undercapitalized and without sufficient assets to pay its debts; misled potential investors regarding the true magnitude of the Legacy Liabilities; loaded down Tronox with debt; forced Tronox to provide sweeping indemnities to New Kerr-McGee and substantially above-market benefits to retirees; defrauded creditors; and set Tronox on a path to an inevitable bankruptcy.

2. By the late 1990s, the entity then known as Kerr-McGee Corporation (“Old Kerr-McGee”) had accumulated massive Legacy Liabilities through its various far-flung businesses—including treatment of wood products, production of rocket fuel, refining and marketing of petroleum products, and the mining, milling and processing of nuclear materials—since it was founded in 1929.

3. Having enjoyed years of profits from the various businesses that created the Legacy Liabilities, Old Kerr-McGee decided to jettison the toxic legacy resulting from those businesses because it was preventing Old Kerr-McGee from participating in potential transactions that would result in even greater profits for Old Kerr-McGee and its senior executives. Potential merger and acquisition partners were scared away by the “poison pill” of

Legacy Liabilities. The need to evade the Legacy Liabilities was underscored when the U.S. Environmental Protection Agency (“EPA”) notified Old Kerr-McGee in 1999 that it was allegedly responsible for hundreds of millions of dollars in cleanup costs at a former wood treatment plant in Manville, New Jersey. Old Kerr-McGee knew that Manville was just the tip of the iceberg and that it would face similar potential liability at numerous other sites like Manville.

4. Old Kerr-McGee devised a two-step fraudulent scheme to escape its toxic past and attempt to place its valuable oil and gas assets safely beyond the reach of the EPA, tort claimants, and other creditors. *First*, Old Kerr-McGee would isolate the Legacy Liabilities by transferring all of its valuable oil and gas assets out of the historical business and into a new “clean” entity. *Second*, Old Kerr-McGee then would sever the historical business containing the Legacy Liabilities—achieving a “clean break” between its valuable oil and gas assets and the Legacy Liabilities.

5. Step One of the scheme was code-named “Project Focus.” To isolate the Legacy Liabilities from the valuable oil and gas assets, Old Kerr-McGee created an entirely new corporate structure that featured a new “clean” parent company—also called “Kerr-McGee Corporation” (“New Kerr-McGee”)—and a new “clean” subsidiary—Kerr-McGee Oil and Gas Corporation (the “Oil and Gas Business”)—into which all of the valuable oil and gas assets were transferred. Numerous liabilities created by those oil and gas assets, however, stayed behind along with the liabilities of all of Old Kerr-McGee’s other historical business. Through these corporate machinations, Old Kerr-McGee became a subsidiary of New Kerr-McGee and was stripped of its most valuable assets. All that remained in Old Kerr-McGee (which remained under the control of New Kerr-McGee until April 1, 2006) was a small, cyclical chemical

business, a handful of discontinued businesses, and more than 70 years of Legacy Liabilities (the “Chemical Business”). The majority of the Legacy Liabilities retained by the Chemical Business stemmed from business operations completely unrelated to the Chemical Business, including oil and gas operations.

6. New Kerr-McGee initiated Step Two in spring 2005 when it commenced efforts to sell or spin-off the liability-laden Chemical Business. But potential purchasers balked. Numerous potential buyers refused even to bid on the Chemical Business burdened with the “poison pill” of Legacy Liabilities. One stated that the amount of Legacy Liabilities that New Kerr-McGee was attempting to put on the Chemical Business was “criminal.” Another potential purchaser reduced its proposed \$1.2 billion purchase price for the Chemical Business by \$900 million if the Legacy Liabilities were included. These were legitimate concerns. During the sale process, EPA sent New Kerr-McGee a demand for \$178.8 million for response costs incurred through December 2004 at Manville, one of numerous wood treatment sites where New Kerr-McGee knew it could have potential liability. There were also thousands of personal injury tort claims pending against New Kerr-McGee related to the wood treatment sites and other issues.

7. New Kerr-McGee realized that it could never achieve its goal of a clean break from its Legacy Liabilities with an arm’s-length buyer. So it elected to spin-off (the “Spin-Off”) the Chemical Business as Tronox. A Spin-Off enabled New Kerr-McGee to unilaterally dictate the terms of the deal, avoid third-party due diligence, and eliminate standard representations and warranties regarding its massive Legacy Liabilities.

8. The two-step scheme concluded with the completion of the Spin-Off on March 31, 2006. New Kerr-McGee not only offloaded the massive Legacy Liabilities, but also stripped \$785 million out of the Chemical Business tax free on the way out the door.

9. The scheme, however, paid additional dividends for New Kerr-McGee. Less than 90 days after New Kerr-McGee jettisoned the Legacy Liabilities, Anadarko offered to acquire New Kerr-McGee for \$18 billion on June 22, 2006. The transaction was approved and New Kerr-McGee became a wholly owned subsidiary of Anadarko on August 10, 2006. A primary architect of the two-step scheme, New Kerr-McGee Chairman and Chief Executive Officer Luke R. Corbett, personally profited by more than \$200 million from the Anadarko deal. New Kerr-McGee Senior Vice President and Chief Financial Officer Robert M. Wohleber, who also served as Chairman of the Board of Tronox until the completion of the Spin-Off, pocketed more than \$20 million. New Kerr-McGee Senior Vice President and General Counsel Gregory F. Pilcher, another architect of the Spin-Off, walked away with more than \$9 million. Other New Kerr-McGee senior executives also enjoyed windfalls.

10. While the “clean break” from the Legacy Liabilities allowed New Kerr-McGee to complete an \$18 billion sale with massive profits for its senior executives, Tronox was simply broke. Overburdened with the Legacy Liabilities and debt, stripped of essential cash, and grossly undercapitalized, Tronox was doomed to fail. Despite valiant efforts to survive, including significant personnel reductions, efforts to streamline its operations, and reductions in retiree benefits programs, Tronox was left with no choice but to file for bankruptcy protection on January 12, 2009.

11. New Kerr-McGee knew that Tronox was doomed to fail from the moment of the Spin-Off:

- New Kerr-McGee rushed to complete the Spin-Off near the top of the chemical sector business cycle. It knew that Tronox would never achieve the inflated projections that New Kerr-McGee had presented to the market under typical conditions.

- New Kerr-McGee concealed from potential investors the true extent of the Legacy Liabilities that it forced upon Tronox.
- New Kerr-McGee's investment banker for the Spin-Off—as well as for the Anadarko deal—was Lehman Brothers. While Lehman Brothers was touting Tronox's virtues to the market, it was telling a different story internally. On several occasions, Lehman Brothers' lead banker drew a picture of a potted flower on a white board. The flower represented Tronox. He also drew a weed growing out of the flower pot. The weed represented the Legacy Liabilities. The Lehman Brothers banker explained that the weed would choke the flower.
- New Kerr-McGee stripped all of Tronox's cash except for \$40 million (which was less than the amount Tronox would have to spend in its first year to service its Legacy Liabilities and debt). New Kerr-McGee told Tronox to cover cash shortfalls by selling its assets.
- Following extensive due diligence, a potential third-party buyer warned New Kerr-McGee that Tronox could never survive on its own.
- New Kerr-McGee switched a number of retired high level executives from the Tronox pension fund to the New Kerr-McGee pension fund, fearing that a Tronox bankruptcy would negatively impact their retirement payments.
- Anadarko agreed to an unusual provision in connection with the acquisition of New Kerr-McGee that indemnified New Kerr-McGee's officers and directors for acts and omissions prior to the acquisition, thereby purporting to shield the officers and directors from liability for their roles in the Spin-Off.

12. Simply put, Tronox was destined to fail. New Kerr-McGee knew it. But

Tronox's public investors and creditors did not.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b).

14. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **PARTIES**

15. Plaintiff Tronox Incorporated is a Delaware corporation with its principal place of business in Oklahoma City, Oklahoma. Tronox has operations and facilities in the United States,

the Asia Pacific region, and Europe. On January 12, 2009, Tronox and 14 of its affiliated companies (the “Debtors”) filed for chapter 11 protection in this Court. The Debtors operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

16. Plaintiff Tronox Worldwide LLC, one of the Debtors, is a successor in interest to Old Kerr-McGee and, as a result of the Spin-Off, is a wholly owned subsidiary of Tronox Incorporated.

17. Plaintiff Tronox LLC, one of the Debtors, is a successor in interest to Old Kerr-McGee and, as a result of the Spin-Off, is an indirect wholly owned subsidiary of Tronox Incorporated.

18. Defendant Anadarko is a Delaware corporation headquartered in The Woodlands, Texas. On June 22, 2006, Anadarko offered to acquire New Kerr-McGee for \$18 billion, including \$16.4 billion in cash. On August 10, 2006, the shareholders of New Kerr-McGee approved the offer, and New Kerr-McGee became a wholly owned subsidiary of Anadarko. Accordingly, Anadarko is a successor in interest to New Kerr-McGee.

19. Defendant Kerr-McGee Corporation (*i.e.*, New Kerr-McGee) is a wholly owned subsidiary of Defendant Anadarko, and is also a successor to Old Kerr-McGee.

## **BACKGROUND**

### **I. Old Kerr-McGee Creates Massive Legacy Liabilities Through Far-Flung Businesses During Its More Than 70-Year History.**

20. Old Kerr-McGee was founded in 1929 as Anderson & Kerr Drilling Company near Oklahoma City, Oklahoma. As the company grew its oil and gas exploration activities and drilling operations, it moved into downstream operations with the purchase of its first refinery in 1945.

21. Old Kerr-McGee continued to expand in the 1950s into various other energy-related businesses. In 1952, Old Kerr-McGee entered the uranium industry when it acquired mining properties in Arizona. Shortly thereafter, it constructed the country's largest uranium-processing mill. Also in the 1950s, Old Kerr-McGee expanded its retail operations into owning and operating service stations, and further expanded its refining operations.

22. In the early 1960s, Old Kerr-McGee entered the forestry business through a series of asset purchases, and acquired several fertilizer-marketing companies.

23. In 1967, Old Kerr-McGee completed a merger with American Potash and Chemical Corporation, and began to manufacture and market a variety of ammonium perchlorate chemicals (such as fertilizers, potash, and sodium chlorate), boron, titanium dioxide, and manganese. That same year, Old Kerr-McGee started construction of its first coal mine shaft in Stigler, Oklahoma.

24. In the 1970s, Old Kerr-McGee became involved in various aspects of the nuclear industry, including exploration, mining, milling, and conversion of uranium oxide into uranium hexafluoride, pelletizing of these materials, and fabrication of fuel elements.

25. By 2000, Old Kerr-McGee had exited most of these historic business operations (collectively, the "Legacy Businesses") and was left with two core operating businesses: (a) oil and gas exploration and production and (b) chemicals. Although it had discontinued the Legacy Businesses, Old Kerr-McGee remained responsible for the Legacy Liabilities. The overwhelming majority of the Legacy Liabilities—including some that are the direct result of oil and gas operations—are not related to the titanium dioxide and other operations that became Tronox.

## **II. Old Kerr-McGee Decides To Jettison Its Legacy Liabilities In The Late 1990s.**

26. In the late 1990s, consolidation in the oil and gas industry increased valuations of exploration and production companies like Old Kerr-McGee. Old Kerr-McGee, however, was left on the sidelines because potential merger and acquisition partners were scared away by the Legacy Liabilities.

27. Old Kerr-McGee's executives, however, were not going to let this opportunity for windfall profits pass them by.

28. No later than 1998, Old Kerr-McGee began considering various transactions through which it could evade its Legacy Liabilities. One transaction involved assigning all of the Legacy Liabilities to a dormant subsidiary, Edgebrook Development Corporation, in exchange for a promissory note issued by Old Kerr-McGee equal to the total costs of the Legacy Liabilities.

29. Old Kerr-McGee decided it needed a cleaner break from the Legacy Liabilities than the Edgebrook transaction would provide. This conclusion was underscored by the EPA's notices to Old Kerr-McGee in 1999 that it was a potentially responsible party for the clean-up of a former wood treatment site at Manville, New Jersey. Given the scope of the potential liabilities at Manville and other similar wood treatment sites (as well as its numerous other legacy environmental sites), Old Kerr-McGee concluded that any transaction that required it to provide sufficient value to another entity to cover the costs of the Legacy Liabilities was now off the table. The Legacy Liabilities were simply too big.

30. Specifically, on April 30, 1999, EPA published a proposed plan describing remedial alternatives for the Federal Creosote Superfund Site at Manville, New Jersey.

31. Two months later, on July 6, 1999, EPA sent a letter to Old Kerr-McGee stating that “EPA has documented the release and threatened release of hazardous substances into the environment” at Manville, that the site “is currently the location of a residential community of single-family homes, and is bordered by various commercial and residential areas,” and that “hazardous substances have been detected at the Site in homes, soils and groundwater.” The letter also stated that EPA has “reason to believe that, for purposes of Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Kerr-McGee is a potentially responsible party (“PRP”) with respect to the Site.”

32. On October 18, 1999, EPA sent another letter to Old Kerr-McGee stating that it had selected a remedy for Manville that included permanent relocation of residents, excavation of source material, and off-site thermal treatment and disposal. EPA estimated the cost of the remedy at \$59,100,000. EPA also warned that because the site “consists of residential housing and is directly affecting this community, it is particularly important that this remedial action be conducted on an expedited basis.” EPA requested that Old Kerr-McGee determine whether it would voluntarily finance or perform the proposed remediation.

33. The April 1999 public notice and the July and October 1999 EPA letters caused significant concern within Old Kerr-McGee, including among its Board of Directors. Old Kerr-McGee launched an investigation into the Manville site, including title searches to analyze any connection between an alleged predecessor company and the site, the identity of other potentially responsible parties, and the nature and extent of Old Kerr-McGee’s potential exposure. Old Kerr-McGee also met with EPA to try to obtain information on any other potentially responsible parties, the scope of the remediation project, and whether a final remedy had been selected for

the site. Old Kerr-McGee management frequently updated the company's Board of Directors regarding this investigation.

34. Old Kerr-McGee had reason to be concerned. The potential liability at Manville was significant in its own right. According to a cost recovery lawsuit that EPA and the State of New Jersey filed in 2008 against Tronox as Old Kerr-McGee's alleged successor in interest, these governmental entities have spent approximately \$280 million in clean-up costs at Manville. The bigger problem for Old Kerr-McGee was that Manville was simply the tip of the iceberg. Old Kerr-McGee knew that it was associated with numerous other previously undisclosed wood treatment and agricultural chemical sites that, like Manville, posed the specter of substantial environmental and tort liabilities.

### **III. Old Kerr-McGee Devises A Two-Step Scheme To Avoid Responsibility For Legacy Liabilities.**

35. For Old Kerr-McGee's Board and management, Manville was a pointed reminder that they would not be able to tap into the lucrative oil and gas merger market while saddled with the Legacy Liabilities. Accordingly, Old Kerr-McGee developed a scheme to jettison the Legacy Liabilities and shield its valuable oil and gas assets from EPA, tort claimants, and other creditors.

36. The scheme involved two steps. *First*, Old Kerr-McGee would isolate its Legacy Liabilities in a subsidiary that included the Chemical Business while the valuable oil and gas assets were segregated in a separate "clean" subsidiary. *Second*, Old Kerr-McGee would achieve a "clean break" from the Legacy Liabilities by severing the Chemical Business either through an arm's-length transaction or a spin-off.

