

In re:	§	
	§	
LAC D’AMIANTE DU	§	
QUÉBEC LTÉE, ET AL.	§	Case No. 05-20521
	§	
	§	
Debtors.	§	Chapter 11
	§	
<hr/>		
	§	
ASARCO, LLC,	§	
	§	
	§	Adversary Proceeding No. 05-_____
Plaintiff	§	
	§	
v.	§	
	§	
LAC D’AMIANTE DU QUÉBEC LTÉE,	§	
CAPCO PIPE COMPANY, INC.,	§	
CEMENT ASBESTOS PRODUCTS	§	
COMPANY,	§	
LAKE ASBESTOS OF QUEBEC, LTD.,	§	
LAQ CANADA, LTD., EACH	§	
OF THEIR RESPECTIVE ESTATES,	§	
AND ROBERT C. PATE, FUTURE	§	
CLAIMS REPRESENTATIVE	§	
	§	
Defendants.	§	
	§	

Plaintiff ASARCO, LLC (“ASARCO” or “Plaintiff”), a Tucson-based integrated copper mining and smelting company and the parent of the debtors in the above-captioned chapter 11 case, files the following Complaint for Declaratory Relief (the “Complaint”) in this adversary proceeding (the “Adversary Proceeding”) and, in support hereof, alleges as follows:

NATURE OF THIS ADVERSARY PROCEEDING AND RELIEF REQUESTED

1. This Adversary Proceeding arises out of a present and actual controversy between ASARCO, on the one hand, and Lac d'Amiante du Québec Ltée, CAPCO Pipe Company, Inc., Cement Asbestos Products Company, Lake Asbestos of Quebec, Ltd., and LAQ Canada, Ltd. (collectively, the "Debtors"), each of their respective bankruptcy estates, and Robert C. Pate, solely in his capacity as the Future Claims Representative (as defined below) and not in his individual or any other capacity, (together with the Debtors, the "Defendants"), on the other hand, regarding the purported liability of ASARCO for claims against LAQ and CAPCO (as defined below), arising from alleged injuries from claimed exposure to asbestos and/or asbestos-containing products (the "Asbestos Claims").

2. The Debtors are direct or indirect wholly-owned subsidiaries of ASARCO. Prior to 1986, Lac d'Amiante du Québec Ltée ("LAQ") was in the business of mining asbestos fiber from the Black Lake region of central Quebec, Canada, and CAPCO Pipe Company, Inc. (f/k/a/ Cement Asbestos Products Company) ("CAPCO") formerly manufactured various asbestos-containing cement underground pipe products. In 1986, LAQ transferred its assets to a subsidiary that continued to operate the mines through a partnership and, by 1989, it had sold its interest in the partnership to third-party investors and ceased all operations. Similarly, CAPCO also is a non-operating dormant company that had stopped making asbestos-containing pipes by 1993. Nevertheless, both LAQ and CAPCO found themselves, like much of corporate America, in a widening asbestos crisis as plaintiffs began asserting a growing number of asbestos-related personal-injury claims against them.

3. In the case of CAPCO, the majority of the Asbestos Claims allege exposure as a result of cutting and handling cement asbestos pipe manufactured by CAPCO, while Asbestos

Claims against LAQ are based generally on theories of exposure to products containing asbestos fibers that LAQ mined and milled. Over 85,000 such claims are being asserted by claimants in various parts of the United States (the “Current Actions”). In addition, thousands of potential plaintiffs may assert claims in the future alleging personal injury, wrongful death, or other damage from the alleged exposure to, or the presence of, asbestos and/or asbestos-containing products (the “Future Actions”). The Current Actions and the Future Actions are collectively referred to as the “Asbestos Actions.”

4. To deal with this increasing tide of asbestos-related liabilities, the Debtors were forced to file their chapter 11 cases of reorganization. The Debtors anticipate filing a plan of reorganization that will propose establishment of a trust pursuant to sections 524(g) and 105 of title 11 of the United States Code (the “Bankruptcy Code”).

5. Having never mined, milled, manufactured or sold asbestos or asbestos-containing products, ASARCO has no direct liability for any materials or products mined, milled, manufactured or sold by CAPCO or LAQ. Yet, this has not stopped plaintiffs from naming ASARCO as defendant in a large number of the Current Actions against either CAPCO or LAQ. Although a limited number of the Asbestos Claims are based on direct theories of liability (ASARCO is a defendant in a few direct premises claims representing less than 1% of total active claims), the majority are derivative of claims against CAPCO or LAQ.

6. ASARCO has had a growing number of claims brought against it asserting that it should be liable to asbestos claimants for the alleged direct liability of LAQ and CAPCO based on a number of theories, including, without limitation, denuding-the-corporation, single-business-enterprise, corporate trust funds, breach of fiduciary duty or conspiracy, allegations that LAQ or CAPCO was the mere instrumentality, agent, or alter ego of ASARCO, or that the

corporate veil should be pierced, or that as a result of domination and control over any of the Debtors, directly or indirectly, ASARCO should be liable for asbestos-related claims or any other claims that have origins in acts or omissions of any of the Debtors, or any other theories alleging direct or indirect liability for the conduct of, claims against, or demands on the Defendants to the extent that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code (collectively, the “Alter Ego Theories”). Pursuant to the Alter Ego Theories, asbestos claimants allege that ASARCO is liable on Asbestos Claims against one or more of the Debtors.

7. Based on the Alter Ego Theories, Defendants assert, or will assert, that ASARCO is liable for Asbestos Claims against one or more of the Debtors, despite facts unequivocally demonstrating that: (a) only LAQ mined and milled asbestos fiber at issue in the Asbestos Actions; (b) only CAPCO manufactured asbestos-containing products at issue in the Asbestos Actions; and (c) LAQ, CAPCO and ASARCO have maintained appropriate corporate separateness and respected all attributes of corporate business and accounting separateness.

8. This Adversary Proceeding requests a declaratory judgment that ASARCO is not liable to the Debtors, their respective bankruptcy estates or any of their present or future creditors for any liability, asbestos-related or otherwise, under the Alter Ego Theories.

JURISDICTION AND VENUE

9. On April 11, 2005, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to be authorized to operate their businesses and to manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

10. This Court is granted subject-matter jurisdiction over this Adversary Proceeding pursuant to 28 U.S.C. §§ 1334(b) and (e). This Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(C), (E), (L), and (O), because it raises significant issues that implicate the administration of the Debtors' estates.

11. Venue is proper in this Court pursuant to 28 U.S.C. § 1409.

12. Pursuant to 28 U.S.C. § 2201, this Court can enter the declaratory relief sought in this Complaint because this case presents an actual controversy and is within this Court's jurisdiction as stated above.

13. To the extent that Asbestos Actions based on the Alter Ego Theories are valid, an assertion that ASARCO categorically denies, they constitute a right of action belonging to the Debtors -- the representatives for, and fiduciaries of, their respective bankruptcy estates -- which right of action is “property of the estate” within the meaning of section 541(a)(1) of the Bankruptcy Code, and as such, the Asbestos Actions that assert claims against ASARCO based on the Alter Ego Theories are subject to the automatic stay of section 362(a)(3). In the non-bankruptcy context, actions based on any of the Alter Ego Theories could be separately asserted, and indeed have been asserted, by individual creditors of LAQ and CAPCO.

14. The individual prosecution of Asbestos Actions that assert claims against ASARCO based on the Alter Ego Theories would frustrate the goal of equal distribution among the Debtors' creditors, would abridge the general policy of giving the Debtors an opportunity to reorganize their finances, and it would result in a multi-jurisdictional rush to judgment that cuts against the fundamental policies of the Bankruptcy Code. Instead, this Adversary Proceeding seeks to collectively resolve all Asbestos Actions that assert claims against ASARCO based on the Alter Ego Theories. The unified and orderly resolution of the matters set forth in this

Complaint will benefit all parties-in-interest in the Debtors' chapter 11 cases and is essential to the efficient administration of the Debtors' estates, as it will establish the framework for determining ASARCO's contribution to the trust under section 524(g) of the Bankruptcy Code.

THE PARTIES

Plaintiff

15. ASARCO is a limited liability company organized and existing under the laws of the State of Delaware, with its headquarters and principal executive offices located at 1150 N. 7th Ave., Tucson, Arizona 85705.

Defendants

16. Defendants are all the Debtors in these bankruptcy proceedings, each of their respective bankruptcy estates, and Robert C. Pate, solely in his capacity as the Future Claims Representative (as defined below) and not in his individual or any other capacity. The Debtors are direct or indirect wholly-owned subsidiaries of ASARCO.

17. Defendant LAQ is a Delaware corporation that may be served with process through its registered agent, the Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

18. Defendant CAPCO is an Alabama corporation that may be served with process through its registered agent, the Corporation Company, at 2000 Interstate Park Drive, Suite 204, Montgomery, Alabama 36109.

19. Defendant Cement Asbestos Product Company is an Alabama corporation that may be served with process through its registered agent, the Corporation Company, at 2000 Interstate Park Drive, Suite 204, Montgomery, Alabama 36109.

20. Defendant Lake Asbestos of Quebec, Ltd. is a Delaware corporation that may be served with process through its registered agent, the Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

21. Defendant LAQ Canada, Ltd. is a Delaware corporation that may be served with process through its registered agent, the Corporation Trust Company, at Corporation Trust Center, 1209 Orange Street, Wilmington, Delaware 19801.

22. By Order dated April 19, 2005, the Court appointed Defendant Robert C. Pate as the legal representative for future asbestos-related claimants who might assert claims against the Debtors (the “Future Claims Representative”). Mr. Pate is being sued in his representative capacity only.

**ASARCO IS NOT LIABLE FOR ASBESTOS CLAIMS AGAINST LAQ
BASED ON THE ALTER EGO THEORIES**

23. None of the Alter Ego Theories that the Defendants have advanced (or are likely to advance in the future) in favor of using the assets of Plaintiff to satisfy the liabilities of LAQ are viable.

24. There is no valid reason for invoking any of the Alter Ego Theories. Analyses of the past and present operations and structure of LAQ will demonstrate that none of the Alter Ego Theories can succeed. Plaintiff can, and will, demonstrate that:

(1) From its inception, LAQ was sufficiently capitalized and it never guaranteed, or pledged its assets for, a debt incurred by ASARCO;

(2) The capitalization noted above was reasonably deemed sufficient to handle all future liabilities because, in part, ASARCO’s management had put into place a strong, comprehensive insurance coverage program that, by all indications at that time, appeared to be more than sufficient to cover all of LAQ’s present and future asbestos-related liabilities;

(3) LAQ observed appropriate corporate formalities, it maintained a properly constituted board of directors, elected appropriate officers, had its own charter and bylaws, and maintained independent corporate records;

(4) From its inception, LAQ was given appropriate control over its own business operations and it largely operated as an autonomous business in that LAQ individually participated in trade organizations, produced its own marketing literature, had its own letterhead and invoices, and signed and negotiated its own agreements;

(5) To the extent that ASARCO exercised any control over LAQ, it was solely in the form of ordinary corporate governance procedures;

(6) LAQ conducted its own separate business selling most of its asbestos fibers to non-ASARCO entities, it managed its day-to-day operations, and engaged on its own and independent decision-making process as it relates to financial and business strategies and otherwise;

(7) To the extent that ASARCO and LAQ shared services, common functions and facilities, ASARCO would be reimbursed for the use of any such services, functions or facilities and/or the value of such services, functions or facilities would otherwise be accounted for via the intercompany accounting;

(8) There was no centralized cash management system for all ASARCO-related entities, instead, revenue was collected at the subsidiary level;

(9) LAQ maintained its own daily cash balance and had its own banking relationships with local banks in Quebec;

(10) Whenever LAQ borrowed working capital from ASARCO, any advances were properly memorialized in written memoranda and reflected in the accounting records;

(11) LAQ had a completely separate accounting system, maintained by its own accounting personnel;

(12) At all relevant times, LAQ generated its own revenue. Although public, consolidated financial statements were prepared, separate accounting statements exist for LAQ and each of the Debtors. LAQ's assets and liabilities can thus be readily ascertained.

**ASARCO IS NOT LIABLE FOR ASBESTOS CLAIMS AGAINST CAPCO
BASED ON THE ALTER EGO THEORIES**

25. None of the Alter Ego Theories that the Defendants have advanced (or are likely to advance in the future) in favor of using the assets of Plaintiff to satisfy the liabilities of CAPCO are viable.

26. There is no valid reason for invoking any of the Alter Ego Theories. Analyses of the past and present operations and structure of CAPCO will demonstrate that none of the Alter Ego Theories can succeed. Plaintiff can, and will, demonstrate that:

(1) From the time it became a subsidiary of ASARCO, CAPCO was sufficiently capitalized and it never guaranteed, or pledged its assets for, a debt incurred by ASARCO;

(2) The capitalization noted above was reasonably deemed sufficient to handle all future liabilities because, in part, ASARCO's management had put into place a strong, comprehensive insurance coverage program that, by all indications at that time, appeared to be more than sufficient to cover all of CAPCO's present and future asbestos-related liabilities;

(3) CAPCO observed appropriate corporate formalities, it maintained a properly constituted board of directors, elected appropriate officers, had its own charter and bylaws, and maintained independent corporate records;

(4) From its inception, CAPCO was given appropriate control over its own business operations and it largely operated as an autonomous business in that CAPCO individually participated in trade organizations, produced its own marketing literature, had its own letterhead and invoices, and signed and negotiated its own agreements;

(5) To the extent that ASARCO exercised any control over CAPCO, it was solely in the form of ordinary corporate governance procedures;

(6) CAPCO conducted its own separate business selling most of its asbestos-containing products to non-ASARCO entities, it managed its day-to-day operations, and engaged on its own and independent decision-making process as it relates to financial and business strategies and otherwise;

(7) To the extent that ASARCO and CAPCO shared services, common functions and facilities, ASARCO would be reimbursed for the use of any such services, functions or facilities and/or the value of such services, functions or facilities would otherwise be accounted for via the intercompany accounting;

(8) There was no centralized cash management system for all ASARCO-related entities, instead, revenue was collected at the subsidiary level;

(9) CAPCO maintained its own daily cash balance and had its own bank accounts;

(10) Whenever CAPCO borrowed working capital from ASARCO, any advances were properly memorialized in written memoranda and reflected in the accounting records;

(11) CAPCO had a completely separate accounting system, maintained by its own accounting personnel;

(12) At all relevant times, CAPCO generated its own revenue. Although public, consolidated financial statements were prepared, separate accounting statements exist for CAPCO and each of the Debtors. CAPCO's assets and liabilities can thus be readily ascertained.

FIRST CAUSE OF ACTION

(DECLARATORY JUDGMENT THAT ASARCO IS NOT LIABLE FOR LAQ'S ASBESTOS CLAIMS UNDER THE ALTER EGO THEORIES)

27. Plaintiff incorporates by reference paragraphs 1-26 of this Complaint.

28. An actual controversy has arisen and now exists between the parties concerning the liability of the Plaintiff for LAQ's asbestos-related liability under any of the Alter Ego Theories, for which Plaintiff desires a declaration of rights.

29. A declaratory judgment is necessary in that Defendants have contended, or are expected to contend, and Plaintiff has denied and will continue to deny, that ASARCO is and should be held liable for LAQ's asbestos-related liability under one or more of the Alter Ego Theories.

30. Accordingly, Plaintiff seeks declaratory relief to prevent the Defendants from improperly seeking to hold Plaintiff liable for LAQ's asbestos-related liability under one or more of the Alter Ego Theories.

SECOND CAUSE OF ACTION

(DECLARATORY JUDGMENT THAT ASARCO IS NOT LIABLE FOR CAPCO'S ASBESTOS CLAIMS UNDER THE ALTER EGO THEORIES)

31. Plaintiff incorporates by reference paragraphs 1-26 of this Complaint.

32. An actual controversy has arisen and now exists between the parties concerning the liability of the Plaintiff for CAPCO's asbestos-related liability under any of the Alter Ego Theories, for which Plaintiff desires a declaration of rights.

33. A declaratory judgment is necessary in that Defendants have contended, or are expected to contend, and Plaintiff has denied and will continue to deny, that ASARCO is and should be held liable for CAPCO's asbestos-related liability under one or more of the Alter Ego Theories.

34. Accordingly, Plaintiff seeks declaratory relief to prevent the Defendants from improperly seeking to hold Plaintiff liable for CAPCO's asbestos-related liability under one or more of the Alter Ego Theories.

WHEREFORE, Plaintiff requests that the Court enter a judgment in its favor and against the Defendants as follows:

- A. Declaring that Plaintiff is not liable under the Alter Ego Theories for the Asbestos Actions of LAQ and/or CAPCO.
- B. Declaring that Plaintiff's assets may not be used to satisfy asbestos personal injury or any other claims or demands against LAQ and/or CAPCO, both present and future.
- C. Awarding Plaintiff its costs, expenses and attorneys' fees.
- D. Granting such other and further relief as the Court deems equitable and just.

Dated: June 15, 2005

Respectfully submitted,

BAKER BOTTS L.L.P.

/s/ Jack L. Kinzie
Jack L. Kinzie
Texas State Bar No. 11492130
James R. Prince
Texas State Bar No. 00784791
Romina L. Mulloy
Texas State Bar No. 24037156
2001 Ross Avenue
Dallas, Texas 75201-2980
Telephone: 214.953.6500
Facsimile: 214.661.6503
Email: *jack.kinzie@bakerbotts.com*
jim.prince@bakerbotts.com
romina.mulloy@bakerbotts.com

and

Tony M. Davis
Texas State Bar No. 05556320
910 Louisiana
Houston, Texas 77002
Telephone: 713.229.1547
Facsimile: 713.229.2847
Email: *tony.davis@bakerbotts.com*

COUNSEL FOR ASARCO, LLC

CERTIFICATE OF SERVICE

I, Romina L. Mulloy, hereby certify that on June 15, 2005, a true and correct copy of the foregoing pleading was served by electronic mail and first-class mail, postage prepaid, on counsel of record listed below.

Shelby A. Jordan
Jordan, Hyden, Womble & Culbreth, P.C.
Suite 900, Bank of America
500 North Shoreline
Corpus Christi, Texas 78471
Telephone: 361.884.5678
Facsimile: 361.888.5555
Email: *sjordan@jhwclaw.com*
COUNSEL FOR THE DEBTORS

John H. Tate,
II Oppenheimer, Blend, Harrison, & Tate, Inc.
711 Navarro, Sixth Floor
San Antonio, Texas 78205
Telephone: 210.224.2000
Facsimile: 210.224.7540
Email: *jtate@obht.com*
**COUNSEL FOR ROBERT C. PATE,
FUTURE CLAIMS REPRESENTATIVE**

/s/ Romina L. Mulloy
Romina L. Mulloy