IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE:	§	**Case No. 05-21207**
	§	
ASARCO LLC, et al.	§	**Chapter 11**
	§	
Debtors.	§	**(Jointly Administered)**
	§	

DISCLOSURE STATEMENT IN SUPPORT OF THE DEBTORS' ~~FOURTH~~FIFTH AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE UNITED STATES BANKRUPTCY CODE

BAKER BOTTS L.L.P.

Jack L. Kinzie
James R. Prince
Marty Green
2001 Ross Avenue
Dallas, Texas 75201-2980
Telephone: 214.953.6500
Facsimile: 214.953.6503

BAKER BOTTS L.L.P.

Tony M. Davis
Mary Millwood Gregory
One Shell Plaza
910 Louisiana
Houston, Texas 77002
Telephone: 713.229.1234
Facsimile: 713.229.1522

JORDAN, HYDEN, WOMBLE, CULBRETH & HOLZER, P.C.

Shelby A. Jordan
Harlin C. Womble
Nathaniel Peter Holzer
Suite 900, Bank of America
500 North Shoreline
Corpus Christi, Texas 78471
Telephone: 361.884.5678
Facsimile: 361.888.5555

Counsel for the Debtors

Dated: ~~April 27,~~May 11, 2009

TABLE OF CONTENTS

DISCLOSURE STATEMENT EXHIBITS

Exhibit Designation	Exhibit Title
DS Exhibit A	Uniform Glossary of Defined Terms for Plan Documents
DS Exhibit B	~~Fourth~~**Fifth** Amended Joint Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code
DS Exhibit C	Order (I) Approving the Adequacy of the Disclosure ~~Statements~~**Statement** in Support of Debtors' ~~Fourth~~**Fifth** Amended Joint Plan of Reorganization and (II) Establishing Certain Procedures Related to Confirmation
DS Exhibit D	Debtors' Selected Historical Financial Information
DS Exhibit E	Debtors' Liquidation Analysis
DS Exhibit F	Estimated **Anticipated** Administrative Expenses of the Trusts and the Plan Administrator
DS Exhibit G	Legal Structure of ASARCO LLC and its Subsidiaries Prior to the Effective Date
DS Exhibit H	Organizational Structure of the Debtors and Certain Related Entities Prior to the Effective Date
DS Exhibit I	Curriculum Vitae of the FCR, Judge Robert C. Pate
DS Exhibit J	List of Professional Persons Representing the Debtors
DS Exhibit K	List of Filing Dates of the Debtors
DS Exhibit L	Intentionally Omitted
DS Exhibit M	~~Settlement and Purchase and Sale Agreement for the Sale of the Sold Assets to the~~**New** Plan Sponsor **PSA**
DS Exhibit N	Background Information Regarding the Plan Sponsor
DS Exhibit O	Current Officers and Directors of the Subsidiary Debtors
DS Exhibit P	Intentionally Omitted
DS Exhibit Q	FFIC's Position Statement Regarding Risk of No Insurance Coverage
DS Exhibit R	**Asbestos/AMC/Parent Agreement in Principle and Letters from Counsel for the Debtors, Counsel for the Asbestos Subsidiary Committee, and Counsel for the FCR Regarding the Asbestos/AMC/Parent Agreement in Principle**

INTRODUCTION

*Please consult the Uniform Glossary of Defined Terms for Plan Documents attached as **Exhibit A** to this Disclosure Statement for the meaning of defined terms.*

ASARCO LLC and the Subsidiary Debtors are soliciting acceptances of their plan of reorganization, attached hereto as **Exhibit B**. This solicitation is conducted in order to obtain sufficient acceptances to enable the Plan to be confirmed by the Bankruptcy Court pursuant to the provisions of section 1129 of the Bankruptcy Code.

The purpose of the Disclosure Statement is to set forth (a) the history of the Debtors, their businesses, and their Reorganization Cases; (b) information concerning the Plan and alternatives to the Plan; (c) information for the holders of Claims and Interests regarding their rights under the Plan; (d) information to assist the holders of Claims and Interests in impaired Classes in making an informed judgment regarding whether they should vote to accept or reject the Plan; and (e) information to assist the Bankruptcy Court in determining whether the Plan complies with the provisions of chapter 11 of the Bankruptcy Code and should be confirmed.

Pursuant to the Disclosure Order dated _____ __, ____, attached hereto as **Exhibit C**, the Bankruptcy Court (i) approved this Disclosure Statement, in accordance with section 1125 of the Bankruptcy Code, as containing "adequate information" to enable a hypothetical, reasonable investor typical of holders of Claims against and Interests in the Debtors to make an informed judgment as to whether to vote to accept or reject the Plan, and (ii) authorized its use in connection with the solicitation of votes with respect to the Plan. **APPROVAL OF THIS DISCLOSURE STATEMENT, HOWEVER, DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF THE PLAN.** No solicitation of votes on the Plan may be made except pursuant to this Disclosure Statement and in accordance with section 1125 of the Bankruptcy Code.

This Disclosure Statement is not intended to replace a careful and detailed review and analysis of the Plan by each holder of a Claim or an Interest, but instead is intended only to aid and supplement that review. Any description of the Plan is a summary only. Holders of Claims and Interests and other parties in interest are cautioned to review the Plan and any related attachments in their entirety for a full understanding of the Plan's provisions. This Disclosure Statement is qualified in its entirety by reference to the full text of the Plan and the exhibits and attachments thereto. If any inconsistency exists between the terms of the Plan and this Disclosure Statement, the terms and provisions of the Plan shall control.

Certain of the statements contained in this Disclosure Statement are forward-looking projections and forecasts based upon certain estimates and assumptions. Such statements may prove to be wrong or materially different from actual future results, and there can be no assurance that such statements will be reflective of actual outcomes. The statements contained in this Disclosure Statement, moreover, are made as of the date hereof unless otherwise specified herein, and the delivery of this Disclosure Statement does not imply that there has been no change in the information set forth herein since such date.

Holders of Claims against and Interests in the Debtors are encouraged to read and carefully consider the matters described in this Disclosure Statement, paying careful attention to Sections 3 (Summary of the Proposed Plan) and 7 (Risks of the Plan) of this Disclosure Statement. Prior to voting on the Plan, each holder of a Claim should consult such holder's attorney, accountant, tax advisor, and financial advisor as to the effect of the Plan on such holder, including, without limitation, the tax effects of the Plan. In making a voting decision, each holder must rely on the holder's own examination of the Debtors and the terms of the Plan, including the merits and risks involved.

This Disclosure Statement may not be relied upon for any purpose other than to determine whether to vote in favor of or against the Plan, and nothing contained herein shall constitute an admission of any fact or liability by any party, or be admissible in any proceeding involving the Debtors or any other party, or be deemed evidence of the tax or other legal consequences or effects of the reorganization of the Debtors.

The statements and information about the Debtors, including financial information, financial projections, and information regarding Claims or Interests contained in this Disclosure Statement, have been prepared from information provided by the Debtors and their advisors. No statement or information concerning the Debtors (particularly as to future business, results of operations or financial condition, or with respect to distributions to be made under the Plan) or their assets, properties, or businesses that is given for the purpose of soliciting acceptances of the Plan is authorized, other than as set forth in this Disclosure Statement.

As noted at various points herein, the Disclosure Statement contains statements included at the request of the Parent, the Asbestos Subsidiary Committee, the FCR, and others. The Debtors make no representations as to the accuracy of such statements. Moreover, the lack of a specific reference to the Debtors' position regarding any such statements should not be taken as the Debtors' agreement with all or any part of such statements.

SUMMARY OF VOTING PROCEDURES

The Debtors have sent Ballots with voting instructions and copies of this Disclosure Statement to all known holders of Claims in impaired Classes that are entitled to vote on the Plan. All holders of impaired Claims and Interests should read the Ballot carefully and follow the voting instructions accurately. Holders of Claims should use only an official Ballot.

A. WHO CAN VOTE?

Pursuant to the provisions of the Bankruptcy Code, only Classes of Claims which are (1) "impaired" by the Plan, and (2) entitled to receive a distribution under the Plan are entitled to vote on the Plan. Under the Plan, Claims in Classes 2 and 3 are impaired (unless any sub-Classes of Class 2 Secured Claims are Reinstated, in which case the Claims in the sub-Classes that are Reinstated shall be unimpaired), and, accordingly, the holders of Claims in those Classes are the only holders of Claims entitled to vote to accept or reject the Plan. Claims in Classes 1 and ~~5,~~**5** and, as previously noted, any Class 2 Secured Claims that are Reinstated are unimpaired by the Plan~~)~~, and the holders of Claims in such Classes are conclusively presumed by operation of the Bankruptcy Code to have accepted the Plan.

The Debtors shall solicit the votes of **each sub-Class of** Class 4. If the Bankruptcy Court determines that this Class is unimpaired, then holders of Unsecured Asbestos Personal Injury Claims in **each sub-Class of** Class 4 shall be conclusively presumed to have accepted the Plan for purposes of section 1129 of the Bankruptcy Code. In that event, the Bankruptcy Court may determine that such holders are also conclusively presumed to have accepted the Plan for purposes of section 524(g) of the Bankruptcy Code, or may require the votes of Claimants in **each sub-Class of** Class 4 to be counted in order to determine whether the 75 percent voting requirement of section 524(g) is satisfied. If the Bankruptcy Court determines that Class 4 is impaired, the Ballots cast by holders of Class 4**A and Class 4B** Claims shall be used to determine whether **each sub-Class of** Class 4 accepts or rejects the Plan for purposes of sections 1129 and 524(g) of the Bankruptcy Code.

Claims in Classes 6 and 7, and Interests in Classes 8 through 10, shall not receive or retain any property on account of their Claims and Interests, and the holders of Claims and Interests in such Classes are conclusively presumed by operation of the Bankruptcy Code to have voted to reject the Plan.

The holder of a Claim may not split his, her, or its vote for a particular Claim. Accordingly, (1) each holder shall receive a separate Ballot for each Claim held, regardless of whether or not such Claims are within the same Class; (2) each holder shall have a single vote for the Plan for each Claim held; (3) the full amount of each Claim (calculated in accordance with these procedures) shall have been deemed to have voted either to accept or reject the Plan; and (4) any Ballot that partially rejects and partially accepts the Plan shall not be counted.

The Bankruptcy Court has established _____ __, ____, as the Voting Record Date for purposes of determining which holders of Claims are entitled to vote to accept or reject the Plan.

B. WHAT IS THE DEADLINE FOR VOTING?

In order for your vote to be counted for voting purposes, Ballots accepting or rejecting the Plan, including Master Ballots submitted by (1) nominees for Bondholders in Class 3 and (2) attorneys for Class 4 Unsecured Asbestos Personal Injury Claimants, must be *physically* received by the Balloting Agent no later than 4:00 p.m., Prevailing Central Time, on _____ __, ____. Please allow adequate time for delivery.

To ensure the integrity of the voting process, all Ballots must be submitted as originals and bear an original signature in order to be counted. Please plan on voting so that the Ballots can be received in time to be counted.

C. WHERE AND HOW DO I RETURN MY BALLOT?

Ballots should be returned to the Debtors' Balloting Agent at:

ASARCO Balloting
c/o AlixPartners, LLP
2100 McKinney Avenue, Suite 800
Dallas, TX 75201

You must sign and return the Ballot accompanying this Disclosure Statement to the Balloting Agent in order to have your vote count. You may return your Ballot by mail, hand delivery, or overnight courier. However, the Balloting Agent is not able to accept Ballots by email or facsimile. A self-addressed, postage-prepaid envelope is included for your convenience.

D. CAN MY ATTORNEY VOTE FOR ME?

Yes, under certain circumstances. If you (1) have authorized your attorney to vote for you and (2) have not changed those arrangements, your attorney may vote as your agent. If your attorney votes for you, you do not need to complete a Ballot. If you have not authorized your attorney to vote for you, only you may vote on the Plan.

E. I AM A NOMINEE VOTING ON BEHALF OF A BONDHOLDER—WHAT DO I NEED TO DO?

Nominees voting on behalf of Bondholders must use and complete the Master Ballots for Bondholders. Each Master Ballot must be signed by a Nominee under penalty of perjury on behalf of the applicable Bondholders, who must have authorized the Nominee to vote on their behalf.

Ballots cast by Nominees on behalf of Bondholders must be received by the Debtors' Balloting Agent at the address listed on the Ballot by _____ __, ____, at 4:00 p.m., Prevailing Central Time. Ballots may be returned by mail, hand delivery, or overnight courier. However, the Balloting Agent is unable to accept Ballots by email or facsimile. Please allow enough time for delivery.

F. I AM AN ATTORNEY VOTING ON BEHALF OF MY CLIENT—WHAT DO I NEED TO DO?

Attorneys voting on behalf of Unsecured Asbestos Personal Injury Claimants must use and complete the Master Ballots for Class 4. Each Master Ballot must be signed by an attorney under penalty of perjury on behalf of his or her clients. In other instances, attorneys voting on behalf of clients (other than Class 4 Unsecured Asbestos Personal Injury Claimants) must use and complete the Ballot sent to the client. In either instance, attorneys may vote only for those clients from whom the attorney has obtained authorization to do so.

Ballots cast by attorneys on behalf of their clients must be received by the Debtors' Balloting Agent at the address listed on the Ballot by _____ __, ____, at 4:00 p.m., Prevailing Central Time. Ballots may be returned by mail, hand delivery, or overnight courier. However, the Balloting Agent is unable to accept Ballots by email or facsimile. Please allow enough time for delivery.

G. WHAT DO I DO IF I RECEIVED MORE THAN ONE BALLOT?

If you received more than one Ballot, you may hold Claims in different Classes and may be entitled to vote in more than one Class. Please review the Ballots carefully and consult with your legal and financial advisors for further advice if necessary.

H. WHAT DO I DO IF I DID NOT RECEIVE A BALLOT WITH MY SOLICITATION PACKAGE OR NEED A REPLACEMENT BALLOT?

If you are a holder of a Claim entitled to vote on the Plan and (1) did not receive a Ballot, (2) received a damaged Ballot, or (3) lost your Ballot (and you are not voting through your attorney), you should contact the Balloting Agent, by writing to **ASARCO BALLOTING, c/o ALIXPARTNERS, LLP, 2100 MCKINNEY AVENUE, SUITE 800, DALLAS, TEXAS 75201**, calling 1-888-727-9235 or 1-972-535-7137, or emailing *CMS_Noticing@alixpartners.com*

(reference "ASARCO" in the subject line). You may also obtain additional information on the Debtors' restructuring website: *www.asarcoreorg.com*.

I. CAN I CHANGE MY VOTE?

Once you have sent in your Ballot, you cannot change your vote unless the Bankruptcy Court "for cause shown," after a notice and a hearing, permits you to change your vote or the Plan or the voting procedures order otherwise permits you to do so.

However, the Debtors have agreed that estimation of Asbestos Personal Injury Claims at an amount greater than $500 million shall constitute "cause" for holders of Class 3 Claims to change their votes, and if you hold a Class 3 Claim and file the appropriate papers with the Bankruptcy Court seeking to change your vote on that ground, the Debtors will not oppose your request to change your vote provided your request is timely received based on any deadlines the Bankruptcy Court may set for changing one's vote.

If you have any questions about the procedures for voting on the Plan, you should contact your attorney or the Balloting Agent.

For detailed voting instructions, see the instructions accompanying your Ballot. Please read and follow the instructions closely to ensure that your vote is counted.

OVERVIEW OF THE PROPOSED PLAN

The following is a brief summary of certain material provisions of the Plan. By necessity, this summary is incomplete and is qualified in its entirety by reference to the more detailed information appearing elsewhere in this Disclosure Statement, the attached exhibits, and the Plan and the exhibits thereto, as amended from time to time. Please read the entire Disclosure Statement carefully before deciding how to vote because your rights may be affected by implementation of the Plan.

If approved, the Plan will implement a reorganization that will address the Debtors' liabilities, including environmental and asbestos-related liabilities, in a comprehensive and complete manner.

The Debtors have sought to formulate a plan of reorganization that is fair and equitable to all parties in interest, while allowing the Debtors to restructure and channel all unsecured asbestos-related Claims and Demands against the Debtors to a trust. The Debtors believe that these objectives have been met, and that the Plan provides for the maximum recoveries to, and expeditious and equitable treatment of, all holders of Claims and Interests.

The Plan provides for ASARCO to sell substantially all of its tangible and intangible operating assets to Sterlite (USA), Inc.[1] The majority of the proceeds from such sale, together with Distributable Cash, shall be paid to holders of Allowed Claims largely in accordance with the priorities established by the Bankruptcy Code, as follows:

- **Holders of** Administrative Claims, Priority Tax Claims, and Priority Claims shall be paid the Allowed Amount of their Claims;
- **Holders of** Secured Claims, at the applicable Debtor's option, shall be either paid the Allowed Amount of their Claims with any applicable post-petition interest or reinstated;
- Holders of Convenience Claims shall be paid the Allowed Amount of their Claims;
- Holders of Demands and holders of Unsecured Asbestos Personal Injury Claims shall be paid in full by ASARCO funding the Asbestos Trust with 100 percent of the interests in Reorganized Covington and Cash equal to (1) the estimated amount of the Asbestos Personal Injury Claims and Demands against ASARCO and the estimated amount of the Derivative Asbestos Claims, **plus** post-petition interest on such amount and (2) the amount estimated or approved by the

[1] Background information regarding Sterlite (and provided in its entirety by Sterlite) is attached hereto as **Exhibit N**.

Bankruptcy Court as sufficient to pay for the administrative costs of the Asbestos Trust, which the Debtors do not believe will exceed $27.5 million;

- Holders of Allowed General Unsecured Claims shall receive Pro Rata distributions of all remaining Available Plan Funds, as well as the ~~Litigation~~**Liquidation** Trust Interests~~,~~ **and** the SCC Litigation ~~Trust Interests, and the Residual Assets Liquidation~~ Trust Interests; and

- Holders of Late-Filed Claims, Subordinated Claims, and Interests shall not receive or retain any property under the Plan on account of their Claims and Interests (unless, as noted below, the Bankruptcy Court determines that the Plan Consideration is sufficient to permit distributions to such holders).

An Asbestos Trust shall be established for the benefit of Unsecured Asbestos Personal Injury Claims and Demands. Unless the Bankruptcy Court orders otherwise, the ASARCO Protected Parties shall be protected from all direct and indirect Asbestos Personal Injury Claims and Demands by a channeling injunction pursuant to section 524(g) of the Bankruptcy Code, which shall channel these Claims and Demands to the Asbestos Trust.

The Plan provides that~~,~~ if the Bankruptcy Court determines that the value, as of the Confirmation Date, of the Plan Consideration being provided to holders of Allowed General Unsecured Claims would cause such holders to receive more than they are legally entitled, the holders of Late-Filed Claims, Subordinated Claims, and Interests in ASARCO may, after the Allowed Amounts of General Unsecured Claims are paid, become entitled to receive ~~distributions from the Litigation~~**interests in the Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust.

The ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust shall also be established, with interests therein issued to holders of General Unsecured Claims and, if required by the Bankruptcy Court, the holders of Late-Filed Claims, Subordinated Claims, and Interests in ASARCO.

Certain owned and non-operating properties shall be transferred to Environmental Custodial Trusts for remediation and restoration~~,~~ and the Estates shall receive covenants not to sue.

Reorganized ASARCO and the Plan Administrator shall make distributions to the Trusts established pursuant to the Plan, prosecute objections to Claims (other than objections to Unsecured **Asbestos** Personal Injury Claims and Demands and objections to Claims that have been Allowed) and the Vested Causes of Action, and supervise the Plan Administration Reserve for disposition in accordance with the Plan.

One of ASARCO's subsidiary debtors, Covington Land Company, shall reorganize and own certain income-producing property. The Asbestos Trust shall own 100 percent of the interests in Reorganized Covington.

The Plan provides for the Other Subsidiary Debtors other than Covington to be substantively consolidated with and into ASARCO, and for the Asbestos Subsidiary Debtors to be merged into Covington. Alternatively, the Debtors reserve the right to consolidate the Asbestos Subsidiary Debtors into Covington and the remaining debtors into ASARCO pursuant to section 1123(a)(5)(C) of the Bankruptcy Code, in which case, votes on the Plan shall be counted on a Debtor-by-Debtor basis. As a third alternative, the Debtors reserve the right to proceed with the Plan as to only ASARCO and any one or more of the Subsidiary Debtors that ASARCO designates. Thereafter, the Subsidiary Debtors not included in the Plan with ASARCO would ~~hereafter~~ file one or more separate plans under chapter 11 of the Bankruptcy Code or convert their cases to liquidation cases under chapter 7 of the Bankruptcy Code.

The Plan Administrator shall hold all of the interests in Reorganized ASARCO, and shall manage its business operations.

Integral parts of the Plan are the discharge, Injunctions, and releases set forth in Article XI thereof.

Summary Description of Classes and Distributions to Holders of Claims and Interests

The classification of Claims and Interests, the estimated aggregate amount of Claims in each Class, and the amount and nature of distributions to holders of Claims or Interests in each Class are summarized in the table below. **Please read Section 3 of this Disclosure Statement and Article III of the Plan for more detailed and complete information.**

In formulating the estimated recovery set forth in the charts below, the Debtors made a projection of Cash anticipated to be on hand ~~at~~on the ~~end of the year~~**Effective Date** from operations and other sources, added the Cash expected from the Plan Sponsor, and considered projected uses of Cash between now and the ~~end of the year~~**Effective Date**. The Debtors also estimated the aggregate amount of Claims in each of the Classes as set forth below.

The Debtors believe that Class 4 will be paid in full by treatment afforded by the Plan to the holders of Claims in such Class. Although no assurances can be given, the Debtors believe that Class 3 could receive a Cash distribution on the Initial Distribution Date that will result in a Cash recovery ranging from 43 percent to 100 percent ~~on~~of the principal amount of their Claims. ~~These Classes~~**Class 3** would also receive ~~Litigation~~**Liquidation** Trust Interests~~,~~ **and** SCC Litigation ~~Interests, and Residual Assets Liquidation~~**Trust** Interests. These distribution percentages are based on many assumptions and estimates, and actual results could be significantly higher or lower for a number of reasons. For example, the amount of the Cash distribution to Class 3 is dependent upon, among other things, (1) the amount the Bankruptcy Court determines is appropriate for the estimation of Class 4 Claims against ASARCO and (2) copper prices which have been, and continue to be, volatile. The non-Cash consideration, whose value depends on a number of factors, including the outcome of litigation, may ultimately be worth significantly more or less than the Debtors currently estimate. Moreover, the estimates developed for the Claims could vary significantly from the amounts for which those Claims settle or are actually Allowed by the Bankruptcy Court. Substantial disputes exist between the Debtors and the Bondholders, including as to the Bondholders' entitlement to post-petition interest, the appropriate rate of post-petition interest to be paid on **the** Bondholders' Claims, and whether the Bondholders are entitled to a "make-whole premium" that those Bondholders assert could total in excess of $100 million.

Unclassified Claims

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified. For a discussion of certain additional matters related to Administrative Claims and Priority Tax Claims, see Section 3.3(a) and (b) hereof.

Description ~~and Estimate~~ of Claims	**Description of Distributions or Treatment Under the Plan**	**Estimated Aggregate Amount of Allowed or Asserted Claims**	**Estimated Recovery**
Administrative Claims	Shall generally receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date (except as otherwise provided in the Plan)	$441 to $612 million (the low amount assumes that the Parent's Administrative Claim is denied administrative priority and disallowed in full, while the high ~~range~~**amount** assumes that the Parent's Administrative Claim is granted administrative priority in the amount of $161.7 million. *See* Section 2.18(b) below for a discussion of Debtor's objection to Parent's Administrative Claim)	100%
Priority Tax Claims	Shall receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date	$4 million	100%

Demands and Classified Claims and Interests

Description ~~and Estimate~~ of Claims and Demands	**Description of Distributions or Treatment Under the Plan**	**Status/ Entitled to Vote**	**Estimated Aggregate Amount of Allowed or Asserted Claims or Demands**	**Estimated Recovery**
Class 1 – Priority Claims	Shall receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date or, if later, the date or dates on which such Priority Claim becomes due in the ordinary course	**Unimpaired** Deemed to Accept the Plan Not Entitled to Vote	*De Minimis*	100%
Class 2 – Secured Claims	Shall, at the election of the Debtors, either (a) receive the Allowed Amount of such holder's Claim, together with any applicable post-petition interest, in Cash, on the later of the Effective Date or the date or dates such Secured Claim becomes due in the ordinary course or (b) be Reinstated on the Effective Date	**Will Vote, But Only the Votes of Claimants Receiving the Cash Payment Option Will Be Counted**	$28 to $33 million	100%

<table>
<tr><th>Description ~~and Estimate~~ of Claims and Demands</th><th>Description of Distributions or Treatment Under the Plan</th><th>Status/ Entitled to Vote</th><th>Estimated Aggregate Amount of Allowed or Asserted Claims or Demands</th><th>Estimated Recovery</th></tr>
<tr><td rowspan="3">Class 3 – General Unsecured Claims</td><td rowspan="3">Shall receive such holder's Pro Rata share of Plan Consideration, consisting of Cash, ~~Litigation~~<u>Liquidation</u> Trust Interests,<u> and</u> SCC Litigation Trust Interests~~, and Residual Assets Liquidation Trust Interests~~</td><td>Impaired

Entitled to vote</td><td>$2.1 to $2.3 billion</td><td>Cash recoveries as reflected below (depending on the amount the Bankruptcy Court estimates as the Allowed Amounts of ASARCO's liability on account of Claims and Demands in Class 4, including interest), plus interests in:
~~• Litigation Trust;~~
~~• SCC Litigation Trust (to be funded with the SCC Final Judgment; *see* Section 2.24(c)); and~~
• ~~Residual Assets~~ Liquidation Trust (although the present value of the ~~Sterlite~~<u>Plan Sponsor</u> Promissory Note is already included in the Cash Recovery numbers below and is valued at $203 million) <u>and</u>
• <u>SCC Litigation Trust (to be funded with the SCC Final Judgment; *see* Section 2.24(c))</u></td></tr>
<tr><td colspan="2">Illustrative Estimated Asbestos Claim Amount<u>[2]</u></td><td colspan="2">Class 3 Cash Recovery Range</td></tr>
<tr><td colspan="2">~~$25 million~~
$100 million
$150 million
$250 million
$500 million
$750 million
$1,000 million</td><td colspan="2">~~88% - 100%~~
84% - 97%
82% - 95%
77% - 90%
66% - 78%
54% - 66%
43% - 54%</td></tr>
<tr><td>Demands and Class 4 –</td><td>Shall be channeled to the</td><td>Unimpaired<u>[3]</u></td><td>TBD</td><td>100%</td></tr>
</table>

<u>[2] The Asbestos Claimants' Committee asserts that the aggregate Allowed Amount of Unsecured Asbestos Personal Injury Claims may be as high as $2.1 billion. If the aggregate Unsecured Asbestos Personal Injury Claims were Allowed at $2.1 billion, the Debtors do not believe that there would be sufficient Cash to provide a meaningful Cash recovery to Class 3 Claimants on the Effective Date.</u>

<u>[3] The Asbestos Claimants' and the FCR strongly disagree that any plan with this proposed treatment for current and future asbestos claimants is permissible under the Bankruptcy Code. The Asbestos Claimants'</u>

Description ~~and Estimate~~ of Claims and Demands	Description of Distributions or Treatment Under the Plan	Status/ Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Demands	Estimated Recovery
Unsecured Asbestos Personal Injury Claim	Asbestos Trust, and processed, liquidated, and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement The Asbestos Trust shall receive (a) Cash equal to the estimated amount of the Asbestos Personal Injury Claims against ASARCO and the estimated amount of the Derivative Asbestos Claims plus post-petition interest on that amount and (b) 100 percent of the Interests in Reorganized Covington	But shall nevertheless be entitled to vote For more information, see Section 3.4(d) below		
Class 5 – Convenience Claims	Shall generally receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date	**Unimpaired** Deemed to Accept the Plan Not Entitled to Vote	TBD	100%
Class 6 – Late-Filed Claims	Shall not receive or retain any property under the Plan on account of such Claims	**Impaired** Deemed to reject the Plan Not Entitled to vote	$10 to $26 million	0%
Class 7 – Subordinated Claims	Shall not receive or retain any property under the Plan on account of such Claims	**Impaired** Deemed to reject the Plan Not Entitled to vote	TBD	0%
Class 8 – Interests in ASARCO	Shall not receive or retain any property under the Plan on account of such Interests	**Impaired** Deemed to reject the Plan	N/A	0%

Committee and the FCR assert that no channeling injunction may be issued pursuant to section 524(g) of the Bankruptcy Code without the affirmative vote of 75 percent of holders of Asbestos Personal Injury Claims, and the FCR asserts that his consent is mandatory for all holders of Demands to be bound by any such injunction. Furthermore, the Asbestos Claimants' Committee and the FCR believe that Congress specifically enacted section 524(g) of the Bankruptcy Code as the exclusive means of achieving a permanent channeling injunction against present and future asbestos claims, and that the Debtors' attempt through the Plan to obtain a channeling injunction without complying with the mandates of section 524(g) is impermissible.

Description ~~and Estimate~~ of Claims and Demands	Description of Distributions or Treatment Under the Plan	Status/ Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Demands	Estimated Recovery
		Not Entitled to Vote		
Class 9 – Interests in Asbestos Subsidiary Debtors	Shall not receive or retain any property under the Plan on account of such Interests	**Impaired** Deemed to reject the Plan Not Entitled to Vote	N/A	0%
Class 10 – Interests in Other Subsidiary Debtors	Shall not receive or retain any property under the Plan on account of such Interests	**Impaired** Deemed to reject the Plan Not Entitled to Vote	N/A	0%

SECTION 1
GENERAL INFORMATION AND HISTORICAL BACKGROUND

1.1 History and Business Activities of the Debtors.

A brief description of the history and business of the Debtors is set forth below, and a list of some of the prior names used by the Debtors and entities merged into the Debtors throughout their corporate existence, as well as some of their predecessors' names, is set forth in **Exhibit G** hereto. The organizational structure of the Debtors and certain related entities, as it currently exists, is set forth in **Exhibit H** hereto.

(a) Business Overview.

ASARCO is a leading producer of copper in the United States. ASARCO's main business is the mining and processing of copper ore into copper cathode, rod and cake, and the refining and sale of precious metals (silver and gold) and other by-products (molybdenum, selenium, tellurium, and nickel). ASARCO owns and operates three open-pit copper mines in Arizona (the Mission mine, the Ray mine, and the 75 percent owned Silver Bell mine), a copper smelter in Hayden, Arizona, and a copper refinery, rod and cake plants, and precious metals plant in Amarillo, Texas.

ASARCO, originally organized in 1899 as American Smelting and Refining Company, has operated for over 109 years. Initially, it was a holding company for diverse smelting, refining, and mining operations throughout the United States and now operates as a Tucson-based fully integrated copper mining, smelting, and refining company.

(b) ASARCO's Current Operating Sites and Facilities.

As detailed in Section 2.28 below, substantially all of the Debtors' operating assets are being sold under the Plan to the Plan Sponsor. Those assets can be generally described as follows:

(1) Mission Complex.

The Mission Complex consists of an open-pit mine, two concentrators, a molybdenum line, a warehouse, and maintenance and administration facilities. It is located in Sahuarita, Arizona, 18 miles south of Tucson, Arizona, in Pima County. The principal products produced at the Mission Complex are a concentrate containing copper and silver and a

molybdenum concentrate. Copper concentrates produced at the Mission concentrators are shipped to the ASARCO Hayden smelter for conversion into copper anodes. Molybdenum concentrates are sold to an unaffiliated company to be refined into a final molybdenum product.

The Mission open pit and mill began producing in 1961. ASARCO expanded the Mission operation into what is today known as the Mission Complex through discovery of new ore zones, acquisitions of additional properties, and mill expansions. ASARCO discovered the San Xavier South and San Xavier North ore bodies, both of which lie in part in the San Xavier District portion of the Tohono O'odham Indian Reservation, subsequent to the startup of the original Mission concentrator. ASARCO acquired the Pima open pit mine and mill from Cyprus Minerals in 1985, and the Eisenhower Property from Anamax Mining Company in 1987. The original Mission pit, the Pima pit, the Eisenhower property, and the San Xavier South pit all form one large pit today. Mining ended at the San Xavier North pit in 2001, with the exhaustion of the known economic ore.

ASARCO operates two mill plants at the Mission Complex, the North Mill and the South Mill. The North Mill began operation in 1961 and was expanded and modernized in 1967, 1987, 1993, 1995, and 1999. The South Mill was originally the Pima mine concentrator, which ASARCO converted into a stand-alone mill. The refurbishment and new construction of the South Mill took place in 1991. After being placed on care and maintenance status in 2001, ASARCO recommenced operations in September 2007.

During 2006, ASARCO spent $750,000 for refurbishment and start up of the molybdenum plant to process and produce molybdenum when it is encountered in the mine. The molybdenum line started operations in January 2007.

(2) Ray Complex.

The Ray Complex is located in eastern Pinal County and western Gila County, Arizona, southeast of Phoenix. ASARCO and its predecessor companies have been mining and smelting at the Ray Complex for almost 100 years. The transition from underground to open pit mining was completed in the 1950's. The Ray Complex produces copper cathode and copper concentrate.

The present ASARCO smelter began operations in 1983. In November 1986, ASARCO acquired the Ray mines division of Kennecott Copper Corporation. In 1992, the new Ray concentrator began operations.

Property at the Ray Complex is situated in two principal locations. The Ray operations include the mine, the Ray concentrator, and the solvent extraction electrowinning plant, which are located about 82 miles southeast of Phoenix, near Kearney, Arizona. The Hayden operations include the Hayden concentrator, the copper smelter, and the administration building. The Hayden operations are about 100 miles southeast of Phoenix at Hayden, Arizona.

There is a rail link between the Ray and Hayden operations, owned and operated by ASARCO's wholly-owned subsidiary Copper Basin Railway, Inc.

(3) Hayden Smelter.

The Hayden smelter is located in Hayden, Arizona, approximately 18 miles east of the Ray operations and 70 miles northeast of Tucson, Arizona. The smelter consists of an oxygen flash furnace, converters, anode casting, an oxygen plant, an acid plant, and associated maintenance, warehouse, and administrative facilities.

The Hayden smelter is situated on a 200-acre site in Gila County, Arizona. Construction of the original Hayden smelter began in 1911, and was completed in 1912. It was built to smelt the copper ores of what was then Kennecott Copper Corporation's Ray mine.

Operations at the smelter began in 1912. In 1980, in order to satisfy emission limits for smelters negotiated with the EPA, improve air quality in the area, and maximize copper production at reasonable costs, ASARCO implemented a $133 million capital improvement project for the smelter. The project included the installation of an INCO flash furnace, an oxygen plant, a water treatment plant, a double-contact acid plant, and modifications to various existing facilities.

The Hayden smelter processes concentrates and precipitates produced by mines other than Ray and Mission as well as concentrates produced from Ray and Mission ores.

ASARCO learned in late July 2007 that the EPA was considering placing the Hayden plant site and surrounding residential areas on the Superfund National Priorities List. The EPA requested the State of Arizona's views regarding this proposal. The Governor of Arizona believed it was premature to list the site on the Superfund National Priorities List at that point and asked that the EPA, the State of Arizona, and ASARCO enter into negotiations to address environmental conditions at the Hayden site without resorting to such a listing. The parties participated in extensive negotiations regarding the scope of actions to be taken at the Hayden site, which resulted in an agreement regarding cleanup of the site. Pursuant thereto, ASARCO has begun work on certain residential yards that the EPA deems to be a high priority, using funds from the Prepetition ASARCO Environmental Trust. A motion seeking approval of the agreement was filed on May 1, 2008, and was approved by the Bankruptcy Court by order entered on May 27, 2008.

As required to secure its obligations under the approved settlement agreement, ASARCO established and funded a $15 million trust on July 3, 2008. The funds in the Hayden site trust are to be used to pay for required cleanup of the residential areas surrounding the smelter, to pay for additional investigative work at the Hayden site to identify releases of hazardous substances, and, if releases requiring remediation are found at the Hayden smelter site and are not otherwise being addressed under any other regulatory program, to pay for such cleanup. Under the settlement agreement, ASARCO's liability for cleanup of the residential areas is limited to $13.5 million (with no credit for prior expenditures funded by the Prepetition ASARCO Environmental Trust). While there is no cap on ASARCO's liability for the cost of the required investigation activities or any on-site remediation that may result from the investigation, the funds in the Hayden site trust are believed to be adequate to cover such costs.

(4) Silver Bell Mine.

The Silver Bell mine is one of the oldest ASARCO properties in Arizona, and produces copper cathode. Silver Bell also operates a solvent extraction plant, tank house, warehouse, and administrative and maintenance areas. In 1996, ASARCO formed Silver Bell Mining, LLC, a limited liability company owned 75 percent by ASARCO's wholly-owned subsidiary ARSB and 25 percent by wholly-owned subsidiaries of Mitsui & Co. (U.S.A.), Inc. and Mitsui & Co., Ltd.

The Silver Bell mine is located approximately 45 miles northwest of Tucson in Pima County, Arizona. Although ASARCO had completed the purchase of most consolidated mining companies in the area by 1915, geologists did not begin to reevaluate the mineral properties in the area until 1946. Stripping for the open pit mine began in 1951, but mine and mill operations were suspended in 1984 due to low copper prices.

Leach operations continued, however, and in 1978 a feasibility study was undertaken to build a cathode solvent extraction electrowinning plant that would replace the copper precipitation plant. In 1990, a rubble leaching evaluation was completed. Construction of the solvent extraction electrowinning plant began in May 1996. The plant started production in July 1997.

Silver Bell operates four open pit mines: North Silver Bell, El Tiro, West Oxide, and Oxide. El Tiro and Oxide were sources of sulfide ore for the former milling operation. The North Silver Bell pit was developed specifically for the Silver Bell solvent extraction electrowinning operation. Silver Bell currently operates a solvent extraction plant, tank house, warehouse, and administrative and maintenance areas in addition to the four open pits.

Milling of sulfide ores from the Oxide and El Tiro open pit mines ended in 1984. Concurrent with milling operations, copper was recovered by dump leaching of run-of-mine waste and precipitating copper cement into launders. The cement copper was then shipped to ASARCO smelters.

Production of copper precipitates by leaching of the existing dumps continued until 1997, when Silver Bell commenced production of electrowon copper cathodes in a new solvent extraction electrowinning plant.

(5) Amarillo Copper Refinery.

The Amarillo, Texas copper refinery is one of the largest copper refineries in the world. The copper refinery was constructed in 1973-1974, and was commissioned at the end of 1975. In 1979, the patented Reatrol process (Reagent Control) increased production efficiency, enabling the plant to exceed design capacity. An electrolyte purification facility was installed in 1993, improving the quality of refined production. Primarily, the Amarillo refinery produces copper cathode, rod, cake, silver bars, gold bars, crude nickel sulfate, selenium, tellurium, platinum-sponge, and Enviroalloy™.

The refinery is located nine miles northeast of Amarillo. The plant consists of an anode department, a tank house, refined casting departments, precious metals refinery, a copper scrap facility, a precious metals scrap handling facility, a nickel plant, a selenium/tellurium plant, and support facilities. The facility sits on 250 acres, and the tank house itself is one-half mile in length.

The plant site is surrounded by 3,000 acres of ASARCO-owned land that is leased to third parties for farming and grazing.

(6) Corporate Offices.

Prior to 2008, ASARCO's corporate employees were spread out across three sites in Tucson, Arizona and one site in Phoenix, Arizona. To increase the Debtor's efficiency, provide for more effective management, and reduce costs, ASARCO sought authority to consolidate its Phoenix corporate office with its Tucson corporate headquarters. ASARCO also sought approval to enter into a new lease of nonresidential real property in Tucson, with premises large enough to accommodate the relocating Phoenix employees and all Tucson employees in one location. The request was approved by order entered on February 7, 2008. ASARCO entered into an office lease with WC Partners effective February 1, 2008, for the location of the Tucson corporate headquarters. ASARCO took possession of the leased premises in April 2008.

On April 16, 2008, ASARCO filed a motion for authority to reject the lease of its Phoenix corporate office. Rejection of the lease and relocation of its employees who were working out of the Phoenix office to the Tucson corporate headquarters was a substantial and necessary step towards the much-needed consolidation process. By order entered on May 7, 2008, the Bankruptcy Court approved the rejection of the lease effective as of April 30, 2008, and set June 30, 2008 as the deadline for the landlord under the lease, and June 6, 2008 as the deadline for any other Person, to file a Claim, if any, arising from the relief requested in the rejection motion.

(c) Copper Basin Railway.

In September 2006, ASARCO bought out Rail Partners II, LLC, its 55 percent majority partner in Copper Basin Railway, Inc., for $11.5 million. *See* Section 2.10(c) below for further discussion of this purchase. ASARCO now owns 100 percent of Copper Basin Railway, Inc.

Copper Basin Railway, Inc. was formed in 1986 when Rail Management Company purchased Southern Pacific Railroad's Hayden Branch extending from Magma to Hayden, Arizona. Soon afterward, Rail Management also acquired Kennecott Copper Corporation's private railways at Ray (adjacent to the Ray mine) and Hayden. Today, the railway comprises approximately 75 miles of track joined from what was once three separate operations. Along the track are three tunnels and several steel bridges. The railway has a total of 16 locomotives.

Located in the southern Arizona desert, the railway is a Class III short line freight railroad that primarily serves ASARCO's copper mining operations at the Ray mine. The railroad is used to haul ore from the Ray mine to the Hayden mill, to haul concentrate from the Ray mill to the Hayden smelter, and to haul acid from the Hayden smelter to the Ray mine for heap and dump leaching, and for other purposes. It ties into the Southern Pacific Railroad at Magma Junction near Florence, Arizona. Supplies are received by rail, as are concentrates from other mines that are shipped to the Hayden smelter for custom smelting. Copper anodes produced at the Hayden smelter are shipped by rail and truck to ASARCO's Amarillo copper refinery. Throughout its history, the railway has hauled a variety of goods, and while the majority of its cargo is mining-related, it occasionally carries vehicles for use in military exercises near the town of Florence, Arizona.

(d) Other Assets.

The sale to the Plan Sponsor does not include, among other sites, the El Paso smelter, the Globe, Colorado facility, the East Helena, Montana facility, the AR Sacaton site, or the Perth Amboy, New Jersey site. Those assets (with the possible exception of the Perth Amboy property), which are described below, shall be transferred to Environmental Custodial Trusts pursuant to the global settlement of environmental Claims discussed below in Section 2.20 unless ASARCO reaches an agreement with the concurrence of the governments for the sale of those assets prior to the Effective Date. Mitsui asserts a lien on the silver located at the El Paso smelter and the East Helena facility, and has filed an objection to the Environmental 9019 Motion to the extent the settlement purports to transfer the El Paso smelter and the East Helena facility free and clear of Mitsui's liens.

(1) El Paso Smelter.

ASARCO owns a former metals smelting site in El Paso, Texas. The facility began operations as a lead smelter in 1887. The smelter operated continuously until 1999, and saw numerous expansions during its history to allow for the production of zinc, antimony, arsenic, sulfuric acid, and copper. The facility was dedicated to copper smelting and sulfuric acid production in 1985.

ASARCO suspended the El Paso smelter's operations in 1999, and the smelter was placed on standby status until 2009. In February 2009, ASARCO terminated efforts to reopen the smelter and requested the cancellation of two air permits issued by the TCEQ necessary for operation of the smelter. ASARCO continues to maintain on-site staff to provide security and to perform site remediation and plant closure activities.

The State of Texas issued an Agreed Order in 1996 requiring ASARCO to implement corrective actions for the environmental impact resulting from the handling and disposal of solid waste. Also, an EPA RCRA Consent Decree issued in 1999 required an additional supplemental environmental project to further protect human health and environment.

Beginning in 1996, ASARCO has continued to actively comply with the requirements of the Agreed Order by implementing corrective measures to protect groundwater. To date, ASARCO has constructed a site-wide stormwater collection and reclaim system; constructed on-site landfill cells and encapsulated over 75 percent of impacted surface soils; and constructed 60 percent of the low-permeable asphalt cap on unpaved on-plant areas.

In addition, the investigation and characterization of the groundwater impact has been completed and the authorization to proceed with final design and construction for a pump and treat network in conjunction with a slurry wall containment system is pending TCEQ review and approval. The schedule for completing the remaining 25 percent of the surface soil encapsulation is also pending TCEQ approval.

(2) Globe.

The Globe, Colorado facility was acquired by ASARCO's predecessor in 1899, and operated as a specialty metals producing facility until 2006. The plant initially produced lead but, in response to market demands, changed to the production of arsenic trioxide and cadmium. In the 1990's the facility converted operations to a high-purity metals plant refining and processing bismuth, litharge, antimony, high-purity copper, and other specialty products.

The Globe smelter ceased operations in 2006 as part of the business plan to sell the property and transfer the specialty metals operation to the Amarillo refinery. During cessation of operations, ASARCO's on-site staff continues to perform routine maintenance duties and operate the on-plant water treatment system.

In accordance with a Colorado Department of Health Compliance Order on Consent and a State of Colorado Consent Decree, ASARCO implemented an active groundwater recovery and treatment system, utilizing an on-plant water treatment facility.

(3) East Helena.

The lead smelter plant in East Helena, Montana was constructed in 1888, and was acquired by ASARCO's predecessor in 1899. The smelter accepted ores from the local area and then transitioned into a custom smelter, processing ores from a regional client base.

The smelter operated continuously from 1888 through 2000 with numerous improvements and technology upgrades: in 1927 a zinc plant was built, which operated until 1982; in 1966 an updraft sinter machine was constructed; in 1977 the Clean Air Act led to the construction of an acid plant; in 1990 the Ore Storage and Concentrate Handling Building was constructed; in 1992 and 1994 two water treatment facilities were built; in 1996 a new dross reverb furnace was built; and finally, pursuant to an agreement between ASARCO and the State of Montana, the construction of four supplemental environmental projects for ventilation and dust handling was completed by 1999.

The East Helena smelter suspended operations in 2001, and was placed on standby status. On-site personnel have continued to provide facility maintenance functions throughout the suspension period. Prior to its bankruptcy filing, ASARCO entered into Consent Decrees with the MDEQ and the EPA. The MDEQ Consent Decree expired on December 31, 2006. On October 2, 2007, ASARCO and the MDEQ entered into an Administrative Order on Consent, Docket No. HW-07-01, to continue ASARCO's cleaning and demolition program established under the 2005 Consent Decree. The Administrative Order on Consent requires ASARCO to develop and implement yearly work plans for the removal, storage, and proper disposal or recycling of all remaining hazardous waste and secondary material located in process units, pollution control devices, and storage units and other identified areas of the East Helena plant.

ASARCO has been implementing RCRA and CERCLA remedial actions since the late 1980's. The 1998 EPA Consent Decree required an evaluation of historic releases and environmental impacts. The first phase of the investigation resulted in corrective action mandates for disposal of demolition debris and the resulting exposed soils. ASARCO is investigating releases to soils, surface water and groundwater, and evaluating and installing source control measures to address these impacted areas and mitigate the further migration of released contamination. Soil remedial actions shall be implemented as the demolition (which is substantially completed) proceeds in compliance with the EPA Consent Decree.

Ongoing monitoring and investigations confirm the existence of an impacted groundwater plume extending off-property into residential neighborhoods. The extent of the corrective action required for the groundwater has not been completely identified or planned with the regulatory agencies.

ASARCO is subject to a criminal investigation relating to prepetition conduct at the East Helena plant. Two grand jury subpoenas have been issued, and ASARCO is responding to them. ASARCO is in settlement discussions with the United States Attorney to resolve possible charges.

(4) AR Sacaton Site.

This site, located in Pinal County, Arizona, is owned by AR Sacaton, a wholly-owned subsidiary of ASARCO, and is currently utilized as a record storage facility for ASARCO's historical records. The site consists of nearly 2,020 acres, including a well field and a number of metal buildings that were built in 1972.

In the early 1960's ASARCO discovered a moderate-sized copper deposit northwest of Casa Grande, Arizona. The construction of the copper concentrator was completed and milling commenced in 1974 and continued until 1984 when economic open pit mine reserves were exhausted. At the time of closing in 1984, Sacaton had an underground reserve of 16.5 million tons at 1.25 percent copper. In addition, there is also a probable resource of 46 million tons at 0.98 percent copper as stated with a moderate degree of confidence.

A smaller underground copper reserve was targeted adjacent to and northwest of the open pit mine. Another site, called Park/Salyer, is located to the southwest. Both mineral deposits contain high grade copper based on historical geological summary reports, but any additional mining opportunities at the site are totally dependent on the success of the recovery of 1,023 acres of land, a portion of which includes the deposits mentioned above, transferred initially to AMC in 2004 for $5 million to raise cash to pay past due operating expenses of ASARCO. As discussed in Section 2.24(g) below, AR Sacaton and ASARCO have jointly sued AMC and the current owner to recover the properties transferred as constructively fraudulent transfers under the bankruptcy laws. If the transferred properties are recovered, the possibility of realizing value for the undeveloped minerals at the site is enhanced.

There are no on-going corrective action activities at the site, and no remedial investigation or remedial actions are being considered at this time. The ADEQ filed a Proof of Claim against ASARCO (as a former operator of the Sacaton site), a portion of which asserts liability relating to the Sacaton site. In informal discussions with the ADEQ regarding its claim, the ADEQ has suggested that up to $40 million of its Claim should be apportioned to the Sacaton site.

(5) Perth Amboy.

ASARCO operated the Perth Amboy, New Jersey facility as a nonferrous metals refinery from 1894 through 1976. Following the transfer of the refining functions to the Amarillo Copper Refinery, the Perth Amboy site transitioned into an industrial/commercial warehouse facility.

The Perth Amboy site is a port facility located in an historical industrial area on the Arthur Kill Sound. The site occupies 70.5 acres including a waterfront pier, bulkhead, and 16 buildings. There are also several remaining mill and refining structures that are unused and not part of the 16 building warehouse complex.

The City of Perth Amboy declared the site a "redevelopment zone" in 1997, and has evaluated the potential to include the site in the City's comprehensive long-range development plan. The City has selected a designated redeveloper known by the acronym PA-PDC.

Currently there are 17 leases on-site, which utilize 44 percent of the total available warehouse space and create a gross annual cash flow of approximately $1 million.

There are no on-going corrective actions. However, ASARCO is performing groundwater investigations and evaluating remedial options for hydrocarbon and metal impacts in response to requirements by the New Jersey Department of Environmental Protection. The full extent of required remedial action has not been identified.

The Debtors continue investigating the possibility of pursuing a liability transfer, or negotiating an additional custodial trust agreement, with regard to the ASARCO-owned portion of the Perth Amboy, New Jersey site. The Debtors believe that the environmental costs associated with the ASARCO-owned portion of the Perth Amboy, New Jersey site could be $8 million, but the State of New Jersey believes that such costs could be as high as $15 million.

(6) Miscellaneous Assets.

ASARCO holds various non-core assets that it has accumulated over its history. ASARCO estimates that the current aggregate value of these assets is less than $50 million. These assets include a promissory note from AMC, on which a payment of approximately $20 million is due in October 2009, which the District Court in the SCC Litigation has relieved AMC from the obligation it has to make. *See* Section 2.24(c) below for a discussion of the SCC Final Judgment. Other assets within this category include marketable securities in other companies, various life insurance policies and settlements, and a royalty stream from ASARCO's 2006 sale of coal rights in Sebastian County, Arkansas (as noted in Section 2.11(a) below).

(e) Subsidiary Debtors.

The Subsidiary Debtors are direct or indirect wholly or majority-owned subsidiaries of ASARCO. Prior to 1986, LAQ was in the business of mining asbestos fiber from the Black Lake region of central Quebec, Canada, and CAPCO formerly manufactured various asbestos-containing cement pipe products. Many of the Subsidiary Debtors do not currently have any operations. ASARCO Master owns various tracts of real property, including property to be transferred to the Environmental Custodial Trusts, and owned a site in Houston, Texas that is on the Texas state superfund list. On August 28, 2008, the Debtors entered into an agreement whereby, upon closing, the Houston site and the environmental remediation obligations and liabilities associated with the site, as well as other obligations and risks associated with real property ownership, were transferred to ELT Houston LLC for a payment by the Debtors to ELT/ES of $28.9 million. Concurrently, the Debtors entered into a settlement agreement with the State of Texas that relieved the Debtors from any further environmental liability for the Houston site, effective upon the closing date of the agreement. A motion seeking approval of both the liability transfer and settlement agreement was filed in the Bankruptcy Court on August 28, 2008, and approved by orders entered on September 22, 2008. The Houston site transaction closed on October 1, 2008, and right, title, and interest in the property as well as all associated obligations and liabilities were transferred to ELT Houston LLC, and the settlement agreement with the State of Texas related to the Houston site became effective.

1.2 Current Management of the Debtors.

(a) ASARCO.

ASARCO's current directors are Carlos Ruiz Sacristán (chairman of the board), Edward R. Caine, and H. Malcolm Lovett, Jr. As discussed in Section 2.7 below, since December 15, 2005, ASARCO has **had** a three-member board of directors, with one director (Mr. Ruiz) appointed by ASARCO's indirect parent ASARCO Incorporated and two independent directors (Mr. Caine and Mr. Lovett). If either Mr. Caine or Mr. Lovett resigns or is otherwise unable to serve, a replacement director shall be selected by the remaining members of the board, subject to approval of the Bankruptcy Court. The Committees and the FCR shall have an opportunity to interview any such replacement director prior to the hearing on approval.

Subsequent to its appointment in December 2005, the board undertook an initiative to improve ASARCO's management and operations. Beginning in late 2005, it commenced a search for a new Chief Executive Officer and Chief Financial Officer. The board hired Alvarez & Marsal LLC in April 2005 to supplement internal financial and operating staff and improve financial and accounting practices, and then hired a new Chief Financial Officer in July 2006. In 2006, the board revamped and expanded compensation and retention programs and then worked with existing management and creditor constituents to improve labor relations, develop an expanded capital expenditure program, and implement a revised mine plan in order to improve production levels and efficiencies.

ASARCO's current senior executive officers are:

Name	Title
Joseph F. Lapinsky	Chief Executive Officer and President
Donald B. Mills	Chief Financial Officer
Douglas E. McAllister	Executive Vice President, General Counsel, and Secretary
John B. George	Vice President, Administration
Gary A. Miller	Vice President, Commercial
Manuel E. Ramos Rada	Vice President, Metallurgical Operations
Thomas L. Aldrich	Vice President, Environmental Affairs
John D. Low, Jr.	Vice President, Mining Operations
Oscar Gonzalez Barron	Treasurer
Russell A. Smith	Controller

(b) The Subsidiary Debtors.

Attached hereto as **Exhibit O** is a list of the current officers and directors of the Subsidiary Debtors.

(c) Compensation and Benefits of Officers and Directors.

ASARCO's directors are paid $100,000 annually for their service as directors and are reimbursed their reasonable expenses, if any, of attendance at each meeting of the board of directors or such other actions as required of a director while serving in such capacity, including the reimbursement of all expenses incurred in performing due diligence or investigation of ASARCO. The by-laws provide that members of special or standing committees may be allowed like compensation for attending committee meetings. ASARCO's directors are also entitled to indemnification to the fullest extent provided under Delaware law and directors' and officers' insurance.

Mr. Lapinsky receives an annual base salary of $500,000, pursuant to a two-year employment agreement with an automatic one-year renewal term in the absence of advance notice of termination by either party, and an expiration date set one year after the effective date of a plan of reorganization, unless the parties agree to extend it for an additional year.

Mr. Lapinsky is eligible for an annual bonus of up to 75 percent of base salary, which is determined at the sole discretion of the board of directors and contingent upon his employment on January 1 following the performance year. He is also eligible for a one-time retention payment equal to 35 percent of his initial base salary, payable 50 percent on the effective date of a plan of reorganization and 50 percent three months after such effective date, contingent upon his employment on the date payment is due or upon termination due to death, disability, or circumstances giving rise to severance eligibility as set forth below.

Additionally, Mr. Lapinsky is eligible to receive a success bonus equal to two times his initial base salary reduced by (1) the aggregate retention payment set forth above and (2) 50 percent of his initial base salary. The success bonus shall be payable three months after the effective date of a plan, contingent upon Mr. Lapinsky's employment on the date the payment is due.

Mr. Lapinsky's employment agreement provides for severance in an amount equivalent to 24 months of Mr. Lapinsky's base salary as in effect at that time, provided that the severance benefits shall be limited such that the sum of the severance benefits, success bonus, and the retention payment shall not exceed three times the base salary. Severance shall be payable only if the employment relationship is either terminated by ASARCO other than for cause or disability, or by Mr. Lapinsky for good reason (as set forth in the agreement). In the event of such termination or resignation, Mr. Lapinsky also shall be entitled to life insurance, medical, and long-term disability benefits on the same terms as provided immediately prior to such termination or resignation, for the greater of 12 months or the remainder term of the agreement. The severance obligations include a pro rata portion of the annual bonus based on target level and number of days of employment elapsed during the performance calendar year prior to termination or resignation.

Other benefits to be provided to Mr. Lapinsky under his employment agreement include the following: four weeks paid vacation each year; use of an automobile in accordance with company policy; reimbursement of travel expenses and living expenses through the effective date of a plan; reimbursement of reasonable and customary out-of-pocket expenses (including relocation expenses and up to $20,000 for all expenses incurred in connection with the negotiation and preparation of the employment agreement); and participation in ASARCO's benefit plans, consistent with the benefits afforded to other employees generally. Furthermore, on or prior to the effective date of a plan of reorganization, ASARCO shall obtain a standby irrevocable letter of credit in favor of Mr. Lapinsky and beneficiaries in an amount equal to the aggregate of the retention payment, the success bonus, and the severance and other applicable benefits. Mr. Lapinsky received a one-time "extraordinary performance bonus" in the amount of $85,000 in October 2007.

Additionally, Mr. Lapinsky shall be entitled to indemnification to the full extent available under Delaware law as an officer of ASARCO, in accordance with the LLC Agreement, and on the same terms afforded the current directors and Mr. McAllister during his tenure as interim chief executive officer. *See* Section 2.7 below for a description of Mr. McAllister's service as an officer of ASARCO.

Mr. McAllister receives an annual base salary of $266,520. He is entitled to indemnification, to the full extent provided under Delaware law, and to participate in ASARCO's salary, incentive, and employee retention and recruiting plan (which is discussed below in Section 2.16(d)). Mr. McAllister also participates in the ASARCO involuntary severance plan.

Mr. Perrell receives from the Asbestos Subsidiary Debtors a monthly fee of $4,000 and any reasonable and necessary travel expenses incurred in the performance of services as officer and sole director of the Asbestos Subsidiary Debtors. ASARCO guarantees payment of this compensation. Mr. Perrell is also entitled to indemnification from the Asbestos Subsidiary Debtors.

1.3 Factors Leading to the Need for Bankruptcy Relief.

In 2005, ASARCO was suffering from the effects of a downturn in the copper market. Additionally, despite its efforts to negotiate new contracts with its labor unions, ASARCO was experiencing a labor strike at its copper-mining, smelting, and refining facilities. Furthermore, ASARCO was subject to substantial environmental claims and was burdened by Asbestos Personal Injury Claims pending against it and the Asbestos Subsidiary Debtors. ASARCO also had nearly $440 million in bond debt. As a result of the foregoing, ASARCO elected to seek protection under the bankruptcy laws for the benefit of all its creditors and stakeholders.

(a) Longstanding Insolvency.

In 1999, Grupo México acquired ASARCO in a leveraged buyout. ASARCO was saddled with the debt from the transaction, including an $817 million loan from various banks. After paying down some of that debt by selling two of its non-mining subsidiaries, the company remained indebted on a $450 million revolving credit facility (in addition to the $440 million in bond debt). By late 2001, ASARCO also faced claims of trade creditors, asbestos claimants, and environmental claimants – all debts it was unable to pay as they became due. ASARCO monetized insurance policies, sold valuable mining properties for surface value, and curtailed crucial operational stripping for want of funds. These desperate

actions afforded the company little relief. At the end of fiscal 2003, ASARCO had a negative annual cash flow of $151.1 million.

In the midst of this financial crisis, in 2002 to 2003, Grupo México decided that ASARCO should sell its most valuable asset, its controlling interest in SCC_2 to AMC, another of Grupo México's subsidiaries. The DOJ filed suit to block the transaction out of concern that ASARCO would be unable to pay the environmental obligations on which it was already in default, as well as substantial future claims. The government settled the suit, agreeing to dismiss its request that ASARCO be enjoined from proceeding with the sale and providing ASARCO a three-year limitation regarding enforcement of certain environmental claims in exchange for the restructuring of the terms of the proposed sale, including the addition of a $100 million promissory note assigned to an environmental trust. *See* Section 3.9(g) for further discussion of the Prepetition ASARCO Environmental Trust. In addition to funding the trust as part of the SCC transaction, AMC gave ASARCO $500 million in Cash and a note with a nominal value of $123 million and forgave intercompany debt of $41.75 million. ASARCO's officers at the time testified that the transaction gave the company no additional working capital. After the sale, ASARCO continued in crisis mode, unable to resume normal operations or catch up from years of operational neglect despite the substantial rise in copper prices.

In 2007, ASARCO filed suit against AMC alleging that the SCC sale was a fraudulent transfer. *See* Section 2.24(c) below.

The Parent asserts that the terms of the transaction were negotiated openly and transparently with the DOJ, and the price AMC paid for the SCC shares was agreed to by the DOJ, and found to be reasonably equivalent to the value of the shares by independent third party advisors and directors (including Ernst & Young Corporate Finance, as well as ASARCO's general counsel and independent directors). The Parent asserts that current and former ASARCO officers testified that after the transaction, they believed Grupo México and AMC were doing everything possible to keep ASARCO viable during what was a severe downturn in the copper industry.

The Debtors disagree with the Parent's conclusions and assert that Debtors' description of the above events contained in Section 2.24(c) of this Disclosure Statement is more accurate and much of the Debtors' description has been incorporated in the SCC Final Judgment more fully described in Section 2.24(c) of this Disclosure Statement.

(b) Environmental Obligations.

As a result of ASARCO's more than 100 years of operating history, ASARCO and certain of its non-operating subsidiaries are subject to actual and potential environmental remediation and reclamation obligations at numerous sites around the country. There are more than 100 sites spread over approximately 16 states, in which ASARCO or one of its subsidiaries is alleged to be responsible for environmental clean-up costs. ASARCO is a party to numerous consent decrees and lawsuits brought by federal and state governments and private parties as a result of its lead, zinc, cadmium, arsenic, and copper mining, smelting, and refining operations. The three-year limitation regarding enforcement of certain environmental claims of the federal government described above ended in early 2006, causing ASARCO to feel rising pressure from federal and state governments to meet increased remediation demands.

(c) Asbestos-Related Claims.

The Debtors' alleged asbestos liabilities relate primarily to historical operations of CAPCO and LAQ. Although LAQ has not milled asbestos since the late 1980's and CAPCO has not produced asbestos-containing products for over a decade, by the late 1990's, both CAPCO and LAQ had been named in thousands of asbestos lawsuits around the country. As a result of the massive asbestos litigation, five of ASARCO's non-operating subsidiaries filed the Asbestos Subsidiary Cases. **The Asbestos Subsidiary Committee and the FCR assert that they have discovered substantial evidence of ASARCO's direct involvement with asbestos and believe that ASARCO's liability may extend beyond the historical operations of CAPCO and LAQ.**

ASARCO was also named as a defendant in a large number of the asbestos actions against CAPCO and LAQ. ASARCO took the position that it had never directly mined, milled, manufactured, or sold asbestos or asbestos-containing products and therefore should have no liability for any materials or products mined, milled, manufactured, or sold by CAPCO or LAQ. Many of the asbestos claimants took a different position, arguing that ASARCO was liable for the materials or products mined, milled, manufactured, or sold by CAPCO or LAQ under various Alter Ego Theories. Although a limited number of the Claims (estimated **by ASARCO's expert** at less than one percent of the total active asbestos-related claims filed as of the Petition Date) are based on direct theories of liability arising primarily from alleged exposure to

asbestos at facilities owned or operated by ASARCO, the majority are derivative of Claims against CAPCO or LAQ. **The Asbestos Subsidiary Committee and the FCR disagree with this statement and believe the direct claims against ASARCO may be substantially higher**.

(d) Labor-Related Issues.

Unionized workers, represented primarily by the USW, and certain other hourly paid employees representing nearly 1500 employees in total (about 70 percent of the workforce), went on strike beginning on July 2, 2005. The plants affected by the strike were ASARCO's refinery in Amarillo, Texas, its smelter in Hayden, Arizona, as well as ASARCO's Ray, Mission, and Silver Bell copper mines and associated mills. At the center of the strike were nine collective bargaining agreements. Eight of these agreements, covering about 750 workers at ASARCO's Mission and Silver Bell mines and its smelters in Hayden and Amarillo, had expired in 2004. The ninth contract, which expired on June 30, 2005, covered about 800 workers at the Ray mine. ASARCO used salaried employees and some temporary workers to operate these plants during the period of the strike.

Because it is a high cost producer in the copper industry, ASARCO sought to reduce costs, and a significant component of the company's cost structure was its labor costs. Since approximately June 2004, ASARCO had been negotiating new collective bargaining agreements and retiree benefits with union officials. During this period, ASARCO was owned and directed by the Parent. The Unions filed charges against ASARCO with the National Labor Relations Board, accusing it of failing to bargain in good faith. Thereafter, the Unions commenced a four-month strike.

(e) Bond Debt.

On the Petition Date, ASARCO had approximately $440 million in long-term bond debt, with maturities ranging from April 2013 to October 2033, as follows:

Bond	**Maturity**	**Face Value**
CSFB JP Morgan Sec Debentures at 7.875%	April 15, 2013	$100.00m
Nueces River Env Bond (IRB) Series 1998 A 5.60%	April 1, 2018	$22.20m
CSFB Corporate Debentures at 8.50%	May 1, 2025	$150.00m
Gila County - Installment Bond 5.55%	January 1, 2027	$71.90m
Lewis & Clark County Env Bond (IRB) 5.60%	January 1, 2027	$33.16m
Nueces River Env Bond (IRB) 5.60%	January 1, 2027	$27.74m
Lewis & Clark County Env Bond (IRB) 5.85%	October 1, 2033	$34.80m
Total		**$439.8m**

SECTION 2
EVENTS DURING THE REORGANIZATION CASES

2.1 Commencement of the Reorganization Cases.

The Debtors filed voluntary petitions for reorganization under chapter 11 of the Bankruptcy Code in the Bankruptcy Court at various times in 2005, 2006, and 2008 as is shown in **Exhibit K** attached hereto. The Reorganization Cases are being jointly administered as *In re ASARCO LLC, et al.*, Case No. 05-21207.

2.2 First Day Relief.

(a) Asbestos Subsidiary Debtors.

When the Asbestos Subsidiary Debtors filed their bankruptcy cases on April 11, 2005, they concurrently filed several "first day" motions. As a result, the Bankruptcy Court entered orders granting joint administration of the cases; extending the time for filing Schedules; authorizing the retention of Jordan, Hyden, Womble, Culbreth, & Holzer, P.C. as their attorneys; establishing procedures for interim compensation and reimbursement of expenses for professionals; and authorizing the Asbestos Subsidiary Debtors to (1) file a consolidated list of creditors in lieu of a matrix, (2) file a consolidated list of the Asbestos Subsidiary Debtors' largest creditors, and (3) serve all required case notices.

The Bankruptcy Court also approved notice procedures for asbestos claimants and authorized the Asbestos Subsidiary Debtors to list addresses for counsel of represented asbestos claimants in the creditors' matrix in lieu of the asbestos claimants' addresses. As a result, the Asbestos Subsidiary Debtors were authorized to send notices relating to their bankruptcy cases to counsel of record for the individual asbestos claimants, and were not required to send such notices directly to asbestos claimants who are represented by counsel who receive notice. The Bankruptcy Court also entered an order directing all counsel who receive notice of the Asbestos Subsidiary Cases and the related adversary proceeding (which is discussed below in Section 2.19(b)) to notify their affected clients of the pendency of the proceedings.

(b) ASARCO.

In connection with the Reorganization Cases, the Debtors devoted significant attention to continuing ASARCO's operations in chapter 11 with as little disruption and loss of productivity as possible, maintaining the confidence and support of employees and service providers, obtaining post-petition financing, and establishing procedures for the smooth and efficient administration of these cases.

In order to provide for the continued and uninterrupted service of its employees, ASARCO obtained authority on the Petition Date, in accordance with its stated policies and in its sole discretion, to honor and pay in full the accrued and unpaid compensation, benefit, and reimbursement obligations to employees, and authorize and direct all applicable banks and other financial institutions to honor and pay any and all checks drawn on ASARCO's payroll and other disbursement accounts in respect of such employee obligations, provided that sufficient funds were available in the applicable accounts to make those payments.

In addition, the Debtors obtained authority shortly after the Petition Date to continue their prepetition insurance program.

Other "first day" relief included: (1) joint administration of the Reorganization Cases; (2) an extension of time to file Schedules; (3) authority to file a consolidated list of creditors in lieu of a matrix and to serve all notices in the Reorganization Cases; (4) an extension of the notice procedure approved in the Asbestos Subsidiary Cases for asbestos claimants to ASARCO, thereby authorizing ASARCO to serve notices related to the Reorganization Cases upon counsel of record for asbestos or toxic tort claimants rather than notifying each individual claimant; (5) retention of attorneys for ASARCO; (6) an order restraining utilities from discontinuing, altering, or refusing service, and establishing procedures for determining that adequate assurance has been provided to utilities; and (7) authority to maintain the Debtors' cash management systems, to continue to use prepetition bank accounts, checks, and other business forms, and to continue to apply existing investment guidelines.

All of the foregoing relief was essential to minimize disruptions to ASARCO's business as a result of the commencement of the Reorganization Cases and to permit the Debtors to make a smooth transition to operations in chapter 11.

2.3 Retention of Professionals by the Debtors.

(a) Retention of Professional Persons and Entry of Interim Compensation Order.

The Debtors have obtained Bankruptcy Court approval to retain a number of Professional Persons to represent them in their Reorganization Cases. **Exhibit J** to this Disclosure Statement contains a list of the Professional Persons retained by the Debtors pursuant to a separate retention application and order.

By order entered on December 15, 2005, the Bankruptcy Court established procedures for interim compensation and reimbursement of expenses of professionals of ASARCO and the ASARCO Committee that are retained by separate application and order. Pursuant thereto, court-approved professionals may submit a monthly statement to ASARCO, counsel to the Debtors' post-petition lenders, the U.S. Trustee, and a representative of the ASARCO Committee. If no objection is served within 20 days after receipt of the monthly statement, ASARCO may pay 80 percent of the fees and 100 percent of the out-of-pocket expenses requested in the statement. The order further provides for the professionals to file with the Bankruptcy Court interim fee applications approximately every four months.

(b) Retention of Lehman Brothers as Financial Advisor to Debtor.

On August 30, 2005, ASARCO engaged Lehman Brothers as exclusive financial advisor to provide financial advisory and investment banking services with respect to its financial restructuring. From that time until its investment banking and capital markets businesses were acquired by Barclays Capital on September 22, 2008, Lehman

Brothers provided assistance to ASARCO in evaluating and addressing the complex financial and economic issues raised by the Reorganization Cases and conducting a process to identify and select a plan sponsor.

In addition to the services envisioned in the original engagement letter from August 30, 2005, Lehman Brothers provided many other services at the request of ASARCO's management, including, without limitation: (1) on-site personnel for extended periods during 2005 and 2006 to support ASARCO's chief executive officer, chief financial officer, and finance staff on issues critical to the operations of the business; (2) creation and implementation of Debtor's post-petition employee recruiting and retention strategy; (3) key assistance in the efforts to hire a permanent chief executive officer and new chief financial officer; (4) support to the board of directors in the process of selecting and hiring Alvarez & Marsal LLC; (5) assistance in negotiations with labor and advice in connection with the business impact of the 2007 labor agreement; (6) expert litigation support for the fraudulent transfer action filed in connection with the South Mill; (7) introduction of bidders as part of the auction of the Tennessee Mines Division; (8) assistance in implementation of changes to ASARCO's internal management reporting; and (9) assistance in the evaluation, analysis, and implementation of a strategic hedging program.

(c) Retention of Barclays Capital as Financial Advisor and Investment Banker to the Debtors.

The acquisition of the investment banking and capital markets businesses of Lehman Brothers by Barclays Capital closed on September 22, 2008. Gilbert Sanborn and his team who had acted as financial advisors and investment bankers to the Debtors while at Lehman Brothers are now employed by Barclays Capital.

ASARCO sought to retain and employ Barclays Capital as financial advisor and investment banker to the Debtors, effective September 22, 2008. The request was approved on an interim basis (except for the indemnification provisions of the engagement letter, which were approved on a final basis) by order entered on October 29, 2008. A hearing was held on November 13, 2008, and the application was approved by final order entered on November 26, 2008.

(d) Ordinary Course Professionals.

By order entered on October 3, 2005, the Bankruptcy Court permitted the Debtors to employ Professional Persons in the ordinary course of their business without the necessity of filing individual retention applications for each such professional, and to pay the ordinary course professionals in the ordinary course of business without formal application to the Bankruptcy Court by any such professional; *provided, however*, that such fees and disbursements do not exceed an average of $20,000 per month (calculated on a rolling six-month average) per professional. With respect to those ordinary course professionals who do not exceed the $20,000 per month limitation, the Debtors were authorized, in their discretion, to pay 100 percent of their interim fees and disbursements upon the submission to the Debtors of an appropriate invoice setting forth in reasonable detail the nature of the services rendered. In addition to the ordinary course professionals included in the Debtors' original list, the Debtors have filed a number of supplements to the ordinary course professionals list.

By order entered on April 20, 2007, the Bankruptcy Court extended the ordinary course professionals order and the interim compensation order (described above in Section 2.3(a)) to apply to all of the Debtors including any Debtor in bankruptcy cases subsequently filed by affiliates of the current Debtors, but not including the Asbestos Subsidiary Debtors.

2.4 Appointment of Official Committee of Unsecured Creditors for ASARCO.

On August 25, 2005, the U.S. Trustee appointed an official committee of unsecured creditors for ASARCO. The current membership of the ASARCO Committee is as follows:

Deutsche Bank Trust Company Americas
Attn: Stanley Burg
60 Wall Street
NYC 60-2715
New York, NY 10005

Wilmington Trust Company
Attn: Steve Cimalore
Rodney Square North
1100 North Market Street
Wilmington, DE 19890

Pension Benefit Guaranty Corporation
Attn: Roger Reiersen
1200 K Street, N.W.
Washington, D.C. 20005-4026

United Steelworkers
Attn: David R. Jury
Five Gateway Center
Pittsburgh, PA 15222

The Doe Run Resources Company
Attn: Lou Marucheau
1801 Park 270 Drive, Suite 300
St. Louis, MO 63146

Gold Fields Mining, L.L.C.
Roger B. Wolcott, Jr., President
14062 Denver West Parkway
Golden, CO 80401

The ASARCO Committee has retained the following professional persons:

Name	Description of Services
Reed Smith LLP	Counsel
Fulbright & Jaworski L.L.P.	Local Counsel
FTI Consulting, Inc.	Financial Advisors
Bates White LLC	Consultant on Asbestos and Silica Related Matters
Exponent, Inc.	Environmental Consultant

2.5 Appointment of an Official Committee of Unsecured Creditors for the Asbestos Subsidiary Debtors and Appointment of an Official Committee of Asbestos Claimants.

On April 27, 2005, the U.S. Trustee appointed an official committee of unsecured creditors for the Asbestos Subsidiary Debtors. The current membership of the Asbestos Subsidiary Committee is as follows:

Barbara Zondervan
c/o Robert Phillips
Simmons Cooper, LLC
707 Berkshire Blvd.
PO Box 521
East Alton, IL 62024

Thomas Brown
c/o Ryan A. Foster
Ryan A. Foster Law Firm
440 Louisiana St., Suite 2100
Houston, TX 77002

Melvin Eldon Boggs
c/o Steve Baron and Natalie Duncan
Baron & Budd, P.C.
3102 Oak Lawn Ave., Suite 1100
Dallas, TX 75219

Kenna Hall Terrell
c/o Steven Kazan
Kazan McClain Abrams Lyons Greenwood & Harley
171 Twelfth St., Suite 300
Oakland, CA 94607

Robert H. Lawhorn
c/o Charles Finley
Williams Kherkher Hart Boundas, LLP
8441 Gulf Freeway, Suite 600
Houston, TX 77017

Benito T. Caceres
c/o Eric Bogdan
The Bogdan Law Firm
8866 Gulf Freeway, Suite 515
Houston, TX 77017

James A. Bailey
c/o Brian Blevins
Provost Umphrey Law Firm
490 Park St.
Beaumont, TX 77704

Robert Ryan
c/o Christina Skubic
Brayton Purcell
222 Rush Landing Rd.
Novato, CA 94948

Timothy Crisler
c/o Lou Thompson Black
Brent Coon and Associates
Weslayan Tower
24 East Greenway Plaza, Suite 725
Houston, TX 77046

Myra Meiers
c/o Thomas W. Bevan
Bevan & Associates, LPA
10360 Northfield Rd.
Northfield, OH 44067

Samuel M. Cox
c/o Thomas M. Wilson
Kelley & Ferraro, LLP
2200 Key Tower
127 Public Square
Cleveland, OH 44114

The Asbestos Subsidiary Committee has retained the following professional persons:

Name	Description of Services
Stutzman, Bromberg, Esserman, & Plifka, P.C.	Counsel
L Tersigni Consulting PC	Financial Advisors (terminated on 6/6/07)
Charter Oak Financial Consultants, LLC	Financial Advisors
Risk International	Insurance Advisors
David P. Anderson and The Claro Group, LLC	Insurance Advisors
Legal Analysis Systems, Inc.	Asbestos Claims Consultant
Law Offices of Dean Baker	Connecticut Local Counsel

Name	Description of Services

By order entered on August 26, 2008, and upon the Debtors' motion, the Bankruptcy Court directed the U.S. Trustee to appoint the Asbestos Claimants' Committee to represent the specific class of creditors with asbestos-related claims against the Debtors in the Reorganization Cases. The Asbestos Claimants' Committee consists of the current members of the Asbestos Subsidiary Committee and the following three additional members who have Asbestos Premises Liability Claims:

Gary Ellis
c/o Robert Phillips
Simmons Cooper, LLC
707 Berkshire Blvd.
P.O. Box 521
East Alton, IL 62024

Elizabeth Scanlon
c/o Robert Phillips
Simmons Cooper, LLC
707 Berkshire Blvd.
P.O. Box 521
East Alton, IL 62024

Rory Lewis
c/o Christina Skubic
Brayton Purcell
222 Rush Landing Rd.
Novato, CA 94948

The new Asbestos Claimants' Committee shall have all the rights and powers of an official committee in the Reorganization Cases, and the existing Asbestos Subsidiary Committee shall continue its existence in the Asbestos Subsidiary Cases for purposes of fulfilling its obligations in connection with any and all pending matters including matters in which the Asbestos Subsidiary Committee has been granted standing by order of the Bankruptcy Order and for any other proper purpose. By order entered on September 16, 2008, the Asbestos Claimants' Committee obtained authority to employ Stutzman, Bromberg, Esserman & Plifka, P.C. as its bankruptcy counsel. By orders entered on October 10, 2008, the Asbestos Claimants' Committee also obtained authority to retain Legal Analysis Systems, Inc. as asbestos claims estimation consultants, Charter Oak Financial Consultants, LLC as financial advisors, and David P. Anderson as insurance advisor.

2.6 Appointment of a Future Claims Representative.

By order entered on April 19, 2005, the Bankruptcy Court approved the selection of Judge Robert C. Pate as the legal representative in the Asbestos Subsidiary Cases to represent the interests of future asbestos-related claimants. By orders entered on August 15 and 26, 2008, the Bankruptcy Court appointed Judge Pate as the legal representative for future Claimants with asbestos-related Claims against ASARCO and the other Subsidiary Debtors.

Judge Pate is a former Texas State District Judge holding visiting status, and is a solo practitioner in Corpus Christi, Texas with extensive experience in complex business and personal injury cases. Judge Pate has been appointed in numerous complex bankruptcy proceedings to provide special services to the Court and litigants, including *In re TransTexas Gas Corporation, et al.*, Case No. 99-21550 and *In re EnRe, L.P.*, Case No. 02-21354, both filed in the Bankruptcy Court. Judge Pate was appointed and serves as the future claims representative in the silicosis mass-tort bankruptcy case, *In re Clemtex, Inc.*, Case No. 01-21794, also filed in the Bankruptcy Court. In that case, the Bankruptcy Court confirmed a consensual plan of reorganization, pursuant to which a trust for present and future silicosis claimants was created, and a channeling injunction was imposed. Judge Pate receives $350.00 per hour as compensation for his services, and reimbursement of his out-of-pocket expenses. Judge Pate's resume is attached hereto as **Exhibit I**.

The FCR has obtained approval of the Bankruptcy Court to retain the following Professional Persons:

Name	Description of Services
Oppenheimer, Blend, Harrison & Tate, Inc.	Counsel
Legal Analysis Systems, Inc.	Asbestos Claims Consultant
Charter Oak Financial Consultants	Financial Advisors

2.7 Corporate Governance and Appointment of Examiner.

In September 2005, all of ASARCO's prepetition directors resigned from the board of directors. On or about September 23, 2005, Carlos Ruiz Sacristán and Javier Perez Rocha were appointed as directors by ASARCO's ultimate parent, Grupo México. In early October 2005, Mr. Rocha resigned from the board, leaving Mr. Ruiz as the sole director. On or about November 14, 2005, Daniel Tellechea resigned as chief executive officer.

In November 2005, the ASARCO Committee, the Asbestos Subsidiary Committee, and the FCR filed pleadings seeking the appointment of a chief restructuring officer and raising questions about the independence of Mr. Ruiz as sole director. Pursuant to the Corporate Governance Stipulation, agreed to by the ASARCO Committee, the Asbestos Subsidiary Committee, the FCR, ASARCO, the Parent, and Mr. Ruiz, and entered by the Bankruptcy Court on December 15, 2005, two independent directors, H. Malcolm Lovett, Jr. and Edward R. Caine, were appointed to join Mr. Ruiz, and Douglas McAllister was appointed as interim chief executive officer. Mr. McAllister had previously served as vice president, general counsel, and secretary of ASARCO for approximately four years. The stipulation also implemented controls and amendments to ASARCO's LLC Agreement to assure the independence of its board of directors from the interests of ASARCO's indirect parent companies, AMC and Grupo México, set compensation, and provided indemnity and insurance for the directors and Mr. McAllister. The LLC Agreement was amended, by written consent of the directors dated January 9, 2006, and effective as of December 15, 2005, to implement the changes required by the stipulation. The Bankruptcy Court approved additional amendments to the LLC Agreement by order entered on April 3, 2006.

On January 23, 2006, the board unanimously determined to create a special committee of independent directors to handle matters where conflicts of interest may be present. By written consent in lieu of a meeting on February 3, 2006, the board appointed the independent committee to oversee transactions with Grupo México and its affiliates. Thereafter, additional matters, including all litigation regarding the Tax Sharing Agreement between ASARCO and AMC, and the SCC Litigation, were referred to the independent committee.

In mid-2006, the board selected Joseph F. Lapinsky as president and permanent chief executive officer, and Tom S.Q. Yip as vice president and chief financial officer. Their employment agreements were approved, effective July 1, 2006, by the Bankruptcy Court on July 13, 2006. Mr. McAllister became executive vice president and also resumed his former duties as general counsel and secretary. Similarly, the Asbestos Subsidiary Debtors each selected William Perrell as sole director and president, and his employment was approved by the Bankruptcy Court on August 22, 2006. Mr. Yip later resigned, and Donald Mills now serves as ASARCO's chief financial officer.

The Corporate Governance Stipulation permits the two independent directors to hire, at ASARCO's expense, independent counsel and other advisors. By order entered on March 12, 2007, the Independent Committee was authorized to retain Porter & Hedges L.L.P. as independent counsel to the independent committee to address matters relating to its role and responsibilities in that capacity.

On January 23, 2007, the Parent filed a motion to amend the Corporate Governance Stipulation and the LLC Agreement to provide for ASARCO to have a five-member board of which three directors would be appointed by the Parent. Objections to this motion were filed by ASARCO, the ASARCO Committee, the Asbestos Subsidiary Committee, the FCR, the USW, the majority bondholders, and the United States on behalf of the EPA, the USDA, and the Interior. After a hearing thereon on February 16, 2007, the Bankruptcy Court ruled that there was not sufficient evidence to alter the Corporate Governance Stipulation.

On March 23, 2007, the Parent filed a motion seeking access to information or, alternatively, for an order amending the Corporate Governance Stipulation to provide for a five-member board, with three members appointed by it. The motion sought to compel ASARCO to provide the Parent's financial advisor with immediate access to financial and operational data in order to allow the Parent, subject to its due diligence review, to propose a plan of reorganization that would pay all creditors in full and allow the Parent to retain its Interest in ASARCO. During the April 11, 2007 hearing thereon, ASARCO agreed to provide the Parent and all qualified, interested plan sponsors equal access to financial and operational information for the purpose of submitting chapter 11 plan sponsor proposals for ASARCO's consideration, upon execution of a mutually agreeable confidentiality agreement and ASARCO's completion of an electronic data room. On May 1, 2007, the Bankruptcy Court entered an order on the motion, which denied the request for amendment of the Corporate Governance Stipulation and directed ASARCO and the Parent to promptly negotiate a mutually acceptable confidentiality agreement. Upon execution of such agreement, the order called for ASARCO to provide the Parent, on a non-exclusive basis, access to the information that has been or is shared with Harbinger Capital Partners or any of its affiliates.

On August 13, 2007, the Parent filed a motion seeking to require ASARCO to obtain consent from the Parent before entering into a settlement or compromise that results in a cash payment or claim allowance in excess of $10 million. Objections to this request were filed by ASARCO, the ASARCO Committee, the Asbestos Subsidiary Committee, and the FCR. After conducting a hearing thereon, the Bankruptcy Court denied the motion by order entered on November 20, 2007. The Parent filed a notice of appeal from that order, thereby initiating Civil Action No. 07-461. By order entered on April 18, 2008, the District Court denied the appeal as procedurally infirm and substantively without merit. On May 19, 2008, the Parent filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the District Court's

order, which initiated Docket No. 08-40570. On August 14, 2008, the appeal was dismissed without prejudice to its refiling within 180 days. On February 10, 2009, the Parent and AMC filed a notice of reinstatement of appeal, and the court of appeals reinstated this appeal on February 13, 2009. The Parent and AMC subsequently filed a motion to withdraw the appeal with prejudice and, by order entered on March 30, 2009, the appeal was dismissed.

On January 10, 2008, the Parent filed a motion seeking the appointment of an examiner to investigate the good faith of ongoing plan negotiations among the Debtors and certain constituents, conduct a valuation of the Debtors, investigate the good faith of the settlements of claims reached by ASARCO with the asbestos claimants, and investigate whether ASARCO has been properly fulfilling its fiduciary duties to the Parent. Numerous objections were filed. After conducting a hearing on the motion on February 8, 2008, the Bankruptcy Court entered an order on March 4, 2008, which directed the appointment of an examiner. While any party could ask the Bankruptcy Court to assign specific duties to the examiner at any time, the examiner was not given any duties at that time.

On March 11, 2008, the Parent filed a petition for writ of mandamus in the District Court, seeking a writ of mandamus ordering the Bankruptcy Court to assign to an examiner the topics listed in the Parent's motion. The Parent asserted that the Bankruptcy Court constructively disregarded sections 1104(c) and 1106(b) of the Bankruptcy Code by assigning no duties to the examiner. The District Court granted the Parent's request for expedited consideration of the petition and set oral arguments for April 22, 2008. However, prior to the oral arguments, the Parent filed an unopposed motion to dismiss its mandamus petition, which was granted on April 18, 2008.

On April 9, 2008, the Bankruptcy Court entered its Order Establishing the Scope of the Examiner Pursuant to 11 U.S.C. § 1104(b). In that order, the Bankruptcy Court directed the examiner to monitor and assess whether the meeting to select a plan sponsor for a plan of reorganization providing for the sale of substantially all of ASARCO's operating assets (as discussed in Section 2.28 below) was conducted in a manner consistent with the Bid Procedures Order. Any party, including the examiner, may request an expansion or reduction of the examiner's powers and duties.

On April 14, 2008, the U.S. Trustee filed an application for approval of his appointment of Michael Denis Warner of the law firm of Warner Stevens L.L.P. as the examiner. By order entered on April 16, 2008, Mr. Warner was appointed as examiner. By order entered on May 20, 2008, Mr. Warner was authorized to employ the law firm of Warner Stevens L.L.P. as his counsel in the Reorganization Cases. Pursuant to the order appointing him, Mr. Warner monitored the plan sponsor selection process, and reported that it was conducted in accordance with the Bid Procedures Order.

2.8 Payment of Prepetition Obligations to Certain Critical Vendors.

ASARCO obtained authority to pay prepetition amounts owed to six critical vendors, conditioned upon their providing goods and services post-petition on terms mutually acceptable to ASARCO and the vendor, and approval and funding of a debtor-in-possession credit facility. In each instance, payment of the critical vendors' prepetition claims was vital to ASARCO's reorganization efforts because (a) the goods and services provided by them were the only meaningful source from which the Debtors could procure the goods and services; (b) failure to pay the critical vendors would likely result in loss of the goods and services; and (c) such loss would have an immediate and severe impact that would jeopardize ASARCO's operations and ability to reorganize. The amount paid to critical vendors totaled about $4 million.

2.9 Extensions of Exclusivity.

The Bankruptcy Court has entered several orders extending the Debtors' exclusive periods to file a chapter 11 plan of reorganization and solicit acceptances of such plan. On July 2, 2008, the Bankruptcy Court entered an order extending the Debtors' exclusive periods to file and solicit acceptances of the plan until August 1, 2008 and January 16, 2009, respectively. The Debtors' exclusive right to file a plan was modified to allow the Parent and AMC to file a competing plan and solicit acceptances of that plan. ASARCO filed a plan of reorganization and accompanying disclosure statement on July 31, 2008, as amended on September 12, 2008 and on September 25, 2008. The Parent and AMC filed their plan of reorganization and disclosure statement on August 26, 2008, as amended on September 20, 2008 and on September 25, 2008. As discussed in Section 2.30 below, the solicitation procedures relating to these plans were subsequently suspended.

Most recently, by order entered on January 13, 2009, the Bankruptcy Court extended the Debtors' exclusive periods to file and solicit acceptances of a plan until March 17, 2009 and May 18, 2009, respectively; *provided, however*, that the Debtors' exclusivity periods are modified to allow the Parent and AMC to file a competing plan and solicit acceptances thereof.

On April 22, 2009, the Debtors filed a motion seeking to extend their exclusive right to solicit acceptances of the Plan until September 30, 2009.

Harbinger Capital Partners Master Fund I, Ltd. and Citigroup Global Markets, Inc. filed a notice of appeal from the Bankruptcy Court's earlier July 20, 2007 order extending exclusivity and two related orders on discovery issues. The appeal, which initiated Civil Action No. 07-325, was dismissed by the District Court pursuant to a joint stipulation of voluntary dismissal without prejudice on October 15, 2007.

2.10 Executory Contracts and Unexpired Leases.

(a) Extension of Time to Assume or Reject Unexpired Leases of Nonresidential Real Property.

The Bankruptcy Court has entered several orders extending the time by which ASARCO must determine whether to assume or reject its unexpired leases of nonresidential real property. By order entered on December 30, 2008, the Bankruptcy Court extended this deadline until August 1, 2009.

(b) Motions Under Section 365 of the Bankruptcy Code.

Since their bankruptcy filing, the Debtors have filed motions, and obtained authority, pursuant to section 365 of the Bankruptcy Code, to assume certain executory contracts and unexpired leases and to reject others.

(c) Assumption of Shareholders' Agreement and Related Contract Regarding Copper Basin Railway, Inc.

Copper Basin Railway, Inc. owns a Class III short-line freight railroad located in South Central Arizona. The railroad is ASARCO's sole means of transporting work-in-process inventory to and from the Ray mine and the Hayden smelter. On the Petition Date, ASARCO owned 45 percent of the outstanding capital stock (1,800 shares) of Copper Basin Railway, Inc., with the remaining 55 percent of the stock (2,200 shares) owned by Rail Partners II, LLC f/k/a Rail Partners, LP.

The stockholders agreement dated April 10, 1986, among Copper Basin Railway, Inc. and the predecessors in interest to Rail Partners and ASARCO, provided a "put" right in favor of Rail Partners, pursuant to which Rail Partners could require ASARCO to buy all of Rail Partners' capital stock in Copper Basin Railway, Inc. for the fair market value of such shares (with such fair market value determined by agreement or, if no agreement could be reached, by third party independent appraiser). The stockholders agreement also provided "call" rights in favor of ASARCO, pursuant to which ASARCO could require Rail Partners to sell it either (1) the 45 percent of Rail Partners' capital stock formerly held by Green Bay, (2) the 10 percent of Rail Partners' capital stock formerly held by Durden, or (3) both, either at the same or different times, for the fair market value of such stock, determined in the same manner as described above for the put right.

By motion filed on August 29, 2006, as amended on September 8, 2006, ASARCO sought to assume the stockholders agreement and a related contract for the sale of the shares owned by Rail Partners, cure all defaults and to purchase Rail Partners' 55 percent equity interest in Copper Basin Railway, Inc., thereby obtaining control and sole ownership of this critical transportation asset. ASARCO was forced to take action at that time, rather than addressing the option rights at confirmation, because Washington Corporation sought to control the railroad by acquiring Rail Partners. Objections to the motion were filed by the ASARCO Committee, the Asbestos Subsidiary Committee, and Rail Partners. The Bankruptcy Court entered an order approving the motion on September 12, 2006, whereby ASARCO was authorized to assume the stockholders agreement and the sale contract, effective as of the date on which the original motion was filed, and to purchase Rail Partners' 55 percent interest in Copper Basin Railway, Inc. for an agreed-upon total purchase price of $11,455,000. That purchase closed on September 26, 2006.

(d) Cure Procedures for Contracts and Leases Identified by the Debtors for Assumption.

By motion filed on August 29, 2008, the Debtors sought to implement a procedure to set cure amounts on executory contracts and unexpired leases to be assumed by a Debtor in accordance with sections 365(b)(1)(A), 1123, and 105(a) of the Bankruptcy Code, in advance of confirmation. Pursuant to the procedures, the Debtors would send notice of the proposed cure amount to the counter-party to the lease or contract, and the counter-party would have 15 days to object to the proposed cure amount. If the parties are not able to resolve an objection, the Debtors may file a formal motion for approval

of the assumption and establishment of the cure amount or address the dispute as part of the confirmation process. The cure procedures were approved by order entered on September 23, 2008.

2.11 Asset Sales.

(a) Real Property Sales.

The Debtors have obtained Bankruptcy Court orders authorizing them to sell certain real property. The significant sales are listed below.

Property	Buyer	Proceeds and Other Consideration Realized by the Estate
Coal rights in Sebastian County, Arkansas, owned by ASARCO	Hartshorne Carbon Company	$500,000 Cash and a royalty to be paid over 35 years
Tacoma, Washington, owned by ASARCO	MC Construction Consultants, Inc.	$4,700,000 Cash and assumption of certain (primarily environmental) liabilities by buyer. ASARCO may also realize additional proceeds of up to $5,000,000 pursuant to a Development Payout Agreement
Hardshell Mine Property in Santa Cruz, Arizona, owned by ASARCO	Arizona Minerals, Inc.	$4,000,000 cash and $4,500,000 to be paid pursuant to a promissory note secured by a Lien on the property
Tennessee Mines Division, owned by ASARCO	Glencore Ltd.	$63,551,286
Approximately 125.957 acres of vacant real property in El Paso, Texas, owned by ASARCO	MEGACON, LLC	$4,180,263
Salt Lake City real property, owned by ASARCO	Olene S. Walker Housing Loan Fund	$1,732,440

(b) Stock Sales.

On September 11, 2006, ASARCO sought authority to sell stock in certain publicly-traded companies, which, pursuant to a separate Bankruptcy Court order, was filed under seal to avoid any detrimental impact on the stock market that might result from ASARCO's sale of such stock. The sale motion was approved by order entered on September 19, 2006, and permitted ASARCO to sell the stock free and clear of liens, claims, encumbrances, and interests and to open a brokerage account for that purpose.

On April 3, 2008, ASARCO filed a motion seeking authority to sell certain stock free and clear of liens, claims, encumbrances, and interests, which was approved on April 28, 2008. ASARCO is authorized, but not obligated, to sell (1) 388,002 shares of Metlife Company stock; (2) 16,800 shares of Nymex Holdings Inc. stock; (3) 134 shares of Freeport McMoRan Copper & Gold Inc. stock; and (4) 2,956 shares of stock in various agricultural cooperatives, including 1,404 shares of Ag-Land FS, 840 shares of Gateway Co-op$_2$ and 712 shares of Riverland FS. While the stock is unencumbered, ASARCO obtained approval, out of an abundance of caution, to sell it free and clear of any liens, claims, encumbrances, or interests, pursuant to section 363(f) of the Bankruptcy Code. Any such liens or other encumbrances would attach to the proceeds of the sale of the assets, subject to the rights and defenses of ASARCO, if any, with respect thereto.

ASARCO has been engaged in the process of selling the stock on the open market. To date, ASARCO has sold a substantial majority of the stock, which has yielded approximately $21.25 million. ASARCO continues to maintain a modest portfolio of a few low value stocks.

(c) *De Minimis* Sales of Personal Property.

By agreed order entered on March 28, 2006, the Debtors obtained authority to sell *de minimis* personal property (with a value of less than $100,000) in the ordinary course of business, without need for Bankruptcy Court approval upon 10 Business Days' notice to the parties on a notice list. They have used this procedure a number of times to sell *de minimis* personal property.

2.12 Purchases.

Pursuant to the order entered on December 30, 2005, ASARCO was authorized to assume an agreement with Pitney Bowes Credit Corporation for the lease of five haul trucks and a shovel, cure prepetition defaults, and exercise the option to purchase three of the haul trucks and the shovel. Pursuant to an order entered on December 4, 2006, ASARCO was authorized to exercise its option to purchase the two haul trucks remaining under this lease agreement. ASARCO cured the defaults and exercised the options to complete the purchase of all five haul trucks and the shovel for approximately $4.5 million.

Pursuant to agreed orders entered on January 19, 2006, June 30, 2006, September 18, 2006, and November 27, 2006, ASARCO was authorized to assume several equipment leases with Banc of America Leasing & Capital, LLC relating to certain mining and other equipment, cure the defaults, and exercise the options to purchase the equipment. ASARCO cured the defaults and exercised the options to complete the purchase of the equipment for approximately $8.9 million.

Pursuant to an agreed order entered on January 6, 2006, ASARCO was authorized to assume an equipment lease with M&T Credit Services, LLC relating to an electric mining shovel, cure the defaults, and exercise its option to purchase the shovel. ASARCO cured the defaults and exercised the option to complete the purchase of the electric mining shovel for approximately $2.5 million.

By order entered on March 28, 2006, ASARCO obtained authority to purchase from Liebherr Mining & Construction Equipment, Inc. d/b/a Liebherr Mining Equipment Co. nine haul trucks to be delivered in 2007 and 2008, with an option to buy 12 additional trucks in 2009, 2010, and 2011, for a purchase price of $3.5 million per truck, subject to an agreed-upon price escalation and other terms and conditions set forth in the purchase agreements and related documents. ASARCO completed the purchase of the nine haul trucks, which were delivered in 2007 and 2008, for approximately $32.6 million. Subsequently, the board authorized ASARCO to move forward with the purchase of additional trucks in 2009 and 2010 for a purchase price of approximately $4 million per truck, and the company exercised its option for those years.

Pursuant to an agreed order entered on September 15, 2006, ASARCO was authorized to assume an equipment lease with Wachovia Financial Services, Inc. relating to two haulpak trucks, a fork lift, five 100-ton railroad ore cars, and other equipment. ASARCO assumed the equipment lease and purchased the leased equipment for $1,250,000.

Pursuant to an order entered on April 2, 2007, ASARCO was authorized to replace the primary crusher at the Ray mine by installing a new crusher in a different location and decommissioning the existing crusher at the earliest date possible. ASARCO purchased the replacement crusher, conveyor, and support wall for approximately $44.8 million. It is anticipated that this work will cure slope degradation issues, and may increase ASARCO's cash flow by approximately $74.4 million over the life of the project on an undiscounted basis.

By agreed order entered on March 25, 2008, ASARCO was authorized to assume an equipment lease and related agreements with BNY Capital Resources Corporation, whereby ASARCO leases five haul trucks and various mining equipment, cure defaults, and exercise the option to purchase the equipment under the agreement. ASARCO cured the defaults and exercised the options to complete the purchase of the five haul trucks and the mining equipment for an aggregate total of approximately $1.7 million.

In each instance, the purchased assets are indispensable to ASARCO's successful operation of its mines and contribute to increased production and therefore revenue.

2.13 Proofs of Claim and Administrative Claims.

(a) Bar Dates for Proofs of Claim.

By order entered on April 28, 2006, the Bankruptcy Court set August 1, 2006 as the general bar date, and September 30, 2006 as the asbestos claims bar date, for the Debtors other than the 2006 Subsidiary Debtors and the 2008

Subsidiary Debtors. An asbestos-related Proof of Claim form was approved for use in connection with all Proofs of Claim for asbestos claims. Pursuant to the Bar Date Order, asbestos claimants were permitted to obtain an exemption from filing a Proof of Claim by supplying ASARCO's asbestos claims-data management consultants, Claro Group, with certain information on the asbestos claims electronic database prior to June 30, 2006.

The Bar Date for filing Claims against the 2006 Subsidiary Debtors was May 21, 2007 for non-governmental creditors and June 25, 2007 for governmental creditors.

The Bar Date for filing Claims against the 2008 Subsidiary Debtors was September 16, 2008 for non-governmental creditors and October 21, 2008 for governmental creditors.

Claims which were not filed by the applicable Bar Date (except as otherwise specifically provided by order of the Bankruptcy Court) are forever barred and discharged.

(b) Objections to Claims.

More than 100,000 general and asbestos-related Claims have been filed in the Reorganization Cases. In conjunction with their ongoing review and reconciliation of the Proofs of Claim, the Debtors determined that many of the Proofs of Claim may be targeted for disallowance and expungement, reduction and allowance, or reclassification pursuant to objections that are similar in nature as to one or more Proofs of Claim. Pursuant to the order entered on November 5, 2007, the Debtors were authorized to pursue omnibus objections to Proofs of Claim, in accordance with certain procedures and guidelines consistent with Bankruptcy Rule 3007(f).

Since that time, the Debtors have filed a number of objections to specific Claims, as well as omnibus claim objections seeking the disallowance of certain Proofs of Claim on various grounds. For example, on January 13, 2009, ASARCO filed objections to the allowance and amounts of the Bondholders' Claims, wherein ASARCO asked the Bankruptcy Court to disallow all of the Bondholders' Claims, to the extent they claim post-petition interest, interest-on-interest, no-call damages, or prepayment premiums. On January 26, 2009, the Asbestos Claimants' Committee filed a joinder in the Debtors' objections to the Bondholders' Claims and further limited objections to two such Claims. The FCR filed a joinder in these objections to the Bondholders' Claims on January 28, 2009.

The Bondholders contend that, in addition to the principal and pre-petition interest accrued on the Bonds, their Claims include charges and damages for prepayment of the Bonds in violation of the Indentures. The Bondholders estimate that these prepayment charges and damages exceed $100 million in the aggregate across all bond issues. The Bondholders allege that there are provisions of their Indentures that expressly provide that the Bonds are non-callable in advance of their maturity dates, that the Indenture Trustees did not seek to accelerate or demand payment of the Bonds prior to or subsequent to the bankruptcy filing, and that under New York law, which governs the corporate bond Indentures, there is a damage claim for early payments in the face of such provisions.

The Bondholders contend that amounts due for such fees, expenses, charges, and damages need to be included as part of the Bondholders' Allowed Claims or a reserve must be established pending final allowance or disallowance.

Although no assurance can be provided that the Bondholders will not ultimately prevail in these contentions, the Debtors believe that the "prepayment charges and damages" sought by the Bondholders are neither legally nor factually appropriate under the facts of this case.

(c) Administrative Claims Bar Date.

On July 16, 2008, the Debtors filed a motion seeking entry of an order establishing September 19, 2008 as the last day for Entities that assert Administrative Claims against the Debtors to file a proof of Administrative Claim form. The motion was granted by order entered on July 30, 2008, as amended by stipulations and agreed orders entered on August 15, 2008 and September 15, 2008. The following types of Claims are excluded, and are not subject to the Initial Administrative Claims Bar Date:

- Administrative Claims of one Debtor against another Debtor but only to the extent such Administrative Claims (1) are less than $1 million or (2) relate to a transaction that has been expressly approved by prior order of the Bankruptcy Court;
- Administrative Claims of Professional Persons retained pursuant to an order of the Bankruptcy Court for compensation of fees and reimbursement of expenses and any Administrative Claims by professionals for the United Steelworkers;
- Administrative Claims of the members of the Committees and counsel to such members for compensation of fees and reimbursement of expenses;
- Administrative Claims for post-bankruptcy goods or services due and payable in the ordinary course of the Debtors' business;
- Administrative Claims of current or former employees, or labor unions representing such individuals or benefit plans to whom contributions or premiums are made under a collective bargaining agreement or the Coal Act, for post-bankruptcy wages, compensation, expenses, grievances, medical benefits, retirement benefits, or any other post-bankruptcy benefits under an employee benefit plan of a Debtor or court-approved post-bankruptcy retention, severance, or recruiting plan, including, without limitation, any amounts authorized to be paid by the Debtors under the order authorizing payment of prepetition wages and benefits;
- Administrative Claims previously allowed by order(s) of the Bankruptcy Court;
- Administrative Claims on account of which a motion requesting allowance and payment already has been filed in the Bankruptcy Court, against the Debtor(s);
- Administrative Claims held by the U.S. Trustee which arise under section 1930(a)(6) of title 28 of the United States Code;
- Administrative Claims of professionals and their counsel, including the Examiner, and Administrative Claims of current officers and directors of a Debtor and their counsel;
- Administrative Claims relating to Claims of federal and state governmental agencies under state or federal environmental laws that relate to property owned by the Debtors;
- Administrative Claims for payments required under settlement agreements approved by the Bankruptcy Court;
- Administrative Claims relating to liabilities that the Plan Sponsor shall assume under the New Plan Sponsor PSA; and
- Administrative Claims held by Asbestos Personal Injury Claimants.

Holders of Administrative Claims that are required, but fail, to file a proof of Administrative Claim prior to the Initial Administrative Claims Bar Date shall be barred, estopped, and enjoined from asserting such Claims against the Debtors and their Estates, and shall not be entitled to receive further notices regarding such Administrative Claims.

AMC and the Parent filed an Administrative Claim against ASARCO which is the subject of an objection, as discussed below in Section 2.18(b).

Article 15.13 of the Plan provides a Subsequent Administrative Claims Bar Date for Administrative Claims that arise after the Initial Administrative Claims Bar Date.

(d) Procedures Regarding the Debtors' Objections to Administrative Claims.

On January 23, 2009, the Debtors filed a motion seeking approval of procedures and deadlines in connection with their objections to Administrative Claims. The Debtors asked that application of the November 5, 2007 order approving procedures for omnibus objections to Claims be extended to Administrative Claims, and that they be authorized to prosecute common objections to such Claims by one or more omnibus objections in compliance with the procedures described in the Motion. The Debtors also requested that the Bankruptcy Court establish a streamlined and shortened scheduling order for litigation of Administrative Claims (other than the Administrative Claim of AMC and the Parent discussed below in Section 2.18(b), which shall be resolved under a separate scheduling order). The motion was approved by order entered on February 17, 2009.

2.14 Schedules and Statements of Financial Affairs.

The Debtors have filed their schedules and statements of financial affairs required under section 521 of the Bankruptcy Code and Bankruptcy Rule 1007, and have subsequently filed certain amendments thereto. Copies of the Debtors' original and amended schedules and statements may be viewed online any time through the Bankruptcy Court's PACER System at *www.ecf.txsb.uscourts.gov* or at the Debtors' restructuring website *www.asarcoreorg.com*.

2.15 Financial.

(a) DIP Financing.

With the assistance of Lehman Brothers, ASARCO obtained the approval of the Bankruptcy Court for a DIP Facility provided by The CIT Group/Business Credit, Inc. as DIP Agent to enable ASARCO to have additional liquidity during the pendency of the Reorganization Cases. Under the DIP Facility, the DIP Agent made a revolving line of credit available to ASARCO for working capital, capital expenditures, general corporate purposes, and costs of administration. Under the DIP Facility, the revolving line of credit was in the maximum amount of $75 million, inclusive of an amount equal to $50 million for letters of credit, which revolving line of credit was subject to being increased to an amount not to exceed $150 million at ASARCO's option, subject to appraisals and availability. The initial borrowing base was subject to a minimum availability reserve of $10 million at all times. The utilized portion of the DIP Facility would bear interest at rate of either the prime rate plus 1.00 percent or LIBOR plus 2.50 percent, at the DIP Agent's option.

All amounts owing by ASARCO under the DIP Facility were secured by superpriority blanket liens pursuant to section 364(c)(2), (c)(3), and (d)(1) of the Bankruptcy Code on ASARCO's real and personal property, subject to prior Liens and a carve-out in a maximum amount of $5 million for (1) professional fees and expenses; (2) fees pursuant to 28 U.S.C. § 1930; and (3) out-of-pocket expenses of the members of the ASARCO Committee. Such amounts were also subject to a superpriority claim pursuant to section 364(c)(1) of the Bankruptcy Code over all other Claims against ASARCO, other than Claims seeking payment out of the carve-out or from the collateral excluded from the DIP Liens.

Because of improved cash flow resulting from high copper prices, ASARCO did not utilize the DIP Facility. Prior to its expiration, ASARCO elected not to pursue renewal of the DIP Facility, and it expired on its own terms on or about December 15, 2007.

(b) Letter of Credit Facility.

To replace the letter of credit sub-facility under the DIP Facility, ASARCO negotiated the terms of a $5 million senior secured twelve month credit facility for the issuance of letters of credit with JPMorgan Chase Bank, N.A., and sought approval of the Credit Facility by motion filed on March 31, 2008. The Credit Facility was needed because, in the ordinary course of business, ASARCO is required to post letters of credit from time to time. The terms and conditions of the Credit Facility are set forth in the motion. The request was approved by order entered on April 25, 2008, which was supplemented by a Stipulation and Order entered on July 7, 2008.

(c) Secured Intercompany DIP Credit Facility.

By motion filed on August 5, 2008, ASARCO and the Asbestos Subsidiary Debtors sought approval for ASARCO to loan, on a senior secured basis, up to $10 million to the Asbestos Subsidiary Debtors, and for the Asbestos Subsidiary Debtors to enter into a secured debtor-in-possession term loan credit facility of up to $10 million from ASARCO, pursuant to section 364 of the Bankruptcy Code. **The proffer of Douglas McAllister supporting the motion for approval of the Secured Intercompany DIP Credit Facility stated that "To raise cash, ASARCO monetized insurance coverage for asbestos-related liability and used the money to pay its own expenses and other debts rather than to pay settlement agreements previously reached with asbestos plaintiffs. This monetization and diversion practice is documented repeatedly in the findings included in Judge Hanen's recent ruling. ASARCO's debt to the Asbestos Subsidiary Debtors for such actions is more than the $10 million face amount of the Intercompany DIP Loan. Thus, even if the Joint Plan is not confirmed for any reason, ASARCO may offset against such intercompany liability to ensure satisfaction of the loan."** The request was approved by order entered on September 19, 2008.

Because the Asbestos Subsidiary Debtors have no current operations and currently generate no income, they are unable to obtain unsecured credit to continue to fund their reorganization fees, costs, and expenses including (1) professional fees and expenses payable pursuant to the order establishing procedures for interim compensation of professionals or other order of the Bankruptcy Court; (2) taxes and other statutory fees and costs; (3) U.S. Trustee fees as required by law; and (4) administrative expenses incurred in the ordinary course of business.

The intercompany loan is secured by a first priority Lien on the Asbestos Subsidiary Debtors' personal property, and amounts due constitute superpriority administrative expense Claims under section 364(c)(1) of the Bankruptcy Code. ASARCO has a right to credit all amounts due under the intercompany loan as a portion of ASARCO's contribution to the Asbestos Trust under the Plan, which amounts will be waived if necessary for the Bankruptcy Court to determine that Class 4 is unimpaired under the Plan.

The debtor-in-possession term loan credit facility expired on April 1, 2009. The total balance under the credit facility~~, which~~ was $2.1 million as of April 17, ~~2009, is due and payable to ASARCO.~~ **2009. The Asbestos Subsidiary Committee and the FCR assert that ASARCO's debt to the Asbestos Subsidiary Debtors for monetization and diversion of insurance is more than the $10 million face amount of the loan, which ASARCO admitted during the initial hearing on the motion to approve the loan.**

After the Debtors learned that the FCR and the Asbestos Subsidiary Committee had agreed to support a prospective Parent's plan and actively oppose confirmation of the Debtors' Plan, the Debtors informed the FCR and the Asbestos Subsidiary Committee that it had decided not to renew the expired Secured Intercompany DIP Credit Facility. At the request of the Bankruptcy Court, this facility has nevertheless now been extended through May 15, 2009. The Parent, the Asbestos Claimants' Committee, and the FCR contend that, if the facility is not further extended, the asbestos Claimants and the FCR may be unable to pay professionals and may be denied adequate representation. The Parent, the Asbestos Claimants' Committee, and the FCR believe that, under these circumstances, the Asbestos Subsidiary Committee, which represents one of the largest stakeholders in the Reorganization Cases, and the FCR are at risk of a compromise of their fiduciary duties to asbestos Claimants, and further that there is a risk of compromising the integrity of the processes surrounding confirmation of the Debtors' Plan, all resulting from the Debtors' strategic maneuvering. The Debtors disagree with these contentions.

(d) Cash Collateral.

Mitsui is the only party that asserts a Lien on personal property of ASARCO that may be sold and converted to cash in the ordinary course of business. Mitsui asserts a Lien only on silver inventory and the proceeds thereof. Pursuant to the Agreed Final Order Authorizing Use of Cash Collateral in Limited Circumstances, ASARCO agreed to continue to maintain the proceeds of Mitsui's alleged collateral in trust for the benefit of Mitsui in a separate segregated bank account. ASARCO may request the use of Mitsui's alleged cash collateral subject to the provision of five days' notice, an approved budget, and adequate protection to Mitsui. If ASARCO uses Mitsui's alleged cash collateral and the Bankruptcy Court finds that Mitsui's interests are not adequately protected, Mitsui is entitled to a superpriority administrative expense claim under sections 503(b) and 507(a)(1) and (b) of the Bankruptcy Code.

(e) Hedging Program.

Because of uncertainty over the future of copper prices, ASARCO worked with its financial advisor Lehman Brothers to develop a strategic hedging program in order to preserve copper prices above production costs for a portion of its production in 2007 and 2008, enabling ASARCO to reorganize with a more stable liquidity position. By order entered on May 9, 2006, ASARCO received authority to implement such a program. Under the hedging order, ASARCO's board of directors was authorized to establish a hedging committee to recommend and execute specific trades to implement the hedging program in accordance with the parameters and procedures established by the board of directors, upon notice to certain specified parties. The order further authorized ASARCO to use up to $30 million in the implementation of the hedging program, which sum was subsequently increased by an additional $10 million following notice to the specified parties. All contracts under the hedging program originally were required to settle on or before December 31, 2007, but this time period was subsequently extended through December 31, 2008. ASARCO has spent approximately $30 million to implement the hedging program, pursuant to the Bankruptcy Court's order. ASARCO's authority to engage in strategic hedging transactions expired as of December 31, 2008.

2.16 Labor Unions and Employee-Related Matters.

(a) Settlement with the Unions Regarding the Collective Bargaining Agreements.

As discussed in Section 1.3(d) above, a contributing factor to ASARCO's bankruptcy filing was the strike of a large portion of its workforce that began in early July 2005. After many weeks of negotiations, ASARCO and the Unions representing ASARCO employees were able to enter into a Memorandum of Understanding in November 2005, pursuant to which the striking workers returned to work commencing in December 2005.

The collective bargaining agreement covering the Ray mine workers expired on June 30, 2005, and the employees at the smelter and the other mines had been working without an agreement for over a year. The settlement between ASARCO and the Unions extended those collective bargaining agreements, with certain amendments, until December 31, 2006. As part of the settlement, ASARCO agreed to continue making contributions to the company's pension plans, and continue paying disability benefits to employees. ASARCO also agreed not to seek temporary or permanent relief from the collective bargaining agreements or the retiree benefits under sections 1113 or 1114 of the Bankruptcy Code during this time period.

The Memorandum of Understanding included a successorship clause, pursuant to which ASARCO agreed not to consummate a change-of-control transaction unless certain conditions had been satisfied, and the Unions agreed to negotiate in good faith for collective bargaining agreements with any prospective buyer.

The Unions had filed charges against ASARCO with the National Labor Relations Board, accusing it of failing to bargain in good faith. Pursuant to the settlement, these complaints were withdrawn.

(b) Approval of New Collective Bargaining Agreement with Unions.

For the following year, the parties honored and continued to operate pursuant to the terms of the Memorandum of Understanding. In August 2006, the parties resumed labor negotiations. On December 21, 2006, after months of arduous negotiations, ASARCO reached an understanding with the USW, on behalf of itself and the Unions, on the key terms of the new CBA that would replace the existing agreements. The parties continued negotiating until they reached a final agreement on the terms of the CBA, as set forth in a letter of understanding dated January 22, 2007.

The CBA includes phased-in wage increases for ASARCO's hourly workers, and provides for one-time signing bonuses and other bonuses tied to copper prices. A "work assignment flexibility" provision allows ASARCO to adapt its workforce to meet changing needs by, for example, assigning a certain percentage of employees across departments and sharing maintenance crews across plants.

Under the special successorship provision, ASARCO agreed not to consummate any plan of reorganization, sell or transfer any operating plant or significant part thereof, or engage in any other change-of-control transaction unless the prospective buyer shall have recognized the USW as the bargaining representative for ASARCO workers, and made an agreement with the USW establishing the terms of employment to be effective as of the effective date of such plan of reorganization, sale, or other change of control. In connection with this provision, the USW is obligated to negotiate in good faith with any prospective buyer and to offer terms and conditions that are reasonable and substantially the

same as those offered to any other prospective buyer; *provided, however*, that the Union may offer non-identical terms and conditions if those terms reflect differences in the nature of the prospective buyer. The USW commitment to offer fair and reasonable and substantially similar terms is expressly conditioned upon the prospective buyer bargaining in good faith and providing relevant information reasonably requested. The Bankruptcy Court has the power to terminate the special successorship provision entirely if, upon motion of ASARCO or the ASARCO Committee, the Bankruptcy Court finds that the USW breaches its obligation or if the Bankruptcy Court finds, in light of exigent circumstances, that termination of the application of the special successorship clause is necessary to the success of the chapter 11 process.

ASARCO and the USW also entered into the Second Stipulation and Order Regarding Modification to Collective Bargaining Agreement, which clarifies the potential impact of the CBA upon a Parent retained equity plan (as discussed below) and provides that: (1) as long as the Parent does not exercise control of ASARCO during the Reorganization Cases, the Parent is not a party or signatory to the CBA and is not bound by any of the CBA's terms; (2) the special successorship clause applies to a plan of reorganization where the Parent retains a majority of equity or controlling equity in the reorganized debtors, and if pursuant to that clause the Bankruptcy Court determines that (A) the USW has failed to satisfy its obligations under the special successorship clause or (B) in light of exigent circumstances it is necessary to a successful chapter 11 process, the Bankruptcy Court may order that the special successorship clause does not apply; and (3) the Bankruptcy Court retains jurisdiction to determine at a confirmation hearing on any Parent retained equity plan whether any provision of the CBA would violate the Parent's rights under section 1129(a) or (b) of the Bankruptcy Code and, if the Bankruptcy Court so finds, the Bankruptcy Court has the authority to terminate the CBA.

The Bankruptcy Court approved the CBA and the second stipulation on March 15, 2007. The following day, ASARCO, the USW, and the Parent entered into another Stipulation and Order, pursuant to which the Parent agreed not to seek a stay of implementation of the order approving the CBA, while ASARCO and the USW agreed not to argue that the failure to obtain a stay mooted any appeal thereof.

On March 28, 2007, ASARCO and the USW gave notice of a modification to Article 11, Section B(2) of the CBA. The modification is reflected in a letter agreement dated March 20, 2007, between ASARCO and the USW. Article 11, Section B(2) originally provided that, except during maintenance and repair outages and temporary production outages or shortfalls, ASARCO would not replace product that could have been produced at an ASARCO facility with product from other ~~than~~ Canadian or U.S. facilities that provide substantially equivalent wages and benefits, unless the ASARCO facility is operating at full capacity. The amendment deletes the references to Canada and the U.S., so that, under the specified circumstances, ASARCO may purchase product from any facility regardless of location, so long as the replacement facility provides comparable employment terms to its workers.

The Parent, which had objected to the CBA, filed a notice of appeal from the order, thereby initiating Civil Action No. 07-133 in the District Court. On June 11, 2007, the USW and ASARCO entered into another Stipulation and Order, which was filed in the pending appellate case and modified the second stipulation to clarify that the Parent is not a signatory or party to the CBA and is not bound by its terms except as provided in the special successorship clause as modified by the stipulation or under applicable labor law. By order entered on October 14, 2008, the District Court affirmed the Bankruptcy Court's order. The Parent filed a notice of appeal from the District Court's order, thereby initiating Case No. 08-41265 in the Court of Appeals for the Fifth Circuit. The Parent filed an unopposed motion to dismiss this appeal without prejudice to its refiling within 180 days, which was granted by order entered on January 22, 2009.

(c) Settlement of Retiree Litigation.

On July 9, 2003, ASARCO, Silver Bell, and Encycle/Texas, Inc. filed an action against the USW and others in federal court in Arizona seeking a declaration that changes to retiree medical benefits made earlier that year were legal under the Labor Management Relations Act and ERISA. On September 8, 2003, the defendants filed an answer and counterclaimed against ASARCO.

On September 19, 2005, ASARCO initiated Adversary Proceeding No. 05-02078, seeking a declaration that the prosecution of claims against ASARCO and Encycle/Texas violated the automatic stay and requesting an injunction prohibiting prosecution of such claims during the pendency of the Reorganization Cases. On November 14, 2005, ASARCO obtained an order staying the Arizona litigation pursuant to a stipulation by the parties.

As part of the CBA negotiations, ASARCO, the Unions, and the individual members of the class of retirees reached a final agreement on the resolution of the Arizona litigation, which addresses all the claims among the parties

regarding retiree medical benefits. The Bankruptcy Court approved the settlement agreement by order entered on March 15, 2007.

(d) Approval of a Salary, Incentive, and Employee Retention and Recruiting Plan.

Because of the uncompetitive compensation structure of ASARCO, the impact of the bankruptcy, and the highly competitive labor market in mining and related fields, ASARCO experienced significant loss of key personnel. In order to help ASARCO retain valued employees and recruit to fill critical vacancies, ASARCO worked with Lehman Brothers beginning in the Fall of 2005 to develop a retention and recruitment plan for its salaried employees. The program has three components: (1) a revision in salary structure designed to improve competitiveness of its pay levels; (2) an employee retention bonus component; and (3) a variable incentive component. In addition to these components, approximately $1 million is available to be applied at the discretion of the board of directors for salary, retention, and incentive payments.

The 2006 retention and recruitment plan helped stem the tide of departing personnel for a period of time but did not keep pace with the impact of the record high copper price environment on the local labor markets in which ASARCO competes. Consequently, ASARCO continued to suffer vacancies across its operating, planning, engineering, and corporate departments, leaving it with inadequate personnel to address key needs and unable to fill such vacancies because of its below-market compensation structure.

By motion filed on May 11, 2007, ASARCO proposed to revise and update its retention and recruitment plan by (1) setting a target salary range consistent with comparable salaries paid in the market; (2) increasing the incentive bonus payment scale for specific grades and shifting the allocation on target bonuses across company and operating unit criteria; (3) granting the board of directors discretion to increase or decrease incentive bonuses on a discretionary basis up to 105 percent; and (4) carrying forward the unused discretionary bonus pool approved by the Bankruptcy Court from the 2006 plan and increasing it by $900,000 for 2007 to allow for additional salary, incentive, retention, and other adjustments recommended by management and approved by the board in its discretion. The motion was approved by order entered on June 4, 2007.

By motion filed on August 8, 2007, ASARCO sought authority to implement a severance plan as part of its 2007 assessment and update of ASARCO's overall compensation program. The severance program provides specific protection for eligible employees against a termination or reduction in job quality. The motion was approved by order entered on August 31, 2007.

(e) Extension of Collective Bargaining Agreement for Globe Plant.

The collective bargaining agreement covering four employees working at ASARCO's plant in Globe, Colorado expired on May 31, 2006. ASARCO and the United Steelworkers of America, Local 8031-07 agreed to extend the existing agreement for an additional year. The Bankruptcy Court approved the extension of the agreement by order entered on August 21, 2006, and also authorized ASARCO to honor employee benefit obligations under the agreement. The extension, which expired on May 31, 2007, ensured that ASARCO had the necessary work force to comply with its remediation obligations at the Globe plant. The Globe plant closed on August 31, 2006.

(f) Assumption of Certain Workers' Compensation Insurance Agreements.

By motion filed on March 22, 2007, ASARCO asked the Bankruptcy Court to authorize it to assume certain of its existing workers' compensation insurance agreements with AIG and to approve its entry into a renewal insurance program with AIG. ASARCO's insurance broker, Willis of Arizona, Inc., solicited bids for insurance coverage in 2007, and a proposal from AIG was determined to be the most competitive. As a condition to obtaining new policies, ASARCO had to pay approximately $155,000 to cure obligations relating to workers' compensation coverage in 2004. The Bankruptcy Court approved ASARCO's request by order entered on April 16, 2007.

(g) Settlement of Certain Workers' Compensation Claims.

On June 6, 2008, ASARCO filed a motion seeking approval of its proposed settlement with certain former employees who had asserted workers' compensation claims with an alleged aggregate value of $6.8 million. They claimed that their hearing was impaired as a result of working in zinc mines formerly owned and operated by ASARCO's former Tennessee Mines Division in eastern Tennessee. Pursuant to the settlement, each Claimant shall receive an agreed-upon

payment in an amount set forth on an exhibit to the motion, with the Allowed Claims totaling approximately $4.5 million. ASARCO also sought, pursuant to section 362(d)(1) of the Bankruptcy Code, a limited modification of the automatic stay to allow any settling Claimants who so choose to seek approval of the settlement in the Tennessee state court where the hearing loss claims were originally filed or could have been filed, or the Tennessee Department of Labor. In addition, on September 17, 2007, ASARCO obtained approval of a settlement with former employees who contended that their prepetition hearing-loss judgments or settlements were secured. ASARCO agreed to pay certain of those claimants a total of about $1.7 million out of the proceeds from the post-petition sale of the Tennessee Mines Division. The remaining claimants received Allowed Claims totaling approximately $1.4 million.

(h) Payment of Union Professional Fees and Expenses.

In the summer and fall of 2006, ASARCO and the USW were in negotiations regarding the collective bargaining agreements, which were set to expire at the end of 2006. In order to adequately represent the interests of ASARCO's bargaining unit employees and retirees in such negotiations, the USW needed assistance from qualified professionals to address the legal and financial issues. By order entered on August 21, 2006, the Bankruptcy Court authorized ASARCO to pay up to $500,000 of the USW's professional fees and expenses, provided the professionals submit to a fee statement review process and file fee applications approximately every four months.

By motion filed on August 23, 2007, ASARCO sought to increase the aggregate cap on the USW's professional fees that ASARCO is authorized to pay from $500,000 to $1.5 million. The Parent objected to the request. The Bankruptcy Court conducted hearings on the motion on November 1, 2007 and February 8, 2008, and then took the matter under advisement.

(i) Canadian Pension Plan Funding Obligations.

(1) ASARCO.

By motion filed on January 4, 2008, ASARCO sought authority to cure the underfunding of the salaried pension plan for ASARCO Exploration Company of Canada Limited, Federated Metals Canada Limited, and Enthone-OMI (Canada) Inc. and to complete the wind-up and termination of the plan.

As part of the process of closing these companies' Canadian operations in 1999 through 2002, the pension plan began the wind-up process. At the time, the plan was underfunded. ASARCO's predecessor agreed in January 2003 to cure the underfunding in installment payments over five years; however, no installment payments were made and, for years, the required annual wind-up reports were not filed.

By order entered on January 29, 2008, the Bankruptcy Court authorized ASARCO to pay, within its discretion, any amounts owed to the pension plan and related expenses as ultimately negotiated by the parties and subject to variables such as the annuities return rate and interest rates at the time of calculation, and otherwise complete the wind-up (or termination) of the pension plan.

After ASARCO paid the amounts owed to the pension plan by purchasing annuities totaling CA$1.5 million from Industrial Alliance, Insurance and Financial Services of Montreal, Canada, the pension plan was closed in the fourth quarter of 2008.

(2) LAQ.

LAQ sold its rights under a Joint Venture Agreement with United Asbestos Corp. Ltd. concerning operation of an asbestos mining concession and other assets at Black Lake in the Province of Québec to its subsidiary Lac d'Amiante du Canada Ltée on June 18, 1986 by the Memorandum of Agreement of the same date. Lac d'Amiante du Canada Ltée remained a wholly-owned subsidiary of LAQ. On that same day, a limited partnership agreement was signed among Lac d'Amiante du Canada Ltée, Camchib, Bell Asbestos Mines Ltd., and Asbestos Corporation Limited as limited partners, and LAB Chrysotile Inc. as general partner, to carry on the business of the mine.

Also on June 18, 1986, the parties to the limited partnership agreement entered into the Actuarial Basis for Transfer, which set forth their agreement regarding establishing pension plans for the limited partnership's employees. Under the agreement, LAB Chrysotile agreed to set up pension plans to cover employees of the limited partnership and the partners

agreed to transfer certain assets from their plans to LAB Chrysotile's plans, and in the case of Lac d'Amiante du Canada Ltée, from LAQ's plans. Canadian regulations interfered with the planned transfer of pension assets.

LAQ subsequently sold its ownership interest in Lac d'Amiante du Canada Ltée to 2733-2915 Québec, Inc. As part of the sale, the parties stipulated that the assets of the LAQ Retirement Benefit Plan for Salaried Employees and the LAQ Retirement Income Plan for Hourly Rated Employees would be transferred to LAQ prior to closing, subject to the obligations contained in the Actuarial Basis for Transfer. In a separate agreement between Lac d'Amiante du Canada Ltée and LAQ prior to closing, LAQ agreed to "assume and indemnify and hold harmless [Lac d'Amiante du Canada Ltée] in respect of all such obligations to the extent of the amount of such assets lawfully received and entitled to be retained by [LAQ]."

LAB Chrysotile filed Proof of Claim No. 18184 on March 23, 2007, seeking $703,894.63 (CA$822,360.10) for the payment of retirement benefits to former LAQ employees. Because the only obligation LAQ has under its agreement with Lac d'Amiante du Canada Ltée is limited to "the extent of the amount of such assets lawfully received and entitled to be retained by [LAQ]," LAQ disputed this Claim and does not believe it has continuing pension obligations.

(j) Payment of Employee Benefit Obligations.

ASARCO has, over the course of the Reorganization Cases, received authority from the Bankruptcy Court to make quarterly pension plan payments for salaried and hourly employees, make disability payments to current and former employees, cure deficiencies in its retirement plans, and cure other compliance issues relating to certain benefit plans, and has made such payments in accordance with applicable law.

(k) Workers' Compensation Claims.

Most of ASARCO's workers' compensation liabilities are concentrated in Arizona, Montana, Missouri, and Tennessee. In Arizona, ASARCO's workers' compensation liability arises from Claims asserted by former employees at facilities that will be owned and operated by the Plan Sponsor after consummation of the New Plan Sponsor PSA. In Montana, Missouri, and Tennessee, the workers' compensation Claimants are former employees who worked at facilities that are no longer owned or operated by ASARCO or one of its subsidiaries.

Under the New Plan Sponsor PSA, the Plan Sponsor shall assume all of ASARCO's prepetition and post-petition workers' compensation liabilities relating to Transferred Employees (as such term is defined in the New Plan Sponsor PSA). Prepetition workers' compensation obligations of ASARCO's current and former employees who do not become Transferred Employees shall remain obligations of ASARCO's Estate and, upon allowance, shall be satisfied pursuant to the Plan.

The Debtors have resolved some workers' compensation Claims and anticipate resolving the remaining workers' compensation Claims (other than those of Transferred Employees) through ongoing negotiations and the Claim objection and estimation process.

(1) Arizona.

ASARCO's workers' compensation liabilities in Arizona arise principally from ASARCO's ownership and operation of the Ray copper mine and the Hayden smelter. ASARCO's obligations for payment of indemnity benefits are insured under policies issued by the SCF; however, medical benefits relating to workers' compensation injuries are not covered by the policies. Since the Petition Date, the SCF has paid benefits to approximately 170 of ASARCO's current and former employees with work-related injuries.

Approximately 21 current or former workers, as well as the SCF, submitted Proofs of Claim asserting workers' compensation liabilities. The SCF's Proof of Claim includes Claims on behalf of ASARCO's current and former employees with rights to benefits under Arizona workers' compensation law who did not file Proofs of Claim on their own behalf. The SCF seeks reimbursement of medical benefits actually paid by it and certain indemnity payments made in excess of policy limits, in addition to approximately $6.4 million for medical benefits that may be paid to the injured workers in the future.

(2) Montana.

ASARCO's workers' compensation obligations in Montana arise from its ownership and operation of the East Helena smelter. ASARCO was self-insured in Montana for workers' compensation and occupational disease purposes from July 1, 1966 until September 20, 2001. Beginning in 1973, Montana's workers' compensation laws provided for payment of necessary medical expenses relating to an industrial injury for the lifetime of the injured worker. Montana law was thereafter amended in regards to workers' compensation claims arising after June 30, 1993 to extinguish an injured worker's right to future medical benefits if the worker went 60 consecutive months without needing medical treatment. Injured workers may also receive, for a limited time, indemnity benefits based on the nature and extent of their injury.

The two state entities responsible for workers' compensation matters in Montana are the Montana DLI and the Montana Guaranty Fund. Under Montana workers' compensation law, the Montana DLI is responsible with ASARCO for certain worker injuries arising on or after July 1, 1973, while the Montana Guaranty Fund is responsible with ASARCO for certain injuries arising on or after July 1, 1989. The Montana DLI has administered the workers' compensation of former ASARCO employees in Montana since the Petition Date.

As a condition of operating as a self-insurer, ASARCO posted two surety bonds with a combined face value of $1,515,000 issued by National Fire Insurance Company of Hartford (a/k/a CNA) and Safeco Insurance Company. Since the Petition Date, the Montana DLI and the Montana Guaranty Fund have drawn against the surety bonds to pay indemnity and medical benefits to former ASARCO employees in Montana with ongoing workers' compensation claims. Both bonds are expected to be exhausted before the Initial Distribution Date.

Proofs of Claim asserting workers' compensation liabilities were filed by 27 former ASARCO employees. The Montana DLI and the Montana Guaranty Fund filed Proofs of Claim asserting Claims on their own behalf as well as on behalf of all persons with Claims to workers' compensation benefits under Montana law. The Montana DLI and the Montana Guaranty Fund assert Claims for funds necessary to pay former employees' benefits due under Montana workers' compensation law once the surety bonds are exhausted. In addition, the Montana DLI and the Montana Guaranty Fund seek payment of a fee for administering benefits to workers since the Petition Date. Reimbursement is also sought for benefits paid by the Montana DLI or the Montana Guaranty Fund to former ASARCO employees since the Petition Date, if any.

(3) Missouri.

ASARCO's workers' compensation obligations in Missouri arise from its operation of a lead mining business in Missouri, which was sold in 1998. ASARCO is aware of 18 persons with Claims arising under Missouri workers' compensation law. ASARCO intends to resolve these Claims on a case-by-case basis.

As a condition to operating as a self-insured employer in Missouri, ASARCO obtained from National Fire Insurance Company of Hartford (a/k/a CNA) a surety bond with a face value of $500,000. ASARCO anticipates that this bond will be exhausted before the Initial Distribution Date.

Under Missouri law, the difference between the value of a workers' compensation claim and the amount paid to the Claimant by his employer (in this instance, the amount of the distribution received under the Plan) is paid by the Missouri Guaranty Corporation, which then succeeds to any right to payment to which the Claimant becomes entitled to in the future. The Missouri Guaranty Corporation may also have a direct Claim against ASARCO to the extent of its payment of indemnity benefits or medical expenses to any workers' compensation Claimant.

(4) Tennessee.

ASARCO's workers' compensation obligations in Tennessee arise from ASARCO's operation of zinc mines in the eastern part of the state. Over 150 former employees asserted Claims against ASARCO based on hearing loss allegedly suffered while working in these underground mines. As discussed above in Section 2.16(g), the Bankruptcy Court has previously approved settlements of certain workers' compensation Claims arising under Tennessee law. ASARCO is in settlement negotiations with the holders of the remaining workers' compensation claims asserted by former employees in Tennessee. Forty-nine Claims are pending resolution.

(5) Other.

Certain former employees of ASARCO (or their surviving spouses) asserted unliquidated claims under New Jersey workers' compensation law. ASARCO obtained Bankruptcy Court approval in February 2009 of settlements with nine of these creditors, whereby their Claims were Allowed as General Unsecured Claims totaling $113,000. Amounts owed on Proofs of Claim filed by certain other former employees of ASARCO (or their surviving spouses) and by the New Jersey Self-Insurers Guaranty Association under New Jersey workers' compensation law will be resolved by agreement or, if no agreement can be reached, by order of the Bankruptcy Court.

Proofs of Claims asserting rights to relief under the workers' compensation laws of other states (including Colorado, Idaho, Nebraska, Ohio, Texas, and Washington) are being resolved on an individual basis.

2.17 Insurance.

(a) Insurance Coverage Litigation.

In 2001, ASARCO, LAQ, and CAPCO filed a petition in the 94th District Court of Nueces County, Texas, initiating Cause No. 01-02680-C against certain insurance companies, seeking a declaration that the insurance companies were obligated to defend and indemnify them against asbestos Claims pending in various lawsuits filed across the country. The lawsuit is currently pending in the 105th District Court of Nueces County, Texas as Cause No. 01-02680-D. Under the Plan, this lawsuit shall vest in Reorganized ASARCO. The only remaining defendants in the lawsuit are FFIC and certain London market insurers. In the action, ASARCO is seeking reimbursement of prepetition indemnification and defense costs, a declaration as to the coverage obligations under insurance policies sold to ASARCO by the insurance companies, and damages under statute and common law on a variety of extracontractual grounds, including bad faith and improper claims handling. The insurance policies sold to ASARCO by these insurance companies are included on the list of insurance policies attached to the Plan as **Exhibit 8**.

FFIC had removed the lawsuit from state court to the District Court, after the April 2005 bankruptcy filings of LAQ and CAPCO, thereby creating Civil Action No. 05-00323. The District Court referred the lawsuit to the Bankruptcy Court, thereby initiating Adversary Proceeding No. 05-02053. The debtors filed a motion to remand the lawsuit to Nueces County, and FFIC filed a motion for withdrawal of the reference of the lawsuit. On January 25, 2006, the Bankruptcy Court remanded the lawsuit to Nueces County and issued an interim report suggesting that the withdrawal of reference motion was moot. FFIC filed notices of appeal from both of these rulings, thereby initiating Civil Action Nos. 06-00064 (the appeal from the interim report) and 06-00065 (the appeal from the remand order). In orders entered in both appeals on March 7, 2007, the District Court affirmed the Bankruptcy Court's order remanding the lawsuit to state court. On March 11, 2009, the state court entered an order granting the Debtors' motion for partial summary judgment on FFIC's asbestosis exclusion, which effectively eliminates one of FFIC's principal defenses to coverage in the lawsuit.

While the lawsuit seeks coverage for both products claims and premises claims, ASARCO entered into prepetition settlement agreements with American Home Assurance Company and Century Indemnity Company, as successor to, *inter alia*, Insurance Company of North America and California Union Insurance Company, regarding premises claims. All matters relating to these settlement agreements are confidential, but for the fact that settlement has been reached. Thus, while additional policies remain available as a source of insurance coverage, ASARCO is precluded from identifying them on the list of insurance policies that is attached to the Plan as **Exhibit 8**.

ASARCO also entered into prepetition settlement agreements with a number of insurance companies that were originally named as defendants in the lawsuit, but were dismissed as a result of those settlements. A number of those settlements are the subject of fraudulent conveyance actions**, based on ASARCO's assertion that it received less than reasonably equivalent value for the settlements,** that were timely filed but have not been served, in accordance with a Bankruptcy Court order staying service until a specified number of days following the Effective Date. *See* Section 2.24(i), (j), and (l)(3) below. The insurance policies that are subject to these fraudulent conveyance actions, and from which insurance recovery is being sought through such actions, are referenced on the list of insurance policies that is attached to the Plan as **Exhibit 8**.

(b) Post-Petition Settlements with Certain London Market Insurers.

On July 26, 2006, ASARCO filed a motion seeking approval of its settlement with certain participating London market insurers of the insurance coverage litigation discussed in Section 2.17(a) above. The settlement generated

$18,943,000.36 for the Debtors' Estates (or nearly 80 percent of the limits of the policies being settled with respect to the settling carriers). The Bankruptcy Court approved the settlement by order entered on September 14, 2006.

On February 28, 2007, ASARCO filed a motion seeking approval of its settlement agreement with another one of the London market insurers, Sovereign Marine and General Insurance Company Limited, which in effect allowed Sovereign to become a party to the earlier settlement agreement with the participating London market insurers and resulted in ASARCO's recovery of approximately $1 million thus far. The Bankruptcy Court approved the settlement by order entered on March 23, 2007.

On April 1, 2009, ASARCO filed a motion seeking approval of its settlement agreement with another insurer, Aviva Canada Incorporated, under substantially the same terms and conditions as approved by the Bankruptcy Court under the settlement agreement with certain participating London market insurers described above. The settlement will generate approximately $1.15 million for the Debtors' Estates (approximately 80 percent of outstanding policy limits for the policies associated with the settling carrier).

(c) Escrow of Certain Insurance Proceeds.

The Asbestos Subsidiary Debtors, ASARCO, the Asbestos Subsidiary Committee, and the FCR entered into an escrow agreement regarding insurance proceeds that were recovered as the result of an Asbestos Insurance Settlement Agreement. The escrow agreement was set forth in a July 8, 2005 Stipulation and Order Regarding Certain Insurance Proceeds, which was approved by the Bankruptcy Court on that date and issued as an order.

(d) Efforts to Recover from Insurers Not Subject to Suit.

In addition to pursuing insurance recovery through the Nueces County lawsuit discussed in Section 2.17(a) above and the avoidance actions discussed in Section 2.24(i) and (j) below, ASARCO is seeking recovery outside of standard litigation from certain insurers that are either insolvent, in liquidation, or subject to a protective order that prohibits pursuit of a traditional lawsuit against them but against whom a claim may be filed through other means. ASARCO is pursuing recovery through the procedures that are required for each such insurer. The insurance policies sold to ASARCO by these insurance companies are identified on the list of insurance policies that is attached to the Plan as **Exhibit 8**.

2.18 Tax Issues.

(a) The Tax Refund.

As a result of the carryback of certain losses of ASARCO's predecessor, ASARCO NJ, that were incurred prior to Grupo México's acquisition of ASARCO NJ in 1999, ASARCO contends that it is entitled to a tax refund from the IRS for federal income taxes ASARCO NJ paid during 1987, 1988, and 1989. ASARCO has been attempting to collect the tax refund, which is a substantial cash asset of ASARCO's Estate, from the IRS since 2003.

More specifically, ASARCO NJ was the common parent of the ASARCO NJ Consolidated Group that filed consolidated federal income tax returns on a calendar year basis for the taxable years 1987 through 1999. ASARCO NJ paid the federal income taxes reported on the consolidated federal income tax returns filed by the ASARCO NJ Consolidated Group, including those filed for the taxable years 1987 through 1989.

In May 2003, ASARCO NJ filed a claim for refund with the IRS based on the carryback of specified liability losses under Internal Revenue Code section 172(b)(1)(C) and (f), from the taxable years: (1) 1994 and 1995 to the taxable year 1987; (2) 1998 to the taxable year 1988; and (3) 1999 to the taxable year 1989.

On January 26, 2006, the IRS issued a Notice of Partial Allowance and Partial Disallowance of the refund claim. The amounts of the refund claim allowed pursuant to the partial allowance notice are $1,750,684 for the taxable year 1987, $21,336,162 for the taxable year 1988, and $17,392,575 for the taxable year 1989. The total overpayment of tax allowed by the partial allowance notice is $40,479,421. As a result of the merger in 2005 of ASARCO NJ with and into ASARCO, ASARCO succeeded to the ownership of the refund claim and the Tax Refund under Delaware contract and statutory law.

On February 5, 2007, ASARCO filed a complaint for declaratory and injunctive relief against the Asbestos Subsidiary Debtors, Rinker Material South Central, Inc. f/k/a American Limestone, Enthone Inc., EI Liquidation, Inc., and OMI International Corporation, AMC, and the Parent, thereby initiating Adversary Proceeding No. 07-02011. The complaint seeks, *inter alia*, a declaration that the Tax Refund is property of ASARCO's Estate.

On April 11, 2007, the Bankruptcy Court entered a Stipulation and Agreement Regarding the Defense of Tax Refund Complaint on Behalf of the Subsidiary Debtors' Estates, wherein the Asbestos Subsidiary Debtors, each of their respective Estates, the Asbestos Subsidiary Committee, and the FCR agreed that the Asbestos Subsidiary Committee and the FCR should take responsibility for the representation of the interests of the Asbestos Subsidiary Debtors in the Tax Refund adversary proceeding.

By stipulation and order entered on June 1, 2007, Rinker acknowledged that it had no right or entitlement to the refund claim or to any portion of the amounts recovered under the refund claim or to the Tax Refund; as a result, claims against Rinker in this adversary proceeding were dismissed. In the stipulation, Rinker also designated Covington to act as agent for the ASARCO NJ Consolidated Group with respect to the refund claim and the Tax Refund.

By stipulation and order entered on January 3, 2008, the Asbestos Subsidiary Debtors designated Covington to act as agent for the ASARCO NJ Consolidated Group with respect to the refund claim and the Tax Refund; as a result, Count II of the complaint against the Asbestos Subsidiary Debtors was dismissed. By stipulation and order entered on February 25, 2008, ASARCO and CAPCO stipulated that CAPCO is entitled to $51,321 plus a pro rata portion of the statutory interest accrued on the overpayment of tax, less a pro rata portion of any fees payable to Arthur Andersen LLP or Deloitte & Touche LLP relating to the refund claim or the Tax Refund. The Asbestos Subsidiary Debtors, other than CAPCO, acknowledged that they have no right or entitlement to the refund claim or any portion of the Tax Refund. As a result, Count I against the Asbestos Subsidiary Debtors was dismissed.

On December 21, 2007, motions for summary judgment were filed by AMC and the Parent, and by ASARCO. A hearing on the motions was held on January 31, 2008. The Bankruptcy Court requested additional briefing on certain issues raised at the hearing on the motions for summary judgment. On March 31, 2008, ASARCO filed a brief addressing those issues, and AMC and the Parent filed a responsive brief on May 16, 2008. On July 10, 2008, ASARCO filed a reply to AMC's and the Parent's responsive brief.

At the January 31, 2008 hearing, the Bankruptcy Court also requested that the parties attempt to agree to an escrow arrangement authorizing payment of the Tax Refund to an escrow agent while reserving all rights of the interested parties. An escrow arrangement to this effect was negotiated and may be implemented if it becomes economically advantageous to transfer the Tax Refund to an escrow agent.

The DOJ filed a Proof of Claim on behalf of the United States of America in connection with ASARCO's environmental liabilities, asserting a right of setoff pursuant to common law, sections 106(c), 506, or 553 of the Bankruptcy Code, 26 U.S.C. § 6402(d), or 31 U.S.C. § 3720A against, and to the extent of, the Tax Refund. This setoff claim is proposed to be resolved pursuant to the Plan.

(b) Tax Sharing Agreement with and Tax Reimbursement Claims by AMC and the Parent.

The stock of ASARCO NJ was acquired by Grupo México in November 1999. During the year 2000, Grupo México formed and transferred the stock of ASARCO NJ to AMC, which transfer terminated the ASARCO NJ Consolidated Group and created the AMC Consolidated Group having AMC as the common parent and including the ASARCO NJ Subgroup. On January 14, 2004, ASARCO NJ entered into a Tax Sharing Agreement with AMC, which provided that ASARCO NJ would pay to AMC an amount equal to the federal income tax liability attributable to the taxable income of the ASARCO NJ Subgroup that would have been paid if the ASARCO NJ Subgroup had filed a separate consolidated federal income tax return, giving effect to any net operating or capital loss carryovers incurred by the ASARCO NJ Subgroup not previously utilized by the ASARCO NJ Subgroup in computing its liability under the Tax Sharing Agreement. The Tax Sharing Agreement was effective for taxable years ending on or after December 31, 2003. On February 17, 2005, the Tax Sharing Agreement was amended in anticipation of the merger of ASARCO NJ into ASARCO. The amendment provides that the Tax Sharing Agreement shall apply to the ASARCO LLC Subgroup in substantially the same manner as it did with respect to the ASARCO NJ Subgroup, except as modified by the amendment.

At the time that both the Tax Sharing Agreement and the amendment were entered into, the refund claim had not been allowed. The amendment provides that in the event that any tax refund claimed by ASARCO NJ prior to the

date of the amendment should be received by AMC, the Parent, or one of their subsidiaries, such tax refund must promptly be turned over to ASARCO without offset other than for "professional fees that are directly related to preparing, pursuing or other services provided in connection with the claim for refund." ASARCO has not determined whether to assume or reject the Tax Sharing Agreement and the amendment.

At the January 31, 2008 summary judgment hearing, counsel for AMC and the Parent argued for the first time that ownership of the Tax Refund is affected by the Tax Sharing Agreement and amendment, and that summary judgment in ASARCO's favor would circumvent the terms of these agreements. On March 31, 2008, ASARCO filed a brief arguing that the amendment is consistent with ASARCO's ownership of the Tax Refund under Delaware law and merely provides for the payment of the Tax Refund to ASARCO should the Tax Refund be paid by the IRS to any party other than ASARCO. On May 16, 2008, AMC and the Parent filed a response, asserting that the Tax Sharing Agreement and amendment provide that the Tax Refund must be paid to AMC, the Parent, or one of their subsidiaries, and that AMC should be allowed to offset against the Tax Refund the amount of the federal income taxes owed by the AMC Consolidated Group for 2007 that are attributable to the ASARCO LLC Subgroup. On July 10, 2008, ASARCO filed a reply to AMC and Parent's responsive brief.

On or about September 19, 2008, AMC and the Parent filed an Administrative Claim against ASARCO in the amount of $516,200,000 for reimbursement of taxes alleged to be due the Parent under the Tax Sharing Agreement and alleged post-bankruptcy taxes owed to the IRS and other taxing authorities. In an objection filed on January 9, 2009, ASARCO challenged the allowance, priority, and amount of this Claim. On January 23, 2009, the Asbestos Claimants' Committee filed a joinder and supplemental objection regarding ASARCO's objection to the Administrative Claim of AMC and the Parent. The FCR filed a joinder in these objections to the Administrative Claim of AMC and the Parent on January 28, 2009. The ASARCO Committee filed a joinder in ASARCO's objection to the Administrative Claim of AMC and the Parent on February 4, 2009. On or about March 23, 2009, AMC and the Parent amended this Administrative Claim, reducing the amount asserted to $161,718,015. As with any litigation matter, the outcome of this controversy cannot be predicted at this time.

During the last quarter of 2008, ASARCO was notified that the IRS will be performing an audit of the consolidated tax returns of the AMC Consolidated Group for 2006 and 2007, beginning some time in 2009. These consolidated returns include tax items of the ASARCO LLC Subgroup. As of the date hereof, no adjustments have yet been proposed by the IRS.

On February 11, 2009, AMC and the Parent filed a motion for an order compelling the Debtors to assume or reject the Tax Sharing Agreement immediately, so that the tax issues could be resolved between the parties.

Also on February 11, 2009, AMC and the Parent filed a motion to consolidate the Tax Refund adversary proceeding (discussed above in Section 2.18(a)), their motion to compel the assumption or rejection of the Tax Sharing Agreement, and the Debtors' objection to the Administrative Claim of AMC and the Parent. The Bankruptcy Court granted that request by order entered on February 13, 2009, pursuant to which the motion to compel and the claim objection have been consolidated into Adversary Proceeding No. 07-02011.

On February 13, 2009, the Bankruptcy Court entered a scheduling order in that adversary proceeding, setting the hearing on the motion to compel for May 19, 2009, with the final hearing on the objection to the Administrative Claim of AMC and the Parent, together with a determination of ownership of the Tax Refund, to begin on June 15, 2009.

2.19 Asbestos Litigation.

(a) Injunctive Relief Regarding Asbestos Claims.

On April 12, 2005, the Asbestos Subsidiary Debtors filed a complaint initiating Adversary Proceeding No. 05-02030, seeking declaratory and injunctive relief to stay or enjoin the prosecution of asbestos claims against ASARCO (which at that time was not yet in bankruptcy), certain of its non-Debtor subsidiaries, and the then-current officers and directors of ASARCO and the Asbestos Subsidiary Debtors. On April 15, 2005, the Bankruptcy Court entered a temporary restraining order and agreed preliminary injunction, which remains in effect.

On July 26, 2006, ASARCO and the Asbestos Subsidiary Debtors filed a complaint initiating Adversary Proceeding No. 06-02056, seeking declaratory and injunctive relief to stay or enjoin the prosecution and enforcement of asbestos claims against any of the participating London market insurers. This request was made in accordance with a

provision of ASARCO's settlement agreement with the participating London market insurers (discussed in Section 2.17(b) above), which required ASARCO to use its reasonable best efforts to obtain an injunction pursuant to section 105(a) of the Bankruptcy Code in favor of the participating London market insurers. On September 14, 2006, the Bankruptcy Court entered a preliminary injunction, which remains in effect.

(b) Estimation of Derivative Asbestos Claims.

Approximately 102,000 Claimants filed asbestos-related Claims or submitted electronic claims data against ASARCO or one or more of the Debtors. In a number of these Claims against the Asbestos Subsidiary Debtors, and in prepetition lawsuits, ASARCO was alleged to be liable for the Derivative Asbestos Claims. Maintaining that it never manufactured or sold asbestos or asbestos-containing products, ASARCO denied liability.

On June 15, 2005, ASARCO filed a complaint initiating Adversary Proceeding No. 05-02048 against the Asbestos Subsidiary Debtors and the FCR, seeking a declaration that it was not liable for the Derivative Asbestos Claims. Pursuant to a stipulation approved on April 25, 2006, the Asbestos Subsidiary Committee and the FCR were granted standing to prosecute the Derivative Asbestos Claims on behalf of the Asbestos Subsidiary Debtors' Estates and were authorized to take the lead role in the prosecution of this adversary proceeding on behalf of the Asbestos Subsidiary Debtors' Estates and to prosecute all claims, defenses, and counterclaims against ASARCO related to the Derivative Asbestos Claims.

In March 2006, ASARCO filed a motion seeking an estimation of the amount of ASARCO's liability, if any, for the Derivative Asbestos Claims, and proposing a procedure for such estimation proceedings. Objections to the estimation motion were filed by the Asbestos Subsidiary Committee, the FCR, and FFIC.

On May 9, 2006, the Asbestos Subsidiary Committee and the FCR, on behalf of the Asbestos Subsidiary Debtors, filed their Amended Complaint Realigning Parties and Seeking to Hold ASARCO LLC Liable for Tort Liabilities of the Subsidiary Debtors. In the amended complaint, they sought a judgment declaring that ASARCO is liable for the Asbestos Subsidiary Debtors' asbestos-related liabilities under Alter Ego Theories.

ASARCO was able to reach an agreement with the Asbestos Subsidiary Committee and the FCR regarding some aspects of the procedure for resolution of the Derivative Asbestos Claims. The settlement agreement provided for a stipulated process in a contested matter under section 502 of the Bankruptcy Code to establish the aggregate amount of ASARCO's liability, if any, for the asbestos-related liability of the Asbestos Subsidiary Debtors. The amount of the Derivative Asbestos Claims, if any, would be incorporated into ASARCO's plan of reorganization, and used for all purposes, including voting, feasibility, best interests of creditors test, fair and equitable test, no unfair discrimination test, distribution, and other plan-confirmation related matters. The Bankruptcy Court entered an order approving the settlement agreement on March 20, 2007. The order included an addendum which resolved concerns raised by FFIC in an objection, and provided for the estimation proceedings to be conducted to provide for "insurance neutrality." By motion filed on November 30, 2007, ASARCO and the Asbestos Subsidiary Debtors sought to extend the insurance neutrality addendum to all insurance companies that are or may become interested parties in the Reorganization Cases, rather than have its benefits and protections afforded only to FFIC. Objections were filed by Century Indemnity Company, American Home Assurance Company and Lexington Insurance Company, and Mt. McKinley Insurance Company and Everest Reinsurance Company. An agreement was eventually reached with all parties other than Mt. McKinley Insurance Company and Everest Reinsurance Company, and an order of the Bankruptcy Court dated May 29, 2008 extends insurance neutrality to all insurance companies other than those two.

On March 5, 2007, the parties submitted their estimates of the maximum aggregate asbestos-related liability of the Asbestos Subsidiary Debtors as of April and August 2005, the respective Petition Dates of the Asbestos Subsidiary Debtors and ASARCO. The estimates ranged from $180 million to $2.655 billion, not including the Asbestos Premises Liability Claims, **Asbestos Premises Liability** Demands, ~~or the costs of defense~~**direct asbestos Claims against ASARCO, if any, or the costs of defense. While ASARCO cannot disclose the terms and conditions of the confidential coverage in place agreements, ASARCO believes that its insurance will cover a substantial amount of the Asbestos Premises Liability Claims. ASARCO anticipates that its total present and future liability for Asbestos Premises Liability Claims will be between $30 million and $32 million and that the amount not covered by insurance is a fraction of this amount. Prior to ASARCO's bankruptcy filing, it entered into various prepetition asbestos-related settlements agreements, including settlements in contemplation of a pre-packaged bankruptcy filing, and additionally was liable on account of certain unpaid prepetition asbestos related judgments, including agreed judgments. ASARCO does not have a complete listing of judgments on which it may have been liable, but it estimates that its**

aggregate liability on these prepetition settlements and judgments for asbestos premises liability is approximately $2 million and that its liability for judgments and other settlemnets could be substantially higher.

By order dated September 20, 2007, the Bankruptcy Court appointed the Honorable Elizabeth W. Magner, United States Bankruptcy Judge for the Eastern District of Louisiana, to mediate estimation of the Derivative Asbestos Claims. Mediation talks began in October, and continued in November and December 2007, and January 2008. The focus of the discussions quickly expanded from the Derivative Asbestos Claims to encompass a consensual plan of reorganization, and Judge Magner began a dialogue among ASARCO and its key constituencies. Because the talks were productive, the parties asked the Bankruptcy Court to postpone the estimation hearing, which was set to begin on January 2, 2008. These discussions ultimately resulted in development of a global resolution of the Debtors' asbestos and environmental liabilities, which became part of a consensual plan of reorganization and, in the parties' view, obviated the need for an estimation hearing. The parties also decided on a structure for the sale process during the mediation sessions, as is further discussed in Section 2.27 below. The agreements regarding asbestos and environmental liabilities were incorporated into the proposed plan of reorganization that was ultimately withdrawn by the Debtors in October 2008, as discussed below in Section 2.30. However, the parties continued their discussions and were thereafter able to reach revised global settlements regarding resolution of the Debtors' environmental liabilities. Consequently, ASARCO entered into separate settlement agreements with the United States and various states (as discussed in Section 2.20 below), which is the subject of the Environmental 9019 Motion.

Subsequently, ASARCO continued discussions to achieve a global resolution of the asbestos claims. However, no agreement has been reached, and therefore ASARCO is now seeking an estimation of the amount of the Derivative Asbestos Claims ~~and~~**(and also intends to seek an estimation of** any direct Asbestos Claims against ASARCO**)**, which claims shall be satisfied in full by the following:

- the establishment of an Asbestos Trust;

- the channeling of the Unsecured Asbestos Personal Injury Claims and Demands to the Asbestos Trust, pursuant to section 524(g) of the Bankruptcy Code (or in accordance with other applicable provisions of the Bankruptcy Code in the event the Bankruptcy Court or the District Court, as applicable, determine that a section 524(g) injunction should not be granted);

- the Debtors' contribution to the Asbestos Trust of (1) Cash in the Bankruptcy Court's estimated or approved amount of the Derivative Asbestos Claims and any direct Asbestos Personal Injury Claims against ASARCO, together with post-petition interest on such amount; (2) Cash in the amount the Bankruptcy Court determines is needed for the Asbestos Trust's administration expenses; and (3) 100 percent of the interests in Reorganized Covington; and

- the dismissal with prejudice of all claims in Adversary Proceeding No. 05-02048 discussed above and the contested matter seeking to resolve the issues of ASARCO's liability for the Derivative Asbestos Claims and the aggregate amount of any such liability.

On March 30, 2009, the ASARCO Committee filed a motion for entry of a case management order and to establish deadlines for a hearing on estimation of the Derivative Asbestos Claims. Because the Plan does not currently have the support of the Asbestos Claimants' Committee or the FCR, the Derivative Asbestos Claims and direct Asbestos Personal Injury Claims against ASARCO must be estimated. Most of the work in connection with the Derivative Asbestos Claims was performed in late 2007 prior to the mediation before Judge Magner. The Bankruptcy Court conducted a hearing on the ASARCO Committee's motion on April 13, 2009, at which time the court established a schedule for estimation of the Derivative Asbestos Claims. Pursuant ~~thereto~~**to the Supplement to the Second Amended Case Management Order**, the Bankruptcy Court shall conduct the estimation hearing on the issue of ASARCO's liability for the Derivative Asbestos Claims and the estimated amount, if any, of that liability beginning on June 22, 2009. ASARCO intends to request that the estimation proceeding also include all direct Asbestos Personal Injury Claims against ASARCO so that ASARCO's total asbestos-related liability is estimated in the same hearing.

The Debtors believe that the proposed treatment of Unsecured Asbestos Personal Injury Claims as outlined in the Plan is appropriate and in the best interest of the Debtors' Estates and constituents because it (1) allows the expeditious estimation of those claims with respect to ASARCO; (2) funds the Asbestos Trust for the full amount of ASARCO's estimated liability, plus post-petition interest; (3) funds the anticipated costs of administering the Asbestos Trust in the amount the Bankruptcy Court determines is necessary (which the Debtors do not believe should exceed $27.5 million); and

(4) provides for the claims to be satisfied through distributions from the Asbestos Trust in the future. The Asbestos Committee and FCR strongly disagree with this contention.

The Asbestos Claimants' Committee and the FCR contend that estimation of ASARCO's derivative asbestos liability is unnecessary and a waste of judicial and estate resources. The Plan requires the issuance of an asbestos channeling injunction under section 524(g) of the Bankruptcy Code. The absence of a section 524(g) injunction is a default under the New Plan Sponsor PSA rending the Debtors' Plan infeasible. The Asbestos Claimants' Committee and the FCR, however, have entered into a contractual agreement (the Asbestos/AMC/Parent Agreement in Principle) with the Parent that provides for a clear and unequivocal recovery for asbestos creditors. The Asbestos/AMC/Parent Agreement in Principle provides for the creation of an asbestos trust to be funded in the amount of $750 million, plus a $27.5 administrative claim for trust expenses as well as the proceeds from asbestos-related insurance. The Asbestos/AMC/Parent Agreement in Principle also requires the Asbestos Claimants' Committee and FCR to (a) oppose the Debtors' Plan; (b) support the forthcoming Parent plan, subject to a fiduciary out; and (c) not deliver (as to the FCR) and not recommend (as to the Asbestos Subsidiary Committee) that their constituents deliver sufficient votes to support a section 524(g) channeling injunction under the terms of the Debtors' Plan. In light of the Asbestos/AMC/Parent Agreement in Principle, it is unlikely that any plan can be confirmed under which Sterlite will receive the protections of a section 524(g) channeling injunction, and thus the odds of Sterlite closing the New Plan Sponsor PSA are extremely low. The Asbestos Subsidiary Committee and the FCR believe there is no justification for incurring the tremendous expense that will accompany the proposed derivative asbestos estimation. **The FCR contends that the Bankruptcy Court has no jurisdiction to dismiss with prejudice all claims in Adversary Proceeding No. 05-02048 discussed above and the contested matter seeking to resolve the issues of ASARCO's liability for the Derivative Asbestos Claims and the aggregate amount of any such liability, and accordingly, any putative "dismissal" will have no legal effect.**

The Debtors disagree.

The Asbestos Claimants' Committee and the FCR also contend that the derivative asbestos estimation is unnecessary because section 524(g) is the exclusive means of affording debtors and other parties protection from future asbestos claims. Because section 524(g) specifies that no channeling injunction can be issued without the affirmative vote of 75 percent of the holders of Asbestos Personal Injury Claims, the Asbestos Claimants' Committee asserts that the Debtors' Plan, which purports to grant a section 524(g) channeling injunction in favor of Sterlite, cannot be crammed down on Asbestos Personal Injury Claimants that vote to reject the plan. Likewise, the FCR contends that no plan of reorganization containing a section 524(g) channeling injunction has ever been approved absent the consent of the statutorily-required representative of future asbestos claimants. In sum, because there can be no creative "end-runs" around the strict requirements of section 524(g), the proposed estimation is pointless.

The Debtors disagree.

Similarly, the Asbestos Claimants' Committee and the FCR contend that the scope of the estimation proceeding is exceedingly narrow, thereby reinforcing their arguments. Pursuant to the agreement reached between ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, and the FCR, the proposed estimation contested matter only encompasses the extent and amount of ASARCO's liability to the Asbestos Claimants Debtors. By agreement, the estimation contested matter has no effect on any individual claims that any of the more than 100,000 Asbestos Personal Injury Claimants can assert against ASARCO. Each of these claimants is entitled to a jury trial on his or her personal injury tort and wrongful death claims against ASARCO, and absent agreement with the Asbestos Subsidiary Committee and the FCR, each of these personal injury claimants must be dealt with before the Debtors' Plan can be confirmed. Additionally, by agreement, the parties have also expressly agreed that the estimation contested matter only encompasses ASARCO's liability *on account of derivative alter ego theories*. ASARCO's liability for its own conduct is expressly excluded from the proposed estimation contested matter. Accordingly, regardless of the ultimate result of the proposed alter ego estimation, tens of thousands of individual asbestos claimants can still assert direct liability claims against ASARCO, either under theories based on ASARCO's "premises liability" or based on ASARCO's own, independent conduct with respect to asbestos.

The Debtors disagree with this contention because the estimation process will fully address the asbestos liabilities. **The estimation process, however, is not intended to adjudicate any particular Claim of any Asbestos Personal Injury Claimant for purposes of distribution or allowance, which Claims shall instead be determined in accordance with the Asbestos TDP**.

In the alternative, to the extent that the Bankruptcy Court orders the derivative asbestos estimation to proceed, the Asbestos Claimants' Committee and the FCR contend that the Debtors should not be permitted to solicit any votes on the Debtors' Plan unless and until the Asbestos Personal Injury Claims are quantified in some way – either through an agreement or, if ordered to proceed, through the estimation litigation. Thus, the Asbestos Claimants' Committee and the FCR assert that solicitation must await the results of the derivative asbestos estimation. Notably, the Asbestos Claimants' Committee and the FCR are aware of no case law or authority that validates the awkward, cart-before-the-horse approach being promoted by the Debtors. Asbestos claimants are being asked to vote while having absolutely no information from which to evaluate their potential recovery, which renders the solicitation and plan process fatally defective. Such a result is in violation of asbestos claimants' due process rights, contrary to the Bankruptcy Code and applicable law, and effectively precludes such claimants from casting a meaningful vote on the plan. It is simply impermissible to ask asbestos claimants to vote when the only information provided to claimants regarding their potential recovery under the Debtors' Plan is "to be determined."

The Debtors disagree with this contention because the Debtors' Plan adequately identifies the property to be contributed to the Asbestos Trust (*i.e.*, Cash and 100 percent of the interests in Reorganized Covington), and provides for the Cash component of the res to be in the amount estimated by the Bankruptcy Court as sufficient to pay the Asbestos Personal Injury Claims in full, together with Cash in the amount estimated or approved by the Bankruptcy Court to pay the Asbestos Trust's administrative costs.

(c) The Debtors Believe that the Asbestos Claimants' Committee and FCR Cannot Meet the Heavy Burden Needed to Succeed on a Veil-Piercing Claim.

Under both Alabama and Delaware law, which the Debtors contend govern the issue of veil-piercing for CAPCO and LAQ, respectively, there is a strong presumption in favor of corporate separateness. The standard for piercing the corporate veil is extraordinarily difficult to meet. Courts will not pierce the veil unless there is evidence that (1) the subsidiary is completely dominated by the parent corporation such that it is the alter ego of the parent corporation and (2) the corporate form has been misused to perpetrate a fraud or injustice. **The Asbestos Subsidiary Committee and the FCR have noted that in certain proceedings, including the SCC Litigation, the avoidance action against MRI and the avoidance action against Sacaton, ASARCO has asserted various theories for disregarding the corporate separateness with respect to certain of its affiliates. The Asbestos Subsidiary Committee and the FCR believe these assertions should be deemed an admission with respect to this issue for purposes of the estimation of the Derivative Asbestos Claims. ASARCO disagrees and believes that the issues regarding the corporate separateness in those proceedings and with respect to those affiliates are factually and legally distinguishable from that presented in the estimation of the Derivative Asbestos Claims.**

(1) ASARCO Did Not Completely Dominate LAQ or CAPCO.

The domination necessary by a parent corporation to pierce the corporate veil is "complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own." In determining whether the subsidiary is the alter ego of its parent, the courts analyze how the subsidiary corporation operates and the relationship between the subsidiary and parent corporation, including whether the subsidiary (i) is adequately capitalized; (ii) pays dividends; (iii) does business without its parent corporation; (iv) is described as a department or division of the parent; (v) has properly functioning officers and directors; (vi) functions as a façade for the parent; and (vii) observes corporate formalities. In addition, courts consider whether the parent (x) owns all or most of the stock of the subsidiary and (y) siphoned corporate funds from the subsidiary and, if so, whether the subsidiary was solvent at the time.

The Asbestos Claimants' Committee and FCR likely will point to documents purporting to show instances where certain of these factors bear in their favor. ASARCO contends that such instances are wholly insufficient to show the complete domination as required by the case law. Indeed, in normal parent-subsidiary relationships, many of the foregoing factors are present from time to time. ASARCO believes that there are numerous documents and substantial deposition testimony establishing that the parent and subsidiaries operated independently and observed corporate formalities. By way of example, and not limitation, ASARCO ~~believes~~**and the ASARCO Committee believe** that there is evidence demonstrating that:

- LAQ and ASARCO entered into several management and consulting services agreements, whereby LAQ paid a fee for ASARCO's provision of certain management and administrative services. When ASARCO performed services for LAQ or CAPCO, ASARCO charged the applicable subsidiary for the service.

- LAQ and ASARCO paid separate legal fees, even when they were both sued in the same lawsuit.

- LAQ sold materials to CAPCO in arm's length transactions at prices that were charged to non-affiliate customers.

- In situations where ASARCO made payments on LAQ's behalf, ASARCO would charge LAQ via an inter-company account for a payment made.

- LAQ's short-term borrowing arrangements with ASARCO were documented legal obligations.

- CAPCO documented long-term loan payments made to ASARCO.

- LAQ and CAPCO maintained their own board of directors, as well as their own board minutes, agendas, and materials.

- LAQ and ASARCO's asbestos property damage insurer sent separate checks to each entity to reimburse for the costs of defense.

- ASARCO and LAQ had numerous insurance policies of their own, and ASARCO had insurance policies which covered itself and all of its subsidiaries.

- ASARCO and LAQ each had its own pension plan.

- CAPCO had its own additional compensation plan for employees.

- CAPCO and LAQ had their own payroll, employees, manufacturing facilities, and corporate letterhead.

- LAQ and CAPCO conducted business with entities other than each other and other than ASARCO. At the time that LAQ and CAPCO were operating, ASARCO's principal business was as an integrated miner, smelter, and refiner of silver, copper, lead, and by-product metals. It also produced nonmetallic minerals such as coal and limestone. In addition to these activities, ASARCO owned several diverse independent businesses, aside from LAQ and CAPCO.

- CAPCO employees received their pension payments from CAPCO.

- LAQ rented laboratory space in ASARCO's South Plainfield laboratory from ASARCO and conducted separate research operations in that space. ASARCO would accumulate charges for items at the laboratory, such as equipment, and would charge LAQ for them. LAQ would pay ASARCO for these charges.

- LAQ's New York sales office was located at ASARCO's New York headquarters, but segregated by a locked door marked as "Lake Asbestos" or "Lac Asbestos of Quebec." LAQ's files were kept in cabinets behind the locked door. LAQ rented and paid ASARCO for the space.

- LAQ customers' payments were always made payable to LAQ.

- In the normal course of business LAQ would keep "records of contacts with customers, correspondence" and technical service reports on every customer. These reports would describe the customers and whether or not there were any orders.

- LAQ was not involved in hiring CAPCO employees or giving them raises. Neither was LAQ involved in decisions about what asbestos CAPCO would purchase.

(2) There Was No Abuse of the Corporate Form for the Purpose of Evading Liability.

Even if the above facts are ignored, and there is a finding that the companies acted as a single enterprise periodically, the veil will not be pierced without finding of "fraud or similar injustice . . . in the defendants' use of the

corporate form." The required fraud or fraud-like injustice must relate directly to the misuse of the corporate structure. Accordingly, courts examine closely the motivation for the companies' operations. The veil-piercing standard is so exacting that even if the relationship between the companies left the subsidiaries without sufficient capital to pay their liabilities, the veil will not be pierced without evidence that the corporate relationship operated with a fraudulent or unjust purpose. *See Celotex Corp. v. Hillsborough Holdings Corp. (In re Hillsborough Holdings Corp.)*, 176 B.R. 223 (M.D. Fla. 1994) (upstreaming of assets to parent and rendering subsidiary judgment-proof in face of asbestos liability insufficient to pierce corporate veil where assets were not transferred for specific purpose of evading asbestos liability).

~~There~~**ASARCO does not believe there** is ~~no~~**any** evidence ~~in the record~~ that ~~ASARCO~~**it** took assets from the subsidiaries to evade asbestos-related liability or for any fraudulent purpose. Indeed, documents show that when ASARCO did receive payments from the subsidiaries, the subsidiaries received fair consideration in return, including debt cancellation and management and administrative services. **The Asbestos Subsidiary Committee and the FCR contend that ASARCO's actions in compromising certain insurance policies for ongoing operations prior to the commencement of these cases constitutes evidence that ASARCO took assets to evade asbestos-related liability. ASARCO disagrees and asserts that such actions were necessary to maintain ASARCO as a going concern, which inured to the benefit of all parties, including the Asbestos Subsidiary Debtors, and that the rights of the Asbestos Subsidiary Debtors have been preserved by such actions giving rise to Intercompany Claims in favor of such Asbestos Subsidiary Debtors.**

The Asbestos Subsidiary Committee and FCR have alleged that the Asbestos Subsidiary Debtors' corporate separateness has been compromised and that ASARCO is liable for the Claims against the Asbestos Subsidiary Debtors. In connection with the asbestos alter ego estimation proceeding, ASARCO, the ASARCO Committee, and the Parent opposed the Asbestos Subsidiary Committee and FCR's attempts to impose liability on ASARCO for asbestos-related claims against the Asbestos Subsidiary Debtors.

The Asbestos Subsidiary Committee and the FCR assert that compelling evidence demonstrates that ASARCO's derivative asbestos liability should be estimated at more than $2.1 billion. By way of example and without limitation, the Asbestos Subsidiary Committee and the FCR have discovered evidence that ASARCO dominated, controlled, and misused the Asbestos Subsidiary Debtors to such a degree that ASARCO is liable for the derivative asbestos claims asserted by the Asbestos Subsidiary Debtors. Among other things, the evidence gathered in connection with the derivative asbestos estimation supports the following: (A) ASARCO began the asbestos mining enterprise in Canada before LAQ was formed; (B) during LAQ's early history, ASARCO guaranteed LAQ's performance and provided the funds for the business; (C) ASARCO's mining department, engineers, and legal department were heavily involved in LAQ's operations; (D) LAQ's asbestos fiber was listed as part of ASARCO's product line and in fact, ASARCO referred to LAQ as the "ASARCO asbestos mine and mill"; (E) ASARCO personnel were involved in LAQ's marketing, product labeling and branding, research, and sales activities; (F) ASARCO formed CAPCO, in part, as a potential market for LAQ's asbestos; (G) ASARCO provided centralized functions to both CAPCO and LAQ, including medical, legal, research, traffic, collections, and credit approval; (H) ASARCO referred to CAPCO and LAQ as divisions rather than as subsidiaries; (I) ASARCO once claimed to operate the CAPCO cement asbestos plants in documents submitted to the federal government; (J) ASARCO guaranteed a number of Asbestos Subsidiary Debtors' asbestos-related settlements; (K) ASARCO compromised insurance coverage for asbestos-related claims and, at times, used the proceeds to fund operations and cash shortfalls; (L) ASARCO itself marketed, sold, and distributed raw asbestos fiber and/or asbestos-pipe products; (M) ASARCO and the Asbestos Subsidiary Debtors had overlapping officers and directors; (N) ASARCO and the Asbestos Subsidiary Debtors commingled funds at various times during their history; (O) corporate formalities were suspended for periods of time; (P) there were periods of time during which LAQ and CAPCO's board of directors did not meet; (Q) at times, ASARCO exercised direct approval rights over aspects of CAPCO and LAQ's business decisions, ranging from capital expenditures to petty cash allowances to employee salaries; (R) the Asbestos Subsidiary Debtors did not have active boards of directors for years leading up the bankruptcy filings, and in order to obtain the requisite authority to file bankruptcy, these entities had to amend their bylaws and reconstitute their boards of directors; (S) ASARCO ran ads in national publications such as the Wall Street Journal as well as trade publications, trade shows, and even its Annual Reports to its shareholders advertising and publicizing its asbestos products and making such statements as "**ASBESTOS** from Asarco makes a material difference in your life" and "Asarco is a major supplier of asbestos fibers which are used as a reinforcing agent in asbestos cement pipe and sheet, gaskets, brake linings and floor coverings"; (T) ASARCO routinely imported asbestos fibers and distributed them in the United States; (U) ASARCO officers and executives played major roles in numerous asbestos trade and lobbying associations; (V) ASARCO personnel were featured in asbestos industry publications; and (W) ASARCO personnel wrote memos discussing ASARCO's desire to be "asbestos kings."

The ASARCO Committee has been an active participant in the asbestos alter ego proceeding and has indicated that the following information weighs against alter ego liability: (i) despite allegations from various creditors of the Asbestos Subsidiary Debtors, no court has ever entered a judgment determining ASARCO to be the alter ego of the Asbestos Subsidiary Debtors; (ii) the Asbestos Subsidiary Debtors had their own employees, customers, payroll, manufacturing facilities, or plants; (iii) the Asbestos Subsidiary Debtors had their own officers and directors and held board of directors meetings; and (iv) ASARCO referred to the Asbestos Subsidiary Debtors as separate subsidiary entities.

ASARCO believes that, despite the allegations of the Asbestos Subsidiary Committee and the FCR, a court would not find that ASARCO is the alter ego of the Asbestos Subsidiary Debtors. The Asbestos Subsidiary Committee and the FCR disagree with this contention.

(d) ~~Unlike the Expert Damages Reports of ASARCO and the ASARCO Committee, the Asbestos Claimants' Committee and FCR's Expert Damages Report Contains Serious Flaws.~~**The Damage Expert Reports.**

On March 5, 2007, the parties submitted their estimates of the maximum aggregate asbestos-related liability of the Asbestos Subsidiary Debtors. The estimates ranged from a low of $180 million to a maximum of $2.655 billion. ASARCO believes that subsequent developments, including the depositions of the various experts engaged to calculate such aggregate liabilities revealed serious flaws in the expert damages report submitted on behalf of the Asbestos Claimants' Committee and the FCR. Accordingly, ASARCO believes that at the estimation hearing the Bankruptcy Court will determine that, even if ASARCO has any liability for the Derivate Asbestos Claims, the aggregate liability is much closer to the low end of the estimated range above. The Asbestos Subsidiary Committee and the FCR disagree with this contention.

(e) The Asbestos Liability Estimates.

The ~~Claimants~~**claimants**' expert in the estimation proceedings regarding the Derivative Asbestos Claims has estimated the liability for all Claims at between $1.3 billion and $2.1 billion. **The Asbestos Subsidiary Committee and the FCR assert that only their expert used the most appropriate years' settlement values as a basis for future claim projections. The experts of the Debtors and the ASARCO Committee use claim values from different periods before the Debtors' settlement practices were altered by the changes in asbestos litigation that the experts describe.** Based on the last available tort system settlement data, which pre-dated the Asbestos Subsidiary Debtors' bankruptcy filings by over a year, ASARCO's expert estimated the subsidiary claims liability at between $267 million and $430 million. The low end of that range is based on 2000 and 2001 settlement data and reflects settlements that **the Debtors assert** occurred before ~~the~~ Debtors' financial condition became significantly stressed. The range based on the 2002 to early 2004 settlements was approximately $400 million to $430 million. **The Asbestos Subsidiary Committee and the FCR assert that the Debtors' expert has estimated an artificially low valuation of current and future claims. The Debtors had retained different experts in other litigation who estimated that the cost to resolve all pending and future claims against ASARCO and the Asbestos Subsidiary Debtors was greater than the range opined by the Debtors' expert for this estimation proceeding. The Debtors believe that the expert employed by the Asbestos Subsidiary Committee has estimated a grossly inflated number that will be unable to be substantiated.**

None of these liability estimates include the costs associated with the defense of claims or claim administration. **None of these liability estimates include ASARCO's direct asbestos liability, if any.** Under the Plan, ASARCO is providing the Asbestos Trust with Cash in the amount estimated or approved by the Bankruptcy Court as sufficient to satisfy ~~the Asbestos Trust's~~ administration costs **associated with the Asbestos Trust**. ASARCO believes any non-derivative liability of ASARCO will be substantially less than the $267 million estimated at the low end by its expert for the subsidiary claims liability.

(f) Parent's Motion to File Under Seal Objections to Asbestos-Related Proofs of Claim.

On March 3, 2008, the Parent sought authority to file under seal its objections under section 502 of the Bankruptcy Code and Bankruptcy Rule 3007 to asbestos-related Proofs of Claim. The motion alleged that the Parent's review of such Proofs of Claim uncovered glaring facial deficiencies throughout the asbestos claim universe which rebut any presumption of validity. The Parent sought authority to file the objections under seal because they would describe certain confidential medical information as well as the Claimants' social security numbers. This motion was approved by order entered on April 15, 2008. The Parent thereafter filed under seal objections to certain asbestos-related Proofs of Claim.

Responses to the objections were filed by ASARCO, the Asbestos Subsidiary Committee, the FCR, and certain Asbestos Personal Injury Claimants represented by Lipsitz & Ponterio, LLC, contesting the Bankruptcy Court's jurisdiction to adjudicate such Claims. The Bankruptcy Court conducted a hearing thereon on June 6, 2008, heard arguments from counsel, requested briefing on whether it has jurisdiction to decide challenges to the validity of these Proofs of Claims, heard additional arguments from counsel on July 15, 2008, and took the matter under advisement.

To date, the Parent has filed objections to 65 of the approximately 102,000 asbestos-related Proofs of Claim. Of the 65 objections filed, the Parent asserts that 58 Proofs of Claim have so far been withdrawn or expunged by the Bankruptcy Court.

On October 2, 2008, the Bankruptcy Court entered an order abating objections to asbestos Proofs of Claim A through MM. Based on the procedural posture of the pending confirmation proceedings existing at the time, the Bankruptcy Court abated these asbestos Claim objections until after the pending November 17, 2008 confirmation hearing. The Bankruptcy Court explained that a section 524(g) trust, if established, would operate to efficiently and effectively allow or disallow and liquidate the personal injury tort claims asserted, without the need for the Bankruptcy Court "to confront the difficult jurisdictional questions present."

2.20 Estimation of Environmental Claims, Omnibus Objections to Environmental Claims, and the Environmental 9019 Motion.

ASARCO has, for over 100 years, been engaged in the mining, smelting, and refining businesses. As a result of these historical activities, ASARCO acquired potential responsibility for liabilities arising under Environmental Law at over 100 sites, asserted in Proofs of Claim filed by the federal government as well as many state governments, Indian tribes, and private parties. The United States filed a Proof of Claim asserting Claims in stated amounts ranging from $3.6 to $4 billion. Sixteen states filed Proofs of Claim asserting liabilities in stated amounts ranging from $3.8 to $4 billion. At least two Indian tribes filed Proofs of Claim asserting approximately $800 million in Claims, and private parties filed Proofs of Claim in amounts totaling almost $2 billion. These private party Claims are mostly, but not entirely, duplicative of Claims filed by state and federal governments. When analyzed to eliminate obvious duplication, these Proofs of Claim assert approximately $6.5 billion of Claims in determined amounts, with a significant number of additional Claims in "undetermined" amounts. These environmental Claims would create an unsecured class too ill-defined to achieve confirmation of a plan of reorganization unless the vast majority of them were resolved either through estimation by the Bankruptcy Court or settlement.

On January 30, 2007, ASARCO filed a motion asking the Bankruptcy Court to estimate the environmental Claims, and received numerous objections to this request. On March 23, 2007, after extensive negotiations with federal and state governments and PRPs, the Bankruptcy Court entered a case management order establishing agreed-upon procedures for estimation of ASARCO's environmental Claims at 21 sites (including past and future response and natural resource damage Claims, but excluding Toxic Tort, property damage, and similar Claims). The asserted liabilities at these sites accounted for approximately $6.1 billion of the $6.5 billion in environmental Claims asserted in determined amounts, along with the most significant environmental Claims asserted in undetermined amounts. The case management order divided the covered sites into five groups, and set discovery and trial timetables for each group.

As a result of the process initiated by the case management order, three estimation hearings were held as to portions of the three Residual Environmental Settlement Sites, which represent approximately $3 billion of the environmental Claims. Settlements were reached prior to scheduled estimation hearings as to all or part of the Previously Settled Environmental Sites, whereby another $3 billion of environmental Claims were resolved for approximately $532.1 million in Allowed Unsecured Claims or Cash.

Toward the end of the schedule established by the case management order, the DOJ attended the mediation before Judge Magner, which was initially intended to focus upon estimation of the Derivative Asbestos Claims. *See* Section 2.19(b) above. When that mediation expanded to include discussions of a consensual plan, the parties reached an agreement in principle on a plan-based structure of settlement encompassing the sites addressed by the case management order, as well as the majority of the remaining environmental Claims. At that time, the Debtors and the DOJ asked the Bankruptcy Court to defer ruling on the Residual Environmental Settlement Sites which had been the subject of estimation hearings. The agreement in principle was incorporated into the proposed plan of reorganization that was filed by the Debtors on July 31, 2008, as amended on September 12, 2008 and September 25, 2008. As discussed below in Section 2.30, the Debtors were unable to proceed with this plan, which had as a key component the Original Plan Sponsor PSA, after Sterlite announced that it could not close that transaction due to exacerbating circumstances in global finance and commodities markets. While the

Debtors were exploring their options, ASARCO and the other parties to the agreement in principle regarding environmental liabilities continued negotiating settlements to be effectuated outside a plan.

Ultimately, the Debtors, the federal government, and various state governments entered into the global environmental settlements that were submitted to the Bankruptcy Court for approval pursuant to a motion filed under Bankruptcy Rule 9019 on March 12, 2009. The key components of the environmental settlement (in addition to the approximately $532.1 million in settlements relating to Previously Settled Environmental Sites) are:

- owned, non-operating sites with identified environmental issues shall be placed into Environmental Custodial Trusts along with approximately $233.8 million for remediation and closure costs and $27.5 million for administration costs of the trusts;

- environmental Claims relating to the vast majority of previously unresolved state and federal environmental Claims shall be Allowed as General Unsecured Claims totaling approximately $94.5 million; and

- environmental Claims of the United States and the States of Nebraska and Washington relating to the Residual Environmental Settlement Sites are resolved for Allowed Administrative Claims totaling $14 million and Allowed General Unsecured Claims totaling approximately $736 million.

(a) Environmental Custodial Trust Sites.

The Environmental Custodial Trust sites comprise approximately 23 sites where ASARCO owns property with identified environmental issues. ASARCO hired Environmental Resources Management, one of the world's largest environmental consulting firms, to evaluate the potential costs associated with these sites. Environmental Resources Management estimated the expected cost of cleaning up identified liabilities at each site, so that ASARCO's board of directors and management could make informed business judgments in connection with bankruptcy planning. Based on its research and analysis, Environmental Resources Management projected that the costs to clean up identified potential liabilities at the Environmental Custodial Trust sites would likely range between approximately $152.3 million and $218.5 million. The amount of funding, including administrative funding, of the Environmental Custodial Trusts was the subject of intense negotiations between ASARCO and the federal and state governments that are parties to the Environmental Custodial Trust Settlement Agreements. A listing of the Environmental Custodial Trust sites and their funding is set forth in **Exhibit 10** to the Plan. Under the Environmental Custodial Trust Settlement Agreements, the funding shall total approximately $261.3 million. As a material condition to the settlement, the Bankruptcy Court must allow the $261.3 million in funding as Administrative Claims.

(b) Residual Environmental Settlement Sites.

The Residual Environmental Settlement Sites consist of the ~~[~~Coeur d'Alene, Idaho site; the Omaha, Nebraska lead site; and the Tacoma, Washington smelter plume site.~~]~~ The Residual Environmental Claims relating to these sites consist of the Claims of the United States for the Coeur d'Alene site and the Omaha site, the Claims of the State of Nebraska for past and future response costs at the Omaha site, and the Claims of the State of Washington for future costs at the Tacoma site. Under the global environmental settlement, the United States, the States of Nebraska and Washington, and the CDA Trust shall have Allowed General Unsecured Claims totaling $736 million and an Allowed Administrative Claim in the amount of $14 million.

The following chart summarizes the Residual Environmental Claims settlement on a site-by-site basis:

Coeur d'Alene		
Past Costs and Future Oversight	$41,464,000	
Natural Resource Damages	$67,500,000	
Future Response Costs	$373,179,000	
Site Subtotal		$482,143,000
Omaha		
Response Costs	$187,500,000	
Site Subtotal		$187,500,000

Tacoma		
Response Costs	$80,357,000	
Site Subtotal		$80,357,000
TOTAL		**$750,000,000**

The total settlement amounts reflected in the chart above are the result of significant analysis, expert opinion, negotiation, and reflection on the potential outcome of the estimation hearings conducted for each of the Residual Environmental Settlement Sites.

(1) Coeur d'Alene.

In its post-trial brief and related exhibits, the federal government asserted that its total Claim at the Coeur d'Alene site was approximately $2.6 billion. ASARCO's experts opined that the government's Claim should be $120 million. The Coeur d'Alene Claims include past costs, oversight, future response costs, and natural resource damages. Three key factors affect the resolution of the Claims relating to the Coeur d'Alene site: (1) the timing and actual scope of the government's proposed "comprehensive remedy" including the selection of an appropriate discount rate; (2) the applicability in the estimation hearing of the 22 percent divisibility share for ASARCO that the federal district court in Idaho found in prior litigation (which is discussed in Section 2.26(c) below); and (3) the appropriate basis and amount for the government's Claim for natural resource damages. Uncertainty regarding how the Bankruptcy Court would resolve these complex issues in estimating the Claims at Coeur d' Alene creates a very wide range of reasonably possible outcomes for the court's final decision. In order to resolve ASARCO's alleged liability for current and future response costs, the parties agreed that ASARCO would create the CDA Trust, which would receive a General Unsecured Claim for approximately $359 million to be used to perform work at the site. Alleged liability for past costs and oversight costs were resolved with General Unsecured Claims in the amount of approximately $41 million and natural resource damages were resolved with General Unsecured Claims in the amount of approximately $68 million. In addition, portions of the Coeur d'Alene site are currently owned by ASARCO. The government argued that the liability related to these portions of the site is not dischargeable and not divisible. The parties agreed to resolve this alleged liability by transferring ownership of the owned property to the CDA Trust and providing the trust with an Allowed Administrative Claim in the amount of $14 million to be used to perform work and pay future environmental costs and administrative costs at the owned portions of the site. ASARCO believes that the settlement providing for a $14 million Administrative Claim and a $468 million Unsecured Claim is within the range of reasonable outcomes from the estimation hearing and the liability for the owned property.

The following chart and the two charts found below in subsections (b)(2) and (3) set forth the estimates of the various cost components for the Coeur d'Alene, Omaha, and Tacoma sites as presented by ASARCO, the government, and their respective experts at the estimation hearings, as well as the related settlement amounts:

Cost Component	ASARCO estimate	Settlement	Government estimate
Past Costs	$36,000,000	**$41,464,000**	$180,020,000
Oversight	$2,470,000	[redacted]	$67,660,000
Future Response	$74,650,000	**$373,179,000**	$1,983,840,000
Natural Resource Damages	$7,520,000	**$67,500,000**	$333,200,000
TOTAL	$120,640,000	**$482,143,000**	$2,564,720,000

(2) Omaha.

The governments' expert witnesses asserted that the United States' total Claim at the Omaha site was approximately $406 million and the State of Nebraska's Claim was over $2.3 million. ASARCO's experts presented cost estimates that ranged from $5.4 million to $21.5 million. The key issues at the Omaha site are whether liability should be imposed upon ASARCO, whether liability is joint and several, and whether the EPA's interim response actions are inconsistent with the National Contingency Plan. The Residual Environmental Settlement Agreement provides for General Unsecured Claims in the amount of $186.5 million for the United States and in the amount of $1 million for the State of Nebraska.

Cost Component	ASARCO estimate	Settlement	Government estimate
Past and Future Response	$5,400,000 - 21,500,000	**$187,500,000**	$406,000,000

(3) Tacoma Smelter Plume.

The expert witnesses for the State of Washington asserted that its total Claims for future response costs at the Tacoma smelter plume site were approximately $112.7 million. ASARCO's experts opined that the State of Washington's Claim should be $7.65 million. The two key issues are the number of properties requiring remediation and the cleanup cost per property. The State of Washington and ASARCO both presented bases for identifying the total number of residential yards and undeveloped properties that might require remediation.

Cost Component	ASARCO estimate	Settlement	Government estimate
Future Response	$7,650,000	**$80,357,000**	$112,700,000

(c) Miscellaneous Federal and State Environmental Sites.

The Miscellaneous Federal and State Environmental Claims relate to approximately 27 sites where either the federal government, a state government, or both have filed environmental Claims against ASARCO. The creditors asserted Claims at these sites are in excess of $200 million, with several Claims asserted in undetermined amounts. In the fall of 2007, ASARCO reviewed available information relating to the Miscellaneous Federal and State Environmental Sites at the company's various document repositories in preparation for litigation or settlement of the environmental Claims at these sites. ASARCO relied on the knowledge of its employees, outside technical consultants, and legal counsel to develop a litigation strategy for each of these sites. ASARCO anticipated approaching the Miscellaneous Federal and State Sites on a site-by-site basis, as it had under the case management order; however, as a result of the agreement in principle reached at the mediation, ASARCO was instead able to settle the Miscellaneous State and Federal Environmental Claims globally for approximately $100 million. These Allowed Claims are listed in **Exhibit 11** to the Plan.

(d) Previously Settled Environmental Sites.

The Bankruptcy Court has previously approved the settlements relating to the Previously Settled Environmental Sites pursuant to a motion filed pursuant to Bankruptcy Rule 9019. These Allowed Claims are listed in **Exhibit 11** to the Plan.

(e) PRPs' Claims.

On March 14, 2008, in order to address the PRPs' Claims, the Debtors filed a motion to implement a procedure for handling environmental Claims made by PRPs, to disallow the PRPs' Claims for future environmental costs under section 502(e)(1)(B) of the Bankruptcy Code, and to disallow Claims barred by contribution protection provided by numerous settlement agreements pursuant to section 113(f)(2) of CERCLA. The PRPs' Claims which are not disallowed under section 502(e)(1)(B) of the Bankruptcy Code or section 113(f)(2) of CERCLA must be estimated pursuant to section 502(c) of the Bankruptcy Code. In the estimation proceedings, the PRPs must establish ASARCO's share, if any, of the liability on these Claims, and the extent that such Claims are not duplicative of Claims of federal or state governments.

After negotiations with a number of PRPs, ASARCO proposed a case management order establishing procedures for disallowance or estimation of the PRPs' Claims, which the Bankruptcy Court approved by order entered on May 9, 2008. The second case management order provides for the PRPs' Claims to be divided into bands and establishes procedures for discovery, mediation, and hearings on the PRPs' Claims. ASARCO anticipates that the majority, if not all, of the PRPs' Claims in component 6 and some of the Claims in component 5 in the chart below can be resolved pursuant to section 502(e)(1)(B) of the Bankruptcy Code or section 113(f)(2) of CERCLA.

The Bankruptcy Court entered a third case management order establishing procedures for disallowance or estimation of PRPs' Claims at the Perth Amboy site on June 24, 2008. As with the previous two case management orders, this order establishes procedures for discovery, mediation, and a hearing to estimate PRPs' Claims at the Perth Amboy site. The costs for any Claims resolved under the third case management order are included in component 5 in the chart below.

The following chart summarizes the Claim amounts and proposed resolution of environmental Claims, as described above.

Environmental Claims (in $ Millions)		
Component	**Amount Proposed/ Estimated**	**Creditor Claim[24]**
Proposed Global Settlement - Main Components		
1. Environmental Custodial Trusts	$266.5	$369.1
2. Residual Environmental Sites (Coeur d'Alene, Omaha, and Tacoma)	$750.0	$3,083.4
3. Miscellaneous Federal and State Environmental Sites	$94.5	$220.4
Main Component Subtotal	**$1,111.0**	**$3,672.9**
Other Components Not Addressed Above		
4. Previously Settled Environmental Sites	$513.6[35]	$3,050.2 - $3,132.4
5. PRP Costs (resolved)	$47.4	$268.6
6. PRP Costs (unresolved)	$0.5	$2.655
7. Other Miscellaneous Claims[46]	$8.3	$13.3
8. Administrative Costs of Environmental Custodial Trusts	$27.5	n/a
9. Late-Filed Claims	n/a[57]	$4 - $14.5[68]
10. Subordinated Claim	n/a[79]	$11.4 - $27.3[810]
Other Component Subtotal	**$597.3**	**$3,350.155 – 3,458.755**
Combined Total	**$1,708.3**	**$7,023.055 – 7,131.655**

ASARCO believes that the amounts listed above represent a reasonable compromise of what in most cases are varying estimates of the funds necessary to address reasonable cleanup contingencies and provide reasonable compensation for natural resource damages. It is possible, perhaps even likely, that at any given site actual cleanup expenditures may be higher than anticipated. It is also possible, perhaps even likely, that the United States or one or more states may uncover additional sites not previously associated with ASARCO. Although such Claims might under some legal theories be considered non-dischargeable, under the Plan, the United States and states effectively have no further recourse against ASARCO. However, the United States shall continue to have access to the Prepetition ASARCO Environmental

---

[24] Claim amounts derived from Proofs of Claim, creditor updates, or expert reports.

[35] This amount does not include the Cash payments of $10 million at the Cal Gulch/Black Cloud site and $8.5 million at the Upper Blackfoot/Mike Horse site (unowned portions), which have been made pursuant to Court-approved Settlements.

[46] These Claims are for past response costs incurred by the EPA in connection with site investigation activities at and around the Hayden smelter complex; natural resource damage Claims relating to the Ray mine; and the El Paso Paving SEP Claim.

[57] These Claims shall be classified as Class 6 Late-Filed Claims, which shall not receive or retain any property under the Plan.

[68] This amount is for Northwest Aggregates' claim relating to the Tacoma site in the amount of $4 to $14.5 million.

[79] This Claim shall be classified as a Class 7 Subordinated Claim, which shall not receive or retain any property under the Plan.

[810] These amounts are for the United States' Claim relating to Blue Ledge in the amount of $9.7 to $25.6 million and the Kelly Mine site in the amount of $1.7 million.

Trust to the extent that AMC continues to fund it. AMC has not defaulted on any payments owed to the Prepetition ASARCO Environmental Trust thus far. A promissory note with $25 million in principal remaining due is held by the Prepetition ASARCO Environmental Trust, and payments of $12.5 million plus interest are due in May 2009 and May 2010. Funds that are paid into the Prepetition ASARCO Environmental Trust are not property of the Estate, and the United States has broad discretion in determining how those monies are spent.

(f) Environmental 9019 Motion.

As noted above, on March 12, 2009, the Debtors filed the Environmental 9019 Motion, seeking approval of settlements relating to the Miscellaneous Federal and State Environmental Claims, the Residual Environmental Claims, and Claims relating to the Environmental Custodial Trust sites. Objections thereto were filed by the Committees, the FCR, the Parent, Mitsui, the City of El Paso, Blue Tee Corp., and Union Pacific Railroad Company. Among other things, the objections assert that: (1) the global settlements violate applicable law, including CERCLA; (2) in negotiating the global settlements, EPA withheld crucial information from the Bankruptcy Court and parties in interest with respect to certain sites; (3) the global settlements require ASARCO to provide nearly 100 percent of the cleanup cost for certain sites with respect to which third parties have significant environmental liabilities and responsibility; (4) certain aspects of the global settlements exceed EPA's authority; (5) certain aspects of the global settlements violate public policy; (6) the global settlements are unreasonable; (7) proposed settlements with respect to certain sites are substantially in excess of the estimated costs to clean up such sites; and (8) the global settlements constitute an impermissible *sub rosa* plan. The Debtors disagree.

On March 13, 2009, the Bankruptcy Court conducted a status conference on the Environmental 9019 Motion. At that time, the Bankruptcy Court set the motion for hearing on May 18 and 19, 2009. On April 9, 2009, the Bankruptcy Court entered a case management order governing that hearing and related matters, including discovery in regards to the motion. An additional status conference regarding the motion was held on April 22, 2009.

On April 6, 2009, the Parent filed a motion for withdrawal of the reference of the Environmental 9019 Motion on both mandatory and permissive grounds. The Debtors and the United States objected to this request, and a number of states joined in the Unites States' objection. The Bankruptcy Court held a hearing on April 22, 2009 on the Parent's motion. On April 24, 2009, the Bankruptcy Court issued a report and recommendation on the motion recommending that the District Court deny the Parent's motion to withdraw the reference. **After conducting a hearing thereon on April 30, 2009, the District Court denied the motion. On May 1, 2009, the District Court entered an Order Denying Motion to Withdraw the Reference.**

The Debtors disagree with the objections to the Environmental 9019 Motion ~~and oppose the withdrawal of the reference,~~ because the Debtors believe that the approval of the Environmental 9019 Motion is in the best interest of the Estates. Nevertheless, the possibility exists that the Bankruptcy Court will not approve the Environmental 9019 Motion ~~or that the reference will be withdrawn such that the Environmental 9019 Motion is not determined prior to the Confirmation Hearing~~.

2.21 Estimation of Toxic Tort Claims and Omnibus Objection to Toxic Tort Liabilities.

Approximately 1380 Toxic Tort Claims were filed against the Debtors in the aggregate amount of approximately $1.47 billion, with additional Toxic Tort Claims filed in undetermined amounts. In a majority of the prepetition lawsuits on which these Claims are based, the Claimants alleged some type of physical harm or property damage arising from alleged exposure to lead or toxic substances resulting from the Debtors' operation of various sites located in Hayden, Arizona~~,~~; Tar Creek, Oklahoma~~,~~; El Paso, Texas~~,~~; and other locations.

On May 31, 2007, ASARCO filed a motion to establish procedures for the handling of omnibus objections to Toxic Tort Claims and estimation of certain toxic tort liabilities. By order entered on July 30, 2007, the Bankruptcy Court entered a case management order establishing procedures for the handling of omnibus objections to, and the estimation of, ASARCO's Toxic Tort Claims.

On October 23 and 24, 2007, the Debtors and counsel for several of the toxic tort claimants conducted a mediation, and hundreds of personal injury Claims and some property damage Claims were resolved pursuant to five separate memoranda of understanding. The parties thereafter negotiated five separate settlement agreements and, by motion filed on January 23, 2008, the Debtors sought approval of these settlements. Pursuant to the settlements, (a) the Claims resulting from the Debtors' operations of a site in Tar Creek, Oklahoma shall be satisfied with Allowed Unsecured Claims in the aggregate amount of $20,782,500; (b) the Claims resulting from the Debtors' operations of the Ray mine and the Hayden smelter shall

be satisfied with Allowed Unsecured Claims in the aggregate amount of $4,800,000; and (c) the Claims resulting from the El Paso Smelter shall be satisfied with Allowed Unsecured Claims in the aggregate amount of $2,387,500. On February 20, 2008, the Bankruptcy Court entered an order approving the settlements, and on March 3, 2008, entered an order approving the settlements for Claimants who are minors.

Certain property damage Claims relating to the Debtors' operations in Tar Creek, Oklahoma remained outstanding after the October 2007 mediation. Mediation of those Claims occurred on November 27, 2007, with an additional mediation session on February 15, 2008. Through the mediation, the parties were able to resolve all of the appearing claimants' property damage claims. The parties thereafter negotiated a settlement agreement whereby the Claimants shall have Unsecured Claims in the aggregate amount of $7 million. The settlement was approved by the Bankruptcy Court by order entered on July 14, 2008.

As a result of these various settlements, the Debtors have resolved a substantial majority in number of their alleged toxic tort liabilities. The Debtors are addressing the remaining Toxic Tort Claims through omnibus claim objections. As of January 2009, the Debtors have reduced the number of unresolved Toxic Tort Claims to 218 Claims in the aggregate asserted amount of approximately $20 million, one of which (the Claim of Jerome Davis for $10 million) has been argued for disallowance and is under advisement by the Bankruptcy Court. The Debtors anticipate resolving the remaining Toxic Tort Claims through ongoing negotiations and the Claims objection process.

2.22 Litigation and Settlement of Mission Mine Leases.

ASARCO's Mission Mine is located on lands owned by ASARCO, lands rented by ASARCO from the State of Arizona, and lands leased to ASARCO on the San Xavier Indian Reservation.

In 1959, the Secretary of the Interior, acting through the Bureau of Indian Affairs, entered into or approved the Mission Mine Leases with ASARCO's predecessor in interest, on behalf of owners of interests in trust allotments currently held by the Nation and several individuals, within the leaseholds. The agreements consisted of two mining leases for Tract I and Tract II, and 21 business leases.

The Mission Mine Leases provide in part that, in exchange for the privilege of conducting its operations on Tracts I, II, and III, ASARCO must make certain rental and royalty payments to the United States for the use and benefit of the Landowners and comply with certain provisions in the Mission Mine Leases and federal regulations governing the condition of the premises that might arise as a result of the operations. The regulations, in particular, include specifications for the reclamation of the premises during the operations and after the cessation of the operations.

For years, ASARCO, the Nation, and the United States disagreed about the nature and the breadth of reclamation ASARCO was required to perform. After extensive and lengthy negotiations, ASARCO, the Nation, and the United States were able to resolve their disputes. Their agreement is memorialized in the Mission Mine Settlement Agreement attached to the Plan as **Exhibit 15-A**, as amended on July 1, 2008 by the amendment to the settlement agreement attached to the Plan as **Exhibit 15-B**. The Mission Mine Settlement Agreement contains the following key terms, among others:

- Within 10 days after the effective date of the Mission Mine Settlement Agreement, ASARCO was to, and did, deposit $33 million (plus the amount of $2,600 per day for each day starting on and including February 1, 2008 until the date of the deposit) into an escrow account for the purposes of funding the implementation of the mine reclamation component of the agreed mining and reclamation plan.

- On the effective date of the Mission Mine Settlement Agreement, the United States' Claim for prepetition royalties alleged to be related to the Tract I lease was allowed as an Unsecured Claim in the amount of $225,000 for the benefit of the landowners. No other pre-petition Claims (except the cure claim specified below) shall be allowed.

- Within 10 days after the effective date of the Mission Mine Settlement Agreement, ASARCO was to pay the United States, for the use and benefit of the landowners, $172,755.53 in Cash as a cure payment for prepetition royalties and penalties alleged to be related to the Tract II lease. This payment has been made.

- ASARCO is permitted to continue mining on the land.

- ASARCO shall assume the Mission Mine Unexpired Agreements.

- While ASARCO remains contractually obligated to perform the reclamation outlined in the agreed mining and reclamation plan, ASARCO shall be reimbursed from the Mission Mine escrow account as it performs the work. ASARCO is relieved of all obligations to perform reclamation once the Mission Mine escrow account is exhausted or once the remaining balance in the account is insufficient to pay for further reclamation activities.

On March 14, 2008, ASARCO filed its motion for assumption of the Mission Mine Unexpired Agreements and approval of the Mission Mine Settlement Agreement. The motion was approved by order entered on April 9, 2008.

UNLESS OBJECTIONS ARE FILED TO THE PLAN, THE TERMS OF THE MISSION MINE SETTLEMENT AGREEMENT SHALL BE BINDING ON ALL PARTIES OWNING LANDS AFFECTED BY THE MISSION MINE LEASES.

2.23 Settlement with Seaboard Surety Company and St. Paul Fire.

Prior to the Petition Date, SPT, as surety, issued certain surety bonds on behalf of ASARCO, as principal, including, without limitation, the bonds referred to in the SPT Settlement Agreement as the Mission Bonds in favor of the United States or the Interior. The Mission Bonds bonded certain of ASARCO's obligations relating to its mining operations at the Mission Mine. The aggregate penal sum[9~~11~~] of the Mission Bonds is $11,654,896.

In addition to the Mission Bonds, Seaboard also issued the Flow Through Bonds on behalf of ASARCO, as principal, in order to bond ASARCO's obligations to various other entities. The aggregate penal sum amount of the Flow Through Bonds is $12,357,861. ASARCO and SPT reached an agreement resolving the disputes between them, which is memorialized in the SPT Settlement Agreement attached to the Plan as **Exhibit 17**.

On March 14, 2008, ASARCO filed a motion seeking approval of the SPT Settlement Agreement. The motion was approved by order entered by the Bankruptcy Court on April 9, 2008.

2.24 Preferences and Fraudulent Conveyance Actions.

(a) Preferences.

A preference is a transfer to a creditor in payment of an existing debt made within certain statutorily determined time periods before the commencement of a bankruptcy case. Pursuant to section 547(b) of the Bankruptcy Code, the trustee or the debtor in possession may recover preferences for the benefit of all creditors of the estate in order to prohibit the debtor from favoring some creditors over others on the eve of bankruptcy and frustrating the Bankruptcy Code's goal of equitable distribution to all creditors. To establish a preference and recover funds paid out, the trustee or the estate must prove that a transfer of a debtor's property was made:

- to or for the benefit of a creditor;

- on account of an existing debt;

- while the debtor was insolvent;

- within 90 days (or one year, if to an "insider") before the debtor's bankruptcy petition was filed; and

---

[9~~11~~] The "penal sum" of a surety bond represents the maximum amount that the surety could be liable to the obligee on the surety bond.

- so as to enable the creditor to receive more than it would have received if the transfer had not been made, the debtor was liquidated under chapter 7 of the Bankruptcy Code, and the creditor received the distributions it would have received in a chapter 7 case.

The preference statute excepts payments made "in the ordinary course of business" according to ordinary business terms, and these payments are not recoverable from creditors. Also excepted are payments made for new value or a substantially contemporaneous exchange of money and goods. Additional defenses to preference liability are set forth in section 547(c) of the Bankruptcy Code.

The Debtors have analyzed potential preferential transactions with third parties during the 90-day period prior to the bankruptcy filings in order to estimate potential recovery. The analysis also took into consideration the three primary defenses (ordinary course payment, new value, and contemporaneous exchange) and factored deposits held by vendors into estimates of potential net recovery.

As a result of this analysis, the Debtors have filed adversary proceedings in the Bankruptcy Court seeking to recover preferential transfers from approximately 165 defendants who received more than $50,000 each from a Debtor during the preference period. As discussed below in Section 2.24(l)(3), ASARCO has obtained an extension of the time for serving the summonses and complaints in these adversary proceedings.

As discussed below in Section 2.24(l)(4), if the Plan is confirmed, the Trade Creditor Preference Claims (as listed in **Exhibit 14-E** to the Plan) shall be waived and dismissed with prejudice 20 days after the Claim Objection Deadline; *provided, however*, that if a defendant to a Trade Creditor Preference Claim has filed a Proof of Claim and that Proof of Claim is the subject of a pending objection as of the Claim Objection Deadline, such Trade Creditor Preference Claim shall not be dismissed and shall vest in Reorganized ASARCO.

(b) Fraudulent Transfers.

The successful prosecution of a claim by or on behalf of a debtor or its creditors under the applicable fraudulent transfer law generally requires a determination that the debtor effected a transfer of an asset or incurred an obligation to an entity either:

- with an actual intent to hinder, delay, or defraud its existing or future creditors (a case of "actual fraud"); or

- in exchange other than for a "reasonably equivalent" value or a "fair consideration," when the debtor:

  - was insolvent or rendered insolvent by reason of the transfer or incurrence;

  - was engaged or about to engage in a business or transaction for which its remaining assets would constitute unreasonably small capital; or

  - intended to incur, or believed that it would incur, debts beyond its ability to pay as they mature

  (each a case of "constructive fraud").

In the case of either actual fraud or constructive fraud involving a transfer of assets, the bankruptcy estate may be entitled to equitable relief against the transferee of the assets in the form of a recovery of the transferred property or the value of the avoided transfer. The relief in the case of an avoided obligation might take the form of a subordination of that obligation to the claims of creditors entitled to relief.

The measure of insolvency for purposes of a constructive fraud action would depend on the fraudulent transfer law being applied. Generally, a transferor is insolvent if, at the relevant time, either:

- the sum of its debts and liabilities, including contingent liabilities, was greater than the value of its assets, at a fair valuation; or

- the fair salable value of its assets was less than the amount required to pay the probable liability on its total existing debts and other liabilities, including contingent liabilities, as they become absolute and mature.

The transactions of the Debtors that could be subject to review and, upon the required showing, avoidance under the applicable fraudulent transfer law~~,~~ would be limited to those occurring within the relevant limitations period. In the case of actions under section 548 of the Bankruptcy Code, that period would be the 12-month period ending on the Petition Date. In the case of actions under a state fraudulent transfer law, the limitations period ranges from one year to six or more years after the questioned transfer or incurrence of an obligation is effected. Under most state laws, including the laws of Texas, the limitations period is generally four years.

(c) Avoidance Action Against AMC.

On February 2, 2007, ASARCO filed an action against AMC to avoid the transfer of ASARCO's 54.2 percent controlling ownership interest in SCC to AMC on March 31, 2003. As a result of subsequent transactions involving SCC, the stock at issue constitutes about 30.6 percent of currently outstanding stock in SCC. ASARCO sought the return of its interest in SCC and recovery of the SCC dividends it would otherwise have received since the transfer in 2003.

In the AMC lawsuit, ASARCO and SPHC asserted the following causes of action against AMC: (1) actual fraudulent transfer; (2) constructive fraudulent transfer; (3) civil conspiracy; (4) breach of fiduciary duty; (5) aiding and abetting a breach of fiduciary duty; and (6) punitive damages.

After the withdrawal of the reference, this action proceeded before Judge Andrew S. Hanen of the United States District Court for the Southern District of Texas, Brownsville Division, as Civil Action No. 07-00018. A bench trial of the lawsuit began on May 12, 2008 and concluded on June 12, 2008.

On August 30, 2008, Judge Hanen entered a Memorandum Opinion and Order concerning AMC's liability with respect to the transfer in March 2003. The opinion is published at *ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278 (S.D. Tex. 2008), and also may be found at the Debtors' restructuring website at www.asarcoreorg.com. Judge Hanen held that AMC was liable for actual fraudulent transfer under Delaware law because it entered into the transaction with full knowledge that ASARCO's creditors would be hindered or delayed as a result. Judge Hanen further held that AMC aided and abetted and conspired with the directors of ASARCO to accomplish the transaction in breach of the ASARCO directors' fiduciary duties owed to ASARCO for the benefit of ASARCO's creditors. In so doing, Judge Hanen found that AMC had not paid a fair price for the stock. Judge Hanen also found that AMC had not committed a constructive fraudulent transfer under Delaware law and that AMC did not itself owe a fiduciary duty to ASARCO's creditors. Judge Hanen declined to assess punitive damages against AMC.

Judge Hanen conducted a hearing on October 7, 2008 on the appropriate remedy. ASARCO and SPHC sought return of the SCC shares, adjusted to account for transactions involving SCC that occurred after March 2003, and the dividends paid on those shares to AMC since March 2003, as well as compensation for loss of control of SCC, plus accrued prejudgment interest.

On October 10, 2008, Judge Hanen ordered ASARCO and the Parent to mediation before the Honorable Marvin Isgur, United States Bankruptcy Judge for the Southern District of Texas. The Bankruptcy Court ordered Sterlite and ASARCO's creditor constituents to attend the mediation. The mediation sessions, at times attended by as many as 75 people, occurred over six non-consecutive days and concluded without a resolution of the SCC Litigation or Sterlite's decision not to close under the Original Sterlite PSA.

On December 31, 2008, AMC filed a motion seeking a post-trial amendment of ASARCO's pleadings to conform to the evidence presented at trial. ASARCO submitted a response in opposition to that motion.

On April 1, 2009, Judge Hanen issued a Memorandum Opinion and Order regarding ASARCO's damages. The opinion is published at *ASARCO LLC v. Americas Mining Corp.*, No. 1:07-CV-00018, 2009 WL 890551 (S.D. Tex. April 1, 2009), and also may be found at the Debtors' restructuring website at www.asarcoreorg.com. Judge Hanen awarded ASARCO all of the SCC Stock. In addition, Judge Hanen ordered AMC to pay ASARCO money damages and prejudgment interest of $1,382,307,216.75, comprised of dividends AMC received on the SCC Stock of $1,967,548,106.58 and prejudgment interest on those dividends of $326,465,851.95, less $747,392,857.00 that AMC paid for the SCC Stock,

together with prejudgment interest on that payment of $164,313,884.78. Judge Hanen also denied AMC's motion seeking a post-trial amendment of ASARCO's pleadings to conform to the evidence presented at trial.

On April 7, 2009, ASARCO filed an Application for Temporary Restraining Order and Preliminary Injunction. Based on publicly available information, ASARCO believed that AMC and SCC were acting in concert to acquire SCC shares on the open market with the goal of providing AMC with a continuing numerical majority of SCC's outstanding common shares in anticipation of the District Court's final judgment. With majority control, AMC could vote its shares or take a variety of other actions to dilute ASARCO's interest in SCC or otherwise diminish the value of the SCC Stock, resulting in a substantial loss to ASARCO's Estate. ASARCO therefore asked the District Court to issue an injunction restraining AMC, until further order of the District Court, from voting its shares of SCC, without notice to ASARCO and approval of the District Court, in a manner that would (1) hinder, delay, or negate ASARCO's ability to recover the SCC Stock; (2) dilute the ownership interest of SCC represented by the SCC Stock; (3) remove any of the SCC Stock from the United States; or (4) otherwise be detrimental to or diminish the value of the SCC Stock. The District Court entered a temporary restraining order granting the requested relief effective April 7, 2009 at 4:00 p.m., and set a hearing on ASARCO's motion for preliminary injunction for April 17, 2009. The preliminary injunction hearing was later cancelled by agreement of the parties.

On April 14, 2009, Judge Hanen entered an Amended Memorandum Opinion and Order, which corrects a clerical error in the April 1, 2009 Memorandum Opinion and Order.

Judge Hanen entered the SCC Final Judgment on April 15, 2009. The SCC Final Judgment, the form of which was agreed upon by the parties, awarded ASARCO damages against AMC valued at about $6.87 billion on the date of the judgment. Among other things, AMC was ordered to convey to ASARCO 260,093,694 shares of SCC common stock. Using SCC's closing stock price on April 15, 2009, ASARCO estimates those shares to be worth approximately $5.48 billion. AMC also was ordered to pay ASARCO $1,382,307,216.75 in money damages and prejudgment interest.

Also on April 15, 2009, the District Court entered an agreed order, which had been requested by the parties the previous day, restricting the transfer and voting of shares of SCC by AMC and execution on or enforcement of the SCC Final Judgment by ASARCO. Pursuant to the agreed order, ASARCO shall not take any action to execute on or enforce the SCC Final Judgment from the date of the agreed order through June 5, 2009. During this period, AMC shall not (1) transfer, sell, exchange, otherwise dispose of, or encumber any interest AMC has in 54.2% **percent** of ~~the~~ SCC**'s** stock; (2) remove any of AMC's shares of SCC from the United States if removal of those shares would leave AMC with less shares of SCC in the United States than that which would be equivalent to a 54.2% **percent** ownership interest in SCC from the date of the agreed order; or (3) vote any of AMC's shares of SCC, without notice to ASARCO and approval of the District Court, in a manner that would (a) hinder, delay, or negate ASARCO's ability to recover the SCC Stock; (b) dilute the ownership interest of SCC represented by the SCC Stock; (c) remove any of the SCC Stock from the United States; or (d) otherwise be detrimental to or diminish the value of the SCC Stock.

In addition, on April 15, 2009, the District Court entered an agreed scheduling order governing post-judgment briefing that provides for AMC to file by April 29, 2009 any motion to amend or add findings, motion for new trial, motion to alter or amend judgment, or motion for stay of proceedings to enforce judgment, with any response by ASARCO and SPHC due by May 18, 2009, and any reply by AMC due by May 22, 2009. Oral argument on any such motions shall be heard on May 27, 2009.

On April 24, 2009, AMC filed a notice of appeal from the SCC Final Judgment and all adverse orders, rulings, decrees, opinions, and judgments leading up to and included within the SCC Final Judgment.

On April 29, 2009, AMC filed a motion to alter or amend the SCC Final Judgment or for a new trial. AMC argues that the District Court should: (1) modify its award of prejudgment interest predicated on ASARCO's conspiracy claim because the claim does not provide an independent basis for damages or prejudgment interest; (2) reconsider its holding that SPHC was the alter ego of ASARCO and that ASARCO thus has standing to pursue its fraudulent transfer claim; and (3) reconsider its holding that ASARCO is entitled to assert claims of aiding and abetting a breach of fiduciary duty and conspiracy arising out of the prepetition conduct of ASARCO's directors and management.

Also on April 29, 2009, AMC filed a motion for stay of execution of the SCC Final Judgment pending appeal of that judgment. AMC argues that the District Court should stay execution of the SCC Final Judgment pending appeal, without any supersedeas bond, so long as AMC agrees (1) not to sell, transfer, or encumber

the SCC Stock during the pendency of the appeal and (2) to extend the voting restrictions set forth in the District Court's April 15, 2009 order.

ASARCO and SPHC oppose the motions filed by AMC on April 29, 2009 and will respond to such motions on or before May 18, 2009. A hearing is scheduled on the motions for May 27, 2009.

On the Effective Date, this action, including the SCC Final Judgment, shall be transferred to the SCC Litigation Trust. If the SCC Stock is returned to the Estate in accordance with the SCC Final Judgment, the SCC Stock shall go to the SCC Litigation Trust.

(d) Avoidance Action Against Grupo México.

On or about October 15, 2004, certain creditors of ASARCO filed an action in the Supreme Court of the State of New York, County of New York, styled *Phillip Nelson Burns, et al. v. Grupo México, S.A. de C.V., et al.*, Index No. 0114728/2004, against various defendants, including Grupo México. The creditors allege, among other things, that the transfer of ASARCO's interest in SCC to AMC in 2003 was fraudulent under the New York Debtor and Creditor Law, and that the creditors are entitled to judgment against Grupo México. Upon ASARCO's bankruptcy filing, the claims asserted in this lawsuit became property of ASARCO's Estate pursuant to section 541 of the Bankruptcy Code, and the continued prosecution of the lawsuit was automatically stayed pursuant to section 362(a) of the Bankruptcy Code.

ASARCO and SPHC removed the claims against Grupo México relating to the fraudulent transfer of ASARCO's interest in SCC (as asserted in the first, second, third, fourth, and seventh claims for relief in the amended complaint) to the United States District Court for the Southern District of New York. On November 16, 2007, the New York federal court granted ASARCO and SPHC's motion to substitute and transfer venue, and denied Grupo México's motion to remand or dismiss. The removed claims are now pending in the District Court before Judge Hanen as Civil Action No. 07-00203.

On the Effective Date, this action shall be transferred to the ~~Litigation~~**Liquidation** Trust.

(e) Avoidance Action Against MRI.

On April 9, 2007, ASARCO and ASARCO Master filed a complaint against MRI, a subsidiary of the Washington Companies, thereby initiating Adversary Proceeding No. 07-02024. ASARCO seeks to avoid the fraudulent transfer of ASARCO's interest in MR Partnership, a Montana-based mining-operations partnership, to its partner MRI. ASARCO's partnership interest, 49.9 percent of one of the most valuable mining operations in the United States, was transferred to MRI after ASARCO failed to meet partnership cash calls prior to its bankruptcy filing. At the time of the cash calls, ASARCO was deeply insolvent and severely undercapitalized. ASARCO's interest in the partnership was transferred for $5 million, a mere fraction of its reasonably equivalent value. ASARCO also objected to MRI's Proofs of Claim which assert Claims in excess of $100 million for reimbursement of contingent environmental liabilities incurred by the MR Partnership pursuant to the indemnification and reimbursement provisions of the partnership agreement.

Pursuant to a settlement agreement approved by the Bankruptcy Court on December 27, 2007, certain of MRI's Proofs of Claim were compromised. MRI's Proofs of Claim seeking indemnification under the partnership agreement for alleged future reclamation obligations totaling $87 million were not compromised and remain pending in the MRI Litigation.

ASARCO objected to MRI's future reclamation Claim under section 502(e)(1)(B) of the Bankruptcy Code, which requires a court to disallow a claim of a party liable with the debtor if the claim is for contribution or reimbursement and is contingent at the time the claim is considered for allowance. In addition, ASARCO objected to the Claim under section 502(d) of the Bankruptcy Code, which requires disallowance of the claim of a claimant from which property is recoverable as a fraudulent transfer or preference. ASARCO also objected to the Claim on the grounds that the indemnification provisions of the partnership agreement are inapplicable to a dissociated partner. ASARCO further denies any liability to MRI because the MR Partnership is profitable and can pay for the reclamation itself, thereby leaving MRI with no damages to assert against ASARCO.

On May 22, 2007, MRI asked that the reference of this adversary proceeding be withdrawn. ASARCO objected to this request. The Bankruptcy Court held a hearing on the motion on June 15, 2007, and issued its report and recommendation on July 6, 2007. The court recommended that the District Court allow the lawsuit to remain in the

Bankruptcy Court for pretrial matters. By order entered on December 18, 2007 in Civil Action No. 07-299, the District Court agreed with the Bankruptcy Court's recommendation and denied the motion to withdraw the reference. If MRI can establish a right to a jury trial at the time the lawsuit is ready for trial, then the merits of withdrawing the reference to the District Court will likely be re-examined.

On July 30, 2007, MRI filed a motion seeking dismissal of all causes of action in this adversary proceeding or, alternatively, a transfer of venue of the action to the United States District Court for the District of Montana. The Bankruptcy Court held a hearing on the motion on September 14, 2007. By order entered on April 15, 2008, the Bankruptcy Court denied the motion to dismiss or transfer venue, for the reasons stated orally on the record on April 7, 2008. On April 25, 2008, MRI filed a notice of appeal from that order, as well as a motion for leave to appeal the order and a separate motion asking the District Court to certify a direct appeal to the United States Court of Appeals for the Fifth Circuit.

On May 28, 2008, the Bankruptcy Court entered an Agreed Revised Comprehensive Discovery, Mediation and Scheduling Order which established a pre-trial schedule and set the trial on this adversary proceeding to commence on June 1, 2009, and continue through June 3, 2009, if necessary.

On August 22, 2008, MRI filed a motion seeking leave to serve a third-party complaint and summons upon Grupo México and AMC. The Bankruptcy Court entered an order denying the motion on October 2, 2008.

On January 9, 2009, and while discovery was still ongoing, MRI moved for summary judgment. ASARCO's complaint asserted two claims to avoid the dilution of its partnership interests under the partnership agreement: constructive fraudulent transfer and actual fraudulent transfer. MRI's summary judgment motion argues that: (1) the dilution of ASARCO's interests under the partnership agreement is tantamount to a state law foreclosure, which is not actionable as a constructive fraudulent transfer as a matter of law; (2) ASARCO's claims, both actual and constructive, are time barred as a matter of law; and (3) there is no evidence supporting ASARCO's claim to avoid the dilutions as having been made with the "actual" intent to hinder, delay, or defraud creditors. The first two arguments (but not the third) were argued and denied at the beginning of the lawsuit, when the Bankruptcy Court denied MRI's motion to dismiss ASARCO's complaint. ASARCO intends to aggressively defend against all three arguments.

On the Effective Date, this adversary proceeding shall be transferred to the ~~Litigation~~**Liquidation** Trust. If ASARCO and ASARCO Master prevail on their constructive fraudulent transfer claims against MRI and MRI asserts a Claim back against the Debtors under section 502(h) of the Bankruptcy Code, the Allowed Amount of this Claim will be determined by the Bankruptcy Court in the adversary proceeding as part of the determination of ASARCO's pending objection to MRI's unresolved Proof of Claim. If MRI is allowed a Claim under section 502(h), such Claim will be treated as a Class 3 General Unsecured Claim. MRI asserts that in the event the MRI Litigation is transferred to the ~~Litigation~~**Liquidation** Trust, the trust prevails in that action, and MRI is then ordered to turn over the property that is the subject of that action, or its value, to the trust, then MRI shall have a Class 3 General Unsecured Claim against the Estate for the full amount of the property or amount ordered to be turned over. ASARCO disagrees and contends that the amount of any section 502(h) Claim should not exceed $5 million, the amount of the benefit received by ASARCO in exchange for the transfer of ASARCO's interest in the MR partnership. MRI disagrees and also denies that any Claim of MRI could or should be addressed by the ~~Litigation~~**Liquidation** Trust.

The Debtors believe that the Plan's proposed treatment is appropriate and should be approved.

MRI's alleged $87 million Claim will be treated as a Class 3 General Unsecured Claim if ultimately Allowed, but because it has been objected to, MRI's Claim will not be counted for voting purposes unless MRI asks that it be estimated before Confirmation.

(f) Rosemont Mining Property Avoidance Action.

On August 7, 2007, ASARCO filed a complaint against the Augusta Defendants and the Rosemont Ranch Defendants, thereby initiating Adversary Proceeding No. 07-02056. ASARCO sought to avoid the June 2004 fraudulent transfer of certain of its property located in Pima County, Arizona to Rosemont Ranch, LLC. The specific allegations can be obtained by reviewing the complaint in this lawsuit, but generally speaking, ASARCO sold the property for $4 million to the Rosemont Ranch Defendants while insolvent, and they then sold the property less than one year later to the Augusta Defendants for approximately $20 million. The parties were able to reach a settlement, which was approved by the Bankruptcy Court by order entered on February 13, 2009. The settlement consists of payments of $1.25 million Cash payable to ASARCO at closing ($1 million from the Rosemont Ranch Defendants and $250,000 from the Augusta Defendants), plus

$9 million over eight years from the Augusta Defendants, payable from profits, if any, of production at the Rosemont property and subject to an option, which if exercised, would require the Augusta Defendants to pay ASARCO the net present value of such payments in Cash calculated using an 18 percent discount rate. For 2009, the parties agreed that the option exercise price would be $2.6 million. The parties exchanged full mutual and customary releases at the closing of the settlement and, on March 26, 2009, the Bankruptcy Court dismissed all claims pending in the adversary proceeding with prejudice.

Production is assumed to start in 2012, but actual production could begin later than 2012 and potentially not at all if either necessary capital or a mining permit is not obtained. If production starts in a year other than 2012, the profit payments will adjust accordingly and payments will commence in the year in which actual production starts. The scheduled profit payments are $500,000 for years one through three; $1,000,000 for years four and five; $1,500,000 for years six and seven; and $2,500,000 for year eight; *provided, however*, that no payment in any given year will exceed 25 percent of annual profits for the year. Any shortfall in a scheduled profit payment is carried over and added to the next year's scheduled profit payment. A suspension of operations at the Rosemont property would defer the profit payments until operations resume. The profit payments shall continue until ASARCO has received $9 million or the Augusta Defendants exercise, or are required to exercise due to a change of control or sale of the Rosemont property, the buy-back option.

All rights of ASARCO under the settlement agreement with the Augusta Defendants and the Rosemont Ranch Defendants shall vest in Reorganized ASARCO on the Effective Date.

(g) Sacaton Avoidance Action.

On August 8, 2007, ASARCO and AR Sacaton filed a complaint against AMC, Tri-Point Development, LLC, CRM/Casa Grande, LLC, Vanguard Properties, Inc., and First American Exchange Company, LLC, thereby initiating Adversary Proceeding No. 07-02071. ASARCO and AR Sacaton seek to avoid the January 2004 fraudulent transfer of real property near Casa Grande, Arizona which contains substantial underground copper reserves, and also object to AMC's Proof of Claim. AR Sacaton quit claimed the property to AMC in exchange for an "emergency loan" of $5,000,000, which ASARCO and AR Sacaton believe was less than the property's reasonably equivalent value.

Certain of the defendants filed a motion to dismiss the adversary proceeding or, alternatively, to transfer the venue to the District of Arizona and a motion to dismiss ASARCO as a party. The Bankruptcy Court held a hearing on the motions on November 28, 2007, and took them under advisement. By order entered on April 15, 2008, the Bankruptcy Court denied a motion to dismiss the complaint or transfer venue for the reasons stated orally on the record on April 7, 2008. A separate motion to dismiss remains pending. Also pending is a motion to amend the pleadings to add as a defendant a previously unknown subsequent transferee, WHM Copper Mountain.

Tri-Point Development, LLC, CMR Casa Grande, LLC, and Vanguard Properties, Inc. filed a notice of appeal from the order denying the transfer of venue and a motion for leave to appeal. By separate motion, they asked the Bankruptcy Court to certify a direct appeal to the United States Court of Appeals for the Fifth Circuit. The certification request was denied by order entered on October 1, 2008. Tri-Point Development, LLC, CMR Casa Grande, LLC, and Vanguard Properties, Inc. filed a notice of appeal to the District Court from that order, but thereafter dismissed that appeal.

AMC filed a motion to realign ASARCO as a defendant in this adversary proceeding. The plaintiffs objected. After conducting a hearing on the request on February 27, 2008, the Bankruptcy Court took the matter under advisement.

On October 31, 2008, WHM Copper Mountain filed a petition in bankruptcy in the United States Bankruptcy Court for the Northern District of Georgia. The bankruptcy case was transferred to the United States Bankruptcy Court for the District of Arizona on February 2, 2009. On February 16, 2009, M&I Marshall & Ilsley Bank filed a motion in the Arizona bankruptcy court to lift the automatic stay so that it could protect its alleged interest in property given as security for a $25 million loan to WHM Copper Mountain, including a portion of the property at issue in the Sacaton avoidance action. WHM Copper Mountain objected to the motion to lift the stay. ASARCO has taken no position on the motion for relief from stay, which has not yet been ruled upon.

On the Effective Date, this lawsuit shall be transferred to the ~~Litigation~~**Liquidation** Trust.

(h) ASARCO Committee's D&O Litigation.

On August 8, 2007, the ASARCO Committee derivatively filed a complaint on behalf of ASARCO's Estate against certain individuals who served as directors and officers of ASARCO, thereby initiating Adversary Proceeding No. 07-02077. The ASARCO Committee seeks to recover damages of no less than $100 million and related equitable relief from the defendants for their alleged breach of their fiduciary duties to ASARCO and its creditors.

ASARCO elected not to pursue the claims set forth in this adversary proceeding but consented to the ASARCO Committee's prosecution of them on behalf of ASARCO's Estate. The Bankruptcy Court entered a stipulation and order authorizing the ASARCO Committee to pursue these claims on August 8, 2007 (as corrected on August 20, 2007). AMC and the Parent filed a motion for leave to appeal, as well as a notice of appeal, from the stipulation and order, which initiated Civil Action No. 07-00104 in the District Court.

In an advisory filed in the Bankruptcy Court, the ASARCO Committee stated that once service has been effected on all defendants, it intends to file a motion seeking to stay this adversary proceeding.

On the Effective Date, this action shall be transferred to the ~~Litigation~~**Liquidation** Trust.

(i) Avoidance Action Against Insurance Companies.

On April 10, 2007, the Asbestos Subsidiary Debtors filed in the Bankruptcy Court a Complaint to Recover Constructive Fraudulent Transfers against certain insurance companies, thereby initiating Adversary Proceeding No. 07-02025. The Asbestos Subsidiary Debtors had a legal or equitable interest in insurance policies sold by the defendant insurers. Prior to the filing of the Reorganization Cases, the insurers entered into settlement agreements with the Asbestos Subsidiary Debtors or ASARCO that required them to deliver releases in exchange for the consideration paid by the insurers thereunder. The complaint alleges that the Asbestos Subsidiary Debtors received less than reasonably equivalent value in exchange for the releases and were either insolvent at the time of the transfer of the release or became insolvent as a result of such transfer. The Asbestos Subsidiary Debtors believe that the transfers constitute constructively fraudulent transfers under the fraudulent transfer provisions of the Bankruptcy Code and Arizona or New York law. They seek to avoid the transfers and recover the value of the releases from the defendants.

At the request of the Asbestos Subsidiary Debtors, the Bankruptcy Court abated service of the summons and complaint until 90 days after the effective date of any confirmed plan of reorganization in the Asbestos Subsidiary Debtors' bankruptcy cases.

On the Effective Date, this action shall vest in Reorganized ASARCO.

(j) Avoidance Actions Against Insurance Companies Filed Under Seal.

On August 8, 2007, ASARCO filed in the Bankruptcy Court five Complaints to Recover Constructively Fraudulent Transfers against various insurance companies, thereby initiating Adversary Proceeding Nos. 07-02065, 07-02066, 07-02067, 07-02068, and 07-02069. These actions seek to avoid, as constructively fraudulent transfers, transfers of assets pursuant to settlements with the defendants.

Because the settlement agreements contain confidentiality provisions, and the facts surrounding the transfers should not be made public, the Bankruptcy Court, by order entered on August 8, 2007, permitted the complaints, exhibits, and related pleadings in these five adversary proceedings filed by ASARCO to be filed under seal.

As discussed below in Section 2.24(l)(3), ASARCO has obtained an extension of the time for serving the summons and complaints in these adversary proceedings until 90 days after the effective date of any confirmed plan of reorganization in the Reorganization Cases.

On the Effective Date, these actions shall vest in Reorganized ASARCO.

As described in Section 2.24(i) and this Section 2.24(j) hereof, the Asbestos Subsidiary Debtors and ASARCO have filed constructively fraudulent transfer suits against certain insurers, including Everest Reinsurance Company, Mt. McKinley Insurance Company, Century Indemnity Company, and American Home Assurance Company,

seeking to avoid transfers of assets pursuant to settlements with the defendants. While Everest Reinsurance Company, Mt. McKinley Insurance Company, Century Indemnity Company, and American Home Assurance Company dispute that they have any liability in the avoidance actions, those insurers assert that if such liability is established and coverage is resurrected, they have policy rights to control or consent to the settlement of claims by insureds. Accordingly, Everest Reinsurance Company, Mt. McKinley Insurance Company, Century Indemnity Company, and American Home Assurance Company contend that, if insurance coverage is reinstated, it may be vitiated by the Asbestos Subsidiary Debtors' and ASARCO's failure to comply with policy terms. The Debtors and the Asbestos Subsidiary Debtors dispute this contention.

(k) Avoidance Action Against Mineral Park, Inc.

On September 21, 2006, ASARCO filed a Complaint to Avoid and Recover Fraudulent Transfer and Application for Temporary Restraining Order and Preliminary Injunction against Mineral Park Inc., thereby initiating Adversary Proceeding No. 06-02069 in the Bankruptcy Court. This complaint sought to avoid ASARCO's prepetition sale of its South Mill facility (one of its copper mills) to Mineral Park. Because of the immediate threat of irreparable harm to ASARCO's Estate if the mill was dismantled and moved across the state, the Debtors' management and counsel were forced to commit significant time and resources to this action, which included the involvement of all of ASARCO's high-level executives. ASARCO obtained a preliminary injunction preserving the South Mill pending an expedited trial in February 2007. Lehman Brothers provided expert testimony and negotiated directly with Mineral Park's chief executive officer after settlement negotiations among counsel had been unsuccessful. Through the efforts of Lehman Brothers, a favorable settlement was reached before trial, under which ASARCO repurchased the South Mill – an asset expected to generate over $100 million of cash flow through the life of the Mission Mine – for $9 million. The Bankruptcy Court approved the settlement on February 28, 2007. ASARCO restarted the South Mill in November 2007, and believes it will significantly contribute to the value of the Estate.

(l) Tolling Agreements and Extension and Abatement of Time Period for Service of Summons and Related Complaints.

(1) Approval of Tolling Agreement Regarding Deadline for Asbestos Subsidiary Debtors to Bring Causes of Action Under Chapter 5 of the Bankruptcy Code Against ASARCO.

Bankruptcy Code § 546(a)'s two-year statute of limitations for filing Avoidance Actions and other actions under chapter 5 of the Bankruptcy Code expired as to the Asbestos Subsidiary Debtors on April 11, 2007. ASARCO and the Asbestos Subsidiary Committee entered into an agreement tolling and extending the deadline for the Asbestos Subsidiary Debtors to bring causes of action under chapter 5 of the Bankruptcy Code against ASARCO until October 1, 2007, unless ASARCO, the Asbestos Subsidiary Debtors, and the Asbestos Subsidiary Committee agreed otherwise in writing. The agreement did not apply to any limitations period that expired prior to April 10, 2007. The Bankruptcy Court approved the agreement by order entered on May 11, 2007. The parties have thereafter entered into several stipulations further tolling and extending the limitations period. Most recently, the parties agreed to toll and extend the limitations periods until July 1, 2009, pursuant to the motion filed on December 1, 2008.

(2) Approval of Tolling Agreement and Limited Waiver of Statute of Limitations Between ASARCO and Mitsui and Authorization for ASARCO to Enter into Similar Agreements.

ASARCO believes it may have causes of action against Mitsui under chapter 5 of the Bankruptcy Code for avoidance of Mitsui's alleged security interests, recovery of preferential payments, and release of funds in Mitsui's cash collateral account (*see* discussion at Section 2.15(d) above). Mitsui denies that such claims exist, and the parties are currently discussing the potential claims. However, ASARCO's deadline for filing Avoidance Actions against Mitsui and other potential defendants was August 9, 2007, unless this deadline was tolled. ASARCO and Mitsui entered into a Tolling Agreement and Waiver of Statute of Limitations, tolling, extending, and waiving any and all applicable statutes of limitations with respect to any claims that ASARCO and Mitsui may have against each other. Pursuant to the original tolling agreement, the tolling period terminated upon the earlier of one year after the agreement's July 27, 2007 effective date or 90 days after the agreement was terminated by written notice of termination by any party.

ASARCO has other potential Avoidance Actions against other potential defendants, which might also be barred if litigation were not commenced by August 9, 2007. While ASARCO filed hundreds of Avoidance Actions before the deadline, it did not believe that litigation should be commenced against certain potential defendants with whom it was in negotiations or as to which investigations are still pending. ASARCO therefore believed that entering into tolling agreements

similar to the one entered into with Mitsui would be beneficial to its Estate, by allowing the parties to preserve their legal rights, while giving them additional time to attempt to resolve claims without need of expensive litigation.

On July 19, 2007, ASARCO filed a motion seeking authorization to enter into the tolling agreement with Mitsui and to enter into agreements with other potential defendants on the same material terms without need of further Bankruptcy Court approval. The motion was granted by order entered on July 27, 2007. ASARCO thereafter entered into tolling agreements with several other potential defendants.

Since the entry of such agreements, some of the claims and causes of action necessitating the agreements were settled or otherwise resolved, and the Debtors have extended the termination deadlines of the tolling agreements addressing claims and disputes not yet resolved.

(3) Extension and Abatement of Time Period for Service of Summonses and Related Complaints for Certain Causes of Action Under Chapter 5 of the Bankruptcy Code.

ASARCO's investigation identified approximately 200 Avoidance Actions and other actions under chapter 5 of the Bankruptcy Code, the vast majority of which are garden-variety preference actions, some of which are referred to herein as the Trade Creditor Preference Claims (as listed in **Exhibit 14-E** to the Plan). ASARCO and the ASARCO Committee agreed that the best course of action, in light of the expiration of the limitations period on August 9, 2007, was for ASARCO to preserve the causes of action by filing lawsuits, but defer service of the summonses and complaints relating to such claims until such time as there is more clarity in the Reorganization Cases regarding distributions to unsecured creditors under a plan of reorganization. On July 19, 2007, ASARCO filed a motion seeking an extension and abatement of the time period for serving summonses and complaints with respect to such causes of action until 90 days after the effective date of any confirmed plan of reorganization in the Reorganization Cases. The motion was granted by order entered on August 13, 2007.

(4) Dismissal and Waiver of Certain Trade Creditor Preference Claims.

If the Plan is confirmed, then Trade Creditor Preference Claims (as listed in **Exhibit 14-E** to the Plan) shall be waived and dismissed with prejudice 20 days after the Claim Objection Deadline; *provided, however*, that if a defendant to a Trade Creditor Preference Claim has filed a Proof of Claim and that Proof of Claim is the subject of a pending objection as of the Claim Objection Deadline, such Trade Creditor Preference Claim shall not be dismissed and shall vest in Reorganized ASARCO. The Plan Administrator shall have the authority on behalf of Reorganized ASARCO to prosecute, compromise and settle, abandon, release, or dismiss any such retained Trade Creditor Preference Claims.

ASARCO and the ASARCO Committee believe that the dismissal and waiver of certain Trade Creditor Preference Claims is appropriate. As discussed above in Section 2.24(a), a "preference" under the Bankruptcy Code is generally a payment made by a debtor to a non-insider creditor within the 90 days prior to the petition date if the payment is on account of a pre-existing debt owed by the debtor to such creditor. However, the Bankruptcy Code affords such persons a number of defenses to a preference suit. For instance, a vendor that supplies a debtor with additional goods, but does not receive payment for such goods, may in certain circumstances credit the unpaid value of such goods against any preference claim that the debtor may have. Such credit is called "new value." Thus, as a general matter, a creditor that provides a debtor with "new value" after the creditor has received a payment from the debtor can deduct the amount of the "new value" from the previous preferential transfer. Similarly, payments made by a debtor on account of goods and services acquired in the ordinary course of the debtor's business, and paid in accordance with the ordinary terms in the parties' business, may be exempt from recovery by a debtor under the preference statutes. This so-called "ordinary course" defense is designed to protect vendors who continue to provide goods and services to a debtor in the ordinary course of business, and who are paid in the ordinary course of business. However, creditors who vary payment terms – for instance, if they are paid more quickly than was historically the case – may be precluded from taking advantage of the "ordinary course" defense. In addition, a creditor holding a valid deposit generally has a defense to a preference action to the extent that the creditor is validly secured by the deposit and such deposit exceeds the amount of the preference payment(s).

As discussed in Section 2.24(a) above, the Debtors filed adversary proceedings in the Bankruptcy Court seeking to recover approximately $53 million of gross payments made to non-insider creditors during the preference period. Of this amount, approximately $6 million was filed against creditors that did *not* have an ongoing business relationship with the Debtors; whereas $47 million was filed against vendors and suppliers that have an on-going business relationship with the Debtors. The latter category of preference claims are generally the Trade Creditor Preference Claims.

The Debtors, with the assistance of Alvarez & Marsal, prepared an analysis of the estimated projected recoveries on account of Trade Creditor Preference Claims as of July 2007. Although the gross amount of Trade Creditor Preference Claims is approximately $47 million, the balance of such claims after deducting potential defenses and deposits, is approximately $16 million. The Debtors estimate that the fees and costs of prosecuting the Trade Creditor Preference Claims will be approximately $4 million (or 9 percent of the gross Trade Creditor Preference Claims). This figure is an estimate and the actual fees and costs could be more or less than $4 million based on myriad factors that cannot be predicted at this time, including the level of opposition to the preference claim by any particular defendant, the level of discovery that any particular claim requires, settlement opportunities, and the potential need for multiple expert witnesses. Further, actual recoveries on preference actions are difficult to estimate. The outcome of any particular preference action against a preference defendant is not free from doubt. Recoveries in actual preference litigation, therefore, could be materially higher or lower than the Debtors' estimates.

By law, unless the parties otherwise agree, a defendant in a preference action is entitled to an allowed claim for the amount of the preferential payment that it repays the debtor. As such, for purposes of their analysis, the Debtors assumed they could potentially recover $12 million net of fees and costs on account of the Trade Creditor Preference Claims and such creditors, in turn, would be allowed aggregate general unsecured claims of $16 million. If, for example, general unsecured creditors in ASARCO Class 3 ultimately receive payment of 75 percent of their Allowed Claims under the Plan, then the Trade Creditor Preference Claims are potentially worth zero on a net-of-costs basis (*i.e.*, 75 percent of $16 million). In addition, in light of ASARCO's multi-billion dollar judgment against AMC in the SCC Litigation, there is a reasonable possibility that creditors in ASARCO Class 3 will be paid more than 75 percent of their Allowed Claims under the Plan and potentially may be paid in full with post-petition interest.

In addition, part of the consideration paid by Sterlite is a nine-year, approximately $600 million promissory note. The Plan Sponsor Promissory Note (which will be among the assets of the ~~Residual Assets~~ Liquidation Trust) is payable from the cash flows of the business acquired by Sterlite under the Plan. The Debtors believe that Sterlite's reorganized business will derive more value in the form of, among other things, go-forward credit support from trade vendors and service providers, than it would if the Debtors retained and prosecuted the Trade Creditor Preference Claims. This go-forward value inures to the benefit of all creditors and stakeholders under the Plan insofar as solid trade credit support will assist in improving cash flow and cementing business relationships, which enhance the value of the reorganized enterprise as a whole and increases the likelihood that Sterlite will timely perform its payment obligations under the Plan Sponsor Promissory Note.

The Debtors, therefore, believe that waiver of the Trade Creditor Preference Claims is in the collective best interests of all stakeholders.

(5) Extension and Abatement of Time Period for Service of Summonses and Related Complaints for Lawsuits Against Affiliates to Recover Preferences and Inter-Company Debt.

Among the approximately 200 Avoidance Actions and other actions under chapter 5 of the Bankruptcy Code identified by ASARCO in 2007, were five actions against Grupo México and certain of its Affiliates (as listed in **Exhibit 14-B (5) a-e** to the Plan). These five Avoidance Actions, four of which involve foreign defendants, were initially abated under the Bankruptcy Court order entered on August 13, 2007. In early 2008, ASARCO commenced the process to effect service in Mexico of the summonses and related complaints involving the four foreign Affiliates, in compliance with the requirements of the *Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*.

However, by agreement of the parties, all time periods, response dates and deadlines in connection with these four proceedings have been extended and abated until the earlier of (a) 90 days after the effective date of any confirmed plan of reorganization in the Reorganization Cases, or (b) 30 days after the filing of record of a Notice of Termination of Abatement Period by any party to the relevant adversary proceeding.

On the Effective Date, these actions shall be transferred to the ~~Litigation~~**Liquidation** Trust.

2.25 Other Litigation in Bankruptcy Court or On Appeal from Bankruptcy Court Orders.

(a) TMD Acquisition Corporation's Adversary Proceedings Against ASARCO.

On November 4, 2005, TMD Acquisition Corporation filed Adversary Proceeding No. 05-02086 against ASARCO seeking a declaratory judgment that a prepetition asset purchase agreement for the Tennessee Mines Division property (which ASARCO sold post-petition to Glencore Ltd. for $65 million) remained executory and that, upon rejection, TMD was entitled to a $250,000 Lien. TMD also filed a Proof of Claim seeking $47.4 million in damages for breach of that contract. ASARCO agreed to pay TMD $475,000 in exchange for a full release of Claims by TMD and its assignee Nord Resources Corporation. By order entered on December 15, 2006, the Bankruptcy Court approved the settlement, and all Claims asserted by TMD or Nord against ASARCO were dismissed with prejudice by order entered on January 19, 2007.

(b) Adversary Proceeding Against the State of Montana.

On October 26, 2006, ASARCO and American Smelting filed Adversary Proceeding No. 06-02079 against the MDEQ, Atlantic Richfield Company, and ARCO Environmental Remediation LLC, seeking declaratory and injunctive relief. The MDEQ had filed a lawsuit (Cause No. C-DV-2003-160) on March 21, 2003, in the Montana First Judicial District Court, Lewis & Clark County against ASARCO, American Smelting, Atlantic Richfield, and ARCO Environmental Remediation LLC, seeking a money judgment and various other relief in connection with the alleged contamination and threats of contamination at, and resulting from, the Upper Blackfoot Mining Complex in Lewis & Clark County, Montana. On October 26, 2007, the State of Montana, acting through MDEQ and the Montana Department of Justice, filed a second amended complaint in the Montana litigation, adding claims for natural resource damages. In the adversary proceeding, ASARCO and American Smelting sought a declaration that the prosecution of the Montana litigation against them in the Montana state court violated the automatic stay, and an injunction prohibiting the prosecution of those claims during the pendency of their bankruptcy cases. They also asked the Bankruptcy Court to grant limited relief from the automatic stay and the injunction to permit the Montana litigation to proceed to judgment with respect to all matters brought by the State of Montana, subject to certain conditions.

ASARCO and American Smelting voluntarily dismissed Atlantic Richfield and ARCO from the adversary proceeding, without prejudice, on November 9, 2006, and were thereafter able to resolve the issues raised by the complaint with Montana. On December 4, 2006, the Bankruptcy Court approved a stipulation whereby the parties agreed that the Montana litigation could proceed to judgment with respect to all matters brought by Montana, subject to certain conditions and limitations, including that nothing in the stipulation permits Montana to seek to enforce a money judgment rendered in the Montana litigation. However, the United States, Montana, and Atlantic Richfield and ARCO subsequently entered into settlement negotiations in the context of the environmental estimation proceedings. The parties reached a settlement that resolves all Claims among the parties with respect to the Upper Blackfoot Mining Complex. As part of the settlement, Montana agreed to dismiss the Montana litigation once certain conditions are met. A motion seeking approval of this settlement was filed with the Bankruptcy Court on April 25, 2008, and was approved by order entered on May 19, 2008. On June 12, 2008, the settlement agreement was also approved by the Montana federal district court, after a 30-day public comment period. In accordance with the settlement agreement and pursuant to a Notice of Consent to Dismissal with Prejudice filed by the State of Montana, the Montana First Judicial District Court for Lewis & Clark County entered an order dated October 6, 2008 dismissing the second amended complaint in the Montana action with prejudice.

(c) Adversary Proceeding Against Gerald Metals, Inc.

On May 1, 2006, ASARCO filed a complaint against, and an objection to Proof of Claim No. 8351 filed by, Gerald Metals, Inc., thereby initiating Adversary Proceeding No. 06-02033. Gerald and ASARCO engaged in contractual commercial transactions over a number of years for the purchase, toll, and exchange of copper materials. Pursuant to the order entered on October 28, 2006, ASARCO rejected several executory contracts with Gerald. Gerald filed a rejection damages Claim against ASARCO in the amount of $13,904,158, and asserted that $7,166,365.12 of this amount (the amount owed by Gerald to ASARCO under the agreements) was secured as a result of its setoff rights. In its complaint, ASARCO asked that this Claim be disallowed, sought damages resulting from Gerald's failure to pay the amounts due to ASARCO on various outstanding invoices, and sought the turnover of an overshipment of copper in possession of Gerald. Gerald filed a motion for relief from the automatic stay in order to effect its setoff rights, but that motion was consolidated into the adversary proceeding by stipulation and agreed order entered on March 20, 2006.

The parties were able to resolve their disputes and sought approval of their settlement by motion filed on July 3, 2007. The settlement agreement provides for Gerald to pay ASARCO $5,587,656.68, Gerald to have an Allowed Unsecured Claim in the amount of $12,304,158, and the parties to execute mutual releases. The Bankruptcy Court approved the settlement agreement by order entered on July 27, 2007, and the adversary proceeding was dismissed with prejudice by order entered on August 31, 2007.

(d) Adversary Proceeding Filed by Miguel Hernandez Against ASARCO.

Miguel Hernandez filed a Proof of Claim for $1,000,000 and Adversary Proceeding No. 08-2010 against ASARCO claiming unlawful discrimination in employment based on religion. ASARCO objected to the Claim. A parallel action in federal district court was filed prepetition. Mr. Hernandez and ASARCO agreed to a settlement of this dispute whereby Mr. Hernandez would withdraw his Claim, dismiss the two lawsuits, and give ASARCO a full release, in exchange for ASARCO giving him a general release. On January 23, 2009, ASARCO filed a motion to approve the proposed settlement, which was granted by order entered on February 17, 2009.

(e) The Deens' Claim for Adverse Possession.

Ron and Linda Deen reside on approximately 12 acres in Pinal County, Arizona as described in their filed Proof of Claim. ASARCO has record title to the property, but the Deens assert ownership of the property by right of adverse possession. The Debtors objected to the Deens' Claim and the Bankruptcy Court reclassified it from Secured to Unsecured, and ASARCO therefore believes they have only a General Unsecured Claim. The Deens believe that order does not affect the substance of their claim, *i.e.*, adverse possession. The Deens also believe their claim for adverse possession is unique and should be separately classified in the Plan, and because it is not, the Plan cannot be confirmed. The Deens also believe their adverse possession claim should be litigated in an Arizona state court.

2.26 Litigation Outside of the Bankruptcy Court.

(a) Extension of Deadline for Removal of Civil Actions.

The Bankruptcy Court entered several orders extending the deadline for removing civil actions to the Bankruptcy Court pursuant to 28 U.S.C. § 1452(a). Most recently, by order entered on April 24, 2009, the Bankruptcy Court extended this deadline until 90 days after the effective date of any plan.

(b) Water Rights Issues.

ASARCO faces complex water rights issues relating to its operations at Hayden smelter and Ray mine. These issues arise by virtue of certain settlements between the Gila River Indian Community and others, as well as future water exchanges under the Central Arizona Project (a water delivery and conservation system enacted under Arizona law), which could possibly adversely impact ASARCO. Action has been taken in federal and state courts of relevant jurisdiction to oppose these settlements.

(c) Coeur d'Alene Litigation.

In 1991, the Coeur d'Alene Tribe filed a natural resources damages lawsuit designated as Case No. 91-0342 against a number of defendants, including ASARCO's predecessor in interest referred to herein as ASARCO NJ, in the United States District Court for the District of Idaho. On March 22, 1996, the United States filed an action designated as Case No. 96-0122 on behalf of the Interior, the USDA, and the EPA against ASARCO NJ and other defendants in the Idaho federal court, seeking clean up costs and natural resource damages in excess of $1.5 billion from the defendants for their alleged release of hazardous materials from their metals mining and smelting facilities. This action was consolidated with the tribe's action. The only remaining non-Debtor defendant in the lawsuit is Hecla Mining Co., Inc.

The Idaho federal court bifurcated the lawsuit and conducted a Phase I trial on liability and injury in 2001. At the conclusion of the Phase I trial, the court ruled that the defendants, including ASARCO, were liable for response and natural resource damages in the Coeur d'Alene basin. The court further ruled that the liability was divisible and not joint and several, with ASARCO liable for approximately 22 percent and Hecla liable for 31 percent. Phase II of the litigation was to determine the amount of response costs and natural resources damages for which the defendants are liable. The Phase II trial was set to commence on January 17, 2006.

On August 31, 2005, the Idaho court issued a *sua sponte* order staying the Idaho lawsuit as to ASARCO, subject to the right of the parties "to move to lift the stay for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation after the stay relating to the bankruptcy filing by Defendant ASARCO is lifted."

On September 13, 2005, the United States filed a Motion and Memorandum of Law for Declaration of Inapplicability of Automatic Stay, wherein it asked the Bankruptcy Court to issue a declaration that continuation of the Coeur d'Alene litigation through entry of a judgment is not subject to the automatic stay of section 362 of the Bankruptcy Code because it constitutes an exercise of the police and regulatory power, exempted from the automatic stay pursuant to section 362(b)(4) of the Bankruptcy Code. ASARCO and the ASARCO Committee filed responses in opposition to this motion. The Bankruptcy Court held a hearing on the motion on December 6, 2005, at which time the court took the matter under advisement. No ruling has been issued on the motion to date.

(d) Other Litigation Relating to Environmental Liabilities.

In addition to the Montana litigation discussed in Section 2.25(b) above and the Coeur D'Alene lawsuit discussed in Section 2.26(c) above, the Debtors are parties to dozens of lawsuits and other proceedings pending in federal and state courts around the country and relating to environmental liabilities. None are presently active. Pursuant to Article 10.20(a) of the Plan, after the Effective Date, the Plan Administrator may, in his, her, or its discretion, file a notice of discharge with a copy of the Confirmation Order in any lawsuits in which ASARCO or any other Debtor was named as a defendant prior to the Effective Date.

(e) Canadian Litigation.

Several actions were filed in the Superior Court, Province of Québec, District of Montreal, Dominion of Canada, well before the Debtors' bankruptcy filings. Lac d'Amiante du Québec Ltée commenced two actions for account, No. 500-05-015073-925 and No. 500-05-027806-965, against 2858-0702 Québec Inc. and Lac d'Amiante du Canada, Ltée in 1992 and 1996, seeking to impose joint and several liability upon them for payment of CA$44,256,890 plus interest owing as net expenditures under a certain joint venture agreement for mining of asbestos in the Black Lake region of Québec. Lac d'Amiante du Québec Ltée also filed an action for accounting of LAB Chrysotile, Inc. and 2858-0702 Québec Inc. In response, 2858-0702 Québec Inc. filed an action for accounting of Lac d'Amiante du Québec Ltée and ASARCO. Both actions generally seek accountings of costs and distributions under the joint venture agreement.

Woods LLP, Lac d'Amiante du Québec Ltée's counsel in the two actions for account, currently holds in its trust account an amount in excess of CA$591,256.96 as security for costs required under Canadian law.

There has been no activity in any of these actions since 2001, and very little discovery was conducted before that time. For all practical purposes, the actions have been dormant for over a decade. Therefore, Woods LLP has provided no opinion on the merits of the claims or any evaluation on the chances of success. Lac d'Amiante du Québec Ltée does not know if any of the defendants have the ability to pay any judgment that it might obtain if these actions were to proceed to trial.

On the Effective Date, the actions filed by Lac d'Amiante du Québec Ltée shall vest in Reorganized Covington.

2.27 Asset Valuation and Plan Exit Process.

In order to propose a plan of reorganization and exit bankruptcy, the Debtors need not only to determine their liabilities, but also to establish the value of their assets and provide forms of consideration acceptable to their Claimants. The Debtors submitted to the Bankruptcy Court at an April 11, 2007 hearing an exit process timeline (as subsequently updated) that describes the process and tentative timetable, developed at the Debtors' request by Lehman Brothers (the Debtors' financial advisors at that time), to identify parties (including creditors, the Parent, and third parties) interested in co-sponsoring a Debtor-proposed plan of reorganization and to provide them access to the Debtors' information for the purpose of assessing plan alternatives. Implementation of this centrally coordinated and transparent process was intended to maximize the value of the Debtors' assets and govern the development of a viable plan. The exit process timeline was designed to allow the Debtors to systematically explore all exit options while minimizing disruptions to their business operations and establishing a level playing field for any parties interested in participating in the process.

On April 27, 2007, in accordance with the exit process timeline, the Debtors distributed a background information document to potential plan sponsors. On June 11, 2007, ASARCO distributed a form of confidentiality agreement to potential plan sponsors. On June 19, 2007, the parties that had executed confidentiality agreements as of that time received a confidential information memorandum.

The Debtors and Lehman Brothers spent April, May, and early June 2007 collecting information and populating a virtual data room to be utilized for due diligence. On June 19, 2007, Lehman Brothers opened the virtual data room, and the potential plan sponsors that executed confidentiality agreements were granted access to the data room.

Over the next several months, Lehman Brothers and members of ASARCO's management team provided due diligence support to interested parties so they would be positioned to submit indicative proposals in late August 2007, and by September 2007, nine indicative proposals had been received. In early September 2007, ASARCO and its advisors evaluated the strengths and weaknesses of the various proposals. Lehman Brothers communicated the analysis to ASARCO's board of directors and to the ASARCO Committee, the Asbestos Subsidiary Committee, the FCR, the DOJ, the State of Washington, and the USW, and recommended that six of the parties that had submitted proposals proceed with on-site and management due diligence. The board and the creditor constituents agreed with the recommendation.

Since September 2007, Lehman Brothers maintained close communications with the interested parties with respect to due diligence support and information about the plans to select a plan sponsor. In November 2007, Lehman Brothers alerted potential plan sponsors that ASARCO and its creditor constituents were considering an alternative for reorganization that did not involve a sale. In December 2007, and as a result of the mediation before Judge Magner, Lehman Brothers sent a letter to potential plan sponsors advising them that ASARCO would pursue a sale alternative and inviting them to re-engage in the due diligence and plan process. Lehman Brothers also contacted other parties who had not registered an interest in making a proposal, and similarly invited them to engage in the process.

During the process of the mediation before Judge Magner, which is also discussed above in Sections 2.19(b) and 2.20, ASARCO and its creditor constituents developed procedures for selecting the plan sponsor that would provide the highest value to the Debtors' Estates. These efforts culminated in the filing of a motion for approval of such procedures, as discussed in Section 2.28 below.

2.28 Selection of a Plan Sponsor and the Decision to Enter into a New Plan Sponsor PSA.

(a) Selection of a Plan Sponsor and Entry into the Original Plan Sponsor PSA.

On March 18, 2008, the Bankruptcy Court approved, on a preliminary basis, bid procedures for selecting a chapter 11 plan sponsor. The plan sponsor procedures were designed to maximize the value of the assets of the Estates by encouraging bidders to submit qualifying bids in order to participate in a plan sponsor selection meeting and to increase their bids at the meeting relative to other competing bidders. By establishing guidelines for the process, the procedures were intended to advance the process to completion, maintain a level playing field among participants and promote healthy competition. On March 25, 2008, the Bankruptcy Court approved the Bid Procedures Order.

The deadline to submit bids was April 30, 2008. ASARCO received four qualified bids.

On May 22 and 23, 2008, ASARCO conducted the meeting to select a plan sponsor in the Dallas office of Baker Botts L.L.P. In attendance were approximately 130 people, including the Debtors, the creditor constituents, the four qualified bidders, the Examiner, and their respective advisors. At the conclusion of the two-day meeting which included rigorous negotiations with each of the bidders, ASARCO, in consultation with its creditor constituents, selected Sterlite as the Successful Bidder (as such term is defined in the Bid Procedures Order).

On May 30, 2008, ASARCO's board of directors approved the selection of Sterlite as the Successful Bidder and authorized ASARCO to execute a purchase and sale agreement with Sterlite. On May 30, 2008, ASARCO and the Non-Debtor Sellers, as Sellers, and Sterlite, as purchaser, and its parent Sterlite Industries (India) Ltd. signed the Original Plan Sponsor PSA.

On June 3, 2008, the Debtors filed a motion for final approval of bid protections in connection with the sale of the Sold Assets to the Plan Sponsor. The Bankruptcy Court conducted a hearing on this motion on June 12 and 13, 2008, and entered the Bid Protections Order on July 1, 2008.

On July 2, 2008, the Parent and AMC filed a notice of appeal from the Bid Protections Order, thereby initiating Civil Action No. 08-214 in the District Court. By order entered on September 26, 2008, the District Court dismissed this appeal on the ground that the Bankruptcy Court order was not a final order. The Parent and AMC filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit, but thereafter filed an unopposed motion for dismissal of the appeal without prejudice to reinstatement. By order entered on October 20, 2008, the court of appeals

dismissed the appeal without prejudice to the parties' rights to reinstate the appeal by letter to the clerk of the court within 180 days from the date of the order.

The Original Plan Sponsor PSA provided for a sale of the Sold Assets "as is", "where is", and "with all faults" to the Plan Sponsor for $2.6 billion in Cash, subject to an adjustment payment. ASARCO was to retain Cash on hand at Closing. The Plan Sponsor was also to assume certain liabilities, including certain environmental liabilities. At the signing of the Original Plan Sponsor PSA, the Plan Sponsor posted a letter of credit issued by ABN AMRO Bank N.V. in the amount of $50 million. The letter of credit was to be drawn upon as a component of the purchase price or following termination of the Original Plan Sponsor PSA due to a material breach by the Plan Sponsor of any of its representations, warranties or covenants or other agreements thereunder. Alternatively, the letter of credit was to be cancelled without payment to the Sellers, if the agreement was terminated for any reason other than a purchaser breach.

The Guarantor irrevocably, unconditionally, and absolutely guaranteed to the Sellers the full and timely payment and due and punctual performance and discharge of all of the Plan Sponsor's obligations under the Original Plan Sponsor PSA and the ancillary agreements existing on the date of the Original Plan Sponsor PSA or thereafter of any kind or nature whatsoever. The Guarantor also agreed to indemnify and hold the Sellers harmless from and against and to pay all out-of-pocket costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred by or on behalf of the Sellers in connection with the collection or enforcement of the Guarantor's obligations.

The Original Plan Sponsor PSA contained the following deadlines:

- ASARCO's filing of a plan and disclosure statement by August 1, 2008;
- The Bankruptcy Court's entry of an order approving a disclosure statement by October 15, 2008 (which date could be extended until October 30, 2008 with the Plan Sponsor's consent);
- Entry of an order confirming a plan by December 15, 2008 (which date could be extended until January 17, 2009 with the Plan Sponsor's consent); and
- Occurrence of the Closing by December 31, 2008 (which date could be extended until January 28, 2009 in certain circumstances).

If these deadlines were not met, the Original Plan Sponsor PSA could be terminated.

(b) The Plan Sponsor's Decision Not to Close Under the Original Plan Sponsor PSA.

Once the Original Plan Sponsor PSA was executed, the Debtors worked diligently with their creditor constituents to finalize a consensual plan of reorganization that would maximize recovery to creditors. In compliance with deadlines set forth in the Original Plan Sponsor PSA, ASARCO filed a plan and disclosure statement on July 31, 2008, and the Bankruptcy Court entered an order approving a disclosure statement on September 25, 2008. On September 29 and 30, 2008, the Debtors, through their Balloting Agent, mailed the Debtors' plan and disclosure statement, the plan and disclosure statement proposed by the Parent and AMC, and ballots to all holders of Claims and Interests entitled to vote on either plan. The deadline to submit votes was October 27, 2008.

Prior to the voting deadline, the Plan Sponsor requested a meeting with ASARCO and its legal and financial advisors and informed them that, as a result of the dramatic downturn in world commodity and financial markets, it could not and would not fulfill its obligations under the Original Plan Sponsor PSA without a material reduction in the purchase price. The Plan Sponsor confirmed its decision not to close under the Original Plan Sponsor PSA at a status conference held in the Bankruptcy Court on October 14, 2008. As a result, ASARCO terminated the Original Plan Sponsor PSA on October 22, 2008, and the Debtors moved for suspension of the solicitation procedures and balloting on their plan and the plan proposed by the Parent and AMC, which the Bankruptcy Court granted by order entered on October 20, 2008.

On October 24, 2008, ASARCO's request to draw on the letter of credit on the grounds that the Plan Sponsor had breached the Original Plan Sponsor PSA was presented to ABN AMRO Bank N.V., the issuer of the letter of credit. On October 27, 2008, ASARCO entered into a letter agreement and related agreements with the Plan Sponsor and ABN AMRO Bank, under which ASARCO revoked its drawdown request on the letter of credit, and the Plan Sponsor agreed either to amend the letter of credit or to cause a replacement letter of credit to be issued by 5:00 p.m. on October 30, 2008.

The Plan Sponsor amended the letter of credit to allow ASARCO to draw on it at any time prior to the expiration of the letter of credit (which is July 29, 2009). By order entered on October 28, 2008, the Bankruptcy Court authorized ASARCO, solely for purposes of section 363(b) of the Bankruptcy Code, to take any and all steps necessary to terminate the Original Plan Sponsor PSA, effective as of October 21, 2008. The court also ruled that no further court order would be required, solely for purposes of section 363(b) of the Bankruptcy Code, for ASARCO to draw on the letter of credit or any replacement letter of credit.

The Bankruptcy Court ordered Sterlite to participate in the mediation ordered by Judge Hanen in the SCC Litigation. The Debtors, the Parent, creditor constituents, and the Plan Sponsor participated in the mediation over six non-consecutive days, with Judge Isgur presiding, but no agreement was reached.

(c) Re-Marketing Process and Exploration of Alternative Transactions.

Shortly after Sterlite's decision not to close the Original Plan Sponsor PSA, Barclays Capital began its efforts to re-market the assets to other potential plan sponsors, but under substantially different market and financial conditions than when it began the initial marketing process in 2007. Since October 2008, fifteen major mining companies have announced that, as a result of the significant reduction in copper prices, they are decreasing production through mine closures, production halts, or slowdowns, and several copper miners have delayed or canceled planned operational expansions. Since last summer, merger and acquisition activity in the copper market has slowed dramatically. In addition, debt and equity financing, frozen in late 2008, has been slow to thaw.

In addition to these macro-economic and industry-specific factors, the following factors unique to ASARCO have also negatively impacted a potential sale of its assets to third parties not otherwise engaged in the bankruptcy process: (1) concern that any litigation against Sterlite and the Parent may present delays or obstacles to any other bidder's obtaining the Bankruptcy Court's approval of a different sale transaction; (2) the length of the Reorganization Cases, which have been pending before the Bankruptcy Court for three and a half years; (3) the usual complexities associated with purchasing assets in bankruptcy due to the broad vetting and sometimes cumbersome approval process involved in such acquisitions; (4) a negative perception of the assets arising from the significant asbestos and environmental liabilities asserted against the Estates; and (5) the possibility that any purchaser of the assets may need to fund operating losses, which, given the current market conditions, is particularly problematic.

In this challenging market and under less than optimal circumstances, Barclays Capital embarked on re-marketing the assets. In initial conversations between the Barclays Capital's professionals leading the ASARCO team and their colleagues in the metals and mining investment banking group, concerns were raised that it would be very difficult to attract new interest in the assets given the many challenges cited above. Barclays Capital's metals and mining bankers were particularly concerned that perceptions of ASARCO and the multiple parties with an interest in the outcome of the Reorganization Cases would discourage potential buyers. Despite this disadvantageous environment, Barclays Capital engaged in discussions with several parties that expressed interest in a transaction with ASARCO. Two of those parties submitted new indicative, non-binding proposals to purchase the assets, but at a value significantly below the value offered by Sterlite under the New Plan Sponsor PSA.

In addition to seeking other third-party transactions, ASARCO's board of directors also directed its advisors not only to continue negotiating with Sterlite on a modified transaction but also to develop a stand-alone plan alternative. As part of this process, ASARCO formulated a stand-alone plan that was circulated to its creditor constituents in December 2008. The board kept itself fully informed regarding the views of the major creditor constituents, the various alternatives under review, the changing value of the assets, the effectiveness of cost-reduction measures, the merits of litigation alternatives against Sterlite, and other relevant factors.

Ultimately, after four months of vigorous negotiations with Sterlite and a full vetting of the advantages and disadvantages of a Sterlite-sponsored, stalking-horse plan and other plan structures potentially available to ASARCO, the board, in consultation with ASARCO's advisors and some of the key creditor constituents, determined that a modified transaction and settlement with Sterlite would yield the highest and best value, and thus, was in the best interest of the Debtors, their creditors, and their Estates.

(d) Entry into the New Plan Sponsor PSA and Motion for Approval of Settlement and Release and Revised Bid Protections.

On March 6, 2009, ASARCO and the Non-Debtor Sellers, on the one hand, and Sterlite, as purchaser, and Sterlite Industries (India) Ltd., as guarantor, on the other hand, entered into the New Plan Sponsor PSA attached hereto as **Exhibit M**. Background information regarding Sterlite (provided in its entirety by Sterlite) is attached hereto as **Exhibit N**.

Instead of the $2.6 billion in cash that was to be paid pursuant to the Original Plan Sponsor PSA, ASARCO is to receive $1.1 billion in cash plus assumption of the liabilities that were to be assumed under the Original Plan Sponsor PSA. In addition, Sterlite is providing a non-interest-bearing, secured $600 million note, payable over nine years. The $600 million face amount of the Plan Sponsor Promissory Note is subject to a post-closing working capital adjustment based on the difference between the levels of accounts receivable, accounts payable, and market value of inventory at the Closing Date and $253 million. The principal amount of the note, as adjusted up or down by such working capital items, is referred to in the Plan Sponsor Promissory Note as the Maximum Principal Amount. The note is secured by certain assets being purchased by the Plan Sponsor, excluding, for avoidance of doubt, the inventory and accounts receivable of ASARCO and its Specified Subsidiaries (as such term is defined in the note) and all proceeds of inventory and accounts receivable. The Plan Sponsor Promissory Note provides that, if in any year during the term of the note the Average Copper Daily Price (as such term is defined in the note) exceeds $6,000 per metric tonne, the Plan Sponsor will make a payment pursuant to a formula set forth in the note (which is referred to in the note as the Annual Note Payment); provided that each Annual Note Payment will not exceed one-ninth of the Maximum Principal Amount (even if application of the formula would result in a greater amount) and that, starting with the year ending on the second anniversary of the Closing Date, each Annual Note Payment will be at least $20 million (even if application of the formula would result in a lesser amount). Sterlite also has agreed to post a deposit in the form of three letters of credit to be issued in favor of ASARCO for the total amount of $125 million. Letters of credit in the amount of $100 million have been delivered, and the remaining $25 million will be delivered as promptly as practicable following the Disclosure Statement Approval Date. As of April 6, 2009, the Debtors placed a net present value on this note of $203 million,[12] which represents the present value of the future stream of payments under the Plan Sponsor Promissory Note, assuming copper prices stay below $2.72 per pound and using a conservative 15 percent discount rate. *See* Proffer of George M. Mack in Support of Sterlite 9019 Motion, p. 12 [Docket No. 10801].

The Debtors understand that Sterlite has no intention of entering into any purchase and sale transaction that does not include a release of the Sellers' claims for breach of the Original Plan Sponsor PSA. After substantial negotiations, the Sellers ultimately agreed to a release as part of a global compromise, but only upon the occurrence of specified conditions set forth in the New Plan Sponsor PSA. If **the Plan is rejected or** none of ~~these~~**the other** conditions occurs, or if Sterlite materially breaches or repudiates the New Plan Sponsor PSA, Sterlite will not receive the release and the Sellers may pursue all of their claims against Sterlite and the Guarantor under the Original Plan Sponsor PSA.

The Parent contends that ASARCO's claims against Sterlite and the Guarantor arising from Sterlite's refusal to close the Original Plan Sponsor PSA may include, among others, breach of contract, breach of fiduciary duty, aiding and abetting, tortious interference, promissory estoppel, and third party beneficiary claims. The Parent argued at the hearing on the Sterlite 9019 Motion that the Debtors agreed to the release without an analysis and determination of the value and collectability of these claims. The Debtors made no attempt to market, sell, or auction the litigation claims in order to assess the market value of the claims. This conduct is inconsistent with their intentions with other substantial litigation claims of the estates (*see* discussion of SCC Litigation in section 2.32(d)). The Parent further asserts that evidence presented at the hearing on the Sterlite 9019 Motion suggested that the claims being released could be worth as much as $3 billion. The Debtors assert that there was no such evidence at the hearing on the Sterlite 9019 Motion and that the Parent's assessment of the values of these claims is vastly overstated. If Claimants vote to reject the Plan and the Plan is not confirmed, the release will not be approved and any proceeds of the claims that the Parent has estimated to be as large as $3 billion (and which value the Debtors have disputed) against Sterlite and the Guarantor could be available for distribution to creditors.

The Parent believes that the Debtors have failed to provide all the necessary facts and explanation for the creditors to make an intelligent, objective, and educated evaluation to determine whether they will vote in favor of the release of Sterlite as required by *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Parent believes that the Debtors have not described the ease of obtaining a judgment against Sterlite and its affiliates, the impact such judgment might have on Sterlite's ability to do business anywhere in the world, and the negative economic result of the compromise with Sterlite on the creditors. The Parent further argues that the Debtors have failed to disclose that the value of the release is negatively impacted as copper prices increase and that no provision in the compromise with Sterlite adjusts the purchase price accordingly. Finally,

[12] **The present value of the Plan Sponsor Promissory Note may be higher or lower than this amount, depending upon copper prices and the timing of payments made on the note.**

the Parent contends that the Debtors have not conducted the most simplistic fair market valuation of their claim against Sterlite, nor made an attempt to auction or otherwise dispose of the claim against Sterlite to test whether its value to the estate exceeds the amount allocated from Sterlite's purchase price for the Debtors' assets attributable to the release. The Debtors disagree with these contentions.

Furthermore, the New Plan Sponsor PSA will be subject to higher and better acquisition proposals. In order to incent Sterlite to enter into the modified transaction while allowing the board to continue to exercise its duty to maximize the value of the Sold Assets through alternative transactions, the New Plan Sponsor PSA provides Sterlite the following bid protections, which are similar to (and, in some instances, more favorable to ASARCO than) the bid protections approved by the Bankruptcy Court in connection with the Original Plan Sponsor PSA:

- a limited non-solicitation covenant coupled with (x) a fiduciary out that gives ASARCO termination rights to pursue a superior proposal or a more favorable stand-alone plan that is supported by ASARCO and (y) in the case of a superior proposal, a requirement that to be considered "superior" a proposal must provide at least $51 million (which is equal to $25 million plus a $26 million break-up fee) more value than the New Plan Sponsor PSA, which is similar to the no-shop covenant approved by the Bankruptcy Court in connection with the Original Plan Sponsor PSA, except that it is not effective until entry of the Sterlite Agreed Order,[13] and prior to such entry, Sterlite has agreed to a "go-shop covenant" whereby ASARCO and its advisors may use the New Plan Sponsor PSA to solicit an alternate transaction for the Sold Assets without any restrictions;

- in the event that ASARCO terminates the New Plan Sponsor PSA by exercising the fiduciary out to pursue a Superior Proposal or a Stand-Alone Plan, but such alternative transaction does not close, Sterlite has a Back-Up Bid Option, under which ASARCO must offer Sterlite the right to consummate the purchase and sale of the Sold Assets on substantially the same terms as the New Plan Sponsor PSA;

- under certain limited conditions set forth in section 13.2(b)(v) of the New Plan Sponsor PSA, a break-up fee of $26 million upon the consummation of a superior acquisition proposal that meets the Superior Proposal Threshold or a more favorable stand-alone plan supported by the board of directors of ASARCO following a termination pursuant to ASARCO's fiduciary out, which break-up fee is approximately two percent of the total cash component of the purchase price consideration (*i.e.*, the same percent break-up fee approved by the Bankruptcy Court under the Original Plan Sponsor PSA); and

- a matching right that allows Sterlite to match a subsequent acquisition proposal in some instances without having to meet the Superior Proposal Threshold, which is substantially similar to the matching right approved under the Original Plan Sponsor PSA; and

- an expense reimbursement up to $10 million in some circumstances, which compensates Sterlite only for its out-of-pocket fees and costs and is not payable if the Break-Up Fee is to be paid.

On March 11, 2009, ASARCO filed the Sterlite 9019 Motion seeking: (a) approval of (1) the settlement and conditional release contained in section 2.1 of the New Plan Sponsor PSA and (2) the back-up bid provisions contained in section 8.10(f) thereof, pursuant to Bankruptcy Rule 9019; and (b) approval of the revised bid protections (*i.e.*, the break-up fee, the no-shop covenant with fiduciary out, the Superior Proposal Threshold, the matching right, and the expense reimbursement) pursuant to sections 363(b)(1) and 105(a) of the Bankruptcy Code.

Objections to the Sterlite 9019 Motion were filed by the Asbestos Claimants' Committee, the FCR, the Parent and AMC, Montana Resources, Inc., Ron and Linda Deen, and Glencore, Ltd. The objections asserted, among other things, that: (1) the proposed release failed to meet applicable legal standards for approval of releases of such claims; (2) the Debtors' motion for approval of the release failed to distinguish between the consideration to be provided by Sterlite for purchase of the Debtors' business operations and assets and the consideration being provided for the Estates' release of

---

[13] Pursuant to amendment no. 2 to the New Plan Sponsor PSA, effective as of April 22, 2009, the term "Sterlite Agreed Order" as defined in the New Plan Sponsor PSA refers to the Sterlite 9019 Order.

litigation claims that certain objecting parties assert could be as high as $3 billion less mitigation; (3) the other bidders are forced to bid against the consideration offered by Sterlite for both the assets and the release, thus chilling potentially superior bids for the assets and effectively making the other bidders pay a patently unreasonable and legally unsupportable "topping fee" for Sterlite's release that could constitute hundreds of millions of dollars (and for which Sterlite already is promised a $26 million break-up fee, plus expense reimbursements, as reward for its repudiation of the Original Plan Sponsor PSA); (4) the possibility that, if an alternative proposal or stand-alone plan is consummated, the proposed release will be "earned" by Sterlite (as often repeated by counsel for the Debtors at the April 13 and 14, 2009 hearing) in exchange for $0 in consideration; (5) no market valuations for the Debtors' claim against Sterlite were provided, nor was there any evidence that the Debtors attempted to market such claim; (6) the proposed settlement and release is premature and should not be approved outside of the plan solicitation and confirmation process; (7) the release is improper and should not be granted unless and until the Debtors' Plan and New Plan Sponsor PSA and settlement is consummated; (8) in the event Sterlite were to breach the New Plan Sponsor PSA and settlement, as they did with respect to the Original Plan Sponsor PSA, the release granted in the New Plan Sponsor PSA and settlement and the amendments to the original $50 million letter of credit that supports the Original Plan Sponsor PSA would make it more difficult for the Debtors to assert, and may even eviscerate, a cause of action based on such breach or to draw on the applicable letters of credit; and (9) the release and proposed bid protections, if approved outside a plan confirmation process, constitute an impermissible *sub rosa* plan. The Debtors disagree with these objections and believe that approval of the Sterlite 9019 Motion is in the best interests of the Estate.

The Bankruptcy Court conducted a hearing on the Sterlite 9019 Motion on April 13 and 14, 2009, at the conclusion of which the motion was taken under advisement. Among other things, the evidence at the hearing on the Sterlite 9019 Motion showed that, as of April 6, 2009, the Debtors estimated the present value of the aggregate consideration provided under the New Plan Sponsor PSA (including the Plan Sponsor Promissory Note) to be $1.3 billion. The Debtors' valuation expert, George M. Mack of Barclays Capital, estimated that the range of enterprise value for ASARCO is $700 to $900 million, based on his analysis of the value of comparable publicly-traded mining companies and of the value of ASARCO's discounted cash flows. *See* Proffer of George M. Mack in Support of Sterlite 9019 Motion, p. 12 [Docket No. 10801]. Furthermore, Sterlite's corporate representative testified that Sterlite's estimate of the current value of the consideration under the New Plan Sponsor PSA is approximately $1.4 billion, with close to $1 billion representing the value of the Sold Assets and the remaining $400 million representing the value of the settlement with ASARCO. *See* Debtors' Designation of C.V. Krishnan Deposition in Support of Sterlite 9019 Motion, p. 2 [Docket No. 10800].

Although the Debtors have not subjected the claims against Sterlite to the same market test that the Debtors assert is appropriate for valuing the SCC claims against AMC, the Parent contends that the evidence presented at the hearing on the Sterlite 9019 Motion established that the claims asserted against Sterlite could be as high as $3 billion. The Debtors strongly disagree with the Parent's position and believe that the evidence at the hearing on the Sterlite 9019 Motion provided a more than sufficient legal and factual basis for the court to approve such motion. If the creditors reject the Debtors' Plan and the Plan is not confirmed, the proceeds (if any) from the successful litigation or settlement of claims against Sterlite should be available to the creditors.

Sterlite confirmed on the record that, absent a Manipulative Breach, Sterlite will not receive a release of liability under the Original Plan Sponsor PSA if, among other reasons contemplated by the New Plan Sponsor PSA, a plan of reorganization filed by the Parent (or any entity permitted to file a plan in the Reorganization Cases) and not supported by the Debtors, is confirmed by the Bankruptcy Court. Following the hearing, Sterlite further agreed to extend the deadline for approval of the Sterlite 9019 Motion for one week beyond the April 15, 2009 deadline specified in the New Plan Sponsor PSA. On April 22, 2009, the Bankruptcy Court entered the Sterlite 9019 Order [Docket No. 10935]. The Sterlite 9019 Order provides that, notwithstanding anything to the contrary in the New Plan Sponsor PSA (other than a Manipulative Breach by ASARCO, as defined in the New Plan Sponsor PSA), Sterlite will not receive a release of liability under the Original Plan Sponsor PSA if a plan of reorganization filed by the Parent (whether in the form of an asset purchase agreement, a stand-alone plan, or another structure) or by any other entity permitted to file a plan in the Reorganization Cases (referred to in the Sterlite 9019 Order as an "Alternative Plan"), is confirmed by the Bankruptcy Court and is not supported by the Debtors through the date of confirmation of such Alternative Plan. The Sterlite 9019 Order further provides that ASARCO and the ASARCO board of directors are specifically prohibited from taking any action in support of an Alternative Plan, without prior approval of the Bankruptcy Court through the date of confirmation of such Alternative Plan. A motion or effort by the ASARCO board to obtain such approval of the Bankruptcy Court shall not in itself be deemed to be an action in support of an Alternative Plan. The Sterlite 9019 Order also provides that, from and after the date of confirmation of an Alternative Plan, ASARCO and its board shall take such actions as are necessary to effectuate such Alternative Plan and such actions shall not be deemed to be support of such Alternative Plan and shall not be a release condition of Sterlite's liability under the Original Plan Sponsor PSA. Moreover, the Sterlite 9019 Order provides that if the ASARCO board does not support an Alternative Plan, then confirmation and consummation of that Alternative Plan will not result in a release of liability to Sterlite (absent a Manipulative Breach). In addition, if the ASARCO board determines that the highest and best option for the Estate is the

consummation of an Alternative Plan, the ASARCO board may, in the exercise of its fiduciary duties, decide to abstain from supporting the Alternative Plan if it believes that course of action is in the best interests of the Estate in light of, among other factors, the contractual consequences contained in the New Plan Sponsor PSA of the board's support of an Alternative Plan. Finally, an abstention by ASARCO shall not be deemed to be support of such Alternative Plan and shall not be a release condition of Sterlite's liability under the Original Plan Sponsor PSA.

~~The~~**On May 4, 2009, AMC and the** Parent ~~has indicated that it may~~**filed a notice of** appeal ~~the entry of the Sterlite 9019 Order.~~**from the Sterlite 9019 Order and all adverse orders, rulings, decrees, opinions, and judgments leading up to, merged into, or included within the Sterlite 9019 Order. This appeal is pending before United States District Judge Hayden Head as Civil Action No. 09-100.** The Debtors believe that ~~any such~~**this** appeal will be unsuccessful. However, in the event it is successful, the appeal could result in a modification, vacation, or reversal of such order.

(1) Settlement and Release.

As noted above, one alternative to entry into the New Plan Sponsor PSA that ASARCO considered was the pursuit of an alternative plan of reorganization (either a stand-alone plan or one with a plan sponsor other than Sterlite) and the prosecution of a lawsuit against Sterlite and the Guarantor alleging a breach of their obligations under the Original Plan Sponsor PSA. ASARCO and some of its creditor constituents ultimately decided that it was in the best interests of ASARCO's Estate and its creditors to enter into a new purchase and sale agreement with Sterlite at a reduced price and to settle and release ASARCO's claims against Sterlite and the Guarantor.

Section 2.1(a) of the New Plan Sponsor PSA provides for each Seller, on behalf of itself and its successors, assigns, Representatives, and Subsidiaries, to release its claims arising out of the Original Plan Sponsor PSA against each of the Plan Sponsor and the Guarantor and its successors, permitted assigns, Representatives, and Affiliates. Section 2.1(b) of the New Plan Sponsor PSA provides for each of the Plan Sponsor and the Guarantor, on behalf of itself and its successors, assigns, Representatives, and Subsidiaries, to release its claims arising out of the Original Plan Sponsor PSA against each Seller and its successors, assigns, Representatives, and Affiliates. The releases in section 2.1(a) and (b) of the New Plan Sponsor PSA are effective only if and when a Release Condition (as set forth in section 2.1(c) thereof) occurs.

For purposes of the New Plan Sponsor PSA, a Release Condition means the occurrence after the entry of the Sterlite Agreed Order by the Bankruptcy Court of any of the following, as modified by the Sterlite 9019 Order as described above:

- (A) the Closing under the New Plan Sponsor PSA prior to or on the Termination Date (as such term is defined in section 13.1(c) thereof);
- (B) both (i) the termination of the New Plan Sponsor PSA pursuant to section 13.1(d) thereof due to the Bankruptcy Court's approval of a Superior Proposal that is evidenced by a Definitive Agreement duly executed by all parties thereto and (ii) subsequent to such termination, the consummation by ASARCO and a person other than the Plan Sponsor or the Guarantor (or any of their respective Affiliates) of such Superior Proposal;
- (C) both (i) the termination of the New Plan Sponsor PSA pursuant to section 13.1(e) thereof due to the Bankruptcy Court's approval of a Stand-Alone Plan approved and supported by the board of directors of ASARCO and (ii) subsequent to such termination, the consummation of such Stand-Alone Plan;
- (D) both (i) the termination of the New Plan Sponsor PSA pursuant to section 13.1(b), (c), (f), (g), (h)(ii), (j), or (m) thereof and (ii) subsequent to such termination, the consummation by ASARCO and a person other than the Plan Sponsor or the Guarantor (or any of their respective Affiliates) of a Superior Proposal; provided, that a Definitive Agreement for such Superior Proposal is duly executed by all parties thereto no later than the 180th day following such termination; or
- (E) the termination of the New Plan Sponsor PSA by the Plan Sponsor pursuant to section 13.1(j) thereof upon the occurrence of a Manipulative Breach;

provided, however, that with respect to the foregoing clauses (B), (C), (D), and (E), in no event shall a Release Condition be deemed to have occurred if any Purchaser Bad Faith Event (as such term is defined in section 13.2(c) of the New Plan Sponsor PSA) has occurred. For purposes of Article II and section 13.2(b)(v) of the New Plan Sponsor PSA, the board of directors of ASARCO shall make its determination of whether or not an Acquisition Proposal is a Superior Proposal at the time the Definitive Agreement for such Acquisition Proposal is executed by all parties thereto.

Pursuant to section 2.3 of the New Plan Sponsor PSA, except as set forth in Article II thereof, the Plan Sponsor, the Guarantor, and the Sellers reserve any and all rights and remedies existing at law or in equity or arising out of or relating to the Original Plan Sponsor PSA, including those contained in section 12.2 thereof, or otherwise, and except as set forth in Article II of the New Plan Sponsor PSA nothing in the New Plan Sponsor PSA shall be construed as or constitute a waiver or release of any such rights or remedies.

The Claimants have the option of rejecting the settlement with, and release of, Sterlite. If Claimants vote to reject the Plan and the Plan is not confirmed, absent a Manipulative Breach by ASARCO, no Release Condition occurs and the Plan Sponsor and the Guarantor will not be entitled to a release from ASARCO's claims against them arising out of the breach of the Original Plan Sponsor PSA.

(2) Purchase Price for the Sold Assets.

The New Plan Sponsor PSA provides for a sale of the Sold Assets "as is", "where is", and "with all faults" to the Plan Sponsor for $1.1 billion in Cash plus the Plan Sponsor Promissory Note. ASARCO is to retain the Excluded Assets, including Cash on hand at Closing. The Plan Sponsor is also to assume certain liabilities, including the Assumed Environmental Liabilities, as discussed in section 3.9(h) below.

(3) The Deposit.

Pursuant to section 4.2 of the New Plan Sponsor PSA, the Plan Sponsor agreed to make available to ASARCO a Deposit in the aggregate amount of $125 million as follows.

- Prior to the execution of the New Plan Sponsor PSA, the Plan Sponsor posted the First L/C issued in favor of ASARCO by ABN AMRO Bank N.V., Chicago in the amount of $50 million.

- Simultaneously with the execution of the New Plan Sponsor PSA, the Plan Sponsor posted the Second L/C issued in favor of ASARCO by ABN AMRO Bank N.V., Chicago in the amount of $50 million.

- As promptly as practicable following (but not later than 5:00 p.m. Dallas, Texas time, on the third Business Day following) the Disclosure Statement Approval Date, the Plan Sponsor shall post the Third L/C issued in favor of ASARCO by a Qualified Bank in the amount of $25 million.

Section 4.2(d) of the New Plan Sponsor PSA provides that, subject to section 4.2(h) of the New Plan Sponsor PSA, in anticipation of Closing and upon the agreement of the parties, ASARCO shall draw on the Letters of Credit. All cash received by ASARCO (in immediately available funds in an account designated by ASARCO) prior to or on the Closing Date pursuant to such draw shall be credited against the $1.1 billion payment at Closing and retained by the Sellers as a component of the Purchase Price. Alternatively, at least three Business Days prior to the Closing Date, the Plan Sponsor may deliver a written notice to ASARCO instructing ASARCO that it shall deliver the full amount of the $1.1 billion payment to ASARCO at Closing. In such case, at Closing, upon receipt of the $1.1 billion payment, ASARCO shall deliver to the Plan Sponsor each of the Letters of Credit for return to the issuer thereof for cancellation (or any cash drawn and received pursuant to section 4.2(h) of the New Plan Sponsor PSA).

Immediately following the termination of the New Plan Sponsor PSA due to a Purchaser Breach, the Sellers shall (A) be entitled to receive from the Plan Sponsor and retain the Deposit and (B) be entitled to draw upon all Letters of Credit at anytime thereafter to obtain the Deposit and the receipt by the Sellers of immediately available funds in an account designated by ASARCO in an amount equal to the Deposit pursuant to such draw (or any draw pursuant to section 4.2(h) of the New Plan Sponsor PSA) shall satisfy the Plan Sponsor's payment obligation in clause (A); provided, that only

$100 million shall be paid to and may be drawn by the Sellers if such termination occurs prior to the Disclosure Statement Approval Date.

Immediately following the termination of the New Plan Sponsor PSA for any reason other than (A) a Purchaser Breach or (B) by the Plan Sponsor pursuant to section 13.1(j) thereof upon the occurrence of a Manipulative Breach, the Sellers shall (x) be entitled to receive from the Plan Sponsor and retain $50 million, and (y) be entitled to draw upon any outstanding Letter of Credit at any time thereafter to obtain such funds and the receipt by the Sellers of immediately available funds in an account designated by ASARCO in an amount equal to $50 million pursuant to such draw (or any draws pursuant to section 4.2(h) of the New Plan Sponsor PSA) shall satisfy the Plan Sponsor's payment obligation in clause (x) and (y) as promptly as practicable, and in any event within 10 Business Days, return the Second L/C and (if posted) the Third L/C to the issuer thereof for cancellation (or any cash drawn (and received) pursuant to section 4.2(h) in excess of $50 million; provided, that if (and only if) a Release Condition occurs following the termination of the New Plan Sponsor PSA, as promptly as practicable, and in any event within 10 Business Days following the occurrence of such Release Condition, ASARCO shall either (1) return the First L/C to the issuer thereof for cancellation or (2) if the Sellers have already drawn on the First L/C, including pursuant to section 4.2(h), (and received $50 million in respect of such draw), the Sellers shall deliver the amount of $50 million to the Plan Sponsor and such payment shall be made by wire transfer of immediately available funds to an account designated by the Plan Sponsor.

As promptly as practicable, and in any event within 10 Business Days following the termination of New Plan Sponsor PSA by the Plan Sponsor pursuant to section 13.1(j) thereunder due to a Manipulative Breach, ASARCO shall return the Letters of Credit to the issuer thereof for cancellation (or any cash drawn and received pursuant to section 4.2(h)).

Section 4.2(h) of the New Plan Sponsor PSA provides that at all times the remaining period until the stated expiry of each Letter of Credit shall be at least 30 days. From time to time, the Plan Sponsor shall cause the Letters of Credit to be amended to extend the expiry dates thereunder (without any other modifications thereto) in order to comply with this requirement. If at any time the remaining period until the stated expiry of any Letter of Credit is less than 30 days, ASARCO shall be entitled to draw upon such Letter of Credit at anytime thereafter; *provided, however*, that if the parties mutually agree that the Closing is reasonably likely to occur during such 30 day period, then ASARCO shall not draw upon such Letter of Credit until the stated expiry of such Letter of Credit is 20 days or less and all cash received by ASARCO (in immediately available funds in an account designated by ASARCO) prior to or on the Closing Date pursuant to such draw shall be credited against the $1.1 billion payment at Closing and retained by the Sellers as a component of the Purchase Price; *provided, further*, that, notwithstanding anything to the contrary contained in the New Plan Sponsor PSA, any cash drawn and received pursuant to section 4.2(h) that is to be returned to the Plan Sponsor pursuant to any other provision of section 4.2 of the New Plan Sponsor shall be returned to the Plan Sponsor immediately.

Notwithstanding anything to the contrary contained in the New Plan Sponsor PSA, except pursuant to section 4.2(d) thereof, any draw upon any of the Letters of Credit shall be approved by the Bankruptcy Court as an act outside the ordinary course of business under section 363(b)(1) of the Bankruptcy Code; *provided, however*, that such Bankruptcy Court approval shall not be required for any draw upon the First L/C prior to the entry of the Sterlite Agreed Order by the Bankruptcy Court. For clarification, the Sellers' right to draw upon a Letter of Credit is not conditioned upon any other finding by the Bankruptcy Court.

(4) The Purchase Price Adjustment.

No later than 45 days after the Closing Date, the Sellers shall deliver to the Plan Sponsor a Closing Accounts Statement (as such term is defined in section 4.3(a) of the New Plan Sponsor PSA) prepared in accordance with the illustration set forth in Exhibit E to the New Plan Sponsor PSA setting forth the Included Receivables, the Included Payables, and the Inventory Amount (as each such term is defined in Exhibit E to the New Plan Sponsor PSA), each calculated as of the Closing Date, and a calculation of the Closing Accounts Amount (as such term is defined in Exhibit E to the New Plan Sponsor PSA).

On the date that a binding determination of the Closing Accounts Amount has been made in accordance with section 4.4 of the New Plan Sponsor PSA, the aggregate principal amount of the Plan Sponsor Promissory note shall automatically be (A) increased by the Adjustment Amount if the Closing Accounts Amount is greater than the Agreed Working Capital or (B) decreased by the Adjustment Amount if the Closing Accounts Amount is less than the Agreed Working Capital, in each case without any action on the part of the Plan Sponsor or the Sellers. The New Plan Sponsor PSA defines "Adjustment Amount" to mean, as of the date that a binding determination of the Closing Accounts Amount has been

made in accordance with section 4.4 of the New Plan Sponsor PSA, the product of (x) 1.6 multiplied by (y) Agreed Working Capital minus Closing Accounts Amount. In all cases, the Adjustment Amount shall be expressed as a positive number.

The procedures for resolution of any disputes regarding calculation of the Closing Accounts Amount set forth in the Closing Accounts Statement are set forth in section 4.4 of the New Plan Sponsor PSA.

(5) Solicitation Provisions.

Pursuant to section 8.10(a) of the New Plan Sponsor PSA, prior to entry of the Sterlite Agreed Order by the Bankruptcy Court:

- The Plan Sponsor, the Guarantor, and the Sellers acknowledge that the Sellers may take any action deemed necessary by the Sellers to demonstrate that (A) they have sought to obtain the highest and best value for the Sold Assets and that (B) consummation of the transactions contemplated by the New Plan Sponsor PSA will in fact yield the highest and best value for the Sold Assets, including giving notice thereof to the Sellers' creditors, other bidders for the Sold Assets, and other interested parties, providing information about the Business to prospective bidders, entertaining and negotiating offers from such prospective bidders, and, if necessary, conducting an auction.

- Each Seller and any Representatives of any Seller shall have the right (but not the obligation), acting under the direction of the board of directors of ASARCO or any committee thereof, to, directly or indirectly: (A) solicit, initiate, facilitate, or encourage any Acquisition Proposal or proposal for a Stand-Alone Plan, including by way of providing access to third parties to non-public information pursuant to one or more confidentiality agreements; and (B) enter into and maintain discussions or negotiations with respect to one or more Acquisition Proposals or any Stand-Alone Plan proposal or otherwise cooperate with or assist or participate in, or facilitate, any such discussions or negotiations.

- The Plan Sponsor and the Guarantor agree that none of them nor any of their respective Affiliates or Subsidiaries shall, and that each of them shall use their reasonable best efforts to cause each of their respective Representatives not to, directly or indirectly, discourage or interfere with any Acquisition Proposal or Stand-Alone Plan, or contact or participate in discussions with any person regarding an Acquisition Proposal or proposal for a Stand-Alone Plan that, to the Plan Sponsor or the Guarantor's knowledge, has made, or is considering or participating in discussions or negotiations with any Seller or any Representative of any Seller regarding an Acquisition Proposal or proposal for a Stand-Alone Plan.

- No Seller, nor any of its Representatives, shall have any liability to the Plan Sponsor or the Guarantor, either under or relating to the New Plan Sponsor PSA, the Ancillary Agreements, or any Applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of an Acquisition Proposal or Stand-Alone Plan or the definitive agreement for any such Acquisition Proposal or Stand-Alone Plan. Any Seller may in its sole discretion enter into a definitive agreement with respect to such Acquisition Proposal or Stand-Alone Plan and the Sellers may terminate the New Plan Sponsor PSA prior to or after entry into such a definitive agreement.

- Any action taken by any Seller or any Representative of any Seller in accordance with the provisions of section 8.10(a) of the New Plan Sponsor PSA are expressly acknowledged and agreed to be not in breach or violation of any covenant contained therein or that could be implied therein (including a covenant of good faith or fair dealing).

Pursuant to section 8.10(b) of the New Plan Sponsor PSA, ASARCO agreed that, following the entry of the Sterlite Agreed Order by the Bankruptcy Court, neither it nor any of its wholly-owned Subsidiaries shall, and that it shall direct its Representatives and its wholly-owned Subsidiaries' Representatives not to, directly or indirectly, solicit any Acquisition Proposal; *provided, however*, that nothing shall prevent ASARCO, its board of directors, or any of its Representatives from taking any of the following actions:

- complying with its obligations under Applicable Law with regard to an Acquisition Proposal; or

- (A) engaging in any negotiations or discussions with any person who has made an unsolicited bona fide written Acquisition Proposal or (B) recommending an unsolicited Acquisition Proposal to the Creditor Constituents, if in the case of each of clause (A) and (B) above, the board of directors of ASARCO determines in good faith (after consultation with its legal and financial advisors and the Creditor Constituents) that (1) such action would be reasonably likely to be required in order to comply with its fiduciary duties under Applicable Law and (2) such Acquisition Proposal is a Superior Proposal or is likely to lead to a Superior Proposal; or

- communicating or engaging in discussions with any of the Creditor Constituents or their respective advisors or Representatives regarding any matter, whether Acquisition Proposal, proposal relating to a Stand-Alone Plan, or otherwise.

Section 8.10(c) of the New Plan Sponsor PSA provides that, notwithstanding anything therein to the contrary, the Sellers and their Subsidiaries and their respective officers, directors, employees, attorneys, investment bankers, accountants, and other agents and Representatives shall be permitted to (A) maintain and continue to provide access to the data room to persons that have executed a confidentiality agreement with ASARCO prior to the entry of the Sterlite Agreed Order and (B) respond to any inquiries from and provide access to the data room to persons that have submitted a written bona fide (and unsolicited) Acquisition Proposal that ASARCO determines in good faith is a Superior Proposal (or is reasonably likely to lead to a Superior Proposal) and that have executed a confidentiality agreement with ASARCO. No Seller nor any of its Affiliates shall have any liability to the Plan Sponsor or the Guarantor, either under or relating to the New Plan Sponsor PSA, the Ancillary Agreements, or any Applicable Law, by virtue of entering into or seeking Bankruptcy Court approval of a Superior Proposal or the definitive agreement for such Superior Proposal, in each case, in accordance with the terms of section 8.10 of the New Plan Sponsor PSA, following the receipt of any Superior Proposal, except as provided in section 13.2(b)(v) thereof upon termination of the New Plan Sponsor PSA.

Section 8.10(d) of the New Plan Sponsor PSA requires the Sellers, as soon as practicable, to provide the Plan Sponsor with the material terms and conditions of any Acquisition Proposal, and the identity of the person making such Acquisition Proposal, received by the Sellers after the entry of the Sterlite Agreed Order by the Bankruptcy Court that the board of directors of ASARCO determines in accordance with section 8.10(b)(ii) of the New Plan Sponsor PSA to take any affirmative action to approve, or authorize negotiations of, a definitive agreement in respect of.

(6) Matching/Topping Right.

Section 8.10(e) of the New Plan Sponsor PSA gives the Plan Sponsor a matching/topping right, within four Business Days after the Plan Sponsor receives a copy of the material terms and conditions of any Acquisition Proposal, and the identity of the person making such Acquisition Proposal, pursuant to section 8.10(d) thereof, to deliver to the Sellers an unconditional written offer to improve the terms and conditions contained in the New Plan Sponsor PSA so long as the Deemed Value of such improved offer (which Deemed Value shall include the value of the amounts that would be owed to the Plan Sponsor under section 13.2(b)(v) if such Acquisition Proposal were accepted and consummated) is at least equal to the Deemed Value of such pending Acquisition Proposal. The Plan Sponsor shall be under no obligation to exercise its matching/topping right or to participate in any proceedings designed to elicit from the Plan Sponsor an equal or higher and better offer.

(7) Break-Up Fee and Expense Reimbursement.

Pursuant to section 13.2(b)(v) of the New Plan Sponsor PSA, the Plan Sponsor is entitled to a break-up fee of $26 million if, following the entry of the Sterlite Agreed Order by the Bankruptcy Court, the New Plan Sponsor PSA is terminated pursuant to (A) section 13.1(d) thereof due to the Bankruptcy Court's approval of a Superior Proposal and such Superior Proposal is consummated between ASARCO and a person other than the Plan Sponsor, the Guarantor, or any of their respective Affiliates or (B) section 13.1(e) thereof due to the Bankruptcy Court's approval of a Stand-Alone Plan approved by the board of directors of ASARCO and supported by ASARCO and such Stand-Alone Plan is consummated.

Section 13.2(b)(v) further provides that if, following the entry of the Sterlite Agreed Order by the Bankruptcy Court, the New Plan Sponsor PSA is terminated pursuant to section 13.1(j) thereof, the Sellers shall reimburse the Plan Sponsor within two Business Days following such termination for actual and documented expenses of the Plan Sponsor not to exceed the sum of $10 million.

The Plan Sponsor shall have a first priority Administrative Claim against ASARCO for any amounts due under section 13.2(b)(v) of the New Plan Sponsor PSA. However, neither the $26 million break-up fee nor the expense reimbursement shall be due and payable to the Plan Sponsor if:

- the Plan Sponsor or the Guarantor has materially breached the New Plan Sponsor PSA;
- the Plan Sponsor or the Guarantor has engaged in bad faith conduct with respect to the transactions contemplated by the New Plan Sponsor PSA; or
- the Plan Sponsor or the Guarantor has violated in any material respect the provisions of the Bankruptcy Code, other Applicable Law, or an Order of the Bankruptcy Court, in each case relating to the transactions contemplated by the New Plan Sponsor PSA,

each of which are referred to in the New Plan Sponsor PSA as a Purchaser Bad Faith Event.

(8) Back-Up Bid Option.

Section 8.10(f) of the new Plan Sponsor PSA provides that if ASARCO terminates the New Plan Sponsor PSA pursuant to section 13.1(d) or (e) thereof, and such Superior Proposal or Stand-Alone Plan, as applicable, that prompted such termination is definitively terminated prior to consummation thereof, then ASARCO shall offer the Plan Sponsor the right (referred to in the New Plan Sponsor PSA as the Back-Up Bid Option) to consummate the purchase and sale of the Sold Assets and the assumption of the Assumed Liabilities in a transaction on substantially the same terms and conditions as the New Plan Sponsor PSA; *provided, however,* the Back-Up Bid Option will expire with no further obligation to the Plan Sponsor at 5:00 p.m., Dallas, Texas time, on the tenth Business Day following the date on which the Back-Up Bid Option was offered to the Plan Sponsor unless prior to such time (A) ASARCO receives a Back-Up Bid Agreement and (B) ASARCO shall have received an originally executed letter of credit, enforceable against the issuer thereof, in the amount of $125 million issued in favor of ASARCO by a Qualified Bank; *provided, however*, that if ASARCO has retained or drawn on the First L/C pursuant to section 4.2(f) of the New Plan Sponsor PSA, then the letter of credit shall be issued in the amount of $75 million. The Back-Up Bid Agreement must contain only the following modifications to the New Plan Sponsor PSA:

- all dates and deadlines shall be extended to such dates following execution of the Back-Up Bid Agreement as are consistent with the respective time periods between the effective date of the New Plan Sponsor PSA and the dates or deadlines contained therein;
- the covenants contained in the subsections of section 8.2 of the New Plan Sponsor PSA shall be reasonably revised as appropriate to reflect ASARCO's operations at such time; *provided, however,* that the Plan Sponsor, the Guarantor, and the Sellers, each acting reasonably, are able to agree in writing on such revisions prior to expiration of the Back-Up Bid Option; and
- such other non-substantive changes as may be reasonably required under the circumstances and as may be agreed in writing among the Plan Sponsor, the Guarantor, and the Sellers, each acting reasonably, prior to expiration of the Back-Up Bid Option.

The Plan Sponsor shall be entitled to seek specific performance to enforce its right to receive the offer of the Back-Up Bid Option from the Sellers in accordance with section 8.10(f) of the New Plan Sponsor PSA without the necessity of proving actual damages or of posting any bond.

(9) Guarantor's Guaranty and Indemnity.

Pursuant to section 14.1(a) of the New Plan Sponsor PSA, the Guarantor irrevocably, unconditionally, and absolutely guarantees, as a primary obligor and not as a surety, to the Sellers the full and timely payment and due and punctual performance and discharge of all of the Plan Sponsor's obligations under the New Plan Sponsor PSA and the Ancillary Agreements existing on the date of the New Plan Sponsor PSA or thereafter of any kind or nature whatsoever, including, without limitation, the due and punctual payment of the Purchase Price and any other amount that the Plan Sponsor is or may become obligated to pay pursuant to the New Plan Sponsor PSA or the Ancillary Agreements (which are referred to in the New Plan Sponsor PSA as the Obligations). This guarantee is an unconditional, irrevocable, and absolute guaranty of timely payment and performance of the Obligations and not merely of collection. If for any reason whatsoever the

Obligations shall not be fully and timely paid or performed, the Guarantor shall promptly honor and perform its obligations to the Sellers thereunder upon demand. Pursuant to section 15.7(a) of the New Plan Sponsor PSA, the Plan Sponsor and the Guarantor consent to and submit to the jurisdiction and venue of the Bankruptcy Court for, among other things, enforcement of the New Plan Sponsor PSA. As provided in section 14.2 of the New Plan Sponsor PSA, notwithstanding anything to the contrary contained therein, the Guarantor is not a guarantor or surety of, and does not guarantee, any obligations of the Plan Sponsor under the Plan Sponsor Promissory Note.

Pursuant to section 14.1(i) of the New Plan Sponsor PSA, section 14.1 thereof shall survive the Closing and shall remain in full force and effect. The Guarantor also agreed to indemnify and hold the Sellers harmless from and against and to pay on demand all out-of-pocket costs and expenses (including, without limitation, reasonable legal fees and expenses) incurred by or on behalf of the Sellers in any way relating to the collection or enforcement of the Guarantor's obligations under section 14.1 of the New Plan Sponsor PSA.

(10) Conditions Precedent to Obligations of Each Party Under the New Plan Sponsor PSA.

Section 11.1 of the New Plan Sponsor PSA provides that the respective obligations of the Sellers, the Plan Sponsor, and the Guarantor to consummate the transactions contemplated by the New Plan Sponsor PSA are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions:

- The Bankruptcy Court or the United States District Court having jurisdiction over the Bankruptcy Cases (as such term is defined in the New Plan Sponsor PSA) shall have approved and entered the Plan Confirmation Order, and the Plan Confirmation Order shall have become an Effective Order;

- The United States District Court that has jurisdiction over the Bankruptcy Cases shall have issued or affirmed the Plan Confirmation Order in accordance with section 524(g)(3)(A) of the Bankruptcy Code;

- If the New Plan Sponsor PSA is not consummated prior to October 22, 2009, any waiting period (including any extension thereof) applicable to the sale to and purchase by the Plan Sponsor of the Sold Assets under the HSR Act or under the regulations of any other applicable governmental antitrust or competition authority, where failure to comply with such regulations would prohibit the consummation of the transactions contemplated by the New Plan Sponsor PSA, shall have been terminated or expired;

- No Order issued by any court of competent jurisdiction preventing the consummation of the transactions contemplated by the New Plan Sponsor PSA shall be in effect; and

- All conditions precedent to the effectiveness of the Plan (other than the Closing) shall have been satisfied or waived by the relevant parties.

Section 11.2 of the New Plan Sponsor PSA provides that the obligations of the Plan Sponsor and the Guarantor to consummate the transactions contemplated thereby are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Plan Sponsor or the Guarantor, in whole or in part, subject to Applicable Law):

- All of the representations and warranties of the Sellers contained in the New Plan Sponsor PSA shall be true and correct on and as of the Closing Date, except those representations and warranties of the Sellers that speak of a certain date, which representations and warranties shall have been true and correct as of such date; *provided, however*, that this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to result in a Seller Material Adverse Effect, ignoring solely for purposes of the satisfaction of this condition any reference to Seller Material Adverse Effect or other materiality qualifiers contained in such representations and warranties;

- The Sellers shall have performed, in all material respects, all obligations required by the New Plan Sponsor PSA to be performed by the Sellers on or prior to the Closing Date; and

- The Plan Sponsor shall have been furnished with the deliveries referred to in section 5.2 of the New Plan Sponsor PSA.

Section 11.3 of the New Plan Sponsor PSA provides that the obligations of the Sellers to consummate the transactions contemplated thereby are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by the Sellers, in whole or in part, subject to Applicable Law):

- All of the representations and warranties of the Plan Sponsor and the Guarantor contained in the New Plan Sponsor PSA shall be true and correct on and as of the Closing Date, except those representations and warranties of the Plan Sponsor and the Guarantor that speak of a certain date, which representations and warranties shall have been true and correct as of such date; *provided, however*, that this condition shall be deemed to have been satisfied so long as any failure of such representations and warranties to be true and correct, individually or in the aggregate, would not reasonably be expected to prevent, impede, or materially delay or otherwise affect in any material respect the transactions contemplated by the New Plan Sponsor PSA ignoring solely for purposes of the satisfaction of this condition any materiality qualifiers contained in such representations and warranties;

- The Plan Sponsor and the Guarantor shall have performed, in all material respects, all obligations required by the New Plan Sponsor PSA to be performed by them on or prior to the Closing Date;

- The Sellers shall have been furnished with the deliveries referred to in section 5.3 of the New Plan Sponsor PSA; and

- The consents and waivers set forth in section 6.3(a) and (b) of the Disclosure Schedule shall have been obtained.

(11) Termination of the New Plan Sponsor PSA.

Section 13.1 of the New Plan Sponsor PSA governs termination of the agreement. It provides that the agreement may be terminated prior to the Closing Date as follows:

- By the mutual written consent of the Sellers and the Plan Sponsor;

- By the Sellers if the Plan Confirmation Order has not been entered on or before August 31, 2009 (or such later date, which in no event shall be later than September 30, 2009, if requested by the Sellers and consented to by the Plan Sponsor, which consent may not be unreasonably delayed or denied) (referred to in the New Plan Sponsor PSA as the Confirmation Deadline); *provided, however*, that the Sellers shall not be permitted to terminate the New Plan Sponsor PSA under this subsection thereof if (A) the failure by the Sellers to fulfill any obligation under such agreement has been the primary cause of the Plan Confirmation Order not having been entered on or before the Confirmation Deadline or (B) the Plan Confirmation Order not having been entered is caused primarily by a breach by the Sellers of any covenant or obligation in the New Plan Sponsor PSA required to be performed by the Sellers or the inaccuracy of any representation or warranty of the Sellers made therein;

- By the Sellers if the Closing has not occurred on or before November 30, 2009 (or such later date, which in no event shall be later than December 31, 2009, if requested by the Sellers and consented to by the Plan Sponsor, which consent may not be unreasonably delayed or denied; provided that, if the Plan Confirmation Order has been entered by the Bankruptcy Court (rather than the United States District Court having jurisdiction over the Bankruptcy Cases), such date shall automatically be extended to December 31, 2009 (referred to in the New Plan Sponsor PSA as the Termination Date)); *provided, however*, that the Sellers shall not be permitted to terminate the New Plan Sponsor PSA under this subsection thereof if (A) the failure by the Sellers to fulfill

any obligation under such agreement has been the primary cause of the failure of such consummation to occur on or before the Termination Date or (B) the failure of the Closing to occur is caused primarily by a breach by the Sellers of any covenant or obligation in the New Plan Sponsor PSA required to be performed by the Sellers or the inaccuracy of any representation or warranty of the Sellers made therein;

- By either the Sellers or the Plan Sponsor, at any time after the Bankruptcy Court approves a Superior Proposal to be consummated between ASARCO and a person other than the Plan Sponsor, the Guarantor, or any of their respective Affiliates;

- By either the Sellers or the Plan Sponsor, at any time after the Bankruptcy Court approves a Stand-Alone Plan and such plan has been approved by the board of directors of ASARCO and is supported by ASARCO;

- By the Plan Sponsor if the Plan Confirmation Order has not been entered on or before the Confirmation Deadline; *provided, however*, that the Plan Sponsor shall not be permitted to terminate the New Plan Sponsor PSA under this subsection thereof if (A) the failure by the Plan Sponsor or the Guarantor to fulfill any obligation under such agreement has been the primary cause of the Plan Confirmation Order not having been entered on or before the Confirmation Deadline or (B) the Plan Confirmation Order not having been entered is caused primarily by a breach by the Plan Sponsor or the Guarantor of any covenant or obligation in the New Plan Sponsor PSA required to be performed by the Plan Sponsor or the inaccuracy of any representation or warranty of the Plan Sponsor or the Guarantor made therein;

- By the Plan Sponsor if the Closing has not occurred on or before the Termination Date; *provided, however*, that the Plan Sponsor shall not be permitted to terminate the New Plan Sponsor PSA under this subsection if (A) the failure by the Plan Sponsor or the Guarantor to fulfill any obligation under such agreement has been the primary cause of the failure of such consummation to occur on or before the Termination Date or (B) the failure of the Closing to occur is caused primarily by a breach by the Plan Sponsor or the Guarantor of any covenant or obligation in the New Plan Sponsor PSA required to be performed by the Plan Sponsor or the Guarantor, or the inaccuracy of any representation or warranty of the Plan Sponsor or the Guarantor made therein;

- By the Plan Sponsor (provided that neither the Plan Sponsor nor the Guarantor is in material breach of any representation, warranty, or covenant or other agreement contained in the New Plan Sponsor PSA) if: (A) the Bankruptcy Court shall not have entered the Sterlite Agreed Order on or prior to April 15, 2009[~~10~~14] or (B) the Bankruptcy Court shall not have entered an order approving the Disclosure Statement on or prior to May 31, 2009 (or such later date, which in no event shall be later than July 1, 2009, if requested by the Sellers and consented to by the Plan Sponsor, which consent may not be unreasonably delayed or denied);

- By the Plan Sponsor upon the conversion of ASARCO's bankruptcy case to a case under chapter 7 of the Bankruptcy Code;

- By the Plan Sponsor, if there shall be a breach by the Sellers of any representation, warranty, or covenant contained in the New Plan Sponsor PSA which would result in a failure of a condition to the Plan Sponsor's and the Guarantor's obligation to close set forth in section 11.2(a) or (b) thereof to be satisfied, which breach has not been cured by the earlier of (A) 60 days after the giving of written notice by the Plan Sponsor to the Sellers of such breach and (B) the Termination Date;

- By the Sellers, if there shall be a breach by the Plan Sponsor or the Guarantor of any representation, warranty, or covenant contained in the New Plan Sponsor PSA which would

[~~10~~14] At the request of the Bankruptcy Court, Sterlite agreed to extend the deadline for entry of the Sterlite Agreed Order from April 15, 2009 until April 22, 2009, pursuant to amendment no. 1 to the New Plan Sponsor PSA entered into on April 15, 2009.

result in a failure of a condition to the Sellers' obligation to close set forth in section 11.3(a) or (b) thereof to be satisfied, which breach has not been cured by the earlier of (A) 60 days after the giving of written notice by the Sellers to the Plan Sponsor of such breach and (B) the Termination Date;

- By either the Sellers or the Plan Sponsor, if there shall be any final non-appealable Order entered by a Governmental Authority of competent jurisdiction permanently restraining, prohibiting, or enjoining the Sellers or the Plan Sponsor from consummating the transactions contemplated by the New Plan Sponsor PSA;

- By the Sellers if the Plan (a) fails to satisfy the voting requirements under sections 524(g)(2)(B)(ii)(IV)(bb) and 1126 of the Bankruptcy Code for any Class of Claimants seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products or (b) is rejected by Persons listed in Exhibit P to the New Plan Sponsor PSA that hold at least one-half in number or one-third in amount of the environmental Claims set forth in Exhibit P thereof;

- By either the Sellers or the Plan Sponsor if the Bankruptcy Court denies confirmation of the Plan; or

- By Sellers pursuant to section 8.10(a)(iv) of the New Plan Sponsor PSA; provided that the termination right contained in this subsection thereof may be exercised only prior to the entry of the Sterlite Agreed Order.

Section 13.2 of the New Plan Sponsor PSA addresses the effect of a termination of the agreement. Pursuant thereto, if the New Plan Sponsor PSA is terminated pursuant to section 13.1 thereof:

- Except as otherwise provided in sections 4.2 and 13.2(b)(v) of the New Plan Sponsor PSA, such termination shall be the sole and exclusive remedy of the Plan Sponsor and the Guarantor with respect to breaches by any Seller of any covenant, representation, or warranty contained in such agreement[~~11~~15] and none of the Sellers nor any of their respective past, present, or future trustees, directors, officers, employees, members, shareholders, incorporators, partners, or Affiliates, as the case may be, shall have any liability or further obligation to the Plan Sponsor or Guarantor or any of their respective past, present, or future trustees, directors, officers, employees, members, shareholders, incorporators, partners, or Affiliates, as the case may be, and each Seller (and their respective past, present, or future trustees, directors, officers, employees, members, shareholders, incorporators, partners, or Affiliates, as the case may be) shall be fully released and discharged from any liability or obligation under or resulting from the New Plan Sponsor PSA and neither the Plan Sponsor nor the Guarantor shall have any other remedy, right, claim, or cause of action under or relating to the New Plan Sponsor PSA or any Applicable Law, including for reimbursement of expenses;

- The Sellers shall have all rights and remedies existing at law or in equity and shall have the right to pursue all legal and equitable remedies that may be available to the Sellers, at law or in equity; and in any successful action for damages, the Sellers shall be entitled to recover their demonstrated legal damages, which shall not be limited to out-of-pocket costs in pursuing the transaction contemplated by the New Plan Sponsor PSA;

- All filings, applications, and other submissions made pursuant to the New Plan Sponsor PSA, to the extent practicable, shall be withdrawn from the agency or other person to which they were made;

[~~11~~15] It should be noted that section 15.2 of the New Plan Sponsor PSA provides that prior to any termination thereof pursuant to section 13.1 of the New Plan Sponsor PSA or otherwise, in addition to any other right or remedy to which each party may be entitled, at law or in equity, each party shall be entitled to enforce any provision of the New Plan Sponsor PSA by a decree of specific performance and to temporary, preliminary, and permanent injunctive relief to prevent breaches or threatened breaches of any provision of the New Plan Sponsor PSA, without posting any bond or other undertaking.

- All Evaluation Material (as defined in the Confidentiality Agreement) shall be returned to ASARCO;

- Section 13.2(b)(v) of the New Plan Sponsor PSA provides for payment of a break-up fee and an expense reimbursement in certain circumstances, as discussed above in Section 2.28(d)(7); and

- Payment of funds shall be made to the Sellers or one or more of the Letters of Credit may be drawn or returned for cancellation, in each case, in accordance with section 4.2 of the New Plan Sponsor PSA.

Notwithstanding section 13.2(b) of the New Plan Sponsor PSA, the obligations of the Plan Sponsor and the Guarantor under the Confidentiality Agreement and the obligations of the parties under sections 4.2, 8.5, 8.6, 8.10(f), 13.2, 15.4, 15.6, 15.7, 15.8, 15.11, 15.13, and 15.14, the last two sentences of section 8.1, and Articles II, XII, and XIV of the New Plan Sponsor PSA shall survive any termination of the New Plan Sponsor PSA and remain in full force and effect.

2.29 Mitsui Consent and Tag Along Rights.

Pursuant to section 3.1(h) of the New Plan Sponsor PSA, the Silver Bell Interests are included among the Sold Assets. Under the terms of the Silver Bell LLC Agreement, ARSB's sale, assignment, and transfer of its Silver Bell Interests is subject to the consent of the other members of Silver Bell. However, the Plan Sponsor and the Sellers agreed pursuant to section 3.6 of the New Plan Sponsor PSA that if the consent of the other members of Silver Bell is not obtained prior to Closing, then (a) the Silver Bell Interests and Sellers' right in and to the Silver Bell LLC Agreement shall each be an Excluded Asset and the shares of capital stock of ARSB shall be a Sold Asset and (b) references in section 7.5 of the New Plan Sponsor PSA to Silver Bell Interests shall be deemed to refer to the capital stock of ARSB.

In addition to the consent rights described above, as a result of the transactions contemplated by the New Plan Sponsor PSA, Mitsui, two affiliates of which own 25 percent of the outstanding limited liability company interests of Silver Bell, has asserted that certain provisions of the Silver Bell LLC Agreement or, in the event of a sale of the capital stock of ARSB, certain provisions of a letter agreement dated February 5, 1996, supplementing the Silver Bell LLC Agreement, give such Mitsui affiliates the right to require the Plan Sponsor to acquire from such Mitsui affiliates all or a portion of their membership interests in Silver Bell, as such affiliates may elect in their absolute discretion. Mitsui has further asserted that said letter agreement dated February 5, 1996, supplementing the Silver Bell LLC Agreement, is not an executory contract and the Debtors may not reject it. Mitsui is currently reviewing the Plan and Disclosure Statement and its rights and remedies under the Silver Bell LLC Agreement and the supplemental letter agreement. The Debtors have not taken a formal position with respect to the rights asserted by Mitsui and specifically reserve all rights and remedies against Mitsui and its affiliates, including all rights and remedies that any of them may have to object to any request of such Mitsui affiliates to have all or a portion of their Silver Bell membership interests purchased by the Plan Sponsor. Mitsui and all of its related entities and affiliates specifically reserve all rights and remedies that any of them may have to object to the Plan with respect to the Silver Bell LLC Agreement, the letter agreement dated February 5, 1996, supplementing the Silver Bell LLC Agreement, and any other rights and remedies mentioned in this section of the Disclosure Statement.

2.30 Filing of Disclosure Statements and Plans.

On July 31, 2008, the Debtors filed a plan of reorganization and accompanying disclosure statement which provided for a sale of ASARCO's operating assets to Sterlite. The plan and disclosure statement were thereafter amended on September 12, 2008 and on September 25, 2008.

On August 26, 2008, the Parent and AMC filed a plan of reorganization and disclosure statement for only ASARCO, SPHC, AR Sacaton, and ASARCO Master, which were subsequently amended on September 20, 2008 and on September 25, 2008.

On September 25, 2008, the Bankruptcy Court approved the disclosure statements for the plan proposed by the Debtors and for the plan proposed by the Parent and AMC, as well as the procedures for the solicitation and voting on both plans. On September 29 and 30, 2008, the Debtors, through the Balloting Agent, mailed both plans and ballots to all holders of Claims and Interests entitled to vote on either plan; however, prior to the October 27, 2008 voting deadline, Sterlite notified ASARCO that, because of a material reduction in world commodity prices and a downtown in financial markets, it would not proceed with the Original Plan Sponsor PSA without a material price reduction (as discussed above in Section

2.28). As a result, ASARCO obtained an order from the Bankruptcy Court suspending solicitation of the votes on the Debtors' plan and the competing plan proposed by the Parent and AMC.

After thoroughly considering various alternatives, attending six days of court-ordered mediation, re-marketing the assets to strategic and financial potential plan sponsors, formulating a stand-alone plan, and continuing negotiations with Sterlite on an amended agreement, the board ultimately determined, in consultation with ASARCO's advisors and some of the creditor constituents, that it was in the best interests of the Debtors, their Estates, and their creditors to proceed with a plan of reorganization incorporating the New Plan Sponsor PSA. Consequently, a plan and disclosure statement were prepared, in consultation with some of the creditor constituents, and filed on March 16, **2009, and were subsequently amended on April 27,** 2009. The current Plan and Disclosure Statement were filed on ~~April 27,~~**May 11,** 2009.

2.31 Additional Information.

Additional information and copies of key documents and notices can be obtained at no cost at the Debtors' restructuring information website: *www.asarcoreorg.com*. Please check the restructuring website regularly for updates on the status of the Reorganization Cases.

2.32 The Asbestos/AMC/Parent Agreement in Principle and Certain Concerns Regarding Confirmability of the Plan.

(a) The Asbestos/AMC/Parent Agreement in Principle.

On April 17, 2009, the Asbestos Claimants' Committee, the FCR, AMC, and the Parent filed with the Bankruptcy Court a redacted copy of an Agreement In Principle Regarding Summary Terms of Chapter 11 Plan for ASARCO LLC and Subsidiaries. Persons wanting more information can review the Asbestos/AMC/Parent Agreement In Principle. [Docket No. 10873]. ***See*** **Exhibit R-1 attached hereto**. The Asbestos/AMC/Parent Agreement in Principle, among other things, provides that parties to the agreement would make the following disclosures to the Bankruptcy Court and parties in interest:

- The Asbestos Subsidiary Committee and the FCR will oppose the sale of the Debtors' operating assets to Sterlite and confirmation of the Debtors' Plan;

- The FCR will not deliver, and the Asbestos Subsidiary Committee will not recommend that their constituents deliver, sufficient votes to support a Bankruptcy Code section 524(g) injunction under the terms of the Plan;

- The Parent will deposit the sum of $1.3 billion in cash or cash equivalents (which may include the shares of SCC stock) into an escrow account on or before June 13, 2009;

- The Parent will propose a chapter 11 plan of reorganization providing for the treatment of all claims in the bankruptcy and the retention of the Parent's equity ownership in ASARCO;

- The proposed Parent plan will release all claims against the Parent, Grupo México, and affiliates, including the multi-billion dollar SCC Final Judgment;

- The proposed treatment of unsecured claims under the Parent's proposed plan, other than asbestos claims, was redacted from the Asbestos/AMC/Parent Agreement In Principle and thus is unknown to the Debtors at this time;

- The proposed Parent plan will allow contingent asbestos claims in the aggregate amount of $1.0 billion; and

- Asbestos claims will be channeled to a trust and such trust will be funded with (1) cash in the amount $527.5 million, $27.5 million of which is earmarked for administrative costs of the trust; (2) a one-year, $250 million promissory note from reorganized ASARCO bearing interest at 6 percent and secured by a first lien on all of reorganized ASARCO's assets and a pledge from the Parent of 51 percent of the equity in reorganized ASARCO; and (3) rights to insurance proceeds with respect to asbestos claims.

(b) Concerns Regarding the Ability to Obtain a Channeling Injunction and the Plan's Compliance with the Absolute Priority Rule.

The Parent contends that the Plan cannot be confirmed in light of the Asbestos/AMC/Parent Agreement in Principle with the Asbestos Subsidiary Committee and the FCR because the Parent believes the requirements for a channeling injunction can no longer be met. Section 3.10(c) of the Disclosure Statement describes the Permanent Channeling Injunction. The issuance of a section 524(g) asbestos channeling injunction in favor of Sterlite is a condition to closing under the New Plan Sponsor PSA. Sterlite has also indicated that, if the Bankruptcy Court or the District Court finds that the technical requirements for a section 524(g) injunction are not met, it will accept such other finding and provisions in the Plan Confirmation Order (which order must have become a Final Order) that shall provide that present and future asbestos Claims and Demands are enjoined, released, or otherwise prohibited from being asserted against ASARCO, the Plan Sponsor, the Guarantor, and various other related parties, affiliates, and assets of such parties.

The Parent and the Asbestos Subsidiary Committee and the FCR contend that a section 524(g) injunction may not be issued under the Debtors' Plan without the affirmative vote of 75 percent of voting Claims in Class 4 and that obtaining such affirmative votes will be difficult for ASARCO because the Asbestos/AMC/Parent Agreement in Principle provides that the Asbestos Subsidiary Committee and the FCR will not recommend that their constituents vote in favor of the Debtors' Plan or the issuance of a section 524(g) injunction. The Debtors dispute the contentions of the Parent and the Asbestos Subsidiary Committee and the FCR and believe that the Debtors will obtain sufficient affirmative votes of asbestos claimants to issue a section 524(g) injunction, and even if such affirmative votes are not obtained, a section 524(g) injunction may still be issued because the asbestos Claimants are not impaired under the Debtors' Plan and thus are conclusively presumed to have accepted the Debtors' Plan under section 1126(f) of the Bankruptcy Code. Neither the Parent nor the Asbestos Subsidiary Committee and the FCR agree with the Debtors' contentions.

The Parent and the Asbestos Subsidiary Committee and the FCR also contend that the Sterlite 9019 Order may be reversed on appeal or that Sterlite may breach the New Plan Sponsor PSA. Entry of a final, non-appealable order on the Sterlite 9019 Motion is not a condition to closing under the New Plan Sponsor PSA. Further, the Debtors fully expect Sterlite to close under the New Plan Sponsor PSA. However, there can be no assurance that Sterlite will close. If Sterlite breaches the New Plan Sponsor PSA, ASARCO will be entitled to move the Bankruptcy Court for authorization to draw on deposits equal to $125 million in the form of letters of credit that have been posted. In addition, ASARCO would seek to enforce ASARCO's rights for Sterlite's breach of the Original Plan Sponsor PSA and potentially other relief through the court system. However, because Sterlite has no known assets in the United States, there can be no assurance that ASARCO will be able to collect all or any portion of any judgment it could obtain. For a discussion on risks and difficulties associated with collecting a judgment against Sterlite and its parent, Sterlite Industries (India) Ltd., please see the Sterlite 9019 Motion [Docket No. 10526] and the Proffer of Jay L. Westbrook in Support of the Sterlite 9019 Motion [Docket No. 10806].

In addition, the Parent contends that this Disclosure Statement describes an unconfirmable Plan because the Plan's treatment of Claims in Class 3 (General Unsecured Claims) violates the absolute priority rule. Specifically, the Parent asserts that uncapped recoveries to the holders of Class 3 Claims, particularly as it relates to the proceeds from the SCC Final Judgment, render the Debtors' Plan unconfirmable. If the Parent's legal and factual theories are correct, then there is a risk the Plan cannot be confirmed without a provision limiting these recoveries. The Debtors believe their Plan complies with the provisions of Bankruptcy Code sections 1129(a) and (b) and should be confirmed. Under section 1129 of the Bankruptcy Code, a creditor may not receive more than payment in full of their claims with post-petition interest. Under the Debtors' Plan, holders of General Unsecured Claims are receiving Cash and interests in the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Asset Liquidation~~ Trust.

Because the value of the SCC Final Judgment, the primary asset contributed to the SCC Litigation Trust, is difficult to value and subject to appellate risks, Article 4.3 of the Plan contemplates that the Bankruptcy Court shall determine, as of the Confirmation Date, whether the value of Plan Consideration to be distributed to the holders of Claims under the Plan exceeds the Allowed Amounts of such Claims. If the Bankruptcy Court determines that the value of the Plan Consideration, as of the Confirmation Date, does not exceed the Allowed Amounts of such Claims, the Plan Consideration (including the interests in the SCC Litigation Trust which will hold the SCC Final Judgment) shall pass without limitation or restriction to the recipients under the Plan and such recipients shall be entitled to retain all cash or other property ultimately realized from the Plan Consideration even if the amount ultimately recovered in the future exceeds the Allowed Amounts of such Claims. In that event, there would be no cap or other limitation on the recovery of creditors under the SCC Litigation Trust from the proceeds of the SCC Final Judgment. To the extent the Bankruptcy Court determines that the value of the Plan Consideration, as of the Confirmation Date, exceeds the Allowed Amounts of such Claims, the excess, after the Allowed

Amount of Class 3 Claims are paid, shall be distributed in accordance with section 726 of the Bankruptcy Code in the following order:

First, to pay any Late-Filed Claims;

Second, to pay post-petition interest on any Allowed Amount of any Claim, calculated at the rate of 3.84 percent (the federal judgment rate in accordance with section 1961 of title 28 of the United States Code) or at such other rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims;

Third, to pay Subordinated Claims; and

Fourth, to the holders of Interests in ASARCO.

ASARCO is considering seeking to sell or auction all or a portion of its interest in the SCC Litigation in anticipation of Confirmation to, among other things, attempt to monetize the SCC Final Judgment and better assess the market value of the SCC Litigation. If such an auction is pursued, ASARCO believes the auction will provide a mechanism to value the SCC Judgment in a competitive auction process in which competing bids will be solicited and the highest and best bid will win (subject to a reserve price). If the auction process does not yield a value sufficient to pay all Claims in full with post-petition interest, then ASARCO believes the Bankruptcy Court could find, based on, among other factors, this market test, that as of the Confirmation Date, distributions of Plan Consideration in accordance with the Plan will not result in Class 3 Claimants receiving more value than the Allowed Amounts of their Claims, and that the Plan thus may be confirmed over the Parent's objection. If the Bankruptcy Court determines for any reason that the Plan Consideration exceeds the Allowed Amounts of Claims paid under the Plan, the Plan explicitly provides that the absolute priority rule is followed and the requirements of the Bankruptcy Code have therefore been met.

(c) The Debtors' Position Regarding the Asbestos/AMC/Parent Agreement in Principle.

The Debtors dispute the validity and enforceability of the Asbestos/AMC/Parent Agreement in Principle. The Debtors contend that the Asbestos/AMC/Parent Agreement in Principle is an unenforceable agreement to agree that does not legally bind AMC to fund. For example, Debtors doubt that the Asbestos Claimants' Committee or the FCR can compel AMC to comply with the agreement if, for example, Derivative Asbestos Claims against ASARCO are estimated by the Bankruptcy Court in an amount materially less than $1 billion, the stipulated amount of Asbestos' claim under the Asbestos/AMC/Parent Agreement in Principle. Further, the Asbestos Claimants' Committee and FCR are fiduciaries for their constituents and, with respect to the determination of Derivative Asbestos Claims, are representatives of and fiduciaries for the Estates of the Asbestos Subsidiary Debtors. Debtors contend that the Asbestos/AMC/Parent Agreement in Principle is unlawful because it purports to control the actions, judgment and independent exercise of the Asbestos Claimants' Committee's and FCR's fiduciary duties. While the agreement does allow the asbestos representatives to support a plan other than the Parent's plan under certain circumstances in the exercise of their fiduciary duties (i.e., a fiduciary out), there is no fiduciary out for other material obligations imposed on the Asbestos Claimants' Committee and FCR under the agreement. For instance, absent first obtaining the Parent's consent, the Asbestos Claimants' Committee and the FCR are prohibited under the Asbestos/AMC/Parent Agreement in Principle from supporting any matter whatsoever that may come before the Bankruptcy Court for consideration, even if doing so would otherwise be in the best interest of the Asbestos Subsidiary Debtors and asbestos Claimants. Moreover, the Asbestos/AMC/Parent Agreement in Principle obligates the Asbestos Claimants' Committee and the FCR to support AMC's request to stay collection of ASARCO's multi-billion dollar SCC Final Judgment in the SCC Litigation while AMC's appeal of the SCC Final Judgment is pending, even though the timing of the stay hearing is such that the Asbestos Claimants' Committee and the FCR will be supporting a stay of the SCC Final Judgment before AMC has funded AMC's plan. The Debtors contend that while such action is certainly in AMC's best interest, it hardly benefits creditors or their interests.

~~The Debtors also contend that the Asbestos/AMC/Parent Agreement in Principle is unenforceable because it was entered into by estate representatives without notice or prior court approval.~~

When a plan of reorganization is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, it will generally satisfy the good faith requirement contained in section 1129(a)(3) of the Bankruptcy Code. *See Ketchikan Lodge No. 1429, Benevolent and Protective Order of Elks v. Hewitt (In re Hewitt)*, 16 B.R. 973, 981 (Bankr. D. Alaska 1982). However, declining to confirm a proposed plan on account of lack of good faith is appropriate where "it is evident that the [plan-sponsor] seeks merely to delay or frustrate" efforts of creditors to enforce their rights. *See Travelers Ins. Co. v. Pikes Peak Water Co. (In re Pikes Peak Water Co.)*, 779 F.2d 1456, 1460

(10th Cir. 1985); *see also In re Hoosier Hi-Reach, Inc.*, 64 B.R. 34, 38 (Bankr. S.D. Ind. 1986) (noting that one of the objectives of chapter 11 is the expeditious resolution of disputes).

~~Finally, the Asbestos/AMC/Parent Agreement in Principle chills competition for the assets of ASARCO and is therefore void as against public policy.~~ The Parent has argued in court that the Asbestos/AMC/Parent Agreement in Principle renders the Debtors' Plan unconfirmable because the Debtors cannot obtain a section 524(g) injunction for Sterlite without the support of the Asbestos Claimants' Committee and the FCR. While Debtors disagree that their Plan is unconfirmable, for the reasons stated below, Parent's argument highlights that the purpose of the Asbestos/AMC/Parent Agreement in Principle ~~is~~ **is solely to delay the plan confirmation process** to eliminate Sterlite as a bidder~~ is anti-competitive~~. To be sure, the Bankruptcy Court noted the Parent's intentions in ~~this case~~**these cases** in a recent ruling:

> **[we are] dealing with a case that is now four years old, involving a business reliant on the volatile commodities market. For this company to survive and reorganize, confirmation must occur soon. Delay favors no one except the Parent. The Court has recently approved a bid procedures process based on a new plan of reorganization involving purchase by Sterlite. The bid procedure process and plan confirmation contains negotiated deadlines for confirmation of the plan. The Parent has indicated that it intends to file a competing plan. The Court's experience in this case suggests the parties' feet must be held to the fire to move the case along.** If the Parent can delay the process and cause the Sterlite deal to fall apart, the Parent will arguably be the only contender for the Debtor. The Parent~~'~~s motion to withdraw the reference is simply another delay tactic aimed at knocking out competitive bidders.

~~Report and Recommendation on Motion of Parent to Withdraw the Reference (emphasis added) [Docket No. 10992].~~

(*See* Report and Recommendation at §2, pg 10, Docket No. 10992). All of the major constituents in these cases, including the representatives of the Asbestos Claimants' Committee and the FCR, have recognized this tendency in connection with various actions taken by the Parent. In light of the totality of the circumstances (including the fact that AMC has been adjudicated to have conspired with ASARCO directors to breach their fiduciary duties to ASARCO creditors, and has been ordered to return some $6 billion in fraudulently transferred cash and property to the Debtors, which it has yet to do), it is not difficult to envision a situation in which the Bankruptcy Court could find that a Parent-proposed plan fails to meet the Bankruptcy Code's good faith requirement.

~~The~~**Further, the** Asbestos/AMC/Parent Agreement **in Principle** is an attempt to undermine a competitive plan process that otherwise would encourage Sterlite and the Parent to improve the value of their respective proposals and would permit creditors to vote for or against either or both plans. Thus, Debtors contend the Asbestos/AMC/Parent Agreement is an agreement that cannot and should not be enforced.

For a more fully developed analysis of these issues, please refer to Exhibit R-2 attached hereto. The Debtors received the responses from counsel for the Asbestos Subsidiary Committee and counsel for the FCR regarding the Asbestos/AMC/Parent Agreement in Principle that are attached hereto as Exhibit R-3, and Exhibit R-4, respectively.

(d) The April 21, 2009 Glencore Proposal.

On April 21, 2009, ASARCO received a revised Non-Binding Indicative Offer Termsheet for ASARCO's Operating Assets from Glencore. Glencore's offer contained the following material terms:

> (1) Glencore Acquisition Co., a newly created acquisition entity, would acquire ASARCO's operating assets and related facilities as well as all claims against MRI, including the MRI Litigation. Glencore Acquisition Co. would not acquire, and ASARCO would retain, the estimated $1.25 billion in cash on ASARCO's balance sheet, the litigation against Sterlite, and the SCC Litigation.
>
> (2) Consideration for the acquisition would consist of the following:
>
> (A) $375 million in Cash payable at closing;

(B) Secured notes issued by Glencore Acquisition Co. with face value of $375 million payable in annual installments from up to 75~~%~~ **percent** of the annual excess cash flow generated by the operations of Glencore Acquisition Co. The notes would bear interest at the U.S. Fed-funds rate which would be payable annually in Cash or kind. The notes would be subordinated only by capital expenditure facilities or hedging facilities to be put in place by Glencore Acquisition Co.;

(C) 35 percent of the non-voting equity in Glencore Acquisition Co. to be distributed to ASARCO's creditors, subject to a shareholders' agreement, which Glencore's offer valued at $450 million;

(D) Assumption by Glencore Acquisition Co of $400 million of ASARCO's retiree obligations;

(E) Assumption by Glencore Acquisition Co. of $50 million in known environmental obligations regarding the operating assets; and

(F) Commitment to require Glencore Acquisition Co. to make minimum capital expenditures of an aggregate of $150 million over next five years.

(3) A security deposit in the amount of $100 million to be paid upon signing of a definitive agreement.

(4) A break up fee of $50 million and a topping limit of at least $100 million.

The Debtors' advisors, Barclays Capital, have indicated that the consideration provided under this proposal does not exceed that received under the New Plan Sponsor PSA.

SECTION 3
SUMMARY OF THE PROPOSED PLAN

3.1 General.

The following is a summary of certain key provisions of the Plan. Before voting, holders of Claims that are entitled to vote on the Plan are referred to, and encouraged to review, the relevant provisions of the Plan, Plan Documents, and Bankruptcy Code carefully since their rights could be affected. They also are encouraged to review the Plan and this Disclosure Statement with their counsel or other advisors. Note that other provisions of the Plan not summarized in this Section 3 may be summarized elsewhere in this Disclosure Statement.

3.2 Classification of Claims and Interests.

(a) Generally. In accordance with section 1122 of the Bankruptcy Code, Claims and Interests, other than Administrative Claims and Priority Tax Claims, shall be divided in Classes and receive such treatment as described below. Administrative Claims and Priority Tax Claims shall be treated as set forth in Article II of the Plan.

(b) Classes. Claims against, and Interests in, the Debtors are grouped in the following Classes for purposes of the Plan in accordance with section 1122(a) of the Bankruptcy Code:

(1) Class 1 – Priority Claims. Class 1 consists of all Priority Claims against the Debtors. This Class is unimpaired.

(2) Class 2 – Secured Claims. Class 2 consists of all Secured Claims against the Debtors. This Class is unimpaired if Reinstated and impaired if paid the Allowed Amount of their Claims and any applicable post-petition interest.

(3) Class 3 – General Unsecured Claims. Class 3 consists of all General Unsecured Claims against the Debtors. This Class is impaired.

(4) Class 4 – Unsecured Asbestos Personal Injury Claims. Class 4 consists of all Unsecured Asbestos Personal Injury Claims against the Debtors. This Class is unimpaired.

(5) Class 5 – Convenience Claims. Class 5 consists of all Convenience Claims against the Debtors. This Class is unimpaired.

(6) Class 6 – Late-Filed Claims. Class 6 consists of all Late-Filed Claims against the Debtors. This Class is impaired.

(7) Class 7 – Subordinated Claims. Class 7 consists of all Subordinated Claims against the Debtors. This Class is impaired.

(8) Class 8 – Interests in ASARCO. Class 8 consists of all Interests in ASARCO. This Class is impaired.

(9) Class 9 – Interests in the Asbestos Subsidiary Debtors. Class 9 consists of all Interests in the Asbestos Subsidiary Debtors. This Class is impaired.

(10) Class 10 – Interests in the Other Subsidiary Debtors. Class 10 consists of all Interests in the Other Subsidiary Debtors. This Class is impaired.

3.3 Treatment of Administrative Claims, Priority Tax Claims and Demands.

(a) Administrative Claims.

Claims that are entitled to administrative priority under section 503 of the Bankruptcy Code are treated under Article 2.1 of the Plan. Under that provision, each holder of an Allowed Administrative Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder's Administrative Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date; *provided, however*, that (1) Allowed Administrative Claims representing (A) post-petition liabilities incurred in the ordinary course of business by a Debtor or (B) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto, and (2) the Allowed Administrative Claims of Professional Persons shall be paid pursuant to order of the Bankruptcy Court; and *further provided* that all Assumed Liabilities shall be paid by the Plan Sponsor.

Chase shall receive the Allowed Amount of any Administrative Claim under the Credit Facility discussed in Section 2.15(b) above, in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

ASARCO has an Administrative Claim against the Asbestos Subsidiary Debtors under the Secured Intercompany DIP Credit Facility and reserves the right to waive such Claim if necessary for the Bankruptcy Court to determine that Class 4 is unimpaired under the Plan.

The Asbestos Trust shall have an Allowed Administrative Claim for its administrative expenses in the amount estimated ~~or~~**by the Bankruptcy Court pursuant to its estimation order, following an evidentiary hearing; *provided, however*, if the parties reach agreement regarding the aggregate Allowed Amount of such Claims for purposes of the Plan, such amount shall be** approved by the Bankruptcy Court **in accordance with such procedures as the Bankruptcy Court shall require, including the presentation of supporting evidence regarding such settlement**. ASARCO believes that this Claim will total $27.5 million or less.

Any Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts.

The Settling Asbestos Insurance Companies shall each have an Allowed Administrative Claim for the Pre-524(g) Indemnity (as such term is defined in the applicable Asbestos Insurance Settlement Agreement), in accordance with the terms and conditions of such Asbestos Insurance Settlement Agreement. The Asbestos Insurance Settlement Agreements typically provide that until a Confirmation Order providing for an Asbestos Insurance Company Injunction has become a Final Order, ASARCO shall indemnify and hold harmless the Settling Asbestos Insurance Company in respect of any and all Claims arising under or relating in any way to the Subject Insurance Policies (as such term is defined in the Asbestos Insurance Settlement Agreement) or other Insurance Rights (as such term is defined in the Asbestos Insurance Settlement Agreement), including, without limitation, all Claims, whether by way of direct action or otherwise, made by third parties to the Asbestos Insurance Settlement Agreement, including, without limitation:

- other insurers of ASARCO (*provided, however*, that if Winterthur Swiss makes a claim for contribution against the Settling Asbestos Insurance Companies, then ASARCO shall be obligated to indemnify the Settling Asbestos Insurance Companies only for any amounts in excess of Winterthur Swiss's policy limits);
- any Person claiming to be insured under the Subject Insurance Policies;
- any Person who has made, shall make, or can make a Claim;
- any Person who has acquired or been assigned the right to make a Claim under the Subject Insurance Policies or other Insurance Rights;
- any Person asserting direct action rights under the Subject Insurance Policies or other Insurance Rights, including, without limitation, Persons with asbestos- or silica-related Claims against ASARCO; or
- any federal, state, or local government or any political subdivision, agency, department, board, or instrumentality thereof, including, without limitation, the State of Minnesota pursuant to the Minnesota Landfill Cleanup Act, Minn. Stat. § 115B.39 *et seq.* or the Minnesota Insurance Recovery Act of 1996, Minn. Stat. § 115B.441 *et seq.*

Because the Plan provides for the Asbestos Insurance Company Injunction, the Debtors do not believe that any payments shall be required on the Pre-524(g) Indemnity and are therefore not reserving any funds in connection with any such Claims.

(b) Priority Tax Claims.

Article 2.2 of the Plan provides for treatment of Allowed Priority Tax Claims. Under Article 2.2, each holder of an Allowed Priority Tax Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date.

(c) Demands.

Article 2.3 of the Plan provides treatment for Demands. Under Article 2.3, Demands shall be included in the treatment accorded Class 4 Unsecured Asbestos Personal Injury Claims, as set forth in Articles 4.1 and 4.2(d) of the Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement.

3.4 Treatment of Claims and Interests.

Article IV of the Plan sets forth the treatment to be provided each of the Classes of Claims and Interests under the Plan. The Debtors' previous versions of their plan of reorganization filed in 2008 had provided for separate Classes for Trade and General Unsecured Claims, Bondholders' Claims, Toxic Tort Claims, Previously Settled Environmental Claims, Miscellaneous Federal and State Environmental Claims, and Residual Environmental Claims. Under the Plan, these Claims are combined into a single Class of General Unsecured Claims. The environmental Claims were divided into three Classes corresponding to the environmental settlement agreements that were incorporated into the earlier versions of the plan filed in 2008, but which are now the subject of a motion for approval filed outside the context of the Plan. Moreover, the

Bondholders' Claims had been in a separate Class because the July 31, 2008 plan gave the Debtors the option of reinstating the Bondholders' Claims. Because the reasons for having separate Classes are no longer present, and because administration would be more efficient and cost-effective with a single combined Class, the Debtors consolidated those separate Classes into the Class of General Unsecured Claims.

The following is a summary of the treatment being provided under the Plan to each Class.

(a) Class 1 – Priority Claims.

(1) Voting Rights.

Class 1 is unimpaired by the Plan. Class 1, and holders of Priority Claims in Class 1, are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and are not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 1 Priority Claims are treated in Article 4.2(a) of the Plan. On the Effective Date or, if later, the date or dates that such Priority Claim becomes due in the ordinary course, each holder of an Allowed Priority Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

(b) Class 2 – Secured Claims.

(1) Voting Rights.

The voting rights of each holder of a Class 2 Secured Claim depend upon the Debtors' election. The Debtors shall make their election prior to the Confirmation Hearing. The Debtors shall solicit the votes of each sub-Class of Secured Claims. If the Debtors elect to Reinstate a particular Secured Claim, that sub-Class shall be unimpaired, and the sub-Class's vote shall not be counted. If the Debtors elect the Cash payment option as to a particular Secured Claim, that sub-Class shall be impaired, and that sub-Class's vote shall be counted.

(2) Treatment Under the Plan.

Class 2 Secured Claims are treated in Article 4.2(b) of the Plan. Each holder of an Allowed Secured Claim shall, at the election of the Debtors, either (A) receive the Allowed Amount of such holder's Claim, together with post-petition interest to the extent and at the rate provided in section 506(b) of the Bankruptcy Code, in Cash, on the later of the Effective Date or the date or dates that such Secured Claim becomes due in the ordinary course, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim and any related Lien, or (B) be Reinstated, on the Effective Date; *provided, however*, that any Allowed Secured Claim that is secured by a Lien on any Sold Asset shall receive the Allowed Amount of such holder's Claim with applicable post-petition interest, on the applicable date(s) and shall not be Reinstated.

The Secured Claims of the United States relating to the East Helena, Montana facility and the Globe, Colorado facility, and any Secured Claims relating to the Prepetition ASARCO Environmental Trust shall be satisfied by having the holders of such Claims retain the Liens securing such Claims, unless a holder agrees to different treatment. In addition, upon the Effective Date, the causes of action asserted by the Debtors against the United States of America on behalf of the EPA, the USDA, the Interior and the International Boundary and Water Commission in Adversary Proceeding No. 07-02076 (and only those causes of action) shall be dismissed without prejudice.

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes under the Plan. **Exhibit 16** to the Plan lists the Class 2 Secured Claims (as such list may be amended, supplemented, or modified up to and including the Confirmation Date).

(c) Class 3 – General Unsecured Claims.

(1) Voting Rights.

Class 3 is impaired by the Plan. Holders of General Unsecured Claims in Class 3 are being asked to vote to accept or reject the Plan under section 1126 of the Bankruptcy Code.

(2) Treatment Under the Plan.

Class 3 General Unsecured Claims are treated in Article 4.2(c) of the Plan. Subject to the provisions of Article 4.3 of the Plan, each holder of an Allowed General Unsecured Claim (except any holder that agrees to other, lesser treatment) shall receive such holder's Pro Rata share of the Plan Consideration on or after the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

Notwithstanding the foregoing, all distributions to holders of Allowed Bondholders' Claims shall be subject to, and the allocations made herein shall be reduced on a pro rata basis by, the Charging Lien to the extent of any unpaid Indenture Trustee Fee Claims that are not paid pursuant to Article 15.14 of the Plan.

At the request of the Indenture Trustees, the Plan provides for the payment of valid Indenture Trustee Fee Claims (*see* Article 15.14 of the Plan) and cancellation of instruments, (*see* Article 13.10 thereof), and includes instructions for distributions on account of Bondholders' Claims, (*see* Article 13.2(c) thereof) and mechanics for surrender of Certificates and lost Certificates, (*see* Article 13.9 thereof).

With respect to (1) the Allowed General Unsecured Claims of Governmental Units covered by (A) the Miscellaneous Federal and State Environmental Settlement Agreement, (B) the Residual Environmental Settlement Agreement, (C) the Arizona NRD Settlement Agreement, (D) the Hayden Past Cost Settlement Agreement, and (E) the Mission Mine Settlement Agreement; and (2) all Previously Settled Environmental Claims, the satisfaction, settlement, release, extinguishment, and discharge of such Claims is as provided in such agreements.

(d) Class 4 – Unsecured Asbestos Personal Injury Claims.

(1) Voting Rights.

The Debtors shall solicit the votes of **sub-Class 4A and sub-Class 4-B of** Class 4. If the Bankruptcy Court determines that this Class is unimpaired, then holders of Unsecured Asbestos Personal Injury Claims in Class 4 shall be conclusively presumed to have accepted the Plan for purposes of section 1129 of the Bankruptcy Code. In that event, the Bankruptcy Court may determine that such holders are also conclusively presumed to have accepted the Plan for purposes of section 524(g) of the Bankruptcy Code~~,~~ or may require the votes of Claimants in **each sub-Class of** Class 4 to be counted in order to determine whether the 75 percent voting requirement of section 524(g) is satisfied. If the Bankruptcy Court determines that Class 4 is impaired, the Ballots cast by holders of **Claims in each sub-Class of** Class 4 Claims shall be used to determine whether **sub-**Class 4**A and sub-Class 4B** accepts or rejects the Plan for purposes of sections 1129 and 524(g) of the Bankruptcy Code.

(2) Treatment Under the Plan.

Class 4 Unsecured Asbestos Personal Injury Claims are treated in Article 4.2(d) of the Plan. On the Effective Date, liability of all of the Debtors for all Unsecured Asbestos Personal Injury Claims and Demands shall be assumed by, and channeled to, the Asbestos Trust without further act or deed ~~and~~**for the reasons stated in the Plan, and shall be** satisfied as set forth ~~in the Plan~~**therein**.

All Unsecured Asbestos Personal Injury Claims and Demands shall be processed, liquidated, and paid **by the Asbestos Trust, acting under the control and direction of the Asbestos Trustees,** pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement. The Asbestos Trust

is described in ~~Section 5 below~~**Article VII of the Plan**. The sole recourse of the holder of an Unsecured Asbestos Personal Injury Claim or Demand shall be the Asbestos Trust **as operated by the Asbestos Trustees, including Reorganized ASARCO,** and the Asbestos TDP, and such holder shall have no rights whatsoever at any time to assert such holder's Claim or Demand against any Debtor, Reorganized Debtor, or ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons shall be permanently and forever stayed, restrained, and enjoined from taking any enjoined actions against any ASARCO Protected Party (or the property or interest in property of any ASARCO Protected Party) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to~~,~~ any Unsecured Asbestos Personal Injury Claim or Demand.

(A) Class 4A – Asbestos Premises Liability Claims.

The Asbestos Trust shall **create an Asbestos Premises Liability Claims Fund for payment of Asbestos Premises Liability Claims and Demands. The Asbestos Premises Liability Claims Fund shall** be funded with ~~(A) 100 percent of the interests in Reorganized Covington; and (B)~~ Cash in the amount of the Asbestos ~~Personal Injury Claims (both direct Asbestos Personal Injury Claims and Derivative Asbestos Claims),~~**Premises Liability Claims** and Demands against ASARCO, as estimated by the Bankruptcy Court **pursuant to its estimation order, following an evidentiary hearing, plus post-petition interest on that amount; *provided, however*, if the parties reach agreement regarding the aggregate allowed amount of such claims for purposes of the Plan, such amount shall be approved by the Bankruptcy Court in accordance such procedures as the Bankruptcy Court shall require, including the presentation of supporting evidence regarding such settlement**.

(B) Class 4B – Unsecured Asbestos Personal Injury Claims other than Asbestos Premises Liability Claims.

The ~~Debtors reserve the right prior to the Confirmation Date to modify the~~ Asbestos Trust ~~Agreement to~~**shall** create an Asbestos ~~Premises Liability~~**Personal Injury** Claims Fund for payment of **all Unsecured Asbestos Personal Injury Claims and Demands other than** Asbestos Premises Liability Claims and Demands. ~~If so modified, the~~**The** Asbestos ~~Premises Liability~~**Personal Injury** Claims Fund shall be funded with ~~cash equal to the estimated amount of the Asbestos Premises Liability Claims, and the~~**(a) 100 percent of the interests in Reorganized Covington; and (b) Cash in the amount of the Unsecured Asbestos Personal Injury Claims and Demands against ASARCO other than Asbestos Premises Liability Claims and Demands, as estimated by the Bankruptcy Court pursuant to its estimation order, following an evidentiary hearing, plus post-petition interest on that amount; *provided, however*, if the parties reach agreement regarding the aggregate allowed amount of such claims for purposes of the Plan, such amount shall be approved by the Bankruptcy Court in accordance such procedures as the Bankruptcy Court shall require, including the presentation of supporting evidence regarding such settlement.**

The Debtors reserve the right **prior to the Confirmation Date** to add such additional provisions in the Asbestos Trust or the Plan as may be advisable to preserve the Debtors' claims under any Asbestos Insurance Policy or under the Asbestos In-Place Insurance Coverage.

See Section 5 of this Disclosure Statement for more information about the Asbestos Trust, including additional information regarding the Asbestos TDP.

In connection with funding of the Asbestos Trust, Article 11.3 of the Plan provides for issuance of Injunctions that shall permanently enjoin further pursuit of Unsecured Asbestos Personal Injury Claims and Demands from whatever source against an ASARCO Protected Party. These Injunctions are discussed in greater detail in Section 3.10 of this Disclosure Statement.

(e) Class 5 – Convenience Claims.

(1) Voting Rights.

Class 5 is unimpaired by the Plan. Class 5, and holders of Convenience Claims in Class 5, are conclusively presumed to have accepted the Plan under section 1126(f) of the Bankruptcy Code and are not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 5 Convenience Claims are treated in Article 4.2(e) of the Plan. On the Effective Date, each holder of an Allowed Convenience Claim shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. Election by the holder of an Allowed General Unsecured Claim otherwise treated under Class 3 of the Plan to reduce the Claim of such holder to $1,000 and to receive distribution as a Class 5 Convenience Claim shall constitute acceptance of the Plan and a waiver of the right to recover any amount in excess of $1,000 from any of the Debtors.

(f) Class 6 – Late-Filed Claims.

(1) Voting Rights.

Class 6 is impaired. Class 6 is deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 6 Late-Filed Claims are treated in Article 4.2(f) of the Plan. Except as provided in Article 4.3 of the Plan, the holders of Late-Filed Claims shall not receive or retain any property under the Plan on account of such Claims.

(g) Class 7 – Subordinated Claims.

(1) Voting Rights.

Class 7 is impaired. Class 7 is deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 7 Subordinated Claims are treated in Article 4.2(g) of the Plan. Except as provided in Article 4.3 of the Plan, the holders of Subordinated Claims shall not receive or retain any property under the Plan on account of such Claims.

(h) Class 8 – Interests in ASARCO.

(1) Voting Rights.

Class 8 is impaired. Class 8 is deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 8 Interests in ASARCO are treated in Article 4.2(h) of the Plan. Except as provided in Article 4.3 of the Plan, the holders of Interests in ASARCO shall not receive or retain any property under the Plan on account of such Interests.

(i) Class 9 – Interests in Asbestos Subsidiary Debtors.

(1) Voting Rights.

Class 9 is impaired. Class 9 is deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 9 Interests in Asbestos Subsidiary Debtors are treated in Article 4.2(i) of the Plan. The holders of Interests in the Asbestos Subsidiary Debtors shall not receive or retain any property under the Plan on account of such Interests.

(j) Class 10 – Interests in the Other Subsidiary Debtors.

(1) Voting Rights.

Class 10 is impaired. Class 10 is deemed to have rejected the Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Plan.

(2) Treatment Under the Plan.

Class 10 Interests in the Other Subsidiary Debtors are treated in Article 4.2(j) of the Plan. The holders of Interests in the Other Subsidiary Debtors shall not receive or retain any property under the Plan on account of such Interests.

3.5 Alternative Treatment if the Bankruptcy Court Determines that Class 3 Claimants Are Being Paid More than They Are Entitled to Receive.

The Parent believes that the Debtors' Plan is patently unconfirmable because it violates the absolute priority rule. According to the Parent, under the Debtors' Plan, Class 3 would be entitled to the Liquidation Trust Interests and the SCC Litigation Trust Interests and could receive more than 100 percent of their Allowed Claims while holders of Claims and Interests in Classes 6 through 10 receive no distributions. The Debtors believe that the provisions of the Plan described below provide all holders of Claims and Interests the protections afforded by the absolute priority rule.

At the Confirmation Hearing, the Debtors request that the Bankruptcy Court determine that the value, as of the Confirmation Date, of the Plan Consideration that is to be distributed on account of Class 3 Claims under the Plan (without regard to Article 4.3 of the Plan) does not exceed the Allowed Amounts of such Claims. If the Bankruptcy Court so determines and agrees that the distribution of the Plan Consideration on account of Allowed Class 3 Claims will not result in such Claims being paid more than the Allowed Amount of such Claims, the Plan Consideration shall pass without limitation or restriction to the recipients under the Plan and such recipients shall be entitled to retain all Cash or other property ultimately realized from the Plan Consideration even if the amount ultimately recovered in the future exceeds the Allowed Amounts of Class 3 Claims. If the Bankruptcy Court instead determines that the value, as of the Confirmation Date, of the Plan Consideration to be distributed on account of Class 3 Claims under the Plan (without regard to Article 4.3 of the Plan) would result in distributions exceeding the Allowed Amounts of such Claims, then the ~~Litigation~~**agreements governing the Liquidation** Trust**,** ~~, and the Residual Assets Liquidation~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust shall each be amended prior to the Effective Date to provide that, after the Allowed Amounts of Class 3 Claims are paid in full, the holders of Claims in Class 6 and Class 7 and the holders of Interests in Class 8 shall become additional contingent beneficiaries of each respective trust and to further provide that, after the Allowed Amounts of Class 3 Claims are paid in full, distributions shall be made in the following order:

(a) First, on account of the Allowed Amounts of any Class 6 Claims, on a Pro Rata basis, until such claims are paid in full;

(b) Second, on account of post-petition interest on any Allowed Amounts of any Class 3 Claims or Class 6 Claims calculated at the federal judgment rate in accordance with section 1961 of title 28 of the United States Code or at such rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims, on a Pro Rata basis, until such claims are paid in full;

(c) Third, on account of Class 7 Claims on a Pro Rata basis, until such claims are paid in full;

(d) Fourth, on account of post-petition interest on any Allowed Amounts of any Class 7 Claims, calculated at the federal judgment rate in accordance with section 1961 of title 28 of the United States Code or at such rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims, on a Pro Rata basis, until such claims are paid in full; and

(e) Fifth, on account of Class 8 Interests, on a Pro Rata basis.

As ~~stated~~**set forth** in the Introduction above, the Debtors ~~estimate~~**have estimated the amount of** distributions to General Unsecured Creditors in ASARCO Class 3 under the Plan ~~of 60 to 75 percent of Allowed~~**, depending upon the aggregate estimated amount of the Asbestos Personal Injury** Claims. However, in light of ASARCO's multi-billion dollar judgment against AMC in the SCC Litigation, there is a reasonable possibility that Claimants in ASARCO Class 3 will be paid more than 75 percent of their Allowed Claims under the Plan and potentially be paid in full with post-petition interest.

If sufficient Plan Consideration is available to permit payment in full with post-petition interest, the Debtors propose that post-petition interest should be paid at the federal judgment rate of 3.84 percent or, alternatively, at such rate as determined by the Bankruptcy Court. The federal judgment rate is calculated in accordance with 28 U.S.C. § 1961, which provides for "a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." The weekly average 1-year constant maturity Treasury yield for the week preceding ASARCO's Petition Date is available at *www.federalreserve.gov/releases/h15/20050808*.

Pursuant to section 1961(b) of title 28, interest shall be compounded annually. Pursuant to the Plan, a Claimant is entitled to post-petition interest on an Allowed Claim or any unpaid portion thereof, from August 10, 2005 to and including five Business Days immediately prior to the date a distribution is made, until such amounts are fully satisfied. After the Effective Date, interest shall accrue on any unpaid portion of an Allowed Claim and on any unpaid post-petition interest at the same rate and to the same extent.

Mitsui asserts that it is entitled to a 7.5% **percent** contractual rate of interest on its asserted Secured Claim. The Debtors and Mitsui specifically reserve all rights and remedies that any of them may have concerning the appropriate rate of interest on Mitsui's asserted Claim.

Additionally, various unsecured creditors contend that they are entitled to post-petition interest at the rates provided in their contract or Indenture, as opposed to the federal judgment rate, and that they are entitled to compound interest under the explicit terms of their contracts or Indentures. Various unsecured creditors have different interest rates under their contracts or Indentures and applicable non-bankruptcy law. Although there are authorities that support the positions of the various unsecured creditors on the appropriate rate of post-petition interest, the Debtors believe that the weight of authorities and the better reasoned decisions support the selection of the federal judgment rate as the appropriate rate of post-petition interest, in the event that funds are available for the payment of post-petition interest.

3.6 Intercompany Claims.

Pursuant to Article 4.4 of the Plan, Intercompany Claims ~~(other than (a)~~ **shall be treated as follows:**

(a) Derivative Asbestos Claims, which, if not settled, are to be estimated by the Bankruptcy Court prior to Confirmation~~; (b)~~**, shall be treated as Class 4 Claims under the Plan;**

(b) any Claims or causes of action asserted in ~~the Litigation Claims; (c) the Claims or causes of action~~**any of the Litigation Claims shall be preserved and resolved by Reorganized ASARCO post-Confirmation, and the amount, if any, that the Bankruptcy Court determines constitutes property of the Estates of the Asbestos Subsidiary Debtors shall be turned over to the Asbestos Trust, net of any costs of recovery;**

(c) **any Allowed Claims** asserted by the Asbestos Subsidiary Debtors against ASARCO~~, which Claims or causes of action, if not settled, shall be estimated by the Bankruptcy Court prior to Confirmation; and (d) if ASARCO does not waive its claims thereunder, in which case ASARCO's Administrative Claim~~ **(excluding Derivative Asbestos Claims and Administrative Expenses) shall be treated as Class 3 Claims under the Plan;**

(d) **ASARCO's Administrative Claims** under the Secured Intercompany DIP Credit Facility shall be treated as a Class ~~2 Secured Claim to the extent of any collateral and otherwise as a Class 3 General Unsecured Claim against the Asbestos Subsidiary Debtors) shall be released and extinguished pursuant to the Plan, and no distributions shall be made under the Plan with respect to such Claims. Holders of such Claims shall not be entitled to vote on the Plan.~~ **1 Priority Claim in the bankruptcy cases of the Asbestos Subsidiary Debtors. To the extent the distribution on account of such Class 1 Priority Claim fails to satisfy such Claim in full, ASARCO shall be permitted to withhold distributions on account of any Class 3 Claims of the Asbestos Subsidiary Debtors and apply such distributions to the indebtedness until all amounts owed ASARCO under the Secured Intercompany DIP Credit Facility are paid in full. If any amounts are still outstanding after such application, ASARCO shall be permitted to withhold distributions on account of any Class 4 Claims of the Asbestos Subsidiary Debtors and apply such distributions to the indebtedness until all amounts owed to ASARCO under the Secured Intercompany DIP Credit Facility are paid in full; *provided, however*, that no such amounts shall be so withheld if such withholding would cause Class 4 Claimants under the Plan to be impaired; and**

(e) all other Intercompany Claims shall be released and extinguished pursuant to the Plan, and no distributions shall be made under the Plan with respect to such Claims. Holders of such Claims shall not be entitled to vote on the Plan.

The Intercompany Claims include any Claims of any of the Debtors against CBRI or Silver Bell, and vice-versa. The Debtors are not aware of any such non-Debtor Claims; however, to the extent any such Intercompany Claims exist, they shall be released and extinguished pursuant to Article 4.4 of the Plan.

In its bankruptcy schedules, ASARCO scheduled disputed, contingent, and unliquidated claims of $64.83 million in favor of LAQ and $2.6 million in favor of CAPCO. Neither LAQ nor CAPCO have filed Proofs of Claim pursuant to a stipulation among the Debtors that extended the bar date for intercompany claims. Of this amount, ASARCO estimates that approximately $30 million arises from ASARCO's compromise of insurance proceeds recovered prior to the bankruptcy filing for asbestos-related liabilities, principally of the Asbestos Subsidiary Debtors. ASARCO used these proceeds to pay its own operating expenses and other debts rather than to pay asbestos-related settlements or judgments and related defense costs and expenses. If the Asbestos Subsidiary Debtors are determined to have an interest superior to ASARCO's interest in the insurance policies so compromised, the Asbestos Subsidiary Debtors may have a valid General Unsecured Claim against ASARCO's Estate for the amount of insurance proceeds used by ASARCO to fund its own operating expenses and other debts. ASARCO may have setoff rights or other defenses against such General Unsecured Claims. The difference between the $64.83 million scheduled amount of the Claims and the $30 million discussed above is under review and may not represent Allowed General Unsecured Claims. The validity and amount of the above-described intercompany claims will be determined as part of the claim allowance process provided under the Plan.

3.7 Conditions to Effectiveness.

Notwithstanding any other provision of the Plan or any order entered in connection with the Reorganization Cases, the Effective Date of the Plan shall not occur until and unless each of the following conditions to effectiveness have been satisfied or waived pursuant to Article 9.2 of the Plan:

(a) Disclosure Statement.

The Bankruptcy Court has approved the Disclosure Statement.

(b) Confirmation Findings and Conclusions.

The District Court makes or affirms the following findings of fact and conclusions of law:

(1) As of the Petition Date, ASARCO and the Asbestos Subsidiary Debtors have each been named as a defendant in personal injury, wrongful death, or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(2) The Plan has been approved or deemed approved by creditors in Class 4 under the Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code;

(3) On the Effective Date, the Asbestos Trust shall assume the liabilities of the Debtors with respect to the Unsecured Asbestos Personal Injury Claims and Demands~~,~~ and shall receive all transfers and assignments as set forth in the Plan;

(4) As of the Effective Date, there were no pending or known property damage actions seeking damages as a result of property damage allegedly caused by or arising out of asbestos or asbestos-containing products;

(5) The Asbestos Trust is to be funded in part by securities of Reorganized Covington and by the obligation of such debtor to make future payments;

(6) The Asbestos Trust, upon the Effective Date, is to own 100 percent of the interests in Reorganized Covington;

(7) The Asbestos Trust shall use its assets and income to pay the Unsecured Asbestos Personal Injury Claims and Demands;

(8) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Unsecured Asbestos Personal Injury Claims, which are addressed by the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction;

(9) The actual amounts, numbers, and timing of future Demands cannot be determined;

(10) Pursuit of Demands outside the procedures prescribed by the Plan is likely to threaten the Plan's purpose to deal equitably with Claims and future Demands;

(11) The terms of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including any provisions barring actions against third parties, are set out in the Plan and in this Disclosure Statement;

(12) The Asbestos Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Unsecured Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust shall value, and be in a financial position to pay, all Unsecured Asbestos Personal Injury Claims and Demands in substantially the same manner;

(13) To the extent practicable, the Asbestos Trust shall be operated in a manner that enables Reorganized ASARCO to pursue the Asbestos Insurance Recoveries so long as such operation does not require expenditures of Asbestos Trust Assets unless Reorganized ASARCO agrees to pay for such expenses;

(14) ~~(13)~~ The FCR was appointed by the Bankruptcy Court as part of the proceedings leading to the issuance of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Permanent Channeling Injunction or the Asbestos Insurance Company Injunction and that are to be assumed and paid by the Asbestos Trust in accordance with the Asbestos Trust Documents;

(15) ~~(14)~~ In light of the respective benefits provided, or to be provided, to the Asbestos Trust by, or on behalf of, each ASARCO Protected Party, the Permanent Channeling Injunction is fair and equitable with respect to the persons that might subsequently assert Demands against any ASARCO Protected Party;

(16) ~~(15)~~ In light of the respective benefits provided, or to be provided, by a Settling Asbestos Insurance Company in order to receive the benefits of the Asbestos Insurance Company Injunction, the Asbestos Insurance Company Injunction is fair and equitable with respect to the persons who might subsequently assert Demands against any Settling Asbestos Insurance Company;

(17) ~~(16)~~ The Settling Asbestos Insurance Companies are alleged to be directly or indirectly liable for the Unsecured Asbestos Personal Injury Claims and Demands for one or more of the reasons set forth in section 524(g)(4)(A)(ii) of the Bankruptcy Code;

(18) ~~(17)~~ The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction are integral parts of the Plan and may not be vacated, amended, or modified after Confirmation except to the extent expressly provided in Article 11.3(a) and (b) of the Plan;

(19) ~~(18)~~ The Plan complies with all applicable sections of the Bankruptcy Code, including section 524(g) of the Bankruptcy Code, and the Debtors have complied with all applicable sections of the Bankruptcy Code;

(20) ~~(19)~~ The New Plan Sponsor PSA and all other documents necessary to consummate the sale of the Sold Assets to the Plan Sponsor are approved in all respects, and all parties thereto are authorized and directed to perform all their obligations thereunder;

(21) ~~(20)~~ The sale of the Sold Assets to the Plan Sponsor pursuant to the Plan is approved pursuant to sections 363, 1123, and 1129 of the Bankruptcy Code, and the Plan Sponsor has (A) provided reasonably equivalent value and (B) acted in good faith for the purposes of section 363(m) of the Bankruptcy Code; and

(22) ~~(21)~~ Approval of the settlements and compromises set forth in Article 10.3 and 10.26 of the Plan is appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises, and shall be ordered as part of the Confirmation Order.

(c) Confirmation Order.

The Confirmation Order entered or affirmed by the District Court (1) is acceptable to the Debtors and (2) to the extent the Confirmation Order relates to the New Plan Sponsor PSA, the Plan Sponsor (and the Guarantor), or the transactions contemplated by the New Plan Sponsor PSA, is reasonably satisfactory to the Plan Sponsor.

(d) No Stay.

The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.

(e) Plan Documents.

The Plan Documents necessary or appropriate to implement the Plan have been (1) executed (A) in a form acceptable to the Debtors, and (B) with respect to the Disclosure Statement, to the extent it describes the New Plan Sponsor PSA, the Plan Sponsor (and the Guarantor), or the transactions contemplated by the New Plan Sponsor PSA, in a form and substance reasonably satisfactory to the Plan Sponsor; (2) delivered; and (3) where applicable, filed with the appropriate governmental or supervisory authorities.

(f) Funding of the Trusts.

The Trusts have been funded as provided in Articles 10.5 to 10.7 of the Plan.

(g) U.S. Trustee's Fees.

Any fees owed to the U.S. Trustee by the Debtors as of the Effective Date have been paid in full.

(h) Closing of the Sale of Sold Assets to Plan Sponsor.

The Confirmation Order approves the sale of the Sold Assets to the Plan Sponsor on the Closing Date.

(i) Approval of Environmental Settlements.

The settlement agreements for the Previously Settled Environmental Claims, the Miscellaneous Federal and State Environmental Claims, the Residual Environmental Claims, and the Environmental Custodial Trusts have been approved by the Bankruptcy Court and, where so required by the terms of the settlement agreement, by the appropriate federal district court.

(j) Assumption and Assignment of the Mission Mine Settlement Agreement.

The Mission Mine Settlement Agreement, all related agreements (including the Mission Mine Unexpired Agreements), and escrowed funds and financial assurances shall be assumed by, and assigned to, the Plan Sponsor pursuant to the New Plan Sponsor PSA.

(k) Estimation or Settlement of Asbestos Personal Injury Claims **and Demands**.

An estimation is made regarding ASARCO's liability on account of Asbestos Personal Injury Claims ~~or a settlement is reached with ASARCO regarding the~~**and Demands by the Bankruptcy Court pursuant to its estimation order, following an evidentiary hearing; *provided, however*, if the parties reach agreement regarding the aggregate** Allowed Amount of such Claims **and Demands for purposes of the Plan, such amount shall be approved by the Bankruptcy Court in accordance such procedures as the Bankruptcy Court shall require, including the presentation of supporting evidence regarding such settlement**.

(l) Assumption and Assignment of Hayden Settlement Agreement.

The Hayden Settlement Agreement, all related agreements, and escrowed funds and financial assurances shall be assumed by, and assigned to, the Plan Sponsor.

(m) HSR Act Approval.

Any waiting period (including any extension thereof) applicable to the sale to and purchase by the Plan Sponsor of the Sold Assets under the HSR Act or under the regulations of any other applicable governmental antitrust or competition authority, where failure to comply with such regulations would prohibit the consummation of the transactions contemplated by the New Plan Sponsor PSA, shall have been terminated or expired.

3.8 Waiver of Conditions to Effectiveness.

The Debtors, in their sole discretion, may waive any condition to effectiveness in Article 9.1 of the Plan by filing a notice of such waiver with the clerk of the Bankruptcy Court and by serving a copy of such notice on the Plan Sponsor, the U.S. Trustee, the Committees, the FCR, and the DOJ; *provided, however*, that:

(a) the DOJ and any affected state must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(e)(1), (f), (i), (j), and (l) of the Plan;

(b) the Asbestos Claimants' Committee and the FCR must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(e)(1) and (f) of the Plan; and

(c) the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(c)(2), (e)(1)(B), and (m) of the Plan;

and *provided further*, that in each instance, such consent shall not be unreasonably withheld, delayed, or conditioned.

3.9 How the Plan Shall Be Implemented.

(a) Sale of Sold Assets to Plan Sponsor.

Article 10.1(a) of the Plan provides that on the Closing Date, the Sold Assets shall be sold to the Plan Sponsor on the terms and subject to the conditions contained in the New Plan Sponsor PSA and the Ancillary Agreements entered into in connection therewith. Pursuant to section 4.1 of the New Plan Sponsor PSA, the total consideration paid by the Plan Sponsor to the Sellers in consideration of the sale, conveyance, transfer, assignment, and delivery of the Sold Assets

is (1) an amount equal to: (A) $1.1 billion, plus (B) the Plan Sponsor Promissory Note, and (2) the assumption by Plan Sponsor of the Assumed Liabilities. **The Plan Sponsor Promissory Note shall be issued to the Liquidation Trust, and payments thereunder shall be received by the Liquidation Trust for distribution in accordance with the terms of the Liquidation Trust Agreement and the Plan.**

Pursuant to section 3.5(d) of the New Plan Sponsor PSA, the Plan Sponsor is entitled to reimbursement from ASARCO of any Unpaid Cure Claims Amount paid by the Plan Sponsor in accordance with such section 3.5(d). On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall place Cash in the amount of $5 million in the Unpaid Cure Claims Reserve to be used to make payment in respect of any Unpaid Cure Claims Amount for which ASARCO may be required to reimburse the Plan Sponsor pursuant to section 3.5(d) thereof. Such funds shall be held in the Unpaid Cure Claims Reserve until notice is provided by the Plan Sponsor pursuant to section 3.5(d) of the New Plan Sponsor PSA (or the period in which any such notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 3.5(d) thereof, if and as applicable.

On the Initial Distribution Date, Reorganized ASARCO (and thereafter the Plan Administrator) shall distribute the Available Plan Funds in accordance with the Plan.

(b) Appointment of Plan Administrator and Plan Administration Committee, and Funding of Miscellaneous Plan Administration Accounts.

Not less than 10 days prior to commencement of the Confirmation Hearing, ASARCO shall designate and provide information regarding the Entity that shall initially serve as the Plan Administrator. Upon approval by the Bankruptcy Court in the Confirmation Order, the Plan Administrator shall be appointed. It is anticipated that the Plan Administrator shall serve as the ~~Litigation~~**Liquidation** Trustee~~,~~ **and** the SCC Litigation ~~Trustee, and the Residual Assets Liquidation~~ Trustee. The Plan Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan Administration Agreement, which shall include, without limitation, the obligation to enter into agreements with third party contractors to conduct and complete the following ongoing response actions to the extent funded by the Prepetition ASARCO Environmental Trust or the Prepetition ASARCO Environmental Trust Escrow: the uncompleted portion of residential yard cleanups required under the El Paso Stipulation or included in the "Ongoing Obligation" portion of the East Helena Soils Settlement Agreement; *provided, however,* that any agreement entered into by the Plan Administrator and any third party with respect to such response actions shall not include any indemnification obligation by ASARCO, any other Debtor, Reorganized ASARCO, or the Plan Administrator. In the event that the Plan Administrator is unable to enter into an agreement with a third party contractor in respect of such response actions without providing indemnification to the third party, the Plan Administrator shall be excused from any and all obligations with respect to the performance of such response actions. The Plan Administrator shall serve without bond, may employ or contract with other Persons to assist in the performance of the Plan Administrator's duties, which shall be set forth in the Plan Administration Agreement, and shall procure appropriate directors-and-officers liability insurance and other insurance coverage appropriate to the business in which Reorganized ASARCO is to be engaged. The Plan Administrator shall receive, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services.

The initial members of the Plan Administration Committee shall be those Persons designated in the Confirmation Order. They shall consult with and advise the Plan Administrator, as is set forth in greater detail in the Plan Administration Agreement.

On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall (1) fund the Plan Administration Account with Cash to be used to pay the Plan Administrator's estimated compensation and expenses and all other anticipated costs of administration of the Plan and initial operations of Reorganized ASARCO (including, without limitation, taxes); and (2) fund the Miscellaneous Plan Administration Accounts. The Plan Administrator may also establish such general accounts subaccounts, reserves, or escrows as the Plan Administrator deems necessary and appropriate. In accordance with the Plan Administration Agreement, the Plan Administrator shall invest the Cash held in accounts, reserves, and escrows on behalf of Reorganized ASARCO in direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, including funds consisting solely or predominately of such securities.

The Plan Administrator shall prosecute, settle, or otherwise resolve the Vested Causes of Action, and shall place the Vested Causes of Action Proceeds (if any) in the Vested Causes of Action Escrow.

The Plan Administrator shall allocate the funds in the Plan Administration Account to subaccounts corresponding to the enumerated functions of the Plan Administrator. Until the Plan Administrator has discharged the Plan Administrator's obligations with respect to the purpose for which a particular subaccount or Miscellaneous Plan Administration Account was established, the funds in those subaccounts and the Miscellaneous Plan Administration Accounts may only be used for the purpose designated for that particular account or subaccount. In addition, any taxes attributable to the earnings of the Plan Administration Account, a subaccount, or a Miscellaneous Plan Administration Account (as well as any taxes directly imposed on such account or subaccount) shall be paid out of the assets of such account or subaccount.

To the extent there are any excess funds in the Plan Administration Account (or any subaccount thereof) or the Miscellaneous Plan Administration Accounts, the Plan Administrator shall, after consultation with and approval by the Plan Administration Committee, first transfer such excess funds to any underfunded subaccount or Miscellaneous Plan Administration Account (but only to the extent of any underfunding) and then distribute such funds to the ~~Residual Assets~~ Liquidation Trust for distribution in accordance with the terms and conditions of the ~~Residual Assets~~ Liquidation Trust Agreement.

The Plan Administrator shall have the power to seek injunctive or other necessary or appropriate relief from the Bankruptcy Court to ensure that the funds in the Plan Administration Reserve are used only for the purposes specifically directed in the Plan and the Plan Administration Agreement.

On and after the Effective Date, the Plan Administrator shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the Vested Causes of Action and the Debtors' Privileges associated therewith. The Plan Administrator shall be granted the rights and powers of a debtor-in-possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the Vested Causes of Action and distribute the proceeds of such claims, and such other rights and powers as set forth in the Plan Administration Agreement.

(c) ~~Prospective~~ Resolution of **Present and Future** Asbestos Claims.

The Plan contemplates that, prior to the Confirmation Hearing, the Bankruptcy Court shall estimate~~, or the Debtors will~~ **the amount of ASARCO's liability on account of Asbestos Personal Injury Claims and Demands pursuant to its estimation order, following an evidentiary hearing; *provided, however*, if the parties** reach an agreement regarding~~, the amount of the Debtors' asbestos liabilities, with that agreement memorialized in a settlement agreement that would be approved in connection with Confirmation of the Plan.~~ **the aggregate Allowed Amount of such Claims and Demands for purposes of the Plan, such amount shall be approved by the Bankruptcy Court in accordance with such procedures as the Bankruptcy Court shall require, including the presentation of supporting evidence regarding such settlement.**

(d) Creation and Funding of ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust.

~~On the Effective Date, the Litigation Trust shall be created and the Litigation Trust Expense Fund shall be established. Also on the Effective Date, the Debtors' respective rights, title, and interests in the Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the Litigation Trust.~~

~~On the Effective Date, the SCC Litigation Trust shall be created and the SCC Trust Litigation Expense Fund shall be established. Also on the Effective Date, the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the SCC Litigation Trust.~~

~~On the Effective Date, the Residual Assets Liquidation Trust shall be created and the Residual Assets Liquidation Trust Expense Fund shall be established. Also on the Effective Date, the Debtors' respective rights, title, and interests in the assets constituting the res of the Residual Assets Liquidation Trust shall be transferred to the Residual Assets Liquidation Trust.~~

On the Effective Date, (1) the Liquidation Trust shall be created and the Liquidation Trust Expense Fund shall be established; (2) the Debtors' respective rights, title, and interests in the Liquidation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the Liquidation Trust; and (3) ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit Cash in the amount of $10 million in the Liquidation Trust Reserve. The Plan Administrator shall maintain the Liquidation Trust Reserve and shall from time to time, when requested to do so by the Liquidation Trustee, transfer funds from the Liquidation Trust Reserve to the Liquidation Trustee for the Liquidation Trust Expense Fund as the Liquidation Trustee deems reasonably necessary to the continued operations of the Liquidation Trust, up to an aggregate amount of $10 million. Upon a determination by the Liquidation Trustee that no additional funds will be needed from the Liquidation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the Liquidation Trust Reserve in accordance with the terms and conditions of the Plan Administration Agreement.

On the Effective Date, (1) the SCC Litigation Trust shall be created and the SCC Litigation Trust Expense Fund shall be established; (2) the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the SCC Litigation Trust; and (3) ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit Cash in the amount of $15 million in the SCC Litigation Trust Reserve. The Plan Administrator shall maintain the SCC Litigation Trust Reserve and shall from time to time, when requested to do so by the SCC Litigation Trustee, transfer funds from the SCC Litigation Trust Reserve to the SCC Litigation Trustee for the SCC Litigation Trust Expense Fund as the SCC Litigation Trustee deems reasonably necessary to the continued operations of the SCC Litigation Trust, up to an aggregate amount of $15 million. Upon a determination by the SCC Litigation Trustee that no additional funds will be needed from the SCC Litigation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the SCC Litigation Trust Reserve in accordance with the terms and conditions of the Plan Administration Agreement.

See Section 4 of this Disclosure Statement for further information regarding the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust.

(e) Creation and Funding of Environmental Custodial Trusts.

On or before the Effective Date, the Environmental Custodial Trusts shall be created, and the Custodial Trust Administrative Accounts shall be funded pursuant to the applicable Environmental Custodial Trust Agreements, and by the Effective Date, the Debtors' respective rights, title, and interests in the Designated Properties, together with the appropriate Environmental Custodial Trust Funding and Environmental Custodial Trust Administration Funding for such properties, shall be transferred to the applicable Environmental Custodial Trusts, which shall take title pursuant to the applicable Environmental Custodial Trust Agreements.

(f) Creation and Funding of the Asbestos Trust.

On or before the Effective Date, the Asbestos Trust shall be created. On ~~or after~~ the Effective Date, **all of** the ~~Debtors' respective rights, title, and interests in the Asbestos Trust Assets shall be transferred to~~**interests in Reorganized Covington shall be transferred to the Asbestos Trust, and the Debtors shall also pay Cash to the Asbestos Trust in the amount ordered by the Bankruptcy Court for payment of Asbestos Personal Injury Claims and Demands, post-petition interest thereon, and the Administrative Expenses of** the Asbestos Trust.

See Section 5 of this Disclosure Statement for further information regarding the Asbestos Trust.

(g) Prepetition ASARCO Environmental Trust.

The Prepetition ASARCO Environmental Trust was created pursuant to a Consent Decree entered in *United States v. ASARCO Inc., et al.*, Civil Action No. 02-2079, in the United States District Court for the District of Arizona. This trust is primarily funded by a promissory note due May 31, 2010 in the original principal sum of $100,000,000 from AMC and guaranteed by Grupo México. The current balance of the note is $25 million.

The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Plan Administrator or Reorganized ASARCO shall succeed to ASARCO's administrative role, and shall, as provided in Article 10.2(a) of the Plan, act as Performing Entity (as defined in the trust agreement) from time to time, but shall assume no affirmative liabilities or obligations associated with that role.

However, the various environmental settlement agreements were based on the assumption that certain environmental response actions for the settled sites would be reimbursed from the Prepetition ASARCO Environmental Trust.

The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of environmental Claims under the Plan.

The Debtors anticipate that some of the environmental Claims shall be paid by the Prepetition ASARCO Environmental Trust. To allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust, Reorganized ASARCO shall hold back from distributions under the Plan the amount that the Prepetition ASARCO Environmental Trust would receive if AMC were to have made the required payment (*i.e.*, $12.5 million plus accrued interest in accordance with the note if AMC makes the payment due in May 2009 prior to the Effective Date and $25 million plus accrued interest in accordance with the note if AMC has not made the payment due in May 2009 prior to the Effective Date), and place such amount in the Prepetition ASARCO Environmental Trust Escrow. In the event that AMC fails to make any of the payments remaining due under the note, the Plan Administrator shall pay a corresponding amount to the Prepetition ASARCO Environmental Trust from the Prepetition ASARCO Environmental Trust Escrow, and the Plan Administrator, the trustee of the Prepetition ASARCO Environmental Trust, and the United States shall reasonably cooperate in determining the most efficient mechanism to recover the amounts owed by AMC. Upon AMC's payment of amounts due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of the Plan and the Confirmation Order.

The ASARCO Committee and the Asbestos Claimants' Committee have informed the Debtors that they have material questions regarding the Debtors' obligations to fund, or guarantee funding of, the Prepetition ASARCO Environmental Trust. The Debtors believe that the $25 million holdback is necessary to ensure the governmental creditors' support of the Plan and is part of their global settlement with the federal and various state governments. This matter has not yet been resolved to the satisfaction of the ASARCO Committee and the Asbestos Claimants' Committee, and if it remains unresolved, may result in one or more objections by the committees to Confirmation of the Plan.

(h) Plan Sponsor's Assumption of Certain Environmental Liabilities.

Pursuant to Article 10.18 of the Plan and section 3.3(e) of the New Plan Sponsor PSA, and, except as provided in section 3.4(f), (g), and (h) of the New Plan Sponsor PSA, from and after the Closing, the Plan Sponsor shall assume, pay, perform, and discharge when due the Assumed Environmental Liabilities (as such term is defined in the New Plan Sponsor PSA).

(i) Plan Distributions.

(1) Distributions to Claimants Other than Holders of Unsecured Asbestos Personal Injury Claims and Demands.

- Reorganized ASARCO, on the Initial Distribution Date, and thereafter the Plan Administrator shall be responsible for making all distributions to Claimants other than to the holders of Unsecured Asbestos Personal Injury Claims and Demands.

- Distributions to Professional Persons shall be made by Reorganized ASARCO on the Initial Distribution Date and thereafter by the Plan Administrator pursuant to order of the Bankruptcy Court.

- Except as otherwise expressly provided in the Plan, distributions to the holders of Allowed Claims shall be made at the address of the holder of such Claim as indicated in the claims register which shall be maintained by the Claims Agent prior to the Effective Date. After the Effective Date, the Plan Administrator shall be responsible for maintaining the claims register. Claimants must provide the Plan Administrator with written notice of any change of address or any transfer of, or sale of any participation in, any Allowed Claim at least 30 days prior to any distribution by the Plan Administrator in order for the notice to be effective as to that distribution; *provided, however*, that with respect to Bondholders' Claims, further distributions on account of such Claims by the Indenture Trustees to the record holders of the Bondholders' Claims shall be

accomplished in accordance with ~~the respective Indentures and the policies and procedures of DTC~~**a duly executed letter of transmittal. No such additional distributions will be made until the receipt by the Plan Administrator of a completed letter of transmittal with all required signatures and documents. Pending receipt of such letter of transmittal, any such distributions shall be held in reserve by the Plan Administrator**.

- Payments may be made at **the** election of Reorganized ASARCO or the Plan Administrator by check, wire transfer, or the customary method used for payment by any of the Debtors prior to the Petition Date; *provided, however*, that the United States shall be paid by wire transfer in accordance with wiring instructions provided by the DOJ.

(2) Distributions to Holders of Unsecured Asbestos Personal Injury Claims and Demands.

Distributions to holders of Unsecured Asbestos Personal Injury Claims and Demands shall be made by the Asbestos Trust in accordance with the Asbestos Trust Documents. The Asbestos TDP establishes a priority for distributions to be made by the Asbestos Trust on account of such Claims and Demands.

(3) Distributions on Account of Bondholders' Claims.

All distributions on account of Allowed Bondholders' Claims shall be made: (A) to the respective Indenture Trustee for the particular issue of Bonds, as the case may be, or (B) with the prior written consent of the Indenture Trustee, through the facilities of DTC (if applicable). ~~—~~ **or, in the case of Liquidation Trust Interests and SCC Litigation Trust Interests, in accordance with the instructions contained in a duly executed letter of transmittal. No Liquidation Trust Interests or SCC Litigation Trust Interests shall be issued without the receipt by the applicable Trust Registrar of a completed letter of transmittal with all required signatures and documents. Pending receipt of such letter of transmittal, any such distributions shall be held in reserve by the Plan Administrator.**

If a distribution is made to the Indenture Trustee, such Indenture Trustee shall administer the distribution in accordance with the Plan and the Indenture and, subject to the requirements of Article 15.14 of the Plan, shall be compensated for all of its services and disbursements related to distributions pursuant to the Plan (and for the related fees and expenses of any counsel or professional engaged by the Indenture Trustee with respect to administering or implementing such distributions), by the Debtors, Reorganized ASARCO, the Plan Administrator, as appropriate, in the ordinary course upon the presentation of invoices by such Indenture Trustee. Subject to the procedures set forth in Article 15.14 of the Plan, the compensation of the Indenture Trustees for services relating to distributions under the Plan shall be made without the need for filing any application or request with, or approval by, the Bankruptcy Court.

An Indenture Trustee shall not be required to give any bond, surety, or other security for the performance of its duties with respect to the administration and implementation of distributions.

Any and all distributions on account of Allowed Bondholders' Claims shall be subject to the right of the respective Indenture Trustee to exercise its Charging Lien for any unpaid Indenture Trustee Fee Claim, any fees and expenses of an Indenture Trustee incurred in making distributions pursuant to the Plan, and any fees and expenses of **an** Indenture Trustee incurred in responding to any objection by the Debtors to an Indenture Trustee Fee Claim.

The exercise of an Indenture Trustee's Charging Lien against a distribution to recover payment of any unpaid Indenture Trustee Fee Claim shall not subject the Indenture Trustee to the jurisdiction of the Bankruptcy Court with respect to either the exercise of the Charging Lien or the fees and costs recovered thereby.

Notwithstanding any of the foregoing, nothing herein shall be deemed to impair, waive, or extinguish any rights of the Indenture Trustees under their respective Indentures with respect to the Charging Lien.

(j) Intentionally Omitted.

(k) Procedures for the Treatment of Disputed Claims, Other than Unsecured Asbestos Personal Injury Claims.

(1) Prosecution of Objections to Claims.

Article 14.1 of the Plan provides that the Plan Administrator (on behalf of Reorganized ASARCO) shall have the right, after the Effective Date, to file objections to Claims, other than objections to Unsecured Asbestos Personal Injury Claims and Demands and objections to Claims that have been Allowed, and litigate to judgment, settle, or withdraw such objections to Disputed Claims. Without limiting the preceding, the Plan Administrator (on behalf of Reorganized ASARCO) shall have the right to litigate any Disputed Claims either in the Bankruptcy Court or in any court of competent jurisdiction.

Article 14.1 of the Plan further provides that, after the Effective Date, only the Asbestos Trust shall have authority to file objections to Unsecured Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections. All such objections shall be resolved through the Asbestos TDP. Unsecured Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with the Plan, the Asbestos Trust Agreement, and the Asbestos TDP. For the avoidance of doubt, no objection to Unsecured Asbestos Personal Injury Claims or Demands shall be filed in the Bankruptcy Court.

Except as otherwise provided as to objections to Unsecured Asbestos Personal Injury Claims filed after the Effective Date, nothing in Article 14.1 of the Plan shall prejudice any party in interest's right or standing to file objections to Claims.

(2) Objection Deadline.

Within the later of (a) 90 days after the Effective Date or (b) 90 days after a Proof of Claim is filed, objections to Claims (other than Unsecured Asbestos Personal Injury Claims and Demands, which shall be Allowed or disallowed as provided in the Asbestos TDP) shall be filed with the Bankruptcy Court; *provided, however*, that Reorganized ASARCO or the Plan Administrator may seek to extend such period (or any extended period) for cause.

(3) Disallowance of Improperly Filed Claims.

Any Administrative Claim or other Claim (except for an Unsecured Asbestos Personal Injury Claim or a Demand) for which the filing of a motion for allowance is required shall be disallowed if such filing is not timely and properly made, subject to the right of the Claimant to seek permission under applicable law to file a late Claim.

(4) No Distributions Pending Allowance.

If a Claim or any portion of a Claim is disputed, no payment or distribution shall be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless and until such Disputed Claim becomes an Allowed Claim.

(5) Disputed Claims Reserve.

The Plan Administrator shall maintain, in accordance with the Plan Administrator's powers and responsibilities under the Plan, a Disputed Claims Reserve.

On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit in the Disputed Claims Reserve the Cash that would have been distributed to the holders of Disputed Claims (other than Secured Claims to the extent Disputed Secured Claims Reserves are established with respect to such Claims) if such Disputed Claims had been Allowed Claims as of the Effective Date. The amount to be deposited shall be determined based on the lesser of (i) the asserted amount of the Disputed Claims in the applicable Proofs of Claim; (ii) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; or (iii) the amount otherwise agreed to by the Debtors and the holders of such **Disputed Claims. The Plan Administrator shall, from time to time, contribute to the Disputed Claims Reserve additional assets received from the Liquidation Trustee or the SCC Litigation Trustee in respect of** Disputed Claims.

In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against **the ASARCO** Residual Assets ~~that vest in the Residual Assets Liquidation Trust or any assets (including the Madera Property) that vest in Reorganized Covington~~ shall remain in place, pending resolution of the objection to the allegedly Secured Claim. Any Liens asserted by the holder of an allegedly Secured Claim against assets that are sold to the Plan Sponsor **or transferred to Reorganized Covington or one of the Trusts** shall attach to Cash held by the Plan Administrator in an amount equal to the lesser of (i) the amount of the allegedly Secured Claim; (ii) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; (iii) the fair market value of such assets, net of any Liens senior to the applicable Liens; or (iv) the amount otherwise agreed to by the Debtors and the holders of such allegedly Secured Claims, which Cash shall be held by the Plan Administrator in a Disputed Secured Claims Reserve, pending resolution of the objection to the allegedly Secured Claim.

If a Claim that remains a Disputed Claim as of the Effective Date is thereafter Allowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute from the Disputed Claims Reserve or a Disputed Secured Claims Reserve to the holder of such Claim the Cash that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date to the extent thereafter Allowed.

If a Disputed Claim is disallowed, in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute the Cash reserved in respect of such disallowed Disputed Claim to the ~~Residual Assets~~ Liquidation Trust for distribution in accordance with the terms and conditions of the ~~Residual Assets~~ Liquidation Trust Agreement.

The Plan contemplates that the Plan Administrator and Reorganized ASARCO will take the position for tax purposes that the Disputed Claims Reserve and any Disputed Secured Claims Reserves are grantor trusts owned by Reorganized ASARCO. The Plan Administrator and Reorganized ASARCO shall comply with all tax-reporting requirements accordingly, and shall cause taxes attributable to the earnings of the Disputed Claims Reserve or a Disputed Secured Claims Reserve (as well as any taxes directly imposed on the Disputed Claims Reserve or a Disputed Secured Claims Reserve) to be paid out of the assets of the Disputed Claims Reserve or the Disputed Secured Claims Reserve, respectively.

(l) Compliance with Tax Requirements.

The Debtors, Reorganized ASARCO, the Plan Administrator, the Indenture Trustees, and the Trusts shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions made under the Plan or under any Plan Document shall be subject to such withholding and reporting requirements, if any. Any amount so withheld from a distribution or payment to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of the Plan and the Plan Documents. Notwithstanding any other provision of the Plan, each Person receiving a distribution pursuant to the Plan, or any other Plan Document, shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income and other tax obligations, on account of that distribution.

(m) Unclaimed Property.

(1) Distributions by the Asbestos Trust.

Any Cash, assets, or other property to be distributed under the Plan by the Asbestos Trust that remain unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise is not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted shall become vested in, and shall be transferred and delivered to, the Asbestos Trust~~,~~ for use in accordance with the terms of the Asbestos Trust Agreement.

(2) Distributions by the Plan Administrator.

If the distribution to any holder of an Allowed Claim (other than the holder of an Unsecured Asbestos Personal Injury Claim or a Demand) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant), no further distributions shall be made to such holder unless the Plan Administrator is timely notified in writing of such holder's then current address, at which time all missed distributions shall be made to such holder without interest. Amounts in respect of any undeliverable or unclaimed distributions shall be returned to the Plan Administrator until such distributions are claimed.

The Plan Administrator shall segregate and deposit into the Undeliverable and Unclaimed Distribution Reserve all undeliverable or unclaimed distributions for the benefit of all such similarly situated Persons until such time as a distribution becomes deliverable or is claimed or such Claimant's right to the distribution is waived pursuant to Article 13.4(b)(2) of the Plan. Nothing contained in the Plan shall require Reorganized ASARCO or the Plan Administrator to attempt to locate any holder of an Allowed Claim.

Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise are not deliverable to the Claimant entitled thereto for one year after the initial distribution is made or attempted shall be Forfeited Distributions, and shall become vested in, and shall be transferred and delivered to, the Plan Administrator. In such event, such Claimant shall be deemed to have waived its rights to such payments or distributions under the Plan pursuant to section 1143 of the Bankruptcy Code, shall have no further Claim in respect of such distribution, and shall not participate in any further distributions under the Plan with respect to such Claim. The Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute the Forfeited Distributions to the ~~Residual Assets~~ Liquidation Trust for distribution in accordance with the terms and conditions of the ~~Residual Assets~~ Liquidation Trust Agreement.

(n) Bar Date for Compensation and Reimbursement Claim.

Pursuant to Article 15.12 of the Plan, all applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Claims arising under subsections (b)(2) through (b)(6) of section 503(b) of the Bankruptcy Code must be filed on or before 90 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court; *except that* any application under section 503(b)(3)(D) of the Bankruptcy Code or any application for a fee enhancement or success fee under the Bankruptcy Code must be filed on or before 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals Persons or other Entities for compensation or reimbursement of costs and expenses or for substantial contribution Claims must be filed within 20 days after the applicable application for compensation or reimbursement was served.

(o) Subsequent Administrative Claims Bar Date.

Pursuant to Article 15.13 of the Plan, Claimants, other than Professional Persons, holding Administrative Claims against a Debtor that arise after the Initial Administrative Claims Bar Date and remain unpaid on the Effective Date must file a request for payment of such Subsequent Administrative Claim on or before 45 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any holder of a Subsequent Administrative Claim that is required to file a request for payment of such Claim and that does not file such request prior to the Subsequent Administrative Claims Bar Date shall be forever barred from asserting such Subsequent Administrative Claim against the Debtors, the Reorganized Debtors, and their respective properties, and such Subsequent Administrative Claim shall be deemed discharged as of the Effective Date. Objections to Subsequent Administrative Claims must be filed with the Bankruptcy Court within 20 days after the applicable Subsequent Administrative Claim was served, unless such objection deadline is extended by the Bankruptcy Court. Any Subsequent Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts.

(p) Indenture Trustee Fee Claims.

If, at least 20 days prior to the commencement of the Confirmation Hearing, the Debtors receive from the Indenture Trustees statement(s) of their respective Indenture Trustee Fee Claims incurred through such date and projected to be incurred through the Effective Date, together with such detail as may be reasonably requested by the Debtors, the Debtors or Reorganized ASARCO, as appropriate, shall pay, on the Effective Date, the Indenture Trustee Fee Claims, in full, in Cash. Notwithstanding the foregoing, to the extent that the Debtors dispute any portion of the Indenture Trustee Fee Claims, prior to the Effective Date the Debtors shall file with the Bankruptcy Court and serve on the appropriate Indenture Trustee an objection to such Indenture Trustee Fee Claim stating with specificity the Debtors' objections to such Indenture Trustee Fee Claim. On the Effective Date, the Debtors or Reorganized ASARCO, as appropriate, shall reserve an amount equal to the amount of disputed Indenture Trustee Fee Claims and such dispute shall be consensually resolved by the parties or presented to the Bankruptcy Court for adjudication. The Indenture Trustees reserve the right to assert whatever fees and expenses they believe should be Allowed as Indenture Trustee Fee Claims, and the Debtors and Reorganized ASARCO reserve the right to object to any such amounts on any applicable grounds.

Subject to the payment of the non-disputed portion of the Indenture Trustee Fee Claims and the establishment of the reserve with respect to any disputed portion of the Indenture Trustee Fee Claims, and the payment of all other fees and expenses (including fees and expenses of counsel and other professionals) incurred by the Indenture Trustees in administering distributions to the Bondholders or responding to any objection by the Debtors to an Indenture Trustee Fee Claim, to the extent payment of the foregoing fees and expenses is permitted by the Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in the Plan or in connection with any distributions to be made under the Plan, if any, the Indenture Trustees, and their successors and assigns, shall be relieved of all obligations as Indenture Trustees effective as of the Effective Date.

3.10 Injunctions, Releases, and Discharge.

The Plan provides for entry of various releases and permanent injunctions in favor of the ASARCO Protected Parties. These releases and injunctions are an essential part of the Plan and, if entered, shall limit the rights of holders of Unsecured Asbestos Personal Injury Claims and Demands and others against any ASARCO Protected Party. If these releases and injunctions are not entered, the Debtors shall have the right not to proceed with the Plan.

The Parent believes that the Debtors' Plan is patently unconfirmable because it improperly grants a discharge to many non-Debtor entities in violation of Fifth Circuit law prohibiting the discharge of debts of non-debtors under Bankruptcy Code section 524.

Additionally, the Parent believes that the Debtors' Plan is patently unconfirmable because it contains improper releases, exonerations, and exculpations in Articles 3.10(c), 3.10(g), and 3.11 of the Debtors' Plan, all of which are not permitted under section 1129(a)(1) of the Bankruptcy Code. In particular, the Parent asserts that the Debtors' Plan grants a discharge to the Debtors in violation of section 1141(d)(3) of the Bankruptcy Code, which prohibits a discharge of a debtor if (a) such plan provides for the liquidation of all or substantially all of the debtor's assets, (b) the debtor will not engage in business after the consummation of the plan, and (c) the debtor would be denied a discharge under section 727(a) of the Bankruptcy Code. According to the Parent, all of these sections apply to the Debtors. The Debtors disagree with the Parent's contentions.

(a) Discharge and Release.

Article 11.1 of the Plan provides that, except as otherwise expressly provided in the Plan, the rights afforded therein and the treatment of all Claims, Demands, and Interests is in exchange for and in complete satisfaction, discharge, and release of all Claims, Demands, and Interests of any nature whatsoever, against the Debtors or their respective Estates, assets, properties, or interests in property. Except as otherwise provided in the Plan, on the Effective Date, all Claims and Demands against and Interests in the Debtors shall be satisfied, discharged, and released in full. The PBGC asserts that the Plan cannot discharge or release any claims against any person other than the Debtors with respect to the Hourly and Salaried Plans, including any claim for breach of fiduciary duty or any claim asserted by the PBGC. The Debtors have not taken a formal position with respect to the discharge of PBGC-related claims against non-Debtor parties and they reserve all rights that any of them may have to assert this position. The PBGC also reserves all rights that it may have to object to Articles 8.8 and 11.1 of the Plan on this and any other grounds as may be appropriate.

(b) Discharge Injunction.

Article 11.2 of the Plan contains an injunction to give force and effect to the discharge granted under the Plan. Except as otherwise expressly provided in the Plan, the discharge and release set forth in Article 11.1 of the Plan shall operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (1) any Claim and Demand discharged and released in Article 11.1 of the Plan and (2) any cause of action, whether known or unknown, based on the same subject matter as any Claim or Demand discharged and released in Article 11.1.

(c) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction.

To supplement the injunctive effect of the Discharge Injunction, Article 11.3 of the Plan provides for the Confirmation Order to contain two additional injunctions to take effect on the Effective Date. These injunctions, which are described and set forth in full below, are:

- the Permanent Channeling Injunction; and
- the Asbestos Insurance Company Injunction.

(1) Permanent Channeling Injunction.

Unless the District Court or the Bankruptcy Court determines otherwise, the Permanent Channeling Injunction shall protect ASARCO Protected Parties from direct or indirect liability on account of any Unsecured Asbestos Personal Injury Claim or Demand assertable against an ASARCO Protected Party.

The term "ASARCO Protected Party" means each of the following:

- the Debtors and their predecessors;
- the Reorganized Debtors;
- the ASARCO Protected Non-Debtor Affiliates and their predecessors;
- the Plan Sponsor and the Guarantor (and any of their respective Affiliates);
- Settling Asbestos Insurance Companies;
- the Trusts (except to the extent that the Asbestos Trust Agreement, the Asbestos TDP, or both expressly permit litigation against the Asbestos Trust);
- the Trustees;
- the Asbestos TAC;
- the FCR;
- the Committees, including their members in their member capacities;
- the Plan Administrator;
- the Examiner;
- employee benefit plan "fiduciaries" (within the meaning of section 3(21) of ERISA) who are directors or employees of a Debtor;
- the Indenture Trustees; and
- the present and former directors, officers, agents, attorneys, accountants, consultants, financial advisors, investment bankers, professionals, experts, and employees of any of the foregoing, in their respective capacities as such, including, without limitation, the Protected Officers and Directors;

provided, however, that the term "ASARCO Protected Party" does not include the non-Debtor named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation, or Grupo México and its Affiliates other than ASARCO and ASARCO's direct or indirect subsidiaries.

The USW has requested that it become an ASARCO Protected Party. The Debtors are considering the request of the USW and, if warranted and to the extent authorized by law, and after consultation with other creditor constituents, may amend the Plan and Glossary in accordance with such request.

The full text of the Permanent Channeling Injunction is set forth below:

(A) *Terms. In order to induce, preserve, and promote the settlements contemplated by and provided for in the Plan, and pursuant to section 524(g) or 105(a) of the Bankruptcy Code (or both), all Unsecured Asbestos Personal Injury Claims and Demands shall be channeled to the Asbestos Trust for a remedy under the Asbestos TDP, and all holders of Unsecured Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Unsecured Asbestos Personal Injury Claim or Demand shall be permanently and forever stayed, restrained, and enjoined from taking any action against any ASARCO Protected Party (or any property or interest in property of an ASARCO Protected Party) with respect to such Unsecured Asbestos Personal*

Injury Claim or Demand, including, without limitation, for the purpose of directly or indirectly obtaining a judgment, collecting, recovering, or receiving payments, satisfaction, or recovery with respect to such Unsecured Asbestos Personal Injury Claim or Demand, including, without limitation:

(i) *commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any Unsecured Asbestos Personal Injury Claim or Demand against any ASARCO Protected Party, or against the property or interests in property of any ASARCO Protected Party;*

(ii) *enforcing, levying, attaching (including by prejudgment attachment), collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or other order against any ASARCO Protected Party, or against the property or interests in property of any ASARCO Protected Party, with respect to any Unsecured Asbestos Personal Injury Claim or Demand;*

(iii) *creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien of any kind against any ASARCO Protected Party, or the property or interests in property of any ASARCO Protected Party, with respect to any Unsecured Asbestos Personal Injury Claim or Demand;*

(iv) *except as otherwise specifically provided in the Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind in any manner, directly or indirectly, against any obligation due any ASARCO Protected Party, or against the property or interests in property of any ASARCO Protected Party, with respect to any Unsecured Asbestos Personal Injury Claim or Demand; and*

(v) *proceeding or taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan, the Plan Documents, or the Asbestos Trust Documents relating to any Unsecured Asbestos Personal Injury Claim or Demand.*

(B) *Reservations. Notwithstanding anything to the contrary above or in the Plan, neither the Permanent Channeling Injunction nor the Plan shall enjoin, alter, diminish, or impair:*

(i) *the rights of Entities to the treatment accorded them under Articles II and IV of the Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims or Demands to assert such Unsecured Asbestos Personal Injury Claims or Demands in accordance with the Asbestos TDP;*

(ii) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Asbestos Trust Expenses against the Asbestos Trust;*

(iii) *the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;*

(iv) *the right of Reorganized ASARCO with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company; or*

(v) *the right of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Plan.*

(2) Asbestos Insurance Company Injunction.

The Asbestos Insurance Company Injunction shall bar the assertion or prosecution of Claims, Demands, or causes of action against Settling Asbestos Insurance Companies by any Entity, to the extent such Claim is connected in any way to:

- any Unsecured Asbestos Personal Injury Claim or Demand against or relating to the Debtors;
- any Unsecured Asbestos Personal Injury Claim or Demand relating to Asbestos In-Place Insurance Coverage; or

- an Asbestos Insurance Policy.

The full text of the Asbestos Insurance Company Injunction is set forth below:

(A) Terms. *In order to preserve and promote the property of the Estate, as well as the settlements contemplated by and provided for in the Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in the Plan, pursuant to section 105(a) of the Bankruptcy Code, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert any Claim, Demand, or cause of action (including, without limitation, any Unsecured Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Asbestos Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Unsecured Asbestos Personal Injury Claim or Demand, Asbestos In-Place Insurance Coverage, or an Asbestos Insurance Policy, shall be permanently and forever stayed, restrained, and enjoined from taking any action against such Settling Asbestos Insurance Company for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any such Claim, Demand, or cause of action, including, without limitation:*

(i) *commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any such Claim, Demand, or cause of action against any Settling Asbestos Insurance Company, or against the property or interests in property of any Settling Asbestos Insurance Company;*

(ii) *enforcing, levying, attaching, collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action;*

(iii) *creating, perfecting, or otherwise enforcing, in any manner, directly or indirectly, any Lien of any kind against any Settling Asbestos Insurance Company, or the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action;*

(iv) *except as otherwise specifically provided in the Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly, against any obligation due any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action; and*

(v) *taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan Documents relating to such Claim, Demand, or cause of action.*

(B) Reservations. *Notwithstanding anything to the contrary above or in the Plan, neither the Asbestos Insurance Company Injunction nor the Plan shall enjoin, alter, diminish, or impair:*

(i) *the rights of Entities to the treatment accorded them under Articles II and IV of the Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims or Demands to assert Unsecured Asbestos Personal Injury Claims or Demands against the Asbestos Trust in accordance with the Asbestos TDP;*

(ii) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Asbestos Trust Expenses against the Asbestos Trust;*

(iii) *the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;*

(iv) *the right of Reorganized ASARCO with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company;*

(v) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Plan; or*

(vi) *the right of Reorganized ASARCO to seek relief from the Asbestos Insurance Company Injunction should a Settling Asbestos Insurance Company fail to fulfill all obligations under an Asbestos Insurance Settlement Agreement.*

(3) Permanent Channeling Injunction and the Marshalling of Asbestos Trust Assets.

If any court in the future shall modify, vacate, or in any way limit or restrict the effect of the Permanent Channeling Injunction, whether such injunction was issued pursuant to section 524(g) of the Bankruptcy Code or any other applicable provision of the Bankruptcy Code, all holders of Unsecured Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Unsecured Asbestos Personal Injury Claim or Demand shall, as a matter of equity, first be required to exhaust any and all of the Asbestos Trust Assets before pursuing any action against any of the ASARCO Protected Parties or the Sold Assets.

(d) Limitation of Injunctions.

Notwithstanding any other provisions of the Plan to the contrary, the releases set forth in Article 11.1 and the Injunctions set forth in Article 11.2 and 11.3 of the Plan, respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Asbestos Trust for payment of (1) Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Asbestos TDP or (2) Asbestos Trust Expenses, and such releases and Injunctions shall not enjoin Reorganized ASARCO or the Asbestos Trust from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

(e) Term of Certain Injunctions and Automatic Stay.

Article 12.1 of the Plan provides that all of the Injunctions and stays provided for, in, or in connection with the Reorganization Cases, whether pursuant to section 105, section 362, section 524, or any other provision of the Bankruptcy Code, other applicable law, or court order, in effect immediately prior to Confirmation shall remain in full force and effect until the Injunctions become effective and thereafter if so provided in the Plan, the Confirmation Order or by their own terms. In addition, on and after Confirmation Date, the Debtors may seek further orders as they deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

Each of the Injunctions shall become effective on the Effective Date and shall continue in effect at all times thereafter, and may not be vacated, amended, or modified after the Effective Date, except as otherwise provided in the Plan. Notwithstanding anything to the contrary contained in the Plan, all actions in the nature of those to be enjoined by the Injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

(f) Setoffs and Recoupments.

Subject to the limitations provided in section 553 of the Bankruptcy Code, Article 13.6 of the Plan provides that Reorganized ASARCO or the Plan Administrator, as the case may be, may, but shall not be required to, offset against or recoup from the holder of any Allowed Claim on which payments or other distributions are to be made pursuant to the Plan any Claims of any nature whatsoever the Estates may have against the holder of such Claim but neither the failure to do so, nor the allowance of any Claim under the Plan, shall constitute a waiver or release by Reorganized ASARCO or the Plan Administrator, as the case may be, of any such Claim against such holder or right of setoff or recoupment that the Estates may have against the holder of such Allowed Claim.

(g) Exoneration and Reliance.

Article 11.5 of the Plan sets forth protections for certain participants in the plan process. It provides that, to the fullest extent allowable by law, no ASARCO Protected Party or the USW shall be liable (other than for criminal liability, willful misconduct, gross negligence, bad faith, or *ultra vires* acts) to any holder of a Claim, Demand, or Interest or any other Entity with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time through the Effective Date in connection with:

- the management or operation of any of the Debtors or the discharge of their duties under the Bankruptcy Code;
- the solicitation, negotiation, or implementation of any of the transactions provided for, or contemplated in, the Plan or the other Plan Documents including, without limitation, the marketing of the Plan Assets, the Plan Sponsor selection process, the selection of the Plan Sponsor, and the sale of the Plan Assets to the Plan Sponsor;
- any action taken in connection with either the enforcement of the rights of any Debtor against any Entities or the defense of Claims or Demands asserted against any such Debtor with regard to the Reorganization Cases;
- any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of the Plan, other Plan Documents, or related agreements, instruments, or other documents;
- the administration of the Plan or the assets and property to be distributed pursuant to the Plan; or
- the administration of any of the Estates.

Each ASARCO Protected Party and the USW shall be deemed to have participated in each of the Reorganization Cases in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

Nothing in Article 11.5 of the Plan shall prevent the enforcement of the terms of the Plan.

If any holder of a Claim, Demand, or Interest or if any Entity other than a Governmental Unit brings an action, suit, or proceeding covered by Article 11.5 of the Plan or in any other way arising from or related to any of the Reorganization Cases, the Debtors, or the Trusts (other than as expressly provided in the Plan or the Asbestos TDP) and does not prevail, such holder or other Entity must pay the reasonable attorneys' fees and costs of the ASARCO Protected Party. Moreover, as a condition to going forward with such action, suit, or proceeding, such holder of a Claim, Demand, or Interest, or other Entity must, at the outset, provide appropriate proof and assurances of his, her, or its capacity to pay the ASARCO Protected Party's reasonable attorneys' fees and costs in the event the holder or other Entity fails to prevail. In order for a holder of a Claim, Demand, or Interest, or other Entity to be considered a prevailing party, such party must be awarded an enforceable judgment on the merits that constitutes a material alteration of the legal relationship between such party and an ASARCO Protected Party, and does not include a judgment that awards nominal damages. Article 11.6 of the Plan does not impose any obligation on any ASARCO Protected Party to pay, or provide appropriate proof and financial assurance of his, her, or its capacity to pay, reasonable attorneys' fees and costs in the event that the holder of a Claim, Demand, or Interest or other Entity prevails in an action, suit, or proceeding that is filed against such ASARCO Protected Party.

(h) Interpretation Regarding Article XI of the Plan and the Original Plan Sponsor PSA.

Notwithstanding anything else contained in the Plan, for the purpose of construing whether the Plan Sponsor, the Guarantor, or any of their respective Affiliates shall be entitled to any of the protections or other rights and benefits afforded in any release, exoneration, exculpation, injunction, indemnity, fee shifting provision, or any other protection outlined in Article XI of the Plan, upon such provisions becoming effective, no action taken by the Plan Sponsor, the Guarantor, or any of their respective Affiliates in connection with the Original Plan Sponsor PSA (including its renegotiation or any alleged breach, termination, or repudiation thereof) shall be interpreted, constructed, or deemed to have been an act taken other than in good faith, or to have been an act constituting willful misconduct.

3.11 Additional Releases.

The Parent believes that the Debtors' Plan is patently unconfirmable because it contains exculpation provisions that are inappropriately broad, including exculpation of the ASARCO Protected Parties even for willful misconduct, bad faith, criminal liability, or *ultra vires* acts, and providing that $20 million, that would otherwise be available to creditors, would be withheld to indemnify the ASARCO Protected Parties if a lawsuit is brought within 90 days after the Effective Date. The Debtors disagree with the Parent's contentions.

Article 11.7 of the Plan provides that, to the fullest extent allowable by law, on, and as of, the Effective Date, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, each ASARCO Protected Party that is not a Debtor (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, Demands, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all Claims and Demands based on or arising out of facts or circumstances that existed as of or prior to Confirmation of the Plan in any of the Reorganization Cases, including, without limitation, Claims and Demands based on breach of contract, negligence, or strict liability, and further including, without limitation, any derivative claims asserted on behalf of any of the Debtors or claims based on third party beneficiary status, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that any of the Debtors, their respective Estates, or any of the Reorganized Debtors would have been legally entitled to assert in their own right, whether individually or collectively) which any of the Debtors, their respective Estates, or any of the Reorganized Debtors may have against any of them in any way related to the Reorganization Cases or any of the Debtors (or their respective predecessors or Affiliates); *provided, however*, that nothing in Article 11.7 of the Plan shall impair or otherwise affect the rights of Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy. No ASARCO Protected Party shall be responsible for any obligations of any of the Debtors except those expressly assumed by those parties in the Plan (and only to the extent so assumed). The releases provided for in Article 11.7 of the Plan shall not extend to any claims by any Governmental Unit with respect to criminal liability, willful misconduct, gross negligence, or bad faith, or *ultra vires* acts.

3.12 Exculpation Injunction.

Article 11.8(a) of the Plan provides that all Entities are permanently enjoined from initiating a suit against any ASARCO Protected Party, the USW, their respective successors or assigns, or their respective assets, properties, or interests in property regarding any Claims, Demands, or any other right to legal or equitable relief (regardless of whether such right can be reduced to a right to payment or whether or not the facts or legal bases therefore were known or existed prior to the Effective Date) that are released under Article 11.5, 11.7, or 11.9 of the Plan; *provided, however*, that this injunction shall not apply to Claims based solely upon willful misconduct, gross negligence, or bad faith, or any criminal liability, or liability for *ultra vires* acts. Any such action by a non-Governmental Unit shall be brought in the Bankruptcy Court within 90 days after the Effective Date. Nothing in Article 11.8 of the Plan shall prevent the enforcement of the terms of the Plan.

3.13 Indemnities.

Article 11.8(b) of the Plan provides that Reorganized ASARCO shall defend, hold harmless, and indemnify to the fullest extent permitted by applicable law each of the Protected Officers and Directors and other appropriate parties as designated by ASARCO in its sole discretion not less than 10 days prior to the commencement of the Confirmation Hearing with respect to any Claim, Demand, or liability arising from any action, failure or omission to act, or other matter related to any of the Debtors or any of the Reorganization Cases through and including the Effective Date. If and whenever any indemnified party is, or is threatened to be made, a party to any action, suit, arbitration, investigation, or other proceeding that might give rise to a right of indemnification under Article 11.8 of the Plan, Reorganized ASARCO shall, to the fullest extent permitted by applicable law, reimburse that indemnified party all expenses (including attorneys' fees) reasonably incurred by or on behalf of that indemnified party in connection therewith within 60 days after Reorganized ASARCO receives a statement or statements from that indemnified party requesting reimbursement from time to time, whether prior to or after final disposition of such action, suit, arbitration, ~~or~~ investigation, or other proceeding. In furtherance of these obligations, on the Effective Date, the Plan Administrator shall establish an escrow account to address any of Reorganized ASARCO's indemnification obligations under Article 11.8 of the Plan. On the Effective Date (or as soon thereafter as is reasonably practicable), the Indemnification Escrow shall be funded in the amount of $20 million by ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be. Prior to the Effective Date, ASARCO shall purchase an errors-and-omissions insurance policy for the benefit of each of the indemnified parties in an amount equal to the errors-and-omissions

coverage currently maintained by the Debtors. The term of the policy shall be six years following the Effective Date. In addition, prior to the Effective Date, ASARCO shall exercise the six-year run-off option available under its existing directors-and-officers liability insurance. Each of the Protected Officers and Directors shall be entitled to retain independent counsel in connection with any Claim or liability asserted against him in connection with his service in the Reorganization Cases and to assist him with any issues arising in connection with the termination of his service as officer or director of any Debtor. The fees and expenses of such counsel shall be paid out of the Indemnification Escrow.

As soon as practicable after the sixth year anniversary of the Effective Date or upon such later date as the Plan Administrator deems it appropriate, the Plan Administrator shall distribute any funds remaining in the Indemnification Escrow to the ~~Residual Assets~~ Liquidation Trust for distribution in accordance with the terms and conditions of the ~~Residual Assets~~ Liquidation Trust Agreement.

3.14 Consensual Releases by Holders of Claims, Demands, and Interests.

To the fullest extent allowable by law, on the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, holders of Claims and Interests voting to accept the Plan and holders of Demands shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each ASARCO Protected Party that is not a Debtor from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever relating to the Debtors, the Debtors' property, events giving rise to the Reorganization Cases, the Reorganization Cases, the Original Plan Sponsor PSA, or the Plan, including, without limitation, Claims and Demands based on breach of contract, negligence, or strict liability, and including, without limitation, any derivative claims asserted on behalf of any Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such holder of a Claim, Demand, or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) any of the Debtors, (2) any of the Reorganization Cases, (3) the subject matter of, or the transactions or events giving rise to, any Claim, Demand, or Interest, (4) the business or contractual arrangements between any Debtor and any ASARCO Protected Party, (5) the restructuring of Claims, Demands, and Interests prior to or in any of the Reorganization Cases, (6) the negotiation, formulation, or preparation of the Plan, the Plan Documents or related agreements, instruments, or other documents, or (7) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; provided that the above described release shall apply to all holders of Claims and Interests irrespective of how such parties vote (or whether such parties vote) in connection with the Plan, to the extent that such release relates to any of the above described conduct by any ASARCO Protected Party that has been the subject of a release by the Debtors which has been approved by the Bankruptcy Court. Notwithstanding the foregoing, this release shall not apply to Claims, Demands, or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to act in good faith, or where such action or omission constitutes willful misconduct or gross negligence; provided, however, that nothing in Article 11.9 of the Plan shall impair or otherwise affect the right of Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy.

3.15 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies.

Pursuant to Article 11.10 of the Plan and except as otherwise provided therein, all fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights, or interests released under the Asbestos Insurance Settlement Agreement shall be released, and Reorganized ASARCO shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights, and interests released under the Asbestos Insurance Settlement Agreement. Article 11.10 of the Plan does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements, as listed in **Exhibit 14-C** to the Plan.

3.16 Limitations Regarding Governmental Units and the U.S. Trustee.

The releases, discharges, satisfactions, exonerations, exculpations, and injunctions provided under the Plan and the Confirmation Order shall not apply to any liability to a Governmental Unit arising after the Effective Date; *provided, however*, that no Governmental Unit shall assert any Claim or other cause of action under Environmental Law against the entities administering the Plan for the benefit of the creditors, the assets or funds being held by the entities administering the Plan for the benefit of the creditors, or the Reorganized Debtors based on or arising from acts, omissions, or conduct of the

Debtors prior to February 1, 2009 (including, without limitation, continuing releases related to acts, omissions, or conduct prior to February 1, 2009); *except provided further, however*, that nothing in the Plan or the Confirmation Order (a) precludes the enforcement of the Hayden Settlement Agreement, the Mission Mine Settlement Agreement, or the Arizona NRD Settlement Agreement as provided therein; (b) shall prevent the governments or Environmental Custodial Trusts from recovering under any confirmed plan on any Allowed Claim or payment due with respect to any site listed ~~on~~**in Exhibit 12** to the Plan or for any Allowed Claim for a permit fee or similar assessment or charge owed to the governments under Environmental Law; (c) releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law that any Entity is subject to as the current owner or current operator of property after the Effective Date; (d) releases, discharges, precludes, or enjoins any Allowed Claim or liability of a Debtor's Estate as the current owner or current operator of property between February 1, 2009 and the Effective Date; (e) for sites covered by an approved Environmental Custodial Trust Settlement Agreement, permits the governments or Environmental Custodial Trusts to recover more than permitted under the approved Environmental Custodial Trust Settlement Agreement, nor does it affect the covenants not to sue in the Environmental Custodial Trust Settlement Agreements or the reservation of rights, (f) releases, discharges, precludes, or enjoins any on-site liability of a Debtor's Estate as the owner, operator, or lessee of the Ray mine, the Mission Mine, the Amarillo copper smelter, the Tucson office, or the Ventura Warehouse; (g) precludes enforcement by the United States or a state of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee; or (h) releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law for criminal liability (except to the extent that such liabilities are dischargeable).

Notwithstanding anything to the contrary, nothing in Article XI of the Plan shall apply to the rights of the U.S. Trustee to fulfill his obligations under the Bankruptcy Code and title 28 of the United States Code or the obligations of the Debtors or the Reorganized Debtors to the U.S. Trustee.

3.17 Limitation Regarding Flow Through Bonds.

In accordance with the SPT Settlement Agreement, and except as otherwise provided in Article 8.9 of the Plan in regards to SPT Bond Nos. 394729 and 403998, ASARCO's obligations under and relating to the Flow Through Bonds and the SPT Indemnity Agreement as it relates to the Flow Through Bonds shall not be discharged by Confirmation of the Plan or upon ASARCO's emergence from the Reorganization Cases.

3.18 No Liability for Tax Claims.

Pursuant to Article 12.2 of the Plan, unless a taxing authority has asserted a Claim against a Debtor prior to the applicable Bar Date, no Claim of such taxing authority shall be Allowed against any of the Debtors or the Reorganized Debtors for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of a Debtor, Reorganized Debtor, or any other Entity to have paid taxes or to have filed any tax return (including, without limitation, any income tax return or franchise tax return) in or for any prior year or arising out of an audit of any return for a period before the Petition Date.

3.19 Certain Matters Incident to Plan Confirmation.

(a) No Successor Liability.

Article 12.3(a) of the Plan provides that, except as otherwise expressly provided in the Plan, **including Article 12.3 thereof,** no ASARCO Protected Party shall be deemed a successor or successor in interest to the Debtors or to any Entity for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and no ASARCO Protected Party can be responsible for any successor or transferee liability of any kind or character**, except to the extent that Reorganized ASARCO is the successor or successor in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries**. Article 12.3(b) of the Plan also provides that, except as otherwise expressly provided in the Plan, no ASARCO Protected Party shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of any of the Debtors or the Reorganized Debtors whether arising before, on, or after the Confirmation Date. **The Asbestos Subsidiary Committee and the FCR contend that the ASARCO Protected Parties may be subject to successor liability if the Bankruptcy Court or District Court determines that a section 524(g) injunction cannot be issued. The Debtors disagree with this contention and believe that the evidence at confirmation will provide an adequate legal basis for the Bankruptcy Court or District Court to make the necessary findings to support these provisions of the Plan.**

(b) Revesting of Assets.

Revesting of assets in Reorganized ASARCO is addressed in Article 10.19 of the Plan, which provides that, on the Effective Date, all of the Debtors' rights, title, and interests in and to the Sold Assets shall vest in the Plan Sponsor, free and clear of any Liens, claims, interests, and encumbrances, other than Permitted Liens and the Assumed Liabilities pursuant to section 363(f) of the Bankruptcy Code (including, without limitation, any right of setoff, recoupment, netting, or deduction). Except as otherwise **expressly** provided in the Plan or the Plan Documents, on the Effective Date, **the ASARCO Residual Assets, including, without limitation,** the Plan Sales Proceeds, the Distributable Cash, the Asbestos Insurance Policies, the Asbestos Insurance Recoveries, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, and the Vested Causes of Action, shall vest in Reorganized ASARCO, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court. **The rights, title, and interests of the Asbestos Subsidiary Debtors in the Asbestos Insurance Policies, the Asbestos Insurance Recoveries, the Asbestos In-Place Insurance Coverage, and the Asbestos Insurance Actions shall vest in Reorganized ASARCO, and the Asbestos Subsidiary Debtors shall have no remaining interests therein.**

The Covington Residual Assets, including, without limitation, the Madera Property shall vest in Reorganized Covington, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court.

(c) Vesting and Enforcement of Causes of Action.

The Vested Causes of Action (as listed in **Exhibit 14-A**), including, without limitation, the Debtors' respective rights, title, and interests in and to the Asbestos Insurance Actions, shall vest in Reorganized ASARCO. The Plan Administrator (after consultation with and approval by the Plan Administration Committee) shall be authorized to prosecute, compromise and settle, abandon, release, or dismiss the Vested Causes of Action, without need for approval by the Bankruptcy Court. After the Effective Date, the Plan Administrator may, in the Plan Administrator's discretion, file a notice of discharge with a copy of the Confirmation Order in any lawsuits in which ASARCO or any other Debtor was named as a defendant prior to the Effective Date.

The Debtors' respective rights, title, and interests in and to the ~~Litigation~~**Liquidation** Trust Claims (as listed in **Exhibit 14-B**) shall vest in the ~~Litigation~~**Liquidation** Trustee. The ~~Litigation~~**Liquidation** Trust may prosecute, compromise and settle, abandon, release, or dismiss the ~~Litigation~~**Liquidation** Trust Claims, without need for approval by the Bankruptcy Court.

The Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims (as listed in **Exhibit 14-C**) shall vest in the SCC Litigation Trustee. The SCC Litigation Trust may prosecute, compromise and settle, abandon, release, or dismiss the SCC Litigation Trust Claims, without need for approval by the Bankruptcy Court.

The Asbestos Subsidiary Debtors' respective rights, title, and interests in and to the causes of action listed in **Exhibit 14-D** shall vest in Reorganized Covington. Reorganized Covington may prosecute, compromise and settle, abandon, release, or dismiss such causes of action, without need for approval by the Bankruptcy Court.

(d) Dismissal of Certain Litigation.

Pursuant to Article 10.21 of the Plan, Adversary Proceeding No. 05-02030 filed by the Asbestos Subsidiary Debtors against Anne M. Aaberg, *et al.*, and Adversary Proceeding No. 06-02056, filed by ASARCO, *et al.*, against Anne M. Aaberg, *et al.*, both pending in the Bankruptcy Court, shall be dismissed on the Effective Date. Each lawsuit sought injunctive relief against Asbestos Personal Injury Claims. The injunctions granted in these adversary proceedings shall be replaced by the Plan's Permanent Channeling Injunction and the Asbestos Insurance Company Injunction on the Effective Date.

The Trade Creditor Preference Claims (as listed in **Exhibit 14-E**) shall be waived and dismissed with prejudice 20 days after the Claim Objection Deadline; *provided, however*, that if a defendant to a Trade Creditor Preference Claim has filed a Proof of Claim and that Proof of Claim is the subject of a pending objection as of the Claim Objection Deadline, such Trade Creditor Preference Claim shall not be dismissed and shall vest in Reorganized ASARCO.

(e) Settlement of Certain Causes of Action.

Article 10.3 and 10.26 of the Plan provide that Confirmation of the Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of all Asbestos Insurance Settlement Agreements (if any) and the Asbestos Settlement Agreement (if one has been entered into) and shall cause the Mission Mine Settlement Agreement (which has already been approved by the Bankruptcy Court pursuant to a motion under Bankruptcy Rule 9019) to be binding upon all landowners and allottees who own interests in the land affected by the Mission Mine Settlement Agreement.

(f) Intentionally Omitted.

(g) Assumption and Rejection of Unexpired Leases and Executory Contracts.

Under Article 8.1 of the Plan, on the Effective Date, except as otherwise provided in the Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by a Debtor pursuant to an order of the Bankruptcy Court shall be deemed rejected by such Debtor under sections 365(a) and 1123 of the Bankruptcy Code, other than those executory contracts and unexpired leases that are (1) listed in **Exhibit 2** to the Plan (as such list may be amended, supplemented, or modified by the Debtors on or before the Confirmation Date) or (2) subject to a motion to assume that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of (A) such rejections, and (B)(i) the assumption by ASARCO and assignment to the Plan Sponsor of the executory contracts and unexpired leases listed in **Exhibit 2-A** to the Plan; (ii) the assumption by ASARCO and assignment to an Environmental Custodial Trust of the executory contracts and unexpired leases listed in **Exhibit 2-B** to the Plan; and (iii) the assumption by the applicable Debtor and vesting in Reorganized ASARCO or Reorganized Covington of the executory contracts and unexpired leases listed in **Exhibit 2-C** to the Plan (as each such list may be amended, supplemented, or modified by the Debtors on or before the Confirmation Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume executory contracts and unexpired leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order. The executory contracts and unexpired leases assumed pursuant to Article 8.1 of the Plan or by any order of the Bankruptcy Court shall be assigned to, and the Debtors' obligations thereunder shall be assumed by, the Plan Sponsor or an Environmental Custodial Trust, or shall vest in Reorganized ASARCO or Reorganized Covington (as specified in **Exhibit 2** or the applicable order) as of the Effective Date. The Plan Sponsor has reached a collective bargaining agreement with the USW and other Unions that modifies the Debtors' CBA. The CBA, which shall be assumed as modified and extended through 2013, is expected to provide long-term labor peace and stability. Pursuant to this agreement, the CBA as modified will be effective as of the Effective Date.

Article 8.2 of the Plan provides that entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (1) the approval, pursuant to sections 365(a), 365(f), and 1123 of the Bankruptcy Code, of the assumption by one of the Debtors and assignment to the Plan Sponsor or an Environmental Custodial Trust, or vesting in Reorganized ASARCO or Reorganized Covington (as specified in **Exhibit 2** to the Plan) of the executory contracts and unexpired leases assumed, or assumed and assigned, pursuant to Article 8.1 of the Plan; (2) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors may assume, assume and assign, or reject the unexpired leases specified in Article 8.1 of the Plan through the date of entry of an order approving the assumption,

assumption and assignment, or rejection of such unexpired leases; and (3) the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 8.1 of the Plan.

In accordance with Article 8.3 of the Plan, unless otherwise specified in **Exhibit 2** to the Plan, each executory contract and unexpired lease listed or to be listed in **Exhibit 2** shall include all modifications, amendments, or supplements thereto, or restatements thereof, without regard to whether such agreement, instrument, or other document is listed in **Exhibit 2**.

Pursuant to Article 8.6 of the Plan, to the extent that any Cure Amount Claims constitute monetary defaults, such Claims shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtors: (1) by payment of the Cure Amount Claim on the Effective Date or (2) on such other terms as are agreed to by the Debtors and the non-debtor parties to the executory contract or unexpired lease. In the event of a dispute regarding (A) the amount of any Cure Amount Claim; (B) the ability of the Plan Sponsor or an Environmental Custodial Trust to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed and assigned; or (C) any other matter pertaining to assumption or assumption and assignment of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment (except as otherwise provided in Article 8.6(b) of the Plan).

Article 8.6(b) of the Plan provides that, pursuant to section 3.5(d) of the New Plan Sponsor PSA, at the Closing, ASARCO shall deliver to the Plan Sponsor a statement of any Unpaid Cure Claims Amount and the Contract(s) corresponding thereto, including a calculation thereof. The Plan Sponsor shall be permitted (but not required), within 30 days after receipt of such statement, to pay any Unpaid Cure Claims Amount, and within 10 days after any such payment, the Plan Sponsor shall provide a written notice to ASARCO of such payment and the Contract(s) corresponding thereto. To the extent the Plan Sponsor pays any Unpaid Cure Claims Amount pursuant to section 3.5(d) of the New Plan Sponsor PSA, Reorganized ASARCO shall, within 10 days of receipt of notice from the Plan Sponsor delivered in accordance with section 3.5(d) thereof, reimburse the Plan Sponsor in the amount of such payment; provided that the Confirmation Order shall provide that, as between the Sellers and the counterparty of the underlying Contract, (1) neither the payment nor the reimbursement of a disputed Unpaid Cure Claims Amount shall constitute a waiver, admission, or estoppel in respect of any claims or defenses that ASARCO or Reorganized ASARCO may have related to such Unpaid Cure Claims Amount or the underlying Contract and (2) the right of ASARCO or Reorganized ASARCO to object, assert any counterclaim, or exercise any setoff or other rights in connection with such Unpaid Cure Claims Amount or the underlying Contract shall be preserved regardless of any such payment or reimbursement; *provided, however*, that failure of the Confirmation Order to so provide shall not relieve the Sellers of their payment obligations as set forth in section 3.5(d) of the New Plan Sponsor PSA.

Article 8.5 of the Plan provides that if the rejection by a Debtor, pursuant to Article 8.1 of the Plan, of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and discharged and shall not be enforceable against any Debtor, Reorganized Debtor, or their respective properties, unless a Proof of Claim is filed and served upon Reorganized ASARCO and the Plan Administrator within 30 days after the later of the Effective Date or the date of entry of an order approving such rejection. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order, such Claim shall be treated for all purposes under the Plan as a Class 3 General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed General Unsecured Claim, pursuant to the Plan.

Pursuant to Article 8.4 of the Plan, the Bankruptcy Court shall determine the amount, if any, of the Claim of any Entity seeking damages by reason of the rejection of any executory contract or unexpired lease to which it is a counterparty.

(h) Certain Other Agreements Pertaining to Silver Bell.

Mitsui (and related entities and affiliates) and the company formerly known as ASARCO Incorporated (now ASARCO LLC) entered into certain agreements pertaining to Silver Bell that are not listed as assumed contracts in the New Plan Sponsor PSA or otherwise assigned to the Plan Sponsor. Such agreements include, without limitation, (1) an agreement, dated February 5, 1996, entitled "Asarco Incorporated Guaranty" in favor of certain of Mitsui's affiliates; (2) as more fully discussed in Section 2.29 of this Disclosure Statement, a letter agreement, dated February 5, 1996, supplementing the Silver Bell LLC Agreement, the provisions of which Mitsui asserts give certain of Mitsui's affiliates certain tag-along rights in the event of a sale by ASARCO of the capital stock of ARSB; and (3) an agreement, dated December 12, 1997, entitled "Reimbursement Agreement," which is ancillary to the Equipment Lease Agreement with The Copper Equipment

Trust and certain related agreements (not all of which are reflected as assumed contracts in the New Plan Sponsor PSA). Whether or not such Mitsui affiliates grant consent to the transfer by ARSB of its membership interests in Silver Bell, Mitsui has requested that these agreements be assumed by and assigned to the Plan Sponsor or the Guarantor. Also, on February 5, 1996, ARSB and Silver Bell entered into a "Management Services Agreement" concerning Silver Bell. Whether or not such Mitsui affiliates grant consent to the transfer by ARSB of its membership interests in Silver Bell, Mitsui has requested that this agreement be assumed by and assigned to the Plan Sponsor. The Debtors have not taken a formal position with respect to the treatment of the agreements discussed in this Section 3.19(h) and specifically reserve all rights and remedies that any of them may have concerning such agreements, including all rights and remedies that any of them may have to object to any request by Mitsui or any of its affiliates (i) to have all or a portion of the Silver Bell membership interests held by such Mitsui affiliates purchased by the Plan Sponsor; (ii) to have any agreement with any of the Debtors assumed by and assigned to the Plan Sponsor or the Guarantor; or (iii) to have any agreement with any Debtor treated as a non-executory contract. Mitsui and all of its related entities and affiliates specifically reserve all rights and remedies that any of them may have concerning any such agreement discussed in this Section 3.19(h).

(i) Contracts and Leases Previously Assumed or Entered into After the Petition Date.

Unless otherwise provided in Article 8.7(b) and (c), 8.8, or 8.9 of the Plan, each Contract that is a "Pre-Petition Contract" (as such term is defined in section 3.1(e)(A) of the New Plan Sponsor PSA) or is entered into by ASARCO after the Petition Date as described in section 3.1(e)(B) of the New Plan Sponsor PSA shall be assigned to, and such Debtor's obligations thereunder assumed by, the Plan Sponsor in accordance with the New Plan Sponsor PSA; *provided, however*, that any such Contract entered into after the date of the New Plan Sponsor PSA other than in the Ordinary Course of Business shall be assigned to, and such Debtor's obligations thereunder assumed by, the Plan Sponsor only with the Plan Sponsor's written consent.

Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-D** to the Plan (as such list may be amended, supplemented, or modified on or before the Confirmation Date) shall be assigned to, and such Debtor's obligations thereunder assumed by, one or more Environmental Custodial Trusts, as specified in **Exhibit 2-D** to the Plan.

Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-E** to the Plan (as such list may be amended, supplemented, or modified on or before the Confirmation Date) shall vest in, and such Debtor's obligations thereunder be assumed by, Reorganized ASARCO or Reorganized Covington, as specified in **Exhibit 2-E** to the Plan.

(j) Employee Benefits Plans, Retiree Benefits, and Other Benefits.

Article 8.8(a) of the Plan provides that ASARCO shall satisfy its contribution obligations under ERISA to the Hourly and Salaried Plans during the pendency of the Reorganization Cases and through the Closing Date. ASARCO is the sponsor of the Hourly and Salaried Plans, each of which is covered under Title IV of ERISA. Article 8.8(a) of the Plan also provides that in the event that either the Hourly Plan or the Salaried Plan, or both terminate during the pendency of the Reorganization Cases, or prior to the Closing Date, certain Claims will arise, including joint and several liabilities of the Debtors to the PBGC that may be entitled to priority under various sections of the Bankruptcy Code to the extent provided under applicable law.

Article 8.8(b) of the Plan provides that effective as of the Closing Date, the Plan Sponsor shall adopt and become the "contributing sponsor" of the Hourly and Salaried Plans for purposes of ERISA, and the Plan Sponsor, and each and every member of its "controlled group," as defined in section 4001(a)(14) of ERISA, shall be responsible for satisfying the legal obligations to the Hourly and Salaried Plans subsequent to the Closing Date, including the obligation to fund the Hourly and Salaried Plans pursuant to applicable law. It also provides that in the event that either the Hourly Plan or the Salaried Plan or both terminate subsequent to the assumption of the Hourly and Salaried Plans by the Plan Sponsor, the joint and several liability of the Plan Sponsor and of each and every member of its "controlled group" (as defined above) to the PBGC, if any, will not be affected by any provision of the Plan or by Confirmation of the Plan.

Article 8.8(c) of the Plan provides that as of the Closing Date, the Plan Sponsor shall adopt and become the sponsor and employer for purposes of each and every Employee Benefit Plan set forth in section 9.3 of the Disclosure Schedule, including the Hourly and Salaried Plans, and shall be substituted for ASARCO or its Subsidiaries that had theretofore been the sponsor of such Employee Benefit Plan. Effective as of the Closing, the Plan Sponsor shall be responsible for all benefits and liabilities with respect to such Employee Benefit Plans, as such Employee Benefit Plans may

be amended or modified from time to time by written agreement between the Plan Sponsor and the Unions after the Closing Date.

Pursuant to Article 8.8(d) of the Plan, with respect to each Transferred Employee (as such term is defined in the New Plan Sponsor PSA) (including any beneficiary or the dependent thereof), the Plan Sponsor shall assume all of ASARCO's liabilities and obligations for workers' compensation benefits, even if such liability or obligation relates to Claims incurred (whether or not reported or paid) prior to the Closing Date.

Article 8.8(e) of the Plan provides that, effective as of the Closing Date, the Plan Sponsor shall be responsible for providing coverage under COBRA to any Employee (as such term is defined in section 9.1(a) of the New Plan Sponsor PSA), his or her spouse, or dependent person as to whom a "qualifying event" as defined in section 4890B of the Internal Revenue Code has occurred (1) prior to the Closing Date in the case of a "qualifying event" other than a termination of employment and (2) in the case of a termination of employment "qualifying event" on or prior to the Closing Date. The Plan Sponsor shall also be responsible for providing COBRA coverage to any Employee, his or her spouse, or dependent person as to whom a "qualifying event" occurs on or after the Closing Date including for a "qualifying event" that is a termination of employment on the Closing Date.

Article 8.8(f) of the Plan provides that the Plan Sponsor shall assume and be responsible for all of ASARCO's obligations under the Coal Act, including the obligations (1) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to section 9711 of the Coal Act, 26 U.S.C. § 9711; (2) to pay the annual prefunding premium and the monthly per beneficiary premium required pursuant to section 9712(d)(1)(A) and (B) of the Coal Act, 26 U.S.C. § 9712(d)(1)(A) and (B); and (3) to provide security to the UMWA 1992 Benefit Plan pursuant to section 9712(d)(1)(C) of the Coal Act, 26 U.S.C. § 9712(d)(1)(C); *provided, however*, that the Plan Sponsor shall not be responsible for the Debtors' prepetition premium obligations arising under the Coal Act nor for a Claim for withdrawal liability arising under the United Mineworkers 1974 Pension Plan, which obligations shall be classified and treated as Class 3 General Unsecured Claims.

Article 8.8(g) of the Plan provides that the Plan Sponsor shall assume and be responsible for all of ASARCO's obligations under the CBA as amended by that certain letter agreement entered into between the USW and the Plan Sponsor and dated June 23, 2008, which shall become effective on the Closing Date, and the retiree class action settlement agreement approved by the Bankruptcy Court by order dated March 15, 2007 (Docket No. 4178), which settled the cause of action captioned *Asarco Incorporated et al. v. United Steelworkers of America, AFL-CIO/CLC, et al.*, No. CV-03-1297.

As a result of these provisions, virtually all pension and benefit liabilities of the Debtors will be assumed by the Plan Sponsor, except for the following pension and benefits-related Claims and obligations, which are not being assumed by the Plan Sponsor and shall be classified and treated as Class 3 General Unsecured Claims: (1) the prepetition obligations under the Coal Act and the United Mineworkers 1974 Pension Plan mentioned earlier; (2) the Claim for withdrawal liability arising under the United Mineworkers 1974 Pension Plan mentioned earlier; (3) deferred compensation obligations under ASARCO's deferred income benefit system plan, which covers several retired or separated former executives of the Debtors; (4) the individual pension supplement of certain separated former executives that transferred employment to ASARCO Incorporated (as predecessor to ASARCO) from Servicios de Apoyo Administrativo, S.A. de C.V. and dated July 1, 2002; and (5) the Canadian Pension Plan obligations discussed in section 2.16(i) of this Disclosure Statement.

(k) Bonds and Assurances.

Article 8.9 of the Plan provides that, pursuant to section 8.9 of the New Plan Sponsor PSA, prior to Closing, the Plan Sponsor shall (1) cause ASARCO to be fully, unconditionally, and irrevocably released and discharged from the Bonds and Assurances (as such term is defined in the New Plan Sponsor PSA) including, without limitation, SPT Bond Nos. 394729 and 403998 and (2) replace the Bonds and Assurances or act as a substituted obligor, guarantor, or other counterparty to the Bonds and Assurances as required for the continued operation of the Business. The surety, performance, payment, and other bonds listed in section 3.2(j) of the Disclosure Schedule shall be retained by ASARCO and shall revest in Reorganized ASARCO on the Effective Date.

(l) Post-Effective Date Status of the Committees and the FCR.

Article 15.5 of the Plan provides that the Committees and the position of FCR shall continue in existence until the Effective Date, with the Debtors to pay the reasonable fees and expenses of the Committees and the FCR and their counsel and advisors through that date in accordance with the fee and expense procedures promulgated during the Reorganization Cases.

Notwithstanding the foregoing, the Committees and the FCR shall continue in existence after the Effective Date for the duration of any appeal of the Confirmation Order or any other order in which the Committees and the FCR have an interest and, *provided further,* the Committees and the FCR shall have standing to participate in proceedings brought by their respective professionals or, if applicable, members for allowance of fees and reimbursement of expenses for services rendered during the pendency of the Reorganization Cases and for services rendered to the Committees or the FCR during the pendency of any appeal of the Confirmation Order or any other order in which the Committees and the FCR have an interest.

On and after the Effective Date, the position of FCR shall continue pursuant to orders issued by the Bankruptcy Court during the Reorganization Cases, provided that the FCR thereafter shall have and exercise the rights, duties, and responsibilities set forth in the Asbestos Trust Documents.

Except as provided above, the Committees shall be dissolved on the Effective Date, and the members, attorneys, accountants, and other professionals thereof shall be released and discharged of and from all further authority, duties, responsibilities, liabilities, and obligations related to, or arising from, the Reorganization Cases.

(m) Effectuating Documents and Further Transactions.

Under Article 10.23 of the Plan, the chief executive officer, president, chief financial officer, general counsel, secretary, treasurer, any vice president, or managing member (if applicable) of each Debtor or Reorganized Debtor shall be authorized, to the extent consistent with the respective Debtor's constituent documents, to execute, deliver, file, or record such contracts, instruments, settlement agreements, releases, indentures, and other agreements or documents and to take or direct such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan. The secretary or any assistant secretary of each Debtor or Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions.

(n) Corporate Action.

All matters provided for under the Plan involving the corporate structure of a Debtor or a Reorganized Debtor, or any corporate action to be taken by~~,~~ or required of such Debtor or Reorganized Debtor, shall be deemed to have occurred and be effective as provided in the Plan, and shall be authorized and approved in all respects without any requirement for further action by the holders of interests in, or directors of, any of such entities.

(o) Debtors' Right to Modify the Plan.

As provided in Article 15.6 of the Plan, the Debtors may alter, amend, or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date and expressly reserve their rights to amend the Plan and any Plan Documents as necessary in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code; *provided, however*, that ASARCO shall not, without the prior written consent of the Plan Sponsor **so long as the New Plan Sponsor PSA shall not have been terminated**, seek to amend or modify any provision of the Bid Protections Order, the Disclosure Statement, the Plan, or the Confirmation Order to effect a change in the terms and conditions of the transactions or release contemplated by the New Plan Sponsor PSA which would reasonably be expected to have a material adverse effect on the Plan Sponsor (or the Guarantor) or on the ability of the Debtors and the Plan Sponsor (and Guarantor) to consummate the transactions contemplated by the New Plan Sponsor PSA on or before the Termination Date (as such term is defined in the New Plan Sponsor PSA); except that ASARCO may seek to amend or modify any provision in the Disclosure Statement, the Plan, or the Plan Confirmation Order in connection with an Acquisition Proposal or Stand-Alone Plan in accordance with section 8.10 of the New Plan Sponsor PSA. After the Confirmation Date, the Debtors may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court approval to remedy any defects or omissions or reconcile any inconsistencies in the Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of the Plan, so long as the proposed alteration, amendment, or modification does not adversely affect the treatment of Claims or Interests under the Plan and would not reasonably be expected to have a material adverse effect on the Plan Sponsor, the Guarantor, or the ability to consummate the transactions contemplated by the New Plan Sponsor PSA.

(p) Debtors' Right to Revoke or Withdraw the Plan.

As provided in Article 15.7 of the Plan, the Debtors reserve the right to revoke or withdraw the Plan prior to the Confirmation Hearing and to file subsequent plans of reorganization. If the Debtors revoke or withdraw the Plan, or if Confirmation or Consummation does not occur, then (1) the Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Plan, assumption or rejection of executory contracts or unexpired leases under the Plan, and any document or agreement executed pursuant to the Plan, shall be deemed null and void; and (3) nothing contained in the Plan shall (A) constitute a waiver or release of any Claims by or against, or Interests in, such Debtors or any other Person, (B) prejudice in any manner the rights of such Debtors or any other Person, or (C) constitute an admission of any sort by the Debtors or any other Person.

(q) Rules Governing Conflicts Between Documents.

In the event of a conflict between the terms or provisions of the Plan and the Plan Documents, the terms of the Plan shall control over the Plan Documents. In the event of a conflict between the terms of the Plan or the Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control. In the event of a conflict between the information contained in this Disclosure Statement and the Plan or any other Plan Document, the Plan or other Plan Document (as the case may be) shall control.

(r) Governing Law.

Article 15.15 of the Plan provides that, except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Plan provides otherwise, the rights and obligations arising under the Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas without giving effect to its conflicts of law principles.

(s) Retention and Disposal of Retained Books and Records (Other than Asbestos Books).

Article 15.22 of the Plan provides that the Reorganized Debtors shall make all reasonable efforts to preserve the Retained Books and Records in the same order, format, and condition in which they exist on the Effective Date for 180 days after the Effective Date. After this 180-day period, the Plan Administrator, in consultation with the Trustees may (in the Plan Administrator's discretion, and without liability or recourse) dispose of any Retained Books and Records which the Plan Administrator determines are appropriate for disposal. The Plan Administrator shall provide the Trustees with a reasonable opportunity to segregate and remove, at the expense of the applicable trust, such Retained Books and Records as they may select. Any requests by parties in interest for copies or originals of any of the Retained Books and Records must be made in writing to the Reorganized Debtors on or before 60 days after the Effective Date. All such parties in interest shall reasonably cooperate with the Reorganized Debtors in regards to such requests for copying or permanent retention of any Retained Books and Records. Procedures for retention and disposal of Asbestos Books are set forth in Article 7.13 of the Plan.

3.20 Retention of Jurisdiction.

(a) Jurisdiction.

Article 15.1 of the Plan provides that until the Reorganization Cases are closed, the Bankruptcy Court (and with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, the District Court) shall retain the fullest and most extensive jurisdiction permissible, including, without limitation, the jurisdiction necessary:

- to ensure that the purposes and intent of the Plan are carried out;
- to enforce and interpret the terms and conditions of Plan Documents; and
- to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of a Debtor, a Reorganized Debtor, a Settling Asbestos Insurance Company, the Plan Sponsor, or any other ASARCO Protected Party.

Except as otherwise provided in the Plan, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Interests in any of the Debtors and to adjudicate and enforce all other causes of action that may exist on behalf of the Debtors. Nothing contained in the Plan shall prevent Reorganized ASARCO, the Plan Administrator, the Asbestos Trustees, **the Liquidation Trustee,** or the **SCC** Litigation Trustee (as appropriate) from taking such action as may be necessary in the enforcement of any cause of action that such Entity has or may have and that may not have been enforced or prosecuted by any of the Debtors, which cause of action shall survive entry of the Confirmation Order and occurrence of the Effective Date and shall not be affected thereby except as specifically provided in the Plan.

Article 15.2 of the Plan provides that the Asbestos Trust and the Environmental Custodial Trusts (including each of the Environmental Custodial Trust Accounts) shall be subject to the continuing jurisdiction of the Bankruptcy Court sufficient to satisfy the requirements of Treasury regulation section 1.468B-1.

In addition to the general retention provided for in Article 15.1 and 15.2 of the Plan, Article 15.3 of the Plan provides for the Bankruptcy Court to retain jurisdiction after Confirmation to:

(1) modify the Plan after entry of the Confirmation Order, pursuant to the provisions of the Plan, the Bankruptcy Code, and the Bankruptcy Rules;

(2) correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to the Plan, the Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Plan;

(3) hear and determine any cause of action, and enter and implement such orders as may be necessary or appropriate, to execute, interpret, implement, consummate, or enforce the Plan, the Plan Documents, and the transactions contemplated thereunder;

(4) hear and determine disputes arising in connection with the execution, interpretation, implementation, Consummation, or enforcement of the Plan, including, without limitation, the Plan Documents, and to enforce, including by specific performance, the provisions of the Plan and the Plan Documents;

(5) hear and determine disputes arising under settlement agreements previously approved by the Bankruptcy Court, including, without limitation, the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Environmental Settlement Agreement, and the Residual Environmental Settlement Agreement;

(6) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the New Plan Sponsor PSA, settlement agreements, asset purchase agreements, or other agreements entered into by the Debtors during the Reorganization Cases or to enforce, including by specific performance, the provisions of such agreements;

(7) enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Consummation or implementation of the Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Plan and the Confirmation Order;

(8) assure the performance by Reorganized ASARCO, the Plan Administrator, and the Trustees of their respective obligations to make distributions under the Plan and other Plan Documents;

(9) enter such orders or judgments, including, without limitation, injunctions as necessary to enforce the title, rights, and powers of any of the Debtors, the Reorganized Debtors, the Plan Sponsor, the Plan Administrator, or the Trusts;

(10) hear and determine any motions, applications, or adversary proceedings brought by or against the Trusts related to (A) enforcement or interpretation of the Trust Documents and (B) amendment, modification, alteration, or repeal of any provision of the Trust Documents, if such hearing and determination by the Bankruptcy Court is required pursuant to the Plan;

(11) hear and determine any adversary proceedings, applications, and contested matters, including any remands after appeal;

(12) ensure that distributions to holders of Allowed Claims and Demands are accomplished as provided in the Plan;

(13) hear and determine any timely objections to or motions or applications concerning Claims or the allowance, classification, priority, compromise, setoff, estimation, or payment of any Claim, including, without limitation, any request to subordinate any Claim or Administrative Claim, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;

(14) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

(15) hear and determine any motions, contested matters, or adversary proceedings involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to any of the Debtors, the Reorganized Debtors, the Plan Administrator, or the Trusts arising on or prior to the Effective Date, arising on account of transactions contemplated by the Plan Documents, or relating to the period of administration of the Reorganization Cases;

(16) hear and determine all applications for compensation of Professional Persons and reimbursement of expenses under sections 330, 331, or 503(b) of the Bankruptcy Code;

(17) hear and determine any causes of action relating to any of the Debtors, the Reorganized Debtors, or the Trusts to the fullest extent permitted by section 157 of title 28 of the United States Code;

(18) hear and determine any cause of action in any way related to the Plan Documents or the transactions contemplated thereby, against any ASARCO Protected Party;

(19) recover all assets of each of the Debtors and property of their respective Estates, wherever located, including actions under chapter 5 of the Bankruptcy Code;

(20) hear and determine any motions pending as of the Confirmation Date for the rejection, assumption, or assignment of executory contracts or unexpired leases and the allowance of any Claim resulting therefrom;

(21) hear and determine such other matters and for such other purposes as may be provided in the Plan or the Confirmation Order;

(22) consider and act on the compromise and settlement of any Claim against, or Interest in, any of the Debtors or their respective Estates including, without limitation, any disputes relating to any Administrative Claims, any Bar Date, or Bar Date Order;

(23) hear and determine any questions and disputes regarding title to the assets of any of the Debtors, their respective Estates, or the Trusts;

(24) hear and determine any other matters related to the Plan, including the implementation and enforcement of all orders entered by the Bankruptcy Court in these Reorganization Cases;

(25) hear and determine any applications brought by the Asbestos Trustees to amend, modify, alter, or repeal any provision of the Asbestos Trust Agreement or the Asbestos TDP pursuant to the Asbestos Trust Agreement and to declare or resolve all issues or disputes contemplated by the Asbestos Trust Agreement;

(26) enter such orders as are necessary to implement and enforce the Injunctions; and

(27) hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Plan.

(b) Exclusive Jurisdiction of District Court Over Certain Matters.

Under Article 15.4(a) of the Plan, the District Court shall, without regard to the amount in controversy, retain exclusive jurisdiction after Confirmation over matters relating to section 524(g) of the Bankruptcy Code and the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including, without limitation, the validity, application, or construction of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, or of section 524(g) of the Bankruptcy Code with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction; *provided, however*, that from and after the Effective Date the jurisdiction of the District Court shall be non-exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery. Nothing contained in the Plan shall be deemed a finding or conclusion that: (1) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (2) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; or (3) abstention or dismissal or reference of actions effecting the transfer of jurisdiction of any Asbestos Insurance Action or Asbestos Insurance Recovery pending in the Bankruptcy Court or District Court to another court is precluded, inadvisable, or unwarranted. Any court other than the Bankruptcy Court or the District Court that has or is capable of having jurisdiction over any Asbestos Insurance Action or Asbestos Insurance Recovery shall have the right to exercise such jurisdiction.

Notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date, the reference to the Bankruptcy Court pursuant to the Reference Order shall continue, subject to Article 15.4 of the Plan and any other modifications or withdrawals of the reference specified in the Confirmation Order, the Reference Order, any case management order, or other order of the District Court.

SECTION 4

THE ~~LITIGATION~~**LIQUIDATION** TRUST~~,~~ **AND** THE SCC LITIGATION TRUST~~, AND THE RESIDUAL ASSETS LIQUIDATION TRUST~~

4.1 The ~~Litigation~~**Liquidation** Trust.

(a) Creation of the ~~Litigation~~**Liquidation** Trust.

On the Effective Date, the ~~Litigation~~**Liquidation** Trust shall be created, as provided in the ~~Litigation~~**Liquidation** Trust Agreement. Prior to the Effective Date, the ~~Litigation~~**Liquidation** Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code.

(b) Appointment of ~~Litigation Trustee~~**Trustees**.

The Plan Administrator shall serve as the ~~Litigation~~**Liquidation** Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the ~~Litigation~~**Liquidation** Trustee shall be appointed. The ~~Litigation~~**Liquidation** Trustee shall report to the ~~Litigation~~**Liquidation** Trust Board.

The ~~Litigation~~**Liquidation** Trustee shall have and perform all of the rights, powers, and duties set forth in the ~~Litigation~~**Liquidation** Trust Agreement.

The ~~Litigation~~**Liquidation** Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate the Person who shall initially serve as Delaware Trustee of the ~~Litigation~~**Liquidation** Trust.

The duties, responsibilities, rights, and obligations of the ~~Litigation~~**Liquidation** Trustee and the Delaware Trustee for the ~~Litigation~~**Liquidation** Trust shall terminate in accordance with the terms of the ~~Litigation~~**Liquidation** Trust Agreement.

(c) ~~Litigation~~**Liquidation** Trust Board.

The ~~Litigation~~**Liquidation** Trust Board shall consist of three members initially selected as follows: (1) one selected by the ASARCO Committee; (2) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); and (3) one selected by the other two members of the ~~Litigation~~**Liquidation** Trust Board.

Successors to the members of the ~~Litigation~~**Liquidation** Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, **by** the then-current holders of a majority of the Class A ~~Litigation~~**Liquidation** Trust Interests; (2) in the case of the member originally selected by the DOJ, **by** the then-current holders of a majority of the Class B ~~Litigation~~**Liquidation** Trust Interests; and (3) in the case of the member originally selected by the other two members of the ~~Litigation~~**Liquidation** Trust Board, **by** the then-current other two members of the ~~Litigation Trust Board.~~**Liquidation Trust Board; ; *provided, however*, that any holder of Class A Liquidation Trust Interests or Class B Liquidation Trust Interests who is a party adverse to ASARCO in the SCC Litigation, or is an Affiliate of any party adverse to ASARCO in the SCC Litigation, shall not be entitled to the foregoing selection rights.**

(d) Purpose of the ~~Litigation~~**Liquidation** Trust.

The ~~Litigation~~**Liquidation** Trust shall be established as a statutory trust for the purpose of ~~pursuing the Litigation Trust Claims,~~**holding the assets of the Liquidation Trust and disposing of the same in accordance with the Plan and the Liquidation Trust Agreement and** liquidating all assets of the ~~Litigation~~**Liquidation** Trust for the benefit of the ~~Litigation Trust Beneficiaries, receiving all Litigation Trust Claim recoveries, and distributing the resulting Litigation Trust Proceeds and other Cash of the Litigation Trust to the Litigation Trust Beneficiaries after payment of all expenses of the Litigation Trust~~**Liquidation Trust Beneficiaries (including through the pursuit of the Liquidation Trust Claims)**. The primary purpose of the ~~Litigation~~**Liquidation** Trust is to liquidate its assets, and the ~~Litigation~~**Liquidation** Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the ~~Litigation~~**Liquidation** Trust.

(e) Transfer of ~~Litigation~~**the Liquidation** Trust Claims **and the Plan Sponsor Promissory Note** to the ~~Litigation~~**Liquidation** Trustee.

On the Effective Date **(or, with respect to clause (5), from time to time thereafter)**, the Debtors shall transfer**, assign, and deliver** to the ~~Litigation~~**Liquidation** Trustee for the benefit of the ~~Litigation~~**Liquidation** Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in **and to** the ~~Litigation~~**Liquidation** Trust Claims free and clear of any and all Liens, Claims, encumbrances~~,~~ or interests of any kind in such property of any **other** Person or ~~Entity~~**entity**, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the ~~Litigation~~**Liquidation** Trust Claims; ~~and (3) the Litigation Expense Fund~~**(3) all of Reorganized ASARCO's rights, title, and interest in and to the Plan Sponsor Promissory Note and the Security Documents; (4) the Liquidation Trust Expense Fund; and (5) such other assets deemed appropriate by Reorganized ASARCO in accordance with the Plan. In addition, as of the Effective Date, the Liquidation Trustee, in its capacity as the Liquidation Trustee on behalf of the Liquidation Trust Beneficiaries, shall assume and agree to pay, perform, and discharge the obligations of Reorganized ASARCO under the Plan Sponsor Promissory Note and Security Documents**. As soon as practicable after the Effective Date, the Debtors shall transfer to the ~~Litigation~~**Liquidation** Trustee for the benefit of the ~~Litigation~~**Liquidation** Trust Beneficiaries all documents in the Debtors' possession, custody, or control in connection with the ~~Litigation~~**assets transferred to the Liquidation** Trust ~~Claims~~. On and after the Effective Date, the ~~Litigation~~**Liquidation** Trustee shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the ~~Litigation~~**assets transferred to the Liquidation Trust, including the Liquidation** Trust Claims and the Debtors' Privileges associated therewith. The ~~Litigation~~**Liquidation** Trustee shall be granted the rights and powers of a debtor-in-possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the ~~Litigation~~**Liquidation** Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the ~~Litigation~~**Liquidation** Trust Agreement.

(f) The ~~Litigation~~**Liquidation** Trust.

The ~~Litigation~~**Liquidation** Trust Agreement, substantially in the form of **Exhibit 4** to the Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the ~~Litigation~~**Liquidation** Trustee, the ~~Litigation~~**Liquidation** Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in and to the ~~Litigation Trust Claims~~**assets described in Section 4.1(e) above** to be transferred to the ~~Litigation~~**Liquidation** Trust.

The ~~Litigation~~**Liquidation** Trustee shall have full authority (subject, in certain instances, to approval of the ~~Litigation~~**Liquidation** Trust ~~Fund~~**Board**) to take any steps necessary to administer **both** the ~~Litigation~~**Liquidation** Trust Claims **and the Plan Sponsor Promissory Note**, including, without limitation, the duty and obligation to liquidate the ~~Litigation~~**Liquidation** Trust Claims. Both ~~the~~ Reorganized ~~Debtors~~**ASARCO** and the ~~Litigation~~**Liquidation** Trustee have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the ~~Litigation~~**Liquidation** Trust Claims, including, without limitation, any objections to Claims under sections 502 and 510 of the Bankruptcy Code.

All costs and expenses associated with the administration of the ~~Litigation~~**Liquidation** Trust shall be the responsibility of and paid by the ~~Litigation~~**Liquidation** Trust. Notwithstanding the foregoing, each of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the ~~Litigation~~**Liquidation** Trustee in pursuing the ~~Litigation~~**Liquidation** Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the ~~Litigation~~**Liquidation** Trust Claims to representatives of the ~~Litigation~~**Liquidation** Trust for the purpose of enabling the ~~Litigation~~**Liquidation** Trustee to perform the ~~Litigation~~**Liquidation** Trustee's tasks under the ~~Litigation~~**Liquidation** Trust Agreement and the Plan; *provided, however*, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

The ~~Litigation~~**Liquidation** Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the ~~Litigation~~**Liquidation** Trustee and the ~~Litigation~~**Liquidation** Trust Board may deem necessary or appropriate, and at the sole expense of the ~~Litigation~~**Liquidation** Trust, to aid in the performance of the ~~Litigation~~**Liquidation** Trustee's responsibilities pursuant to the terms of the Plan including, without limitation, the liquidation and distribution of ~~Litigation~~**the assets of the Liquidation** Trust ~~Claims~~.

In the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the ~~Litigation~~**Liquidation** Trust on the Effective Date, the proceeds of the settlement shall be distributed to the ~~Litigation~~**Liquidation** Trust Beneficiaries in the same manner as the ~~Litigation~~**Liquidation** Trust Interests. In the event of such a settlement, the Debtors that are parties to the settlement shall hold the proceeds in escrow for distribution on the Effective Date.

The ~~Litigation~~**Liquidation** Trust shall be deemed a "successor to the debtor" for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters.

Solely for tax purposes, the ~~Litigation~~**Liquidation** Trust Tax Owners shall be treated as grantors and owners of the ~~Litigation~~**Liquidation** Trust pursuant to section 671 et seq. of the Internal Revenue Code and the Treasury Regulations promulgated thereunder and any similar provision of state or local law. For federal income tax purposes, the Debtors intend that all parties (including, without limitation, the ~~Litigation~~**Liquidation** Trustee, the ~~Litigation~~**Liquidation** Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the ~~Litigation~~**Liquidation** Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the ~~Litigation~~**Liquidation** Trust is a deemed transfer to the ~~Litigation~~**Liquidation** Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such ~~Litigation~~**Liquidation** Trust ~~Beneficiaries~~**Tax Owners** to the ~~Litigation~~**Liquidation** Trust, and all income and gain of the ~~Litigation~~**Liquidation** Trust which is earned after such deemed transfer shall be taxed to the ~~Litigation~~**Liquidation** Trust Tax Owners on a current basis. In addition, the investment powers of the ~~Litigation~~**Liquidation** Trustee shall be strictly limited, as provided in the ~~Litigation~~**Liquidation** Trust Agreement.

The fair market value of the portion of the ~~Litigation~~**Liquidation** Trust assets that is treated for federal income tax purposes as having been transferred to each ~~Litigation~~**Liquidation** Trust Tax ~~Owners~~**Owner** as described in the preceding paragraph, and the fair market value of the portion of the ~~Litigation~~**Liquidation** Trust assets that is treated for federal income tax purposes as having been transferred to any ~~Litigation~~**Liquidation** Trust Tax ~~Owners~~**Owner** as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the ~~Litigation~~**Liquidation** Trustee, and all parties (including, without limitation, the ~~Litigation~~**Liquidation** Trustee, the ~~Litigation~~**Liquidation** Trust ~~Beneficiaries~~**Tax Owners**, and the transferors, for tax purposes, of any assets transferred to the ~~Litigation~~**Liquidation** Trust) shall utilize such fair market value determined by the ~~Litigation~~**Liquidation** Trustee for all federal income tax purposes.

The ~~Litigation~~**Liquidation** Trustee shall be responsible for filing all federal, state, and local tax returns for the ~~Litigation~~**Liquidation** Trust and paying any taxes imposed on the ~~Litigation~~**Liquidation** Trust. The ~~Litigation~~**Liquidation** Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the ~~Litigation~~**Liquidation** Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a ~~Litigation~~**Liquidation** Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such ~~Litigation~~**Liquidation** Trust Beneficiary for purposes of the Plan and the Plan Documents.

Any items of income, deduction, credit, or loss of the ~~Litigation~~**Liquidation** Trust shall be allocated by the ~~Litigation~~**Liquidation** Trustee for federal income tax purposes among current or former ~~Litigation~~**Liquidation** Trust Tax Owners, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former ~~Litigation~~**Liquidation** Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

See Section 10 hereof, "Certain Federal Income Tax Consequences of the Plan**,**" for further information.

(h) ~~Litigation~~**Liquidation** Trust Interests.

(1) Issuance of ~~Litigation~~**Liquidation** Trust Interests.

On the Initial Distribution Date, ~~Litigation~~**Liquidation** Trust Interests shall be issued to the Non-Environmental Unsecured Claimants and the Governmental Environmental Claimants pro rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non-Environmental Unsecured Claimants and Governmental Environmental Claimants. Promptly following notice from the Plan Administrator that the Disputed Claim of a Non-Environmental Unsecured Claimant or Governmental Environmental Claimant becomes an Allowed Claim, such Claimant shall be issued ~~Litigation~~**Liquidation** Trust Interests in such amount that upon issuance ~~corresponds~~**the ratio of the number of such Liquidation Trust Interests so issued to the total number of Liquidation Trust Interests, including such Liquidation Trust Interests, is equal** to the ratio of such Claimant's Allowed **Amount with respect to such Disputed** Claim to all Allowed **Amounts of** Claims held by all Class A and Class B ~~Litigation~~**Liquidation** Trust Beneficiaries **(immediately prior to their receipt of their Liquidation Trust Interests)**, including such Claimant**, with respect to which such Liquidation Trust Beneficiaries received Liquidation Trust Interests**. For purposes of the calculation contained ~~on~~**in** the preceding sentence, if a ~~Litigation~~**Liquidation** Trust Beneficiary has transferred his ~~Litigation~~**Liquidation** Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used **(and if less than all of such Liquidation Trust Beneficiary's Liquidation Trust Interests have been so transferred, the portion of the Allowed Claim corresponding to the portion of the Liquidation Trust Interests so transferred shall be used)**.

~~Litigation~~**Liquidation** Trust Interests will be divided into two classes: Class A ~~Litigation~~**Liquidation** Trust Interests and Class B ~~Litigation~~**Liquidation** Trust Interests. All ~~Litigation~~**Liquidation** Trust Interests issued to Non-Environmental Unsecured Claimants shall be designated "Class A ~~Litigation~~**Liquidation** Trust Interests" and all ~~Litigation~~**Liquidation** Trust Interests issued to Governmental Environmental Claimants shall be designated "Class B ~~Litigation~~**Liquidation** Trust Interests." The designation of ~~Litigation~~**Liquidation** Trust Interests as Class A or Class B is **solely** for purposes of appointing members of the ~~Litigation~~**Liquidation** Trust Board as described above. ~~Distribution of Litigation~~**Distributions of Liquidation** Trust Proceeds or other property of the ~~Litigation~~**Liquidation** Trust shall be made to holders of ~~Litigation~~**Liquidation** Trust Interests on a pro rata basis, as more fully described below.

The ~~Litigation~~**Liquidation** Trust Beneficiaries may convey, assign, sell, or otherwise transfer a ~~Litigation~~**Liquidation** Trust Interest subject to the limitations contained in the ~~Litigation~~**Liquidation** Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the ~~Litigation~~**Liquidation** Trustee (after the Effective Date) may at any time cause the ~~Litigation~~**Liquidation** Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws.

(2) Interests Beneficial Only.

The ownership of a ~~Litigation~~**Liquidation** Trust Interest shall not entitle any ~~Litigation~~**Liquidation** Trust Beneficiary to (A) any title in or to the assets of the ~~Litigation~~**Liquidation** Trust as such (which title shall be vested in the ~~Litigation~~**Liquidation** Trustee) or to any right to call for a partition or division of the assets of the ~~Litigation~~**Liquidation** Trust or to require an accounting; or (B) any voting rights with respect to the administration of the ~~Litigation Trust and~~**Liquidation Trust (other than the right to appoint members of the Liquidation Trust Board) or** the actions of the ~~Litigation~~**Liquidation** Trustee in connection therewith.

(3) Maintenance of Register.

The ~~Litigation~~**Liquidation** Trustee shall appoint a ~~Litigation~~**Liquidation** Trust Registrar, which may be the ~~Litigation~~**Liquidation** Trustee, for the purpose of recording ownership of the ~~Litigation~~**Liquidation** Trust Interests. The ~~Litigation~~**Liquidation** Trust Register shall contain the names, addresses for payment and notice, and class and number of ~~Litigation~~**Liquidation** Trust Interests of each of the ~~Litigation~~**Liquidation** Trust Beneficiaries. The ~~Litigation~~**Liquidation** Trust Registrar, if other than the ~~Litigation~~**Liquidation** Trustee, may be such other institution acceptable to the ~~Litigation~~**Liquidation** Trustee and shall be entitled to receive reasonable compensation from the ~~Litigation~~**Liquidation** Trust as an expense of the ~~Litigation~~**Liquidation** Trust. The Indenture Trustees shall be the holders of the Class A ~~Litigation~~**Liquidation** Trust Interests with respect to the Bonds for which they serve as Indenture Trustee, and as such shall be listed in the ~~Litigation~~**Liquidation** Trust Register as the ~~Litigation~~**Liquidation** Trust Beneficiaries on account of the Bondholders' Claims.

(4) Evidence of ~~Litigation~~**Liquidation** Trust Interests.

Ownership of a ~~Litigation~~**Liquidation** Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by book entry in the ~~Litigation~~**Liquidation** Trust Register.

(5) Securities Laws Matters.

To the extent the ~~Litigation~~**Liquidation** Trust Interests are deemed to be "securities," the issuance of ~~Litigation~~**Liquidation** Trust Interests under the Plan are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the ~~Litigation~~**Liquidation** Trustee determines, with the advice of counsel, that the ~~Litigation~~**Liquidation** Trust is required to comply with registration and reporting requirements of the Exchange Act, then the ~~Litigation~~**Liquidation** Trustee shall take any and all actions deemed necessary or appropriate by the ~~Litigation~~**Liquidation** Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the SEC. Notwithstanding the foregoing procedure, nothing in the Plan shall be deemed to preclude the ~~Litigation~~**Liquidation** Trustee from amending the ~~Litigation~~**Liquidation** Trust Agreement to make such changes as deemed necessary or appropriate by the ~~Litigation~~**Liquidation** Trustee, with the advice of counsel, to ensure that the ~~Litigation~~**Liquidation** Trust is not subject to registration or reporting requirements of the Exchange Act.

The Debtors anticipate that the ~~Litigation~~**Liquidation** Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to file with the SEC and send to the ~~Litigation~~**Liquidation** Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on From 10-Q, and Current Reports on Form 8-K. The cost of the preparation, filing, and delivery of any such reports would be an expense of the ~~Litigation~~**Liquidation** Trust.

Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the ~~Litigation~~**Liquidation** Trust pursuant to the Exchange Act, if it is determined that compliance with such requirements would be burdensome on the ~~Litigation~~**Liquidation** Trust. The Debtors have not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.

The ~~Litigation~~**Liquidation** Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the ~~Litigation~~**Liquidation** Trust Agreement, unless the holder is an "underwriter" with respect to such ~~Litigation~~**Liquidation** Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines "underwriter" for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim, ~~or~~ (B) offers to sell securities issued under a plan for the holders of such securities, ~~or~~ (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities, or (D) is a controlling person of the issuer of the securities. Entities who believe they may be "underwriters" under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.

(i) Distributions of ~~Litigation~~ Proceeds and Other Property.

The ~~Litigation~~**Liquidation** Trustee shall apply all ~~Litigation~~**Liquidation Trust** Proceeds, any proceeds therefrom, and any other Cash of the ~~Litigation Trust~~**Liquidation Trust (other than the Liquidation Trust Expense Fund)** in the following order:

first, to pay ~~(or reserve for)~~ all costs and expenses of the ~~Litigation~~**Liquidation** Trust to the extent not paid by or from the ~~Litigation~~**Liquidation Trust** Expense Fund, including, without limitation, compensation payable to the ~~Litigation Trustee~~**Liquidation Trustee, to satisfy other liabilities incurred or assumed by the Liquidation Trust (or to which the assets are otherwise subject) in accordance with the Plan or the Liquidation Trust Agreement, to hold such amounts in reserve as the Liquidation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the assets of the Liquidation Trust during liquidation (including the Liquidation Trust Expense Fund)**, and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the ~~Litigation~~**Liquidation** Trust as a result of the allocation of tax items by the ~~Litigation~~**Liquidation** Trustee or the allowance or disallowance of Disputed Claims;

second, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be delivered for the purposes of satisfying the Disputed Claims Reserve; and

third, to pay any remaining amounts to the ~~Litigation~~**Liquidation** Trust Beneficiaries pro rata based on their ~~Litigation~~**Liquidation** Trust Interest holdings.

If, upon termination of the ~~Litigation~~**Liquidation** Trust, the Litigation **Trust** Expense Fund has funds remaining after the payment of all of the ~~Litigation~~**Liquidation** Trust's expenses, such remaining funds shall be paid to the ~~Litigation~~**Liquidation** Trust Beneficiaries pro rata based on their ~~Litigation~~**Liquidation** Trust interest holdings.

(j) Termination of the ~~Litigation~~**Liquidation** Trust.

The ~~Litigation~~**Liquidation** Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the ~~Litigation~~**Liquidation** Trust in accordance with the terms of the ~~Litigation~~**Liquidation** Trust Agreement and the Plan; or (2) the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the ~~Litigation~~**Liquidation** Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the ~~Litigation~~**Liquidation** Trust. The Bankruptcy Court may approve multiple extensions of the term of the ~~Litigation~~**Liquidation** Trust; provided that (x) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term; and (y) the ~~Litigation~~**Liquidation** Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the ~~Litigation~~**Liquidation** Trust as a grantor trust for federal income tax purposes.

The ~~Litigation~~**Liquidation** Trustee shall not unduly prolong the duration of the ~~Litigation~~**Liquidation** Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the ~~Litigation~~**Liquidation** Trust Claims and to effect the distribution of the assets of the ~~Litigation Trust~~**Liquidation Trust, including the Plan Sponsor Promissory**

Note, to the holders of the ~~Litigation~~**Liquidation** Trust Interests in accordance with the terms of the Plan as soon as practicable.

4.2 The SCC Litigation Trust.

(a) Creation of the SCC Litigation Trust.

On the Effective Date, the SCC Litigation Trust shall be created, as provided in the SCC Litigation Trust Agreement. Prior to the Effective Date, the SCC Litigation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code.

Notwithstanding the foregoing, the Debtors reserve the right to seek to auction interests in the SCC Litigation in anticipation of Confirmation. If the Debtors determine that pursuit of such an auction is in the best interest of their Estates, they will file an appropriate motion with the Bankruptcy Court to approve the auction procedures. If, as a result of any such auction, the Debtors' interest in the SCC Litigation is to be transferred in its entirety, the auction proceeds shall be distributed as Plan Consideration and the SCC Litigation Trust will not be created (and no SCC Litigation Trust Interests will be distributed under the Plan). If the Debtors decide, as a result of the auction, to transfer only a portion of their interest in the SCC Litigation, the SCC Litigation Trust will be created and the remaining SCC Litigation Trust Interests shall be issued in accordance ~~herewith~~**with Article 6.2 of the Plan**. If the Debtors decide that no interests in the SCC Litigation Trust shall be sold at the auction or otherwise, then the SCC Litigation Trust will not be created and the SCC Litigation will be contributed to the ~~Litigation~~**Liquidation** Trust.

(b) Appointment of ~~SCC Litigation Trustee~~**Trustees**.

The Plan Administrator shall serve as the SCC Litigation Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the SCC Litigation Trustee shall be appointed. The SCC Litigation Trustee shall report to the SCC Litigation Trust Board.

The SCC Litigation Trustee shall have and perform all of the rights, powers, and duties set forth in the SCC Litigation Trust Agreement.

The SCC Litigation Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate one Person who will initially serve as Delaware Trustee of the SCC Litigation Trust.

The duties, responsibilities, rights, and obligations of the SCC Litigation Trustee and the Delaware Trustee for the SCC Litigation Trust shall terminate in accordance with the terms of the SCC Litigation Trust Agreement.

(c) SCC Litigation Trust Board.

The SCC Litigation Trust Board shall consist of three members initially selected as follows: (1) one selected by the ASARCO Committee; (2) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); and (3) one selected by the SCC Purchasers.

Successors to the members of the SCC Litigation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, **by** the then-current holders of a majority of the Class A SCC Litigation Trust Interests; (2) in the case of the member originally selected by the DOJ, **by** the then-current holders of a majority of the Class B SCC Litigation Trust Interests; and (3) in the case of the member originally selected by the SCC Purchasers at auction, **by** the then-current holders of a majority of the Class C SCC Litigation Trust Interests; *provided, however*, that any holder of Class A SCC Litigation Trust Interests, Class B SCC Litigation Trust Interests, or Class C SCC Litigation Trust Interests who is a party adverse to ASARCO in the SCC Litigation, or is an Affiliate of any party adverse to ASARCO in the SCC Litigation, shall not be entitled to the foregoing selection rights.

Notwithstanding this section (c), the Debtors may, prior to the Effective Date, amend the SCC Litigation Trust Agreement to do any of the following: increase or decrease the number of members of the SCC Litigation Trust Board, change the method by which such members are designated, or change the number of such

members whose approval should be required for actions or omissions to be taken by the SCC Litigation Trustee in respect of the SCC Litigation Trust Claims.

(d) Purpose of the SCC Litigation Trust.

The SCC Litigation Trust shall be established as a statutory trust for the purpose of pursuing the SCC Litigation Trust Claims, liquidating all assets of the SCC Litigation Trust for the benefit of the SCC Litigation Trust Beneficiaries, receiving all SCC Litigation Trust Claim recoveries, and distributing the resulting SCC Litigation Trust Proceeds and other Cash of the SCC Litigation Trust to the SCC Litigation Trust Beneficiaries after payment of all expenses of the SCC Litigation Trust. The primary purpose of the SCC Litigation Trust is to liquidate its assets, and the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

(e) Transfer of SCC Litigation Trust Claims to the SCC Litigation Trustee.

On the Effective Date, the Debtors shall transfer**, assign, and deliver** to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (3) the SCC Litigation **Trust** Expense Fund. As soon as practicable after the Effective Date, the Debtors shall transfer to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries all documents (or copies thereof) in the Debtors' possession, custody, or control in connection with the SCC Litigation Trust Claims. On and after the Effective Date, the SCC Litigation Trustee shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith. The SCC Litigation Trustee shall be granted the rights and powers of a debtor-in-possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the SCC Litigation Trust Agreement.

(f) The SCC Litigation Trust.

The SCC Litigation Trust Agreement, substantially in the form of **Exhibit 5** to the Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims to be transferred to the SCC Litigation Trust.

The SCC Litigation Trustee shall have full authority (subject, in certain instances, to approval by the SCC Litigation Trust Board) to take any steps necessary to administer the SCC Litigation Trust Claims, including, without limitation, the duty and obligation to liquidate the SCC Litigation Trust Claims.

All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the SCC Litigation Trustee in pursuing the SCC Litigation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the SCC Litigation Trust Claims to representatives of the SCC Litigation Trust for the purpose of enabling the SCC Litigation Trustee to perform the SCC Litigation Trustee's tasks under the SCC Litigation Trust Agreement and the Plan; *provided, however*, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

The SCC Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee ~~or~~**and** the SCC Litigation Trust Board may deem necessary or appropriate, and at the sole expense of the SCC Litigation Trust, to aid in the performance of the SCC Litigation Trustee's responsibilities pursuant to the terms of the Plan including, without limitation, the liquidation and distribution of SCC Litigation Trust Claims.

In the event that ASARCO obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement of the SCC Litigation prior to the Effective Date, the proceeds of the settlement shall be distributed to the SCC Litigation Trust Beneficiaries in the same manner as the SCC Litigation Trust Interests. In the event of such a settlement ASARCO shall hold the proceeds in escrow for distribution on the Effective Date.

The SCC Litigation Trust shall be deemed a "successor to the debtor" for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters.

Solely for tax purposes, the SCC Litigation Trust Tax Owners shall be treated as grantors and owners of the SCC Litigation Trust pursuant to section 671 *et seq.* of the Internal Revenue Code and the Treasury Regulations promulgated thereunder and any similar provision of state or local law. For federal income tax purposes, the Debtors intend that all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the SCC Litigation Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such SCC Litigation Trust Tax Owners to the SCC Litigation Trust, and all income and gain of the SCC Litigation Trust which is earned after such deemed transfer shall be taxed to the SCC Litigation Trust Tax Owners on a current basis. In addition, the investment powers of the SCC Litigation Trustee shall be strictly limited, as provided in the SCC Litigation Trust Agreement.

The fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to each SCC Litigation Trust Tax ~~Owners~~**Owner**, as described in the preceding paragraph, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any SCC Litigation Trust Tax ~~Owners~~**Owner** as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the SCC Litigation Trustee, and all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize such fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the SCC Litigation Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to ~~a~~**an** SCC Litigation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Plan and the Plan Documents.

Any items of income, deduction, credit, or loss of the SCC Litigation Trust shall be allocated by the SCC Litigation Trustee for federal income tax purposes among current or former SCC Litigation Trust ~~Beneficiaries~~**Tax Owners**, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former SCC Litigation Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

See Section 10 hereof, "Certain Federal Income Tax Consequences of the Plan," for further information.

(h) SCC Litigation Trust Interests.

(1) Issuance of SCC Litigation Trust Interests.

On the Initial Distribution Date, SCC Litigation Trust Interests shall be issued to the SCC Purchasers, the Non-Environmental Unsecured Claimants, and the Governmental Environmental Claimants as follows~~, and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims.~~:

An amount of SCC Litigation Trust Interests equal to the SCC Purchaser Percentage shall be issued to the SCC Purchasers pro rata based on their respective SCC Litigation Purchase Price paid for such interests. All SCC Litigation Trust Interests issued to SCC Purchasers shall be designated "Class C SCC Litigation Trust Interests."

All remaining SCC Litigation Trust Interests shall be issued to Non-Environmental Unsecured Claimants and Governmental Environmental Claimants pro rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non-Environmental Unsecured Claimants and Governmental Environmental Claimants. All **SCC** Litigation Trust Interests issued to Non-Environmental Unsecured Claimants shall be designated "Class A **SCC** Litigation Trust Interests" and all **SCC** Litigation Trust Interests issued to the Governmental Environmental Claimants shall be designated "Class B **SCC** Litigation Trust Interests."

Promptly following notice from the Plan Administrator that any Disputed Claim of a Non-Environmental Unsecured Claimant or a Governmental Environmental Claimant has become an Allowed Claim, such Claimant shall be issued SCC Litigation Trust Interests (designated as either Class A or Class B as described above) in such amount that ~~upon issuance corresponds~~**, upon issuance the ratio of the number of such SCC Litigation Trust Interests so issued to the total number of Class A and Class B SCC Litigation Trust Interests, including such SCC Litigation Trust Interests, is equal** to the ratio of such Claimant's Allowed **Amount with respect to such Disputed** Claim to all Allowed **Amounts of** Claims held by ~~the~~**all Class A and Class B** SCC Litigation Trust Beneficiaries ~~holding~~**(immediately prior to their receipt of their SCC Litigation Trust Interests), including such Claimant, with respect to which such SCC Litigation Trust Beneficiaries received** Class A or Class B SCC Litigation Trust Interests~~, including such Claimant~~. For purposes of the calculation contained in the preceding sentence, if an SCC Litigation Trust Beneficiary has transferred his Class A or Class B SCC Litigation Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used **(and if less than all of such SCC Litigation Trust Beneficiary's Class A or Class B SCC Litigation Trust Interests have been so transferred, the portion of the Allowed Claim corresponding to the portion of such SCC Litigation Trust Interests so transferred shall be used)**. The additional issuance of Class A or Class B **SCC** Litigation Trust Interests shall not affect or change in any way the SCC Purchaser Percentage.

The SCC Litigation Trust Beneficiaries may convey, assign, sell, or otherwise transfer an SCC Litigation Trust Interest subject to the limitations contained in the SCC Litigation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the SCC Litigation Trustee (after the Effective Date) may at any time cause the SCC Litigation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws.

(2) Interests Beneficial Only.

The ownership of an SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to (A) any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting; or (B) any voting rights with respect to the administration of the SCC Litigation Trust ~~and~~**(other than the right to appoint members of the SCC Litigation Trust Board) or** the actions of the SCC Litigation Trustee in connection therewith.

(3) Maintenance of SCC Litigation Trust Register.

The SCC Litigation Trustee shall appoint an SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of recording ownership of the SCC Litigation Trust Interests. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and **class and** number ~~and class~~ of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries. The SCC Litigation Trust Registrar, if other than the SCC Litigation Trustee, may be such other institution acceptable to the SCC Litigation Trustee and shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust. The Indenture Trustees shall be the holders of the Class A SCC Litigation Trust Interests with respect to the Bonds for which they serve as

Indenture Trustee, and as such shall be listed in the SCC Litigation Trust Register as the SCC Litigation Trust Beneficiaries on account of the Bondholders' Claims.

(4) Evidence of SCC Litigation Trust Interests.

Ownership of ~~a~~**an** SCC Litigation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by book entry in the SCC Litigation Trust Register.

(5) Securities Laws Matters.

To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under the Plan are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the SCC Litigation Trustee determines, with the advice of counsel, that the SCC Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the SCC Litigation Trustee shall take any and all actions deemed necessary or appropriate by the SCC Litigation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the SEC. Notwithstanding the foregoing procedure, nothing in the Plan shall be deemed to preclude the SCC Litigation Trustee from amending the SCC Litigation Trust Agreement to make such changes as deemed necessary or appropriate by the SCC Litigation Trustee, with the advice of counsel, to ensure that the SCC Litigation Trust is not subject to registration or reporting requirements of the Exchange Act.

The Debtors anticipate that the SCC Litigation Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to file with the SEC and send to the SCC Litigation Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on From 10-Q, and Current Reports on Form 8-K. The cost of the preparation, filing, and delivery of any such reports would be an expense of the SCC Litigation Trust.

Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the SCC Litigation Trust pursuant to the Exchange Act, if it is determined that compliance with such requirements would be burdensome on the SCC Litigation Trust. The Debtors have not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.

The SCC Litigation Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the SCC Litigation Trust Agreement, unless the holder is an "underwriter" with respect to such SCC Litigation Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines "underwriter" for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim, ~~or~~ (B) offers to sell securities issued under a plan for the holders of such securities, ~~or~~ (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities, or (D) is a controlling person of the issuer of the securities. Entities who believe they may be "underwriters" under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.

(i) Distributions of SCC Litigation Proceeds and Other Property.

The SCC Litigation Trustee shall apply all SCC Litigation Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust **(other than the SCC Litigation Trust Expense Fund)** in the following order:

(1) first, to pay ~~(or reserve for)~~ all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation **Trust** Expense Fund, including, without limitation, compensation payable to the SCC Litigation Trustee, **to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets**

are otherwise subject) in accordance with the Plan or the SCC Litigation Trust Agreement, to hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the SCC Litigation Trust Assets (including the SCC Litigation Trust Expense Fund), and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims;

(2) second, to distribute to the SCC Litigation Trust Beneficiaries holding Class C SCC Litigation Trust Interests pro rata based on their respective Class C SCC Litigation Trust Interest holdings such percentage of the remaining amount equal to the SCC Purchaser Percentage;

(3) third, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be delivered to the Disputed Claims Reserve for the purpose of satisfying Disputed Claims; and

(4) fourth, to distribute to the SCC Litigation Trust Beneficiaries holding Class A and Class B SCC Litigation Trust Interests pro rata based on their respective Class A and Class B SCC Litigation Trust Interest holdings, all remaining amounts.

If, upon termination of the SCC Litigation Trust, the SCC Litigation **Trust** Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be paid to the SCC Litigation Trust Beneficiaries as follows:

(1) first, to the SCC Litigation Trust Beneficiaries holding Class C SCC Litigation Trust Interests pro rata based on their respective Class C SCC Litigation Trust Interest holdings, a percentage of such funds equal to the SCC Purchaser Percentage; and

(2) second, to the SCC Litigation Trust Beneficiaries holding Class A and Class B SCC Litigation Trust Interests pro rata based on their respective Class A and Class B SCC Litigation Trust Interest holdings, all remaining amounts.

(j) Termination of the SCC Litigation Trust.

The SCC Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of the SCC Litigation Trust Agreement and the Plan; or (2) the fifth anniversary of the Effective Date; *provided, however,* that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that (x) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term; and (y) the SCC Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the SCC Litigation Trust as a grantor trust for federal income tax purposes.

The SCC Litigation Trustee shall not unduly prolong the duration of the SCC Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the SCC Litigation Trust Claims and to effect the distribution of the assets of the SCC Litigation Trust to the holders of the SCC Litigation Trust Interests in accordance with the terms of the Plan as soon as practicable.

~~4.3 The Residual Assets Liquidation Trust.~~

~~(a) Creation of the Residual Assets Liquidation Trust.~~

~~On the Effective Date, the Residual Assets Liquidation Trust shall be created, as provided in the Residual Assets Liquidation Trust Agreement. Prior to the Effective Date, the Residual Assets Liquidation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code.~~

(b) Appointment of Residual Assets Liquidation Trustee.

The Plan Administrator shall serve as the Residual Assets Liquidation Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the Residual Assets Liquidation Trustee shall be appointed. The Residual Assets Liquidation Trustee shall report to the Residual Assets Liquidation Trust Board.

The Residual Assets Liquidation Trustee shall have and perform all of the rights, powers, and duties set forth in the Residual Assets Liquidation Trust Agreement.

The Residual Assets Liquidation Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate the Person who shall initially serve as Delaware Trustee of the Residual Assets Liquidation Trust.

The duties, responsibilities, rights, and obligations of the Residual Assets Liquidation Trustee and the Delaware Trustee for the Residual Assets Liquidation Trust shall terminate in accordance with the terms of the Residual Assets Liquidation Trust Agreement.

(c) Residual Assets Liquidation Trust Board.

The Residual Assets Liquidation Trust Board shall consist of three members initially selected as follows: (1) one selected by the ASARCO Committee; (2) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); and (3) one selected by the other two members of the Residual Assets Liquidation Trust Board.

Successors to the members of the Residual Assets Liquidation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, the then-current holders of a majority of the Class A Residual Assets Liquidation Trust Interests; (2) in the case of the member originally selected by the DOJ, the then-current holders of a majority of the Class B Residual Assets Liquidation Trust Interests; and (3) in the case of the member originally selected by the other two members of the Residual Assets Liquidation Trust Board, the then-current other two members of the Residual Assets Liquidation Trust Board.

(d) Purpose of the Residual Assets Liquidation Trust.

The Residual Assets Liquidation Trust shall be established as a statutory trust for the purpose of liquidating the Residual Assets for the benefit of the Residual Assets Liquidation Trust Beneficiaries and distributing the proceeds and other Cash of the Residual Assets Liquidation Trust to the Residual Assets Liquidation Trust Beneficiaries after payment of all expenses of the Residual Assets Liquidation Trust. The primary purpose of the Residual Assets Liquidation Trust is to liquidate its assets, and the Residual Assets Liquidation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Residual Assets Liquidation Trust.

(e) Transfer of Residual Assets to the Residual Assets Liquidation Trustee.

On the Effective Date, the Debtors shall transfer to the Residual Assets Liquidation Trustee for the benefit of the Residual Assets Liquidation Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in the Residual Assets free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law and (2) the Residual Assets Liquidation Expense Fund in an amount sufficient to fund the operations of the Residual Assets Liquidation Trust. As soon as practicable after the Effective Date, the Debtors shall transfer to the Residual Assets Liquidation Trustee for the benefit of the Residual Assets Liquidation Trust Beneficiaries all documents (or copies thereof) in the Debtors' possession, custody, or control in connection with the Residual Assets. On and after the Effective Date, the Residual Assets Liquidation Trustee shall be a representative of the Estates under section 1123(b)(4) of the Bankruptcy Code with respect to the Residual Assets. The Residual Assets Liquidation Trustee shall be granted the rights and powers of a debtor in-possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to sell, transfer, or otherwise dispose of the Residual Assets and distribute the proceeds of such assets, and such other rights and powers as set forth in the Residual Assets Liquidation Trust Agreement.

(f) The Residual Assets Liquidation Trust.

The Residual Assets Liquidation Trust Agreement, substantially in the form of **Exhibit 9** to the Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the Residual Assets Liquidation Trustee, the Residual Assets Liquidation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument necessary to cause all of the Debtors' respective rights, title, and interests in and to the Residual Assets to be transferred to the Residual Assets Liquidation Trust.

The Residual Assets Liquidation Trustee shall have full authority (subject, in certain instances, to approval of the Residual Assets Liquidation Trust Board) to take any steps necessary to administer the Residual Assets, including, without limitation, the duty and obligation to liquidate the Residual Assets.

All costs and expenses associated with the administration of the Residual Assets Liquidation Trust shall be the responsibility of and paid by the Residual Assets Liquidation Trust.

The Residual Assets Liquidation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the Residual Assets Liquidation Trustee and the Residual Assets Liquidation Trust Board may deem necessary or appropriate, and at the sole expense of the Residual Assets Liquidation Trust, to aid in the performance of the Residual Assets Liquidation Trustee's responsibilities pursuant to the terms of the Plan, including, without limitation, the liquidation and distribution of Residual Assets.

The Residual Assets Liquidation Trust shall be deemed a "successor to the debtor" for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters.

Solely for tax purposes, the Residual Assets Liquidation Trust Tax Owners shall be treated as grantors and owners of the Residual Assets Liquidation Trust pursuant to section 671 *et seq.* of the Internal Revenue Code and the Treasury Regulations promulgated thereunder and any similar provision of state or local law. For federal income tax purposes, the Debtors intend that all parties (including, without limitation, the Residual Assets Liquidation Trustee, the Residual Assets Liquidation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the Residual Assets Liquidation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Residual Assets Liquidation Trust is a deemed transfer to the Residual Assets Liquidation Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Residual Assets Liquidation Trust Tax Owners to the Residual Assets Liquidation Trust, and all income and gain of the Residual Assets Liquidation Trust which is earned after such deemed transfer shall be taxed to the Residual Assets Liquidation Trust Tax Owners on a current basis. In addition, the investment powers of the Residual Assets Liquidation Trustee shall be strictly limited, as provided in the Residual Assets Liquidation Trust Agreement.

The fair market value of the portion of the assets of the Residual Assets Liquidation Trust that is treated for federal income tax purposes as having been transferred to each Residual Assets Liquidation Trust Beneficiary as described in the preceding paragraph, and the fair market value of the portion of the assets of the Residual Assets Liquidation Trust that is treated for federal income tax purposes as having been transferred to any Residual Assets Liquidation Trust Beneficiary as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the Residual Assets Liquidation Trustee, and all parties (including, without limitation, the Residual Assets Liquidation Trustee, the Residual Assets Liquidation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Residual Assets Liquidation Trust) shall utilize such fair market value determined by the Residual Assets Liquidation Trustee for all federal income tax purposes.

The Residual Assets Liquidation Trustee shall be responsible for filing all federal, state, and local tax returns for the Residual Assets Liquidation Trust and paying any taxes imposed on the Residual Assets Liquidation Trust. The Residual Assets Liquidation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Residual Assets Liquidation Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a Residual Assets Liquidation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such Residual Assets Liquidation Trust Beneficiary for purposes of the Plan and the Plan Documents.

Any items of income, deduction, credit, or loss of the Residual Assets Liquidation Trust shall be allocated by the Residual Assets Liquidation Trustee for federal income tax purposes among current or former Residual Assets Liquidation Trust Tax Owners, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former Residual Assets Liquidation Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

See Section 10 hereof, "Certain Federal Income Tax Consequences of the Plan" for further information.

(h) Residual Assets Liquidation Trust Interests.

(1) Issuance of Residual Assets Liquidation Trust Interests.

On the Initial Distribution Date, Residual Assets Liquidation Trust Interests shall be issued to the Non-Environmental Unsecured Claimants and the Governmental Environmental Claimants pro rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non-Environmental Unsecured Claimants and Governmental Environmental Claimants. Promptly following notice from the Plan Administrator that the Disputed Claim of any Non-Environmental Unsecured Claimant or Governmental Environmental Claimant becomes an Allowed Claim, such Claimant shall be issued Residual Assets Liquidation Trust Interests in such amount that corresponds upon issuances to the ratio of such Claimant's Allowed Claim to all Allowed Claims held by all Residual Assets Liquidation Trust Beneficiaries, including such Claimant. For purposes of the calculation contained in the preceding sentence, if a Residual Assets Liquidation Trust Beneficiary has transferred his Residual Assets Liquidation Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used.

The Residual Assets Liquidation Trust Interests shall be divided into two classes: Class A Residual Assets Liquidation Trust Interests and Class B Residual Assets Liquidation Trust Interests. All Residual Assets Liquidation Trust Interests issued to Non-Environmental Unsecured Claimants shall be designated "Class A Residual Assets Liquidation Trust Interests" and all Residual Assets Liquidation Trust Interests issued to the Governmental Environmental Claimants shall be designated "Class B Residual Assets Liquidation Trust Interests." The designation of Residual Assets Liquidation Trust Interests as Class A or Class B is for purposes of appointing members of the Residual Assets Liquidation Trust Board as described above. Distributions of Residual Assets Liquidation Trust Proceeds or other property of the Residual Assets Liquidation Trust shall be made to holders of Residual Assets Liquidation Trust Interests on a pro rata basis, as more fully described below.

The Residual Assets Liquidation Trust Beneficiaries may convey, assign, sell, or otherwise transfer a Residual Assets Liquidation Trust Interest subject to the limitations contained in the Residual Assets Liquidation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the Residual Assets Liquidation Trustee (after the Effective Date) may cause the Residual Assets Liquidation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws.

(2) Interests Beneficial Only.

The ownership of a Residual Assets Liquidation Trust Interest shall not entitle any Residual Assets Liquidation Trust Beneficiary to (A) any title in or to the assets of the Residual Assets Liquidation Trust as such (which title shall be vested in the Residual Assets Liquidation Trustee) or to any right to call for a partition or division of the assets of the Residual Assets Liquidation Trust or to require an accounting; or (B) any voting rights with respect to the administration of the Residual Assets Liquidation Trust and the actions of the Residual Assets Liquidation Trustee in connection therewith.

(3) Maintenance of Register.

The Residual Assets Liquidation Trustee shall appoint a Residual Assets Liquidation Trust Registrar, which may be the Residual Assets Liquidation Trustee, for the purpose of recording ownership of the Residual Assets Liquidation Trust Interests. The Residual Assets Liquidation Trust Register shall contain the names, addresses for payment and notice, and number and class of Residual Assets Liquidation Trust Interests of each of the Residual Assets Liquidation Trust Beneficiaries. The Residual Assets

~~Liquidation Trust Registrar, if other than the Residual Assets Liquidation Trustee, may be such other institution acceptable to the Residual Assets Liquidation Trustee and shall be entitled to receive reasonable compensation from the Residual Assets Liquidation Trust as an expense of the Residual Assets Liquidation Trust. The Indenture Trustees shall be the holders of the Class A Residual Assets Liquidation Trust Interests with respect to the Bonds for which they serve as Indenture Trustee, and as such shall be listed in the Residual Assets Liquidation Trust Register as the Residual Assets Liquidation Trust Beneficiaries on account of the Bondholders' Claims.~~

~~(4) Evidence of Residual Assets Liquidation Trust Interests.~~

~~Ownership of a Residual Assets Liquidation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by a book entry in the Residual Assets Liquidation Trust Register.~~

~~(5) Securities Laws Matters.~~

~~To the extent the Residual Assets Liquidation Trust Interests are deemed to be "securities," the issuance of Residual Assets Liquidation Trust Interests under the Plan are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the Residual Assets Liquidation Trustee determines, with the advice of counsel, that the Residual Assets Liquidation Trust is required to comply with registration and reporting requirements of the Exchange Act, the Investment Company Act, or the Trust Indenture Act, then the Residual Assets Liquidation Trustee shall take any and all actions deemed necessary or appropriate by the Residual Assets Liquidation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the SEC. Notwithstanding the foregoing procedure, nothing in the Plan shall be deemed to preclude the Residual Assets Liquidation Trustee from amending the Residual Assets Liquidation Trust Agreement to make such changes as deemed necessary or appropriate by the Residual Assets Liquidation Trustee, with the advice of counsel, to ensure that the Residual Assets Liquidation Trust is not subject to any or all of such registration or reporting requirements of the Exchange Act.~~

~~The Debtors anticipate that the Residual Assets Liquidation Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to file with the SEC and send to the Residual Assets Liquidation Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on From 10-Q, and Current Reports on Form 8-K. The cost of the preparation, filing, and delivery of any such reports would be an expense of the Residual Assets Liquidation Trust.~~

~~Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the Residual Assets Liquidation Trust pursuant to the Exchange Act, the Investment Company Act, or the Trust Indenture Act, if it is determined that compliance with such requirements would be burdensome on the Residual Assets Liquidation Trust. The Debtors have not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.~~

~~The Residual Assets Liquidation Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the Residual Assets Liquidation Trust Agreement, unless the holder is an "underwriter" with respect to such Residual Assets Liquidation Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines "underwriter" for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim, or (B) offers to sell securities issued under a plan for the holders of such securities, or (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities, or (D) is a controlling person of the issuer of the securities. Entities who believe they may be "underwriters" under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.~~

~~(i) Distributions of Residual Assets Liquidation Proceeds and Other Property.~~

~~The Residual Assets Liquidation Trustee shall apply all Residual Assets Liquidation Proceeds, any proceeds therefrom, and any other Cash of the Residual Assets Liquidation Trust in the following order: first, to pay (or reserve for), all costs and expenses of the Residual Assets Liquidation Trust to the extent not paid by or from the Residual Assets Liquidation Expense Fund, including, without limitation, compensation payable to the Residual Assets Liquidation Trustee, and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the Residual Assets Liquidation Trust as a result of the allocation of tax items by the Residual Assets Liquidation Trustee or the allowance or disallowance of Disputed Claims; second, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time be delivered to the Disputed Claims Reserve for the purpose of satisfying Disputed Claims to be held in the Disputed Claims Reserve; and third, to pay any remaining amounts to the Residual Assets Liquidation Trust Beneficiaries pro rata based on their Residual Assets Liquidation Trust Interests holdings. If, upon termination of the Residual Assets Liquidation Trust, the Residual Assets Liquidation Expense Fund has funds remaining after the payment of all of the Residual Assets Liquidation Trust's expenses, such remaining funds shall be paid to the Residual Assets Liquidation Trust Beneficiaries pro rata based on their Residual Assets Liquidation Trust Interest holdings. Promptly following the date on which the Disputed Claim of any Non-Environmental Unsecured Claimant or any Governmental Environmental Claimant becomes an Allowed Claim, the Plan Administrator shall distribute the appropriate portion of the Residual Assets Liquidation Trust Interests held in the Disputed Claims Reserve to such Claimant in accordance with Article 13.8 of the Plan and the Plan Administration Agreement.~~

~~(j) Termination of the Residual Assets Liquidation Trust.~~

~~The Residual Assets Liquidation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the Residual Assets Liquidation Trust in accordance with the terms of the Residual Assets Liquidation Trust Agreement and the Plan; or (2) the fifth anniversary of the Effective Date; *provided, however,* that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Residual Assets Liquidation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the Residual Assets Liquidation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Residual Assets Liquidation Trust; provided that (x) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term; and (y) the Residual Assets Liquidation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Residual Assets Liquidation Trust as a grantor trust for federal income tax purposes.~~

~~The Residual Assets Liquidation Trustee shall not unduly prolong the duration of the Residual Assets Liquidation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the Residual Assets and to effect the distribution of the assets of the Residual Assets Liquidation Trust to the holders of the Residual Assets Liquidation Trust Interests in accordance with the terms of the Plan as soon as practicable.~~

SECTION 5
THE ASBESTOS TRUST

5.1 Creation of the Asbestos Trust.

On the Effective Date or such earlier date as the Debtors deem appropriate, the Asbestos Trust shall be created, as provided in the Asbestos Trust Agreement.

The Parent believes that the Debtors' Plan is patently unconfirmable because it will be rejected by and cannot be confirmed without the approval of the asbestos representatives. The Parent argues that the Debtors can not obtain approval for a section 524(g) trust over the objections of the FCR and the asbestos representatives. At the hearing on the Sterlite 9019 Motion, Sterlite's counsel orally represented that it might be willing to close without a section 524(g) trust. Specifically, Mr. Roll stated "we are prepared to accept, as a condition, either the creation of a 524(g) Trust or the entry of a Final Order that disposes of all of the asbestos claims." March 13, 2009, Hrg. Tr. 147:23-148:1. The Bankruptcy Court subsequently entered the Sterlite 9019 Order, pursuant to which it ordered that, "ASARCO and Sterlite shall, within 10 (ten) days of the date hereof, file amendments to the Debtors' plan of reorganization and disclosure statement describing the proposed treatment of asbestos creditors in light of statements made on the record of the Hearing and the Status Conference, together with any other necessary amendments."

Sterlite 9019 Order [Docket No. 10935] at p. 8, ¶ 10. Although the Debtors have filed an amended plan describing an alternative treatment of asbestos claims, the Debtors have not filed an amended Asset Purchase Agreement and Sterlite has not otherwise committed in any public writing to close if a plan that handles asbestos as the Debtors describe but that does not result in a section 524(g) injunction is confirmed. Therefore, according to the Parent, Sterlite still has the ability to refuse to close if the Debtors cannot deliver the section 524(g) trust and the asbestos representatives and the FCR are contractually prohibited from supporting the section 524(g) treatment offered under the Debtors' Plan.

5.2 Appointment of Asbestos Trustees.

Not less than 10 days prior to the commencement of the Confirmation Hearing, ASARCO shall designate and provide biographical information regarding the Persons who shall initially serve as the Asbestos Trustees. Upon approval by the Bankruptcy Court in the Confirmation Order, the Asbestos Trustees shall be appointed.

ASARCO (if prior to the Effective Date) or the Asbestos Trustees (if after the Effective Date) shall designate the Person who shall initially serve as the Delaware Trustee for the Asbestos Trust.

The Asbestos Trustees and the Delaware Trustee shall each have and perform all of the rights, powers, and duties set forth in the Asbestos Trust Agreement.

5.3 Purpose of the Asbestos Trust.

The purposes of the Asbestos Trust shall be, among other things, to (a) liquidate, resolve, pay, and satisfy all Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Plan, the Asbestos Trust Agreement, the Asbestos TDP, and the Confirmation Order; (b) receive, preserve, hold, manage, and maximize the Asbestos Trust Assets for use in paying and satisfying Allowed Unsecured Asbestos Personal Injury Claims and Demands in accordance with the terms of the Asbestos Trust Agreement; and (c) take other actions deemed by the Asbestos Trustees to be in the best interest of the holders of the Unsecured Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Asbestos Trust.

Among other things, the Asbestos Trust shall assume the liabilities and responsibility for Unsecured Asbestos Personal Injury Claims and Demands. To do this, the Asbestos Trust shall use the Asbestos Trust Assets and income to pay all Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Asbestos Trust Agreement and the Asbestos TDP in such a way that all holders of Unsecured Asbestos Personal Injury Claims and Demands are treated fairly, equitably, and reasonably in light of the finite assets available to satisfy such Claims, and to otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B) of the Bankruptcy Code.

A copy of the Asbestos Trust Agreement, in substantially the form that shall be executed, is attached as ***Exhibit 6*** *to the Plan.*

5.4 The FCR.

On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR, as such term is defined in the Asbestos Trust Agreement, and shall have and exercise the functions, rights, duties, powers, and privileges provided in the Asbestos Trust Documents.

5.5 Asbestos TAC.

The initial members of the Asbestos TAC shall be those Persons named in the Confirmation Order. They shall serve in a fiduciary capacity representing all holders of Unsecured Asbestos Personal Injury Claims, in accordance with the provisions of the Asbestos Trust Documents. They shall consult with and advise the Asbestos Trustees regarding the administration of the Asbestos Trust and the liquidation and resolution of Unsecured Asbestos Personal Injury Claims in accordance with the provisions of the Plan and the Asbestos Trust Documents.

The initial members of the Asbestos TAC shall be selected from among the lawyers representing the members of the Asbestos Claimants' Committee and other law firms representing holders of Unsecured Asbestos Personal Injury Claims and Demands. The Debtors shall file with the Bankruptcy Court no later than 10 days prior to the

commencement of the Confirmation Hearing the names and biographical information of the nominated candidates, and such nominations shall be subject to the approval of the Bankruptcy Court at the Confirmation Hearing. In the event that any of the initial members resigns, all successor members shall be appointed in accordance with the Asbestos Trust Agreement.

5.6 Transfers ~~and~~, Assignments, **and Payments** to the Asbestos Trustees.

As described in Article 7.6 of the Plan, on the Effective Date, the Debtors shall transfer ~~and~~, assign, **and pay** without limitation, to the Asbestos Trust for the benefit of the Asbestos Trust Beneficiaries all of the Debtors' respective rights, title, and interests in: (a) the Asbestos Trust Assets; (b) the Asbestos Personal Injury Claims and Demands; and (c) the Debtors' Privileges associated with the Asbestos Personal Injury Claims and Demands**, except to the extent that Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall concurrently retain all Privileges in connection with Asbestos Books that remain in their possession and Reorganized ASARCO shall concurrently retain all Privileges in connection with its pursuit of the Asbestos Insurance Recoveries**.

5.7 Asbestos Trust Agreement.

The Asbestos Trust Agreement, substantially in the form of **Exhibit 6** to the Plan, contains provisions customary to documents utilized in comparable circumstances. ASARCO, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the Asbestos Claimants' Committee, the Asbestos Trustees, the members of the Asbestos TAC, and the FCR shall execute the Asbestos Trust Agreement.

5.8 Asbestos Books.

(a) Inspection and Copying of Asbestos Books.

Subject to the conditions set forth herein, the Asbestos Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO, to inspect and, at the sole expense of the Asbestos Trust, make copies of the Asbestos Books during business hours on any Business Day and as often as may reasonably be desired; provided that, if so requested, the Asbestos Trust shall enter into a confidentiality agreement satisfactory in form and substance to Reorganized ASARCO.

(b) Costs and Expenses.

All costs and expenses associated with the storage of and access to the Asbestos Books shall be the responsibility of, and paid by, the Plan Administrator for any Asbestos Books that remain in Reorganized ASARCO's possession or that are transferred to the Plan Sponsor.

(c) Access to Asbestos Books and Personnel.

Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Trust in providing access to the Asbestos Books in their current condition~~,~~ and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein; provided that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor regarding access to the Asbestos Books or access to the Plan Sponsor's personnel shall be made through Reorganized ASARCO or its representatives. Subject to the conditions set forth herein, the Asbestos Trust, through its duly authorized representatives, shall also have the right, upon reasonable prior written notice, to conduct reasonable interviews of employees and other representatives of Reorganized ASARCO concerning matters reasonably related to the Asbestos Books.

(d) Disposition of Asbestos Books.

Reorganized ASARCO shall provide the Asbestos Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity for the Asbestos Trust to segregate and remove, at the expense of the Asbestos Trust, such Asbestos Books as the Asbestos Trust may select.

(e) Privileged Documents or Communications.

If the Asbestos Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether electronic, written, or oral) to which any Privilege attaches, the Asbestos Trust shall be deemed the Privilege holder for purposes of fulfilling the Asbestos Trust obligations and preserving the Privilege, shall be required to take all reasonable steps to maintain any such Privilege~~,~~ and may not waive any such Privilege without the consent of Reorganized ASARCO, which consent shall not be unreasonably withheld. Any disputes between the Asbestos Trust and Reorganized ASARCO or the Plan Administrator regarding the production of any documents or communications or the waiver of any Privileges shall be decided by the Bankruptcy Court. Production of materials to the Asbestos Trust does not constitute a waiver or an impairment of any Privilege held by Reorganized ASARCO, Reorganized Covington, or any of the Debtors. In the event that any third party challenges any such Privilege, Reorganized ASARCO or the Asbestos Trustees may seek protection from a court of competent jurisdiction. References in this Section 5.8 to Reorganized ASARCO shall also include its successors in interest.

5.9 Assumption of Liabilities by the Asbestos Trust.

Pursuant to Article 7.9 of the Plan, upon the occurrence of the Effective Date, in exchange for the funding in accordance with Article 10.6 of the Plan, the Asbestos Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Unsecured Asbestos Personal Injury Claims and Demands **and the Asbestos Trustees shall be responsible for ensuring that the Asbestos Trust is administered in accordance with the Asbestos Trust Agreement, including that Unsecured Asbestos Personal Injury Claims and Demands are paid in accordance with the Asbestos TDP**.

5.10 Cooperation with Respect to Insurance Matters.

The Plan Sponsor and the Asbestos Trust shall cooperate with Reorganized ASARCO and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things necessary or appropriate to effectuate the meaningful retention by Reorganized ASARCO of the proceeds of any Asbestos Insurance Policy, Asbestos Insurance Recovery or Recoveries, Asbestos Insurance Action, or Asbestos In-Place Insurance Coverage; *provided, however*, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor under Article 7.14 of the Plan shall be made through Reorganized ASARCO or its representatives. The Asbestos Trust shall (a) provide Reorganized ASARCO with all information regarding insurance matters reasonably requested, including without limitation, (1) information regarding the status of the resolution of Unsecured Asbestos Personal Injury Claims and Demands and (2) information necessary or helpful in connection with its efforts to obtain recoveries from an Asbestos Insurance Company including, without limitation, recoveries of extracontractual damage; and (b) execute reasonably requested documentation to facilitate Reorganized ASARCO's pursuit of claims or other action necessary or helpful to Reorganized ASARCO's efforts to realize recoveries from an Asbestos Insurance Company, including, without limitation, recoveries of extracontractual damages. Reorganized ASARCO shall be obligated to compensate the Asbestos Trust for all costs and expenses reasonably incurred in connection with providing assistance to Reorganized ASARCO under Article 7.14 of the Plan, including, without limitation, out-of-pocket costs and expenses, consultant fees, and attorneys' fees.

5.11 How Unsecured Asbestos Personal Injury Claims and Demands Shall Be Liquidated and Paid Under the Asbestos TDP.

The Asbestos TDP shall control liquidation and payment of all Unsecured Asbestos Personal Injury Claims treated in Class 4 and Demands. The initial Asbestos TDP to be put into effect by the Asbestos Trust on the Effective Date of the Plan is Exhibit 1 to the Asbestos Trust Agreement.

(a) Liquidation of Unsecured Asbestos Personal Injury Claims and Demands by the Asbestos Trust.

Unsecured Asbestos Personal Injury Claims and Demands must be liquidated in accordance with the Asbestos TDP before any payment can be made on such Claims and Demands. The Asbestos Claimants' Committee asserts that the Asbestos Personal Injury Claimants are entitled to have their Asbestos Personal Injury Claims liquidated by jury trial. Although the Asbestos TDP provides in section 7.5 thereof for an Asbestos Personal Injury Claimant to access the tort system, it does not specifically address an Asbestos Personal Injury Claimant's jury trial rights. To the extent so required, the Asbestos TDP shall be modified to preserve this right.

(b) Payment of Liquidated Claims by the Asbestos Trust.

The Asbestos TDP provides procedures for payment of Unsecured Asbestos Personal Injury Claims and Demands.

5.12 Excess Asbestos Trust Assets.

If there are any Asbestos Trust Assets remaining after the wind-up of the Asbestos Trust's affairs by the Asbestos Trustees and payment of all of the Asbestos Trust's liabilities has been provided for as required by applicable law including section 3808 of the chapter 38 of title 12 of the Delaware Code, all monies remaining in the Asbestos Trust estate shall be given to organization(s) exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, which tax-exempt organization(s) shall be selected by the Asbestos Trustees **(other than Reorganized ASARCO)** using their reasonable discretion; *provided, however*, that (a) if practicable, the activities of the selected tax-exempt organization(s) shall be related to the treatment of, research on, or the relief of suffering of individuals suffering from asbestos-related lung disease or disorders and (b) the tax-exempt organization(s) shall not bear any relationship to the Reorganized Debtors, AMC, ASARCO USA Incorporated, their successors, or their Affiliates within the meaning of section 468B(d)(3) of the Internal Revenue Code.

The purpose of the foregoing provisions is to prevent the Reorganized Debtors from having a retained interest in the Asbestos Trust Assets so as to ensure that the Asbestos Trust qualifies as a settlement fund under section 468B of the Internal Revenue Code and the treasury regulations thereunder. The likelihood that there will be any material amount of remaining Asbestos Trust Assets that are disposed of under these provisions is expected to be remote.

5.13 Asbestos Trust Expenses.

The Asbestos Trust shall pay all Asbestos Trust Expenses (including applicable taxes) from the assets of the Asbestos Trust. Except for the Asbestos Trust's Allowed Administrative Claim provided for in Article 2.1 of the Plan, neither the Debtors nor the Reorganized Debtors shall have any obligation to pay or reimburse any Asbestos Trust Expenses.

5.14 Intentionally Omitted.

5.15 Tax Treatment of the Asbestos Trust.

The Plan contemplates that the Asbestos Trust shall be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, and the Asbestos Trustees shall be the "administrator" of the Asbestos Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). The Debtors do not believe that the Asbestos Trust being established under section 524(g) of the Bankruptcy Code is a necessary prerequisite for it to constitute a "qualified settlement fund" under applicable provisions of the Internal Revenue Code so long as the Asbestos Trust is (a) administered pursuant to the Plan and subject to the continuing jurisdiction of the Bankruptcy Court and (b) established for the purpose of resolving or satisfying claims. No election shall be made to treat the Asbestos Trust as a grantor trust for U.S. federal income tax purposes. Accordingly, the Asbestos Trust shall be treated as a taxable entity for federal income tax purposes. The Asbestos Trustees shall cause all taxes imposed on the Asbestos Trust to be paid using assets of the Asbestos Trust and shall comply with all tax reporting and withholding requirements imposed under applicable tax laws. Any amount so withheld from a distribution or payment by the Asbestos Trust to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of the Plan and the Plan Documents.

5.16 Termination of the Asbestos Trust.

The Asbestos Trust shall automatically dissolve on the date 90 days after the first to occur of the following events:

(a) the date on which the Asbestos Trustees decide to dissolve the Asbestos Trust because (1) they deem it unlikely that new asbestos claims will be filed against the Asbestos Trust; (2) all Unsecured Asbestos Personal Injury Claims duly filed with the Asbestos Trust have been liquidated and paid to the extent provided in the Asbestos Trust Agreement and the Asbestos TDP or have been disallowed by a Final Order, to the extent possible based upon the funds available through the Plan; and (3) 12 consecutive months have elapsed during which no new asbestos claim has been filed with the Asbestos Trust; or

(b) to the extent that any rule against perpetuities shall be deemed applicable to the Asbestos Trust, the date on which 21 years less 91 days pass after the death of the last survivor of all of the descendants of the late Joseph P. Kennedy, Sr., father of the late President John F. Kennedy, living on the date hereof.

5.17 Termination of the Asbestos Trustee and the Delaware Trustee.

The duties, responsibilities, rights, and obligations of the Asbestos Trustees and the Delaware Trustee for the Asbestos Trust shall terminate in accordance with the terms of the Asbestos Trust Agreement.

SECTION 6
ESTIMATION OF CLAIMS AND VALUATION OF DISTRIBUTABLE ASSETS

6.1 Estimated Claims and Estimated Recoveries by Class.

The Debtors and their professionals have expended considerable time and effort to ensure the accuracy of the estimates set forth in the charts beginning on page 6 above; however, no representation can be made that such information is without inaccuracy. Moreover, the estimated percentage recovery for Class 3 is subject to the amount the Bankruptcy Court determines is appropriate for the estimated Class 4 Claims, changes in copper prices, the uncertainties of litigation with respect to many of the Claims, and other factors that may not be resolved in the Debtors' favor. Therefore, no assurance can be given that the estimated Claims are exact or that the estimated recoveries shall be achieved.

Sources of payments to be made to Claimants pursuant to the Plan include the Debtors' Cash, which could total as much as $1.25 billion and the Available Plan Sales Proceeds, which are expected to total $1.1 billion. This cash estimate may change materially if actual results are less than projected results. Claimants in Class 3 shall also receive ~~Litigation~~**Liquidation** Trust Interests~~,~~ **and** SCC Litigation ~~Trust Interests, and Residual Assets Liquidation~~ Trust Interests.

6.2 The Trusts' Estimated Administrative Costs.

Estimates of the cost of administering each of the Trusts after the Effective Date are set forth in **Exhibit F** to this Disclosure Statement. These costs shall be borne by the respective Trust.

Upon the Debtors' funding of the Trusts on the Effective Date, neither the Debtors, their Estates, the Plan Administrator, the Plan Sponsor, nor the other ASARCO Protected Parties (with the exception of the Trusts) shall have any further liability for such Trust's administrative costs.

The estimated fees, expenses, and other costs of the Plan Administrator to administer, resolve, and make distributions to Claimants is also set forth in **Exhibit F**. These costs shall be paid out of the Plan Administration Reserve.

SECTION 7
RISKS OF THE PLAN

7.1 General.

The following provides a summary of various risks associated with the Plan. However, it is not exhaustive and should be supplemented by careful analysis and evaluation of the Plan and this Disclosure Statement as a whole by each holder of a Claim or an Interest with that holder's own advisors.

7.2 Confirmation and Consummation Risks.

In order for a plan of reorganization to be confirmed, the Bankruptcy Code generally requires that impaired Classes vote to accept the Plan. This requires that voting creditors in each Class approve the Plan by:

- over one-half in number of creditors (50 percent + 1); and
- at least two-thirds in dollar amount.

In addition, to obtain a section 524(g) injunction relating to Unsecured Asbestos Personal Injury Claims and Demands, at least 75 percent of those Claimants in Class 4 who vote must vote to accept the Plan. The Debtors believe that they will meet this voting requirement. However, even if such votes are not obtained, the Debtors believe that a section 524(g) injunction may nonetheless be issued because the Class of Unsecured Asbestos Personal Injury Claims is unimpaired, and therefore conclusively presumed to have accepted the Plan for purposes of sections 524(g) and 1129 of the Bankruptcy Code. If the Bankruptcy Court or the District Court rule against the Debtors on this issue, the section 524(g) injunction may not be issued. As a consequence, the Debtors might be unable to obtain confirmation of the Plan, unless the Debtors are able to obtain other findings and provisions in the Plan Confirmation Order that present and future asbestos Claims and Demands are enjoined, released, or otherwise prohibited from being asserted against ASARCO, the Plan Sponsor, the Guarantor, and various other related parties, affiliates, and assets of such parties. There are no assurances that such an order could be obtained or that ~~Sterlite will find it acceptable~~**such treatment would fall within the range of alternatives to which Sterlite has agreed**.

The FCR asserts that he has the legal right to exercise veto power over the Debtors[2] obtaining an injunction pursuant to section 524(g) of the Bankruptcy Code if he determines that the treatment of Demands is not satisfactory. The Debtors disagree and do not believe that the FCR has such veto power as long as the court determines that the Plan is fair and equitable to the holders of Demands and the other requirements of section 524(g) are otherwise met. However, if the Bankruptcy Court or the District Court decline to issue a section 524(g) injunction if the Plan is not supported by the FCR, the Debtors may not be able to obtain confirmation of the Plan unless the Debtors are able to obtain other findings and provisions in the Plan Confirmation Order that present and future asbestos Claims and Demands are enjoined, released, or otherwise prohibited from being asserted against ASARCO, the Plan Sponsor, the Guarantor, and various other related parties, affiliates, and assets of such parties. There are no assurances that such an order could be obtained or that ~~Sterlite would find it acceptable~~**such treatment would fall within the range of alternatives to which Sterlite has agreed.**

The Parent believes that the Debtors' Plan is unconfirmable because without the support of the asbestos representatives and the FCR, the section 524(g) channeling injunction is not possible. The Debtors disagree with this contention. The Parent asserts that the asbestos representatives and the FCR are contractually prohibited from supporting the section 524(g) channeling injunction offered under the Debtors' Plan and are contractually obligated to oppose confirmation of the Debtors' Plan.

There is no guarantee that the 75 percent voting threshold in regards to Class 4 under the Plan will be reached or that the Bankruptcy Court will concur with the tally or, alternatively, that the Bankruptcy Court will determine that Class 4 is unimpaired and that the voting requirement of section 524(g) of the Bankruptcy Code may be satisfied by the deemed approval of Class 4.

There is no guarantee that the voting thresholds in regards to the other impaired Classes under the Plan will be reached or that the Bankruptcy Court will concur with the tally.

Any objection to the Plan also could prevent Confirmation of the Plan or delay such Confirmation for a significant period of time.

Even if all impaired Classes entitled to vote in fact vote in favor of the Plan and, with respect to any impaired Class deemed to have rejected the Plan, the requirements for "cramdown" are met, the Bankruptcy Court, which as a court of equity may exercise substantial discretion, may choose not to confirm the Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that ~~confirmation~~**Confirmation** of the Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, and that the value of distributions to dissenting holders of Claims and Interests may not be less than the value that such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. *See* Section 8.2 of this Disclosure Statement. Although the Debtors believe that the Plan satisfies all requirements necessary for Confirmation, there is no assurance that the Bankruptcy Court and the District Court will reach the same conclusion, or that the Confirmation, if challenged on appeal, will be affirmed.

Moreover, Article 9.1 of the Plan sets forth a number of conditions precedent to the effectiveness of the Plan. There can be no assurance that any or all of these conditions will be satisfied (or waived), or that supervening factors will not prevent the Plan from being consummated. Accordingly, even if the Bankruptcy Court confirms the Plan, there can be no assurance that the Plan will be consummated. If a liquidation or protracted reorganization were to occur, there is a substantial risk that the value of the Debtors' enterprise would be substantially eroded to the detriment of all stakeholders.

7.3 Risk Factors Related to Estimates and Assumptions.

As with any plan of reorganization or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated, some events will develop in ways that were not foreseen, and many or all of the assumptions that have been used in connection with this Disclosure Statement and the Plan may not be realized exactly as assumed. Some or all of such variations may be material, notwithstanding the effort made to ensure assumptions are in each case reasonable. Accordingly, there can be no assurance that subsequent events will bear out the analyses set forth in this Disclosure Statement. Holders of Claims and Interests should be aware of some of the principal risks associated with the contemplated reorganization:

- There is a risk that one or more of the required conditions or obligations under the Plan will not occur, be satisfied, or waived, as the case may be, resulting in the inability to confirm the Plan.

- The total amount of Allowed Claims may ultimately be materially in excess of the estimated amounts of such Claims assumed in the development of the Plan and in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions ultimately received by any particular holder of an Allowed Claim in a particular Class may be materially and adversely affected should the estimates be exceeded as to any Class.

7.4 Risks Relating to the Sale Process or a Failure to Consummate the New Plan Sponsor PSA.

The Debtors currently expect that the sale of the Sold Assets will culminate in a sale to the Plan Sponsor or an alternative purchaser with a higher or better offer. The Debtors will incur considerable costs and expenses in connection with the sale process and may ultimately be obligated to pay a $26 million break-up fee. There are many factors outside of the Debtors' control that may affect the Debtors' ability to consummate a sales transaction, including the ability of the Plan Sponsor or alternative purchaser to finance the transaction (although the Debtors understand that the Plan Sponsor presently has the funds necessary to finance the cash component of the Purchase Price). Moreover, it is possible that the Debtors may not be able to meet various closing conditions and, as a result, the Plan Sponsor or an alternative purchaser may elect to cancel the asset purchase agreement as a result of these failures; in such a circumstance, there can be no assurance that an alternative buyer would be willing to provide terms as favorable as those that have been offered by the Plan Sponsor. Furthermore, subject to the limitations set forth therein, the Plan Sponsor may terminate the New Plan Sponsor PSA if the following deadlines are not met:

- The Sterlite Agreed Order must be entered by April 22, 2009[~~12~~16];

- An order approving the Disclosure Statement must be entered by May 31, 2009 (which date may be extended until July 1, 2009 with the Plan Sponsor's consent);

- The Confirmation Order must be entered by August 31, 2009 (which date may be extended until September 30, 2009 with the Plan Sponsor's consent); and

- The Closing must occur by November 30, 2009 (which date may be extended until December 31, 2009 with the Plan Sponsor's consent; provided that if the Plan Confirmation Order has been entered by the Bankruptcy Court (rather than the United States District Court having jurisdiction over the Bankruptcy Cases), such date shall automatically be extended to December 31, 2009).

The Debtors can provide no assurance that they will be successful in consummating a sale of the Sold Assets. If the Debtors are unable to successfully complete such a sale, it could have a material adverse effect on the business, financial condition, and results of operations of the Debtors and the value of the Debtors' Estates. Additionally, the Debtors may be obligated to pay a Break-Up Fee regardless of whether a sale transaction is consummated, and such expenses could be significant.

[~~12~~16] At the request of the Bankruptcy Court, Sterlite agreed to extend the deadline for entry of the Sterlite Agreed Order from April 15, 2009 until April 22, 2009, pursuant to amendment no. 1 to the New Plan Sponsor PSA entered into on April 15, 2009.

The Parent has requested that the Debtors include the following paragraph regarding the risks to the Plan associated with the New Plan Sponsor PSA.

"The Debtors can provide no assurance that the Plan Sponsor will not breach the New Plan Sponsor PSA. As described in Section 2.28(b), the Plan Sponsor repudiated the Original Plan Sponsor PSA without any contractual or legal justification and refused to close under the $2.6 billion Original Plan Sponsor PSA shortly before confirmation, citing market conditions. The Debtors can provide no assurance that the Plan Sponsor will not breach its obligation a second time. Under the Debtors' Plan, Sterlite only risks a $125 million deposit in the form of letters of credit with considerable draw conditions that make it questionable that the deposit would ever be collected. There are no safeguards to creditors under the Debtors' Plan in the event a second breach occurs."

The Debtors can provide no assurance with respect to the outcome of the Reorganization Cases, if the transactions contemplated by the New Plan Sponsor PSA are not approved and consummated in a timely manner. Transactional alternatives to the New Plan Sponsor PSA, assuming any such alternatives are available in light of present market volatility, could provide for substantially less favorable: (a) consideration; (b) tax treatment; or (c) certainty of closing.

7.5 Risk that the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Settlement Agreement, and the Residual **Environmental** Settlement Agreement May Not Be Approved.

The Bankruptcy Court may decline to approve any or all of the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Settlement Agreement, and the Residual **Environmental** Settlement Agreement, which are the subject of the Environmental 9019 Motion. For the reasons set forth above in Section 2.20, the Debtors believe that these settlement agreements are in the best interests of their Estates and should be approved, but there can be no assurance that the Bankruptcy Court will in fact approve all or any of the settlements.

The Parent believes that the environmental settlement agreements which form the core of the Debtors' Plan violate applicable federal law and that the Bankruptcy Court may not be able to approve them. In the event that (a) the environmental settlements are not approved and (b) the recovery under the Debtors' Plan reaches a distribution to unsecured creditors as low as 43 percent, the environmental creditors may not support the Debtors' Plan and seek more favorable treatment to the detriment of other creditors. The Debtors disagree because they believe that the approval of the environmental settlements is appropriate under applicable law and that the Bankruptcy Court will approve these settlements.

7.6 The ~~Litigation~~**Liquidation** Trust and the SCC Litigation Trust May Not Realize Any Recovery or May Realize a Capped Recovery.

Although certain assets will be transferred to the ~~Litigation~~**Liquidation** Trust and the SCC Litigation Trust, including the ~~Litigation~~**Liquidation** Trust Claims and the SCC Litigation Trust Claims respectively, there is no guarantee that any recovery will be realized on the ~~Litigation~~**Liquidation** Trust Claims or the SCC Litigation Trust Claims. The ~~Litigation~~**Liquidation** Trust Claims and the SCC Litigation Trust Claims are contingent and unliquidated, and the prosecution of the ~~Litigation~~**Liquidation** Trust Claims may be vigorously defended. The SCC Litigation Trust Agreement provides that, to the extent necessary, it shall be amended to conform to any decisions by the Bankruptcy Court. A further risk is that a favorable ruling is obtained but the **Liquidation Trust or SCC** Litigation Trust is unable to collect on a judgment because of the financial condition of the defendant.

Although the District Court has now entered the SCC Final Judgment in the SCC Litigation, awarding the Debtors substantial damages, AMC has filed a notice of appeal of the SCC Final Judgment and all adverse orders, rulings, decrees, opinions, and judgments leading up to and included within the SCC Final Judgment. It is possible that the SCC Final Judgment could be modified or reversed on appeal or that the appellate court could impose a cap on the damages awarded. Thus, if you vote to accept the Plan, you assume the risk that the SCC Litigation Trust Agreement could possibly be amended to comply with any subsequent rulings, including any ruling imposing a cap on the SCC Litigation Proceeds distributed to the SCC Litigation Trust Beneficiaries. Moreover, the SCC Final Judgment may be reversed on appeal. The Debtors do not believe that any such limitations or restrictions on recovery would be appropriate or that reversal of the SCC Final Judgment in favor of ASARCO and SPHC is justified, but these risks should nonetheless be considered.

If you vote in favor of the Plan, you assume the risk that the SCC Final Judgment in the SCC Litigation may be reversed, the outcome in the ~~Litigation~~**Liquidation** Trust Claims may be unfavorable, and that the worst case

scenario – that no amounts are ultimately recovered on any of the ~~Litigation~~**Liquidation** Trust Claims or the SCC Litigation Trust Claims, despite the expenditure of funds by the ~~Litigation~~**Liquidation** Trustee and the SCC Litigation Trustee in prosecuting such actions – may occur.

7.7 Risk that the Debtors May Not Be Substantively Consolidated or Voluntarily Consolidated.

As set forth below in Section 9.3, the Debtors seek to (a) substantively consolidate the Estates of the Other Subsidiary Debtors (other than Covington) with and into ASARCO, with the surviving entity being ASARCO and (b) merge the Estates of the Asbestos Subsidiary Debtors with and into Covington, with the surviving entity being Covington. ~~They~~**The Debtors** believe that the facts and the governing law support this proposal. However, no assurance can be given that the Bankruptcy Court will grant the Debtors' request for substantive consolidation. Consequently, the Debtors reserve the right to voluntarily consolidate the Other Subsidiary Debtors (other than Covington) into ASARCO, pursuant to section 1123(a)(5)(C) of the Bankruptcy Code. As a third alternative, the Debtors reserve the right to proceed with the Plan as to only ASARCO and any one or more of the Subsidiary Debtors that ASARCO designates. Thereafter, the Subsidiary Debtors not included in the Plan with ASARCO would either file a proposed plan under chapter 11 of the Bankruptcy Code or convert their cases to liquidation cases under chapter 7 of the Bankruptcy Code. Under any of these alternatives, ASARCO would be able to obtain Confirmation of the Plan, and thereby complete the sale of the Sold Assets and obtain the relief needed under section 524(g) of the Bankruptcy Code.

If you vote to accept the Plan, you accept the risk that the Debtors may not be able to proceed with substantive consolidation or effectuate a voluntary consolidation as provided in Article 10.11 of the Plan, in which event, the Debtors will be forced to seek confirmation of the Plan as to only certain of the Debtors.

The Parent believes that the Debtors' Plan is patently unconfirmable because it depends on a "voluntary consolidation" not supportable under section 1123(a)(5)(C) of the Bankruptcy Code even if the Bankruptcy Court does not permit substantive consolidation. The Debtors disagree with this contention.

7.8 Distributions to Holders of Unsecured Asbestos Personal Injury Claims and Demands.

The Asbestos Trust Documents require the Asbestos Trustees to adopt mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Unsecured Asbestos Personal Injury Claims and Demands, or other comparable mechanisms that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, Unsecured Asbestos Personal Injury Claims and Demands that involve similar Claims in substantially the same manner. Accordingly, the payment that will be made to holders of unliquidated Unsecured Asbestos Personal Injury Claims and Demands will equal the liquidated value for each claim multiplied by the then-applicable payment percentage. Estimation of the payment percentage likely to be used in the early years of the operation of the Asbestos Trust for qualified present Unsecured Asbestos Personal Injury Claimants involves data analysis or forecasting of (a) the number of compensable Unsecured Asbestos Personal Injury Claims, (b) the total value of Asbestos Trust Assets available to pay holders of Unsecured Asbestos Personal Injury Claims and Demands, and (c) the probable average values of payments under the Plan.

The amount of the Unsecured Asbestos Personal Injury Claims and Demands may be significantly higher than expected at Confirmation once they are liquidated pursuant to the Asbestos TDP. Likewise, the amount of anticipated Asbestos Trust Expenses could be higher than expected. *See* **Exhibit F** of this Disclosure Statement. Further, while the Asbestos Trustees can be expected to use efficient and cost-effective procedures for claims resolution, it is difficult to predict how successful their efforts will be, particularly since the Asbestos Trust is expected to continue to operate for many years into the future.

7.9 Appointment of Different Trustees.

The Debtors shall request that the Bankruptcy Court appoint as trustees for the ~~Litigation~~**Liquidation** Trust, the SCC Litigation Trust, ~~the Residual Assets Liquidation Trust,~~ and the Asbestos Trust those Persons it designates not less than 10 days prior to the commencement of the Confirmation Hearing. However, the Bankruptcy Court may decline the Debtors' request and appoint one or more different trustees for such ~~Trusts~~**trusts**. If different trustees are appointed, it could materially impact the administration of such ~~Trusts~~**trusts**.

7.10 Appointment of a Different Plan Administrator.

The Debtors shall request that the Bankruptcy Court appoint as Plan Administrator the Entity they designate not less than 10 days prior to the commencement of the Confirmation Hearing. However, the Bankruptcy Court may decline the Debtors' request and appoint a different Plan Administrator. If a different Plan Administrator is appointed, it could materially impact the administration of Reorganized ASARCO.

7.11 Contentions of FFIC, Century Indemnity Company, and American Home Assurance Company Regarding Risk of No Insurance Coverage.

FFIC, Century Indemnity Company, and American Home Assurance Company contend, for a number of reasons, that there will be no insurance coverage for certain asbestos Claims. *See* **Exhibit Q** attached hereto, which was provided by FFIC. Century Indemnity Company and American Home Assurance Company contend as follows:

"Under the Asbestos TDP, the Asbestos Trust must handle Asbestos Premises Liability Claims in accordance with the Asbestos In-Place Insurance Coverage agreements between the Debtors and their insurers. Century Indemnity Company and American Home Assurance Company contend that, to the extent the Asbestos TDP purports to alter the parties' respective rights and obligations under any Asbestos In-Place Insurance Coverage agreements to which Century Indemnity Company or American Home Assurance Company may be parties or applicable policies issued by Century Indemnity Company or American Home Assurance Company, any coverage otherwise available under any such policies or Asbestos In-Place Coverage agreements may be vitiated."

7.12 Claimants May Incur Taxes in Excess of Cash Received.

If a Claimant receives non-cash property pursuant to the Plan, and the Claimant's tax basis in its Claim is less than the fair market value of such non-cash property, then there may be a risk that the Claimant will not receive ~~cash~~**Cash** under the Plan in an amount sufficient to pay the taxes incurred by the Claimant as a result of its distribution under the Plan. Moreover, there may be a risk that non-cash property received by a Claimant could generate income taxable to the Claimant in particular taxable years that exceeds the cash flow generated from such property for such taxable years.

SECTION 8
ALTERNATIVES TO THE PLAN

If the Plan is not confirmed and consummated, alternatives to the Plan include an alternative plan of reorganization or liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

8.1 Alternative Plan of Reorganization.

If the Plan is not confirmed, or if the transactions upon which it is predicated are not approved and consummated, the Debtors could attempt to formulate a different plan of reorganization. Alternatives for a plan could include a stand-alone plan of reorganization, a sale of ASARCO at a later point through an auction process, or an initial public offering of ASARCO concurrent with or subsequent to emergence from bankruptcy. The ability of ASARCO to obtain value and liquidity through any alternative sufficient to provide an attractive plan for creditors would be a function of general economic conditions, the state of the financial markets, the operating performance of ASARCO, and existing and future copper prices. Risks to such alternatives include deteriorating copper prices, such as the market has experienced in recent months, difficulty in retaining and attracting management critical to ASARCO's operations should the Debtors remain in bankruptcy for an extended period of time, and weaknesses in equity and debt markets precluding the generation of Cash sufficient to fund an exit plan. **Alternatively, copper prices could rise and remain at high levels for an extended period of time, and in such an event, an alternative plan of reorganization could potentially bring more value to creditors than the current Plan.**

The Debtors and their advisors have explored various alternative scenarios, and believe that the Plan enables the holders of Claims to realize the maximum recovery under the circumstances. The Debtors believe that the Plan, and the transactions upon which it is predicated, is the best plan of reorganization that can be proposed and that it serves the best interests of the Debtors and other parties in interest.

8.2 Liquidation under Chapter 7.

If the Plan cannot be confirmed, the Debtors' Reorganization Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee or trustees would be appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code.

The Liquidation Analysis prepared by the Debtors is attached to this Disclosure Statement as **Exhibit E**. As indicated in the assumptions listed in the Liquidation Analysis, the analysis assumes the liquidation of the Debtors through orderly sales of their primary operating assets as separate going concerns. Because the Permanent Channeling Injunction would not be available in a chapter 7 liquidation, the values realized from the orderly sale of the assets would in all likelihood be reduced as a result of buyers' concerns regarding the risk of asbestos liability in the acquisition of assets. Further, the lack of a Permanent Channeling Injunction may preclude the orderly sale of the assets as separate going concerns, in which case a liquidation of the component assets would be required. The Debtors believe that the value of their operating assets as going concerns exceeds the value of the component assets. If a liquidation of the assets occurred, values realized would be further reduced and Claims against the Estates increased.

The Plan incorporates a settlement and release of the Debtors' claims against Sterlite and the Guarantor arising from the breach of the Original Plan Sponsor PSA. In a chapter 7 liquidation, however, the proceeds of these claims that the Parent has asserted could be as high as $3 billion would be available to the creditors giving creditors more value and recovery than offered under the Debtors' Plan. Because of the difficulty of collecting any judgment against Sterlite and its affiliates, the Debtors believe that the value realized on account of the claims against Sterlite in a liquidation scenario would be highly speculative and would most likely be substantially lower than the amounts attributable to the release of these claims under the New Plan Sponsor PSA and would certainly be lower than the amounts asserted by the Parent, which fails to take into account mitigation principles that would most likely apply. For a discussion on risks and difficulties associated with collecting a judgment against Sterlite and its parent, Sterlite Industries (India) Ltd., please see the Sterlite 9019 Motion [Docket No. 10526] and the Proffer of Jay L. Westbrook in Support of the Sterlite 9019 Motion [Docket No. 10806].

The net proceeds resulting from the disposition of the Debtors' assets and available Cash would be available first to pay the costs and expenses of liquidation and to satisfy any additional Administrative and Priority Claims that might arise from the Debtors' liquidation under chapter 7. The Debtors' costs of liquidation under chapter 7 would include fees payable to a chapter 7 trustee and other professionals retained by the trustee including attorneys, financial advisors, and accountants, asset disposition expenses, litigation costs related to the resolution of asbestos and other Claims, other expenses incurred in the chapter 11 cases Allowed in the chapter 7 case, and Claims arising from operations of the Debtors during the chapter 11 case. The remaining proceeds would be allocated to creditors in strict priority pursuant to the Bankruptcy Code and thereafter available to Interest holders.

The Plan incorporates a settlement designed to resolve complex and contentious issues between the Debtors and holders of Unsecured Asbestos Personal Injury Claims and Demands. Without the settlement, a hypothetical chapter 7 trustee would need to address these issues through protracted and costly litigation or negotiated settlements with all of these parties as well as additional future Claimants, resulting in significant delay and a significantly greater chapter 7 administrative expense burden on the Estates, and further reducing net proceeds available for distribution.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, the Debtors believe that Confirmation of the Plan will provide each holder of an impaired Claim that has not accepted the Plan with an amount that is not less than such holder would receive pursuant to a liquidation under chapter 7 of the Bankruptcy Code.

The Liquidation Analysis is based upon a number of estimates and assumptions which, while considered reasonable, are inherently beyond the control of the Debtors or any chapter 7 trustee. There can be no assurances that the values reflected in the Liquidation Analysis would be realized if the Debtors were to undergo such liquidation. Instead, actual results could vary materially from those shown in the Liquidation Analysis. In addition, any liquidation necessarily would take place in the future under circumstances that presently cannot be predicted. Accordingly, if the Debtors' Estates were liquidated, the actual liquidation proceeds could be materially lower or higher than the amounts set forth in **Exhibit E**, and no representation or warranty can be made with respect to the actual proceeds that could be received in chapter 7 liquidation proceedings.

SECTION 9
CORPORATE GOVERNANCE AND POST-CONFIRMATION MANAGEMENT

9.1 Cancellation of Existing Interests.

Pursuant to Article 10.10 of the Plan, unless otherwise agreed to by the Debtors, and except to the extent otherwise provided in the Plan, on the Effective Date, all instruments, certificates, and other documents evidencing the Interests in the Debtors shall be cancelled and the obligations of the Debtors or the Reorganized Debtors in any way related thereto (except any obligations provided for under the Plan) shall be discharged.

9.2 Operations Between the Confirmation Date and the Effective Date.

Except as set forth in the Plan with respect to the appointment of the Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

9.3 Substantive Consolidation and Alternatives Thereto.

(a) Substantive Consolidation.

On the Effective Date, the Estates of the Other Subsidiary Debtors (other than Covington) shall be substantively consolidated with and into ASARCO, with the surviving entity being ASARCO. The disclosures in this Section 9.3(a) are being made solely for purposes of confirmation of the Plan and shall not be taken as an admission or as evidence of any described fact or event.

As a result of the substantive consolidation of the Debtors' Estates as set forth above, (1) all Intercompany Claims (other than between (A) ASARCO and the Asbestos Subsidiary Debtors, and (B) ASARCO and Covington) not otherwise resolved or disposed of pursuant to the Plan are eliminated; (2) all assets and liabilities, including any obligations or guarantees of the Other Subsidiary Debtors (other than Covington) become the assets and liabilities of ASARCO; and (3) each Proof of Claim filed against any of the Other Subsidiary Debtors (other than Covington) is deemed filed against and an obligation of ASARCO.

The Debtors believe that substantive consolidation as proposed in the Plan is appropriate for a number of reasons. The Debtors believe that, generally, creditors dealt with the Other Subsidiary Debtors (other than Covington) as a single economic unit and did not rely on their separate identities, and that the affairs of the Other Subsidiary Debtors (other than Covington) are so entangled that consolidation will benefit all creditors. Many of the Other Subsidiary Debtors sought to be consolidated have no or *de minimis* assets, and no liabilities, and so consolidation will have no effect except to save administrative expenses. In many of the instances where the Other Subsidiary Debtors sought to be consolidated have liabilities, ASARCO already shares those liabilities, so consolidation will not result in an increased burden on ASARCO's other creditors. The Debtors' beliefs regarding the benefits of substantive consolidation arise from the additional facts discussed below.

(1) The Other Subsidiary Debtors (Other than Covington).

(A) Corporate and Accounting Practices

For the most part, the Other Subsidiary Debtors maintained no corporate governance or separate business records in the years leading up the bankruptcy filings, and each needed to reconstitute their boards and amend their corporate governance documents in order to have the requisite authority to act and to file for chapter 11 protection.

Pre- and post-bankruptcy, the Debtors prepared consolidated financial statements, had an integrated cash management system, and shared accounting, tax, legal, and other administrative functions. Although ASARCO maintained a set of intercompany accounts, in many instances, the amounts reflected in those accounts represent debt which pre-dates Grupo México's acquisition of ASARCO, and ASARCO has been unable to determine the origin of these amounts and whether they represent actual intercompany debt or capital investment. In some cases the prepetition consolidated intercompany accounting did not include separate accounting districts or bank accounts for certain of the ASARCO

subsidiaries. As disclosed in the Schedules and other pleadings, the intercompany records show large intercompany balances, the origin of which is not fully understood, including a $32 million intercompany balance due to ASARCO by ASARCO Oil and Gas Company, a $11.2 million intercompany balance owed by ASARCO Exploration Company, and a $5.2 million intercompany balance due to ASARCO Consulting, Inc. owed by ASARCO.

The Debtors have attempted to correct identified deficiencies. New accounting districts and bank accounts have been opened since the bankruptcy filings. ASARCO also has sought to formalize relations by entering into Bankruptcy Court-approved intercompany contracts. For example, ASARCO entered into a property management agreement with Bridgeview Management Company, Inc. for management of ASARCO's leasehold interests in New Jersey and a storage and administrative services agreement with AR Sacaton for storage services in one or more warehouses in Arizona.

(B) Assets and Liabilities

None of the Other Subsidiary Debtors had any operations for years prior to their respective bankruptcy filings, and most have no assets or liabilities, except *de minimis* assets or liabilities, litigation assets shared with ASARCO, and common liabilities such as statutory joint and several contingent liability to the PBGC, joint liability under the Coal Act, and shared environmental liabilities. For example, ASARCO (and its predecessors) entered various environmental agreements with state and federal authorities under which it agreed to perform environmental work or guarantee environmental compliance on behalf of or in addition to various of the Other Subsidiary Debtors in order to resolve ASARCO's shared or independent environmental responsibilities. In addition, several creditors have filed Proofs of Claim against all or most of the Debtors or have failed to identify a Debtor, which indicates that creditors view them as a single economic unit.[1]

Certain of the Other Subsidiary Debtors are co-plaintiffs with ASARCO in pending fraudulent transfer actions to recover valuable assets for the benefit of all creditors. Recovery of the property transferred fraudulently and in disregard of the rights and claims of creditors while insolvent will be transferred to the ~~Litigation~~**Liquidation** Trust for the benefit of creditors under the Plan. Further, MRI, the defendant in the lawsuit to recover ASARCO's partnership interest in the Montana Resources copper and molybdenum mine (as discussed in Section 2.24(e) above), has filed Proofs of Claim (each in the amount of approximately $87 million) against both ASARCO Master and ASARCO for the same alleged debt and expressly stated that ASARCO is the alter ego of ASARCO Master and responsible for payment of its Proof of Claim. ASARCO has admitted this allegation in the lawsuit.

In addition to the litigation shared with ASARCO, the only other asset of ASARCO Master is real property previously owned by either Federated Metals Corp. or Domestic Realty Company, Inc. (both of which were merged into ASARCO Master in 2005). Other than *de minimis* claims and claims also asserted against ASARCO, all other Claims filed against ASARCO Master relate to the operations of AR Montana, Domestic Realty Company, Federated Metals Corp., and Midland Coal Company. The AR Montana claims relate to the MRI lawsuit described in the preceding paragraph. The Domestic Realty Claims relate solely to the East Helena and the Everett sites, both of which historically were owned and operated by ASARCO and transferred to Domestic Realty for holding and resale purposes after operations at those sites had ceased. Finally, the remaining Claims relate to the historical operations of Federated Metals Corp. and the Midland Coal division of ASARCO. In the case of Federated Metals Corp., which operated and was marketed as a division of ASARCO, the Claims assert asbestos-related and environmental liabilities in connection with the San Francisco, Houston, and Gulf Metals sites. In the case of the Midland Coal Company, a predecessor to ASARCO Master, which was created to hold the liabilities related to the operations of the Midland Coal division of ASARCO, the only Claim that facially relates to Midland Coal is a Claim filed by SAFECO Inc., which is a Claim under an undrawn surety bond that is subject to a pending claim objection under section 502(e)(1)(b) of the Bankruptcy Code. The schedule attached to the SAFECO surety bond Claim identifies the Midland Coal division of ASARCO as the principal for the bond such that this alleged liability may be a direct obligation of ASARCO.

As it relates to AR Sacaton, other than Claims filed against all Debtors and a Claim by the State of Arizona also filed against ASARCO and asserting liabilities related to ASARCO's current active operations, the only other

---

[1] AIG, FFIC, Armstrong World Industries, Deutsche Bank Company, Missouri Department of Natural Resources, State of New Mexico, and the UMWA Plans have filed Claims against each of the Debtors. Additionally, Pierce Duanne and Joe Ricker (former ASARCO Inc. employees), Kansas Department of Health and the Environment, and Washington State Department of Ecology also have filed Claims against many of the Debtors. Furthermore, out of the total 991 non-ASARCO, general Proofs of Claim filed to date, 471 failed to identify the Debtor against which the Claim is being asserted.

two Claims filed against this subsidiary are a $45 million Claim filed by the ADEQ related to the Sacaton mine and a $262,163 Claim filed by AMC relating to property quitclaimed to AMC in 2004 to raise quick cash for ASARCO to pay past due operating expenses. The Claim by the ADEQ relates to remediation obligations in connection with the Sacaton mine, which was owned and operated by ASARCO until the early 1980s. The property remained as an asset of ASARCO until it was transferred to AR Sacaton, a company created for the purpose of holding this land, in 1998. In 2004, as mentioned above, AR Sacaton transferred a portion of the Sacaton property to AMC, which in turn sold most of it to a third party that year. In exchange for the transfer ASARCO (not Sacaton) was paid approximately $5 million by AMC. These transfers are the subject of the fraudulent transfer action discussed above in Section 2.24(g). Also in 2004, AMC quitclaimed to AR Sacaton the 34 acres that it did not sell. The fraudulent transfer action and the remaining portion of the Sacaton property represent AR Sacaton's only assets.

Encycle, Inc., a non-operating holding company, is the direct parent of Encycle/Texas, Inc. (the debtor in a related chapter 7 case) and ASARCO Consulting, Inc. The interests in these entities represent Encycle's sole assets. Other than the Claims filed against every Debtor, a couple of trade Claims totaling less than $10,000, and a handful of pension-related Claims to which the Debtors have objected, the only other Claims filed against Encycle are environmental Claims related to the Encycle/Texas sites, which also were asserted against ASARCO and have been settled. Similarly, other than a historical $5 million intercompany Claim against ASARCO, the assets of ASARCO Consulting, Inc. total less than $50,000 (including stale employee receivables). ASARCO Consulting, Inc. has no liabilities other than the common Claims, a couple of pension Claims to which the Debtors have objected, *de minimis* trade and tax Claims totaling less than $20,000 and two environmental Claims related to sites in Montana and Oklahoma which also were asserted against ASARCO and the Other Subsidiary Debtors. ASARCO Consulting, Inc. and its predecessor Hydrometrics, Inc. were environmental engineering firms that, historically, derived 70-100% of their business from ASARCO projects. ASARCO Consulting, Inc.'s role, if any, in connection with the Montana and Oklahoma sites would have been in its capacity of environmental contractor and consultant to ASARCO and its affiliates.

Bridgeview Management Company, Inc. was created to manage the commercial real property leaseholds established in the Perth Amboy property, which used to house a secondary smelter and a copper refinery that was operated by ASARCO prior to its shutdown in the 1970s. Bridgeview Management Company, Inc.'s exclusive business is the management of properties owned by ASARCO and CAPCO. Other than the common Claims against all Debtors, the only Claim filed against Bridgeview Management Company, Inc. is a remediation Claim by a lessee who also asserted a Claim against ASARCO as owner and former operator of the Perth Amboy site.

ASARCO Oil and Gas Company has assets in the form of oil and gas leases that post-petition have generated annual royalties anywhere between $200,00 and $500,000, and no liabilities. ASARCO Exploration Company, Inc., another wholly-owned subsidiary of ASARCO, owns 5 million shares of Elekra Mines Ltd. and a right to a contingent payment of almost $1 million, and has no liabilities other than approximately $50,000 in trade debt and, as mentioned earlier, a large historical intercompany payable due to ASARCO.

The 2008 Subsidiary Debtors have *de minimis* real estate assets worth less than $200,000 in the aggregate, less than $1,000 in potential tax-related liability, and no other liability except for liabilities shared with ASARCO.

No other Claims have been asserted against the remaining Other Subsidiary Debtors, except for Claims filed against SPHC which have been withdrawn as satisfied, Claims against Government Gulch Company asserting environmental liabilities related to the Coeur D'Alene site for which ASARCO is jointly and severally liable, and less than 100 environmental, asbestos, toxic-torts, and employee-related Claims filed against American Smelting and Refining Company, the non-operating company formed to preserve ASARCO's historical name.

(2) The Asbestos Subsidiary Debtors.

In contemplation of a potential settlement being reached regarding the asbestos liabilities, the Third Amended Disclosure Statement also provided for the Estates of the Asbestos Subsidiary Debtors to be substantively consolidated with and into ASARCO. Although the Third Amended Disclosure Statement noted that, in connection with the asbestos alter ego estimation proceeding (*see* Section 2.19(b) above), ASARCO, the ASARCO Committee, and the Parent had opposed the Asbestos Subsidiary Committee and FCR's attempts to impose liability on ASARCO for asbestos-related claims against the Asbestos Subsidiary Debtors, it also acknowledged that some of the evidence gathered in connection with the alter ego estimation proceeding supported the corporate interrelatedness that could justify substantive consolidation at the time. However, as asserted by ASARCO and the Parent on numerous occasions, including in filings in connection with the

alter ego estimation proceeding, there also is evidence supporting a conclusion that the Asbestos Subsidiary Debtors and ASARCO maintained their separate corporate existence.

As set forth earlier, the current Plan and Disclosure Statement do not provide for the substantive consolidation of the Asbestos Subsidiary Debtors with and into ASARCO.

(b) Voluntary Consolidation Pursuant to Section 1123(a)(5)(C) of the Bankruptcy Code.

Pursuant to section 1123(a)(5)(C) of the Bankruptcy Code, "[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall provide adequate means for the plan's implementation such as . . . merger or consolidation of the debtor with one or more persons . . . ." 11 U.S.C. § 1123(a)(5)(C). Holders of Claims in impaired Classes shall vote on a Debtor-by-Debtor basis so that their votes may be counted in this fashion, should the Debtors elect voluntary consolidation, rather than substantive consolidation.

As an alternative to substantive consolidation, the Debtors reserve the right, pursuant to section 1123(a)(5)(C), to consolidate the Other Subsidiary Debtors (other than Covington) into ASARCO on the Effective Date.

In addition, the Debtors reserve the right, pursuant to section 1123(a)(5)(C), to consolidate the Asbestos Subsidiary Debtors with and into Covington on the Effective Date.

The Parent contends that section 1123(a)(5)(C) of the Bankruptcy Code merely allows affiliated debtors, as one of the means of implementation of a joint plan of reorganization, to emerge from bankruptcy as a single entity (provided their creditors vote to approve the plan providing for such result), and that section 1123(a)(5)(C) was never meant to allow debtors to merge their estates for distribution purposes. Had section 1123(a)(5)(C) been available to achieve that result, according to the Parent, there would have been no need for the "substantive consolidation" remedy or vigorous legal debate surrounding its appropriateness.

The Debtors disagree.

(c) Separate Plans under Chapter 11 or Conversion to Chapter 7 Cases for Certain of the Subsidiary Debtors.

As another alternative, the Debtors reserve the right to proceed with the Plan as to only ASARCO and any one or more of the Subsidiary Debtors that ASARCO designates. Thereafter, the Subsidiary Debtors not included in the Plan with ASARCO would either file a proposed plan under chapter 11 of the Bankruptcy Code or convert their cases to liquidation cases under chapter 7 of the Bankruptcy Code. **The Subsidiary Debtors have not had ongoing business operations during the pendency of the bankruptcy cases. A general description of each Subsidiary Debtors' assets and liabilities is contained in the bankruptcy schedules they have filed in these cases, which can be found at *www.asarcoreorg.com.***

(d) Effect of Voting in Favor of the Plan.

A vote in favor of the Plan constitutes a vote in favor of voluntary consolidation pursuant to Section 9.3(b) above and a vote in favor of the separate plans proposed pursuant to Section 9.3(c) above.

(e) Possible Modification of the Plan.

If ASARCO elects to proceed to Confirmation without the Asbestos Subsidiary Debtors, ASARCO may modify the Plan, which modification may include provisions such that:

- if necessary or appropriate, the Asbestos Subsidiary Debtors may not be merged into Covington;
- if necessary or appropriate, the holders of Asbestos Personal Injury Claim(s) against the Asbestos Subsidiary Debtors may not be channeled to the Asbestos Trust;
- if necessary or appropriate, all or a part of ASARCO's interest in the Asbestos In-Place Insurance Coverage, any Asbestos Insurance Policy, any Asbestos Insurance Recovery or Recoveries, or

any Asbestos Insurance Settlement Agreement may be assigned by ASARCO to the Asbestos Subsidiary Debtors;

- if necessary or appropriate, one or more Asbestos Insurance Companies may be excluded from the definition of ASARCO Protected Parties, and the Asbestos Insurance Company Injunction might not be issued with respect to such company;

- if necessary or appropriate, one or more of the Asbestos Insurance Actions may be retained by the Asbestos Subsidiary Debtors;

- if necessary or appropriate, the Intercompany Claims between any Asbestos Subsidiary Debtor and ASARCO (including any Administrative Claim of ASARCO against any Asbestos Subsidiary Debtor) may be determined by the Bankruptcy Court, and if it is determined that a net amount is owed by ASARCO to the Asbestos Subsidiary Debtors, such Claims would be paid as Class 3 Claims under the Plan.

ASARCO shall provide appropriate notice of any such modification as required by the Bankruptcy Court.

9.4 Issuance of Interests in Reorganized ASARCO.

On or after the Effective Date, Reorganized ASARCO shall issue interests in Reorganized ASARCO for distribution in accordance with the terms of the Plan, which shall represent all of the equity interests in Reorganized ASARCO as of the Effective Date. They shall be held by the Plan Administrator. The issuance of interests in Reorganized ASARCO under the Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized ASARCO's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in the Plan.

9.5 Issuance of Interests in Reorganized Covington.

On or after the Effective Date, Reorganized Covington shall issue interests in Reorganized Covington for distribution in accordance with the terms of the Plan, which shall represent all of the equity interests in Reorganized Covington as of the Effective Date. The Asbestos Trust shall own 100 percent of the interests in Reorganized Covington, and shall be entitled to periodic dividends and other distributions from Reorganized Covington. The issuance of interests in Reorganized Covington pursuant to distributions under the Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized Covington's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in the Plan.

9.6 Charter Documents.

The charter documents of each of the Reorganized Debtors shall be amended, as of the Effective Date, to prohibit the issuance of nonvoting equity securities. The forms of the these documents are attached to the Plan as **Exhibit 13**.

9.7 Management of the Reorganized Debtors.

On the Effective Date, (a) the current directors and officers of ASARCO and the Subsidiary Debtors shall be removed (without the necessity of further action) and shall have no further obligations; (b) to the fullest extent permitted by applicable law, the rights, powers, and duties of the directors and officers of Reorganized ASARCO shall vest in the Plan Administrator, and the Plan Administrator or the Plan Administrator's designee shall be the presiding officer and the sole director of Reorganized ASARCO (unless and until additional officers or directors are appointed pursuant to the Plan Administration Agreement); and (c) the Asbestos Trustees shall appoint the persons to serve as officers and directors of Reorganized Covington. The compensation for service as officer and director of each of the Reorganized Debtors, and biographical data regarding the proposed Plan Administrator shall be filed with the Bankruptcy Court at least 10 days prior to the commencement of the Confirmation Hearing.

9.8 Reorganized Debtors' Name Changes.

On the Effective Date, Reorganized ASARCO shall change its name to ASARCO Administration Company, LLC, and Reorganized Covington shall change its name to The Covington Company, LLC.

9.9 Continued Corporate Existence and Business Operations of the Reorganized Debtors.

Except as otherwise provided in Article X of the Plan, the Reorganized Debtors shall continue their existences as separate entities after the Effective Date for the purposes of operating their businesses or satisfying their obligations under the Plan, in accordance with applicable law and pursuant to their applicable organizational documents. The Plan Administrator shall, in accordance with the Plan Administration Agreement, operate the business of Reorganized ASARCO, and the officers and directors of Reorganized Covington shall, in accordance with the charter documents of Reorganized Covington, operate the business of Reorganized Covington. On or after the Effective Date, the Plan Administrator and the officers and directors of Reorganized Covington, as applicable, may take such action as permitted by applicable law and each of the Reorganized Debtors' organizational documents, as they may determine is reasonable and appropriate, including to cause (a) each Reorganized Debtor's legal name to be changed; (b) the closure of the Reorganized Debtors' bankruptcy cases (upon consultation with **Liquidation Trustee, the SCC** Litigation Trustee, and the Asbestos Trustees); or (c) the Reorganized Debtors to be engaged in such businesses or activities as are appropriate to their respective corporate purposes.

9.10 Director and Executive Compensation.

A schedule of the annual compensation to be paid to persons serving as executives, officers, and directors of the Reorganized Debtors as of the Effective Date shall be filed with the Bankruptcy Court no later than 10 days before the commencement of the Confirmation Hearing.

SECTION 10
CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, holders of Claims are hereby notified that: (a) any discussion of United States federal tax issues in this document is not intended or written to be relied upon, and cannot be relied upon, by holders of Claims, for the purpose of avoiding penalties that may be imposed on such holders of Claims under the Internal Revenue Code; (b) such discussion is written in connection with the promotion or marketing of the transactions or matters addressed herein; and (c) holders of Claims should seek advice based on their particular circumstances from an independent tax advisor.

10.1 General.

Set forth below is a summary of certain federal income tax consequences of the consummation of the Plan. The summary is based on the Internal Revenue Code, final, temporary, and proposed Treasury Regulations promulgated thereunder, administrative pronouncements or practices, and judicial decisions, all as of the date hereof. Future legislative, judicial, or administrative modifications, revocations, or interpretations, which may or may not be retroactive, may result in federal income tax consequences significantly different from those discussed herein. This summary is not binding on the IRS or United States courts, and no assurance can be given that the conclusions reached in this summary will not be challenged by the IRS or will be sustained by a United States court if so challenged. In addition, the Debtors have not requested, and do not

intend to request, a ruling from the IRS regarding any of the federal income tax consequences of the implementation of the Plan.

This summary does not address the federal income tax consequences to certain categories of holders of Claims subject to special rules, including, without limitation, holders of Claims that are (a) banks, financial institutions, or insurance companies, (b) real estate investment trusts, cooperatives, regulated investment companies, mutual funds, or small business investment companies, (c) brokers or dealers in securities, (d) tax-exempt organizations, (e) investors in pass-through entities and such entities themselves, and (f) foreign taxpayers. Furthermore, this summary is limited to United States federal income tax consequences and does not discuss state, local, or foreign tax consequences or federal estate or gift tax consequences.

This summary is for general information purposes only and does not purport to be a complete analysis or listing of all potential federal income tax consequences that may apply to holders of Claims as a result of the implementation of the Plan. In addition, this summary does not take into account the individual facts and circumstances of particular holders of Claims that may affect the federal income tax consequences of the implementation of the Plan to such holders. Accordingly, this summary is not intended to be, and should not be construed as, legal or federal income tax advice. Holders of Claims should consult their own tax advisors regarding the federal, state, local, and foreign tax consequences of the Plan.

10.2 Federal Income Tax Classification of Trusts, Disputed Claims Reserve and Disputed Secured Claims Reserves.

The federal income tax consequences of the Plan to the Debtors and Claimants will depend to a large degree on the federal income tax classification of the ~~Litigation~~**Liquidation** Trust, the SCC Litigation Trust, ~~the Residual Assets Liquidation Trust,~~ the Asbestos Trust, the Environmental Custodial Trusts, the Disputed Claims Reserve, and the Disputed Secured Claims Reserves.

(a) Classification of ~~Litigation~~**Liquidation** Trust~~,~~ **and** SCC Litigation ~~Trust, and Residual Assets Liquidation~~ Trust.

It is intended that the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust each will be treated for federal income tax purposes as a grantor trust owned by the ~~Litigation~~**Liquidation** Trust Tax Owners~~,~~ **and** the SCC Litigation ~~Trust Tax Owners, and the Residual Assets Liquidation~~ Trust Tax Owners, respectively. However, the Debtors have not sought, and do not intend to seek, a ruling from the IRS or an opinion of counsel regarding the treatment of these trusts. Accordingly, there can be no assurance that the IRS will not take a contrary position. Except as otherwise specified, the remainder of the tax considerations discussion assumes that the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust each will be treated for federal income tax purposes as a grantor trust owned by the ~~Litigation~~**Liquidation** Trust Tax Owners~~,~~ **and** the SCC Litigation ~~Trust Tax Owners, and the Residual Assets Liquidation~~ Trust Tax Owners, respectively. Assuming that the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust are so treated, no entity-level tax will be imposed on any of the income or gain derived by the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, or the Residual Assets Liquidation~~ Trust but, instead, the ~~Litigation~~**Liquidation** Trust Tax Owners~~,~~ **and** the SCC Litigation ~~Trust Tax Owners, and the Residual Assets Liquidation~~ Trust Tax Owners will be treated as the owners of the ~~Litigation~~**Liquidation** Trust's assets~~,~~ **and** the SCC Litigation ~~Trust's assets, and the Residual Assets Liquidation~~ Trust's assets, respectively, for federal income tax purposes and will be required to include in their computation of taxable income their allocable share of income and gain generated by the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust.

(b) Classification of Asbestos Trust and Environmental Custodial Trusts.

The Treasury regulations promulgated under section 468B of the Internal Revenue Code provide that a fund, account, or trust will be a qualified settlement fund if three conditions are met. First, the fund, account, or trust must be established pursuant to an order of, or be approved by, a government authority, including a court, and must be subject to the continuing jurisdiction of that government authority. Second, the fund, account, or trust must be established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event or related series of events that has occurred and that has given rise to at least one claim asserting liability arising out of, among other things, a tort, violation of law, or CERCLA claim. Third, the fund, account, or trust must be a trust under applicable state law or have its assets physically segregated from the other assets of the transferor and persons related to the transferor.

The Asbestos Trust and the Environmental Custodial Trusts have been structured so as comply with the foregoing requirements to the maximum extent possible. However, the Debtors have not, and do not intend to, seek a ruling from the IRS or an opinion of counsel regarding the status of the Asbestos Trust and the Environmental Custodial Trusts as qualified settlement funds. Accordingly, there can be no assurance that the IRS will not take a contrary position. Except as otherwise specified, the remainder of the tax considerations discussion assumes that the Asbestos Trust and the Environmental Custodial Trusts will be treated as qualified settlement funds.

Assuming that the Asbestos Trust and the Environmental Custodial Trusts qualify for qualified settlement fund treatment, the Asbestos Trust and the Environmental Custodial Trusts will be treated as separate taxable entities and will generally be subject to federal income tax on their modified taxable income at the maximum rate applicable to trusts, which is currently 35 percent. In determining the modified taxable income of the Asbestos Trust and each Environmental Custodial Trust, (1) amounts transferred by the Debtors to such trust (other than payments in compensation for late or delayed transfers, dividends on stock of a Debtor or related person, or interest on the debt of a Debtor or related person) pursuant to the Plan will generally be excluded from the trust's income; (2) any sale, exchange or distribution of property by such trust will generally be treated as a sale and result in the recognition of gain or loss in an amount equal to the difference between the fair market value of the property on the date of such disposition and the adjusted tax basis of the trust in such property; and (3) administrative costs (including state and local taxes) incurred by such trust that would be deductible in determining the taxable income of a corporation will generally be deductible by the trust. The adjusted tax basis of the Asbestos Trust and the Environmental Custodial Trusts in property received from the Debtors (or from an insurer on behalf of the Debtors) pursuant to the Plan will generally be the fair market value of such property at the time of such transfer.

(c) Classification of Disputed Claims Reserve and Disputed Secured Claims Reserves.

The Treasury regulations promulgated under IRC section 468B provide that a fund, escrow account, or trust will be a disputed ownership fund if four conditions are met. First, the fund, escrow account, or trust must be established to hold money or property subject to conflicting claims of ownership. Second, the fund, escrow account, or trust must be subject to the continuing jurisdiction of a court. Third, the fund, escrow account, or trust is required to obtain the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor claimant. Finally, the fund, escrow account, or trust must not be a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, a qualified settlement fund, or a liquidating trust (except for certain liquidating trusts established pursuant to a confirmed bankruptcy plan).

It is unclear as to whether the Disputed Claims Reserve or a Disputed Secured Claims Reserve qualifies as a disputed ownership fund under the foregoing rules since it is not clear that the third and fourth conditions are satisfied. If the Disputed Claims Reserve or a Disputed Secured Claims Reserve qualifies as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1), it would be subject to entity level federal income taxation on its income as if it were a corporation, and such entity level taxes imposed on such reserve would be paid out of such reserve. If the Disputed Claims Reserve or a Disputed Secured Claims Reserve does not qualify as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1), then it will not be treated as a separate taxable entity subject to entity level taxation, and the person that is deemed to "own" the reserve for U.S. federal income tax purposes will be required to pay federal income taxes on its earnings.

The Plan Administrator intends to take the position that the Disputed Claims Reserve and the Disputed Secured Claims Reserves do not qualify as disputed ownership funds within the meaning of Treasury Regulations section 1.468B-9(b)(1). The Plan Administrator shall comply with all tax-reporting requirements as though the Disputed Claims Reserve and any Disputed Secured Claims Reserves are grantor trusts deemed owned by Reorganized ASARCO, and shall cause taxes attributable to the earnings of the Disputed Claims Reserve or a Disputed Secured Claims Reserve (as well as any taxes directly imposed on the Disputed Claims Reserve or a Disputed Secured Claims Reserve) to be paid out of the assets of the Disputed Claims Reserve or the Disputed Secured Claims Reserve, respectively.

10.3 Federal Income Tax Consequences to Debtors.

(a) Cancellation of Indebtedness.

Under the Internal Revenue Code, a taxpayer generally must include in gross income the amount of any COD Income realized during the taxable year. Subject to the exception described in the next sentence, the Debtors will generally realize COD Income upon the satisfaction of a Claim pursuant to the Plan to the extent that the liquidated amount of the Claim (or, in the case of the Bonds, the "adjusted issue price" of the Bonds) exceeds the sum of the amount of cash and

the fair market value of property paid in satisfaction of such Claim. Section 108 of the Internal Revenue Code provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to an income tax deduction. Pursuant to this exception, it is expected that the satisfaction of all or substantially all of the Toxic Tort Claims and Unsecured Asbestos Personal Injury Claims, and the satisfaction of most of the environmental Claims, will not result in COD income to the Debtors. Section 108 of the Internal Revenue Code provides further that COD Income may be excluded from gross income to the extent that the taxpayer is insolvent or is in bankruptcy, but such excluded amount must be applied to reduce certain tax attributes of the taxpayer. Because ASARCO is a disregarded entity for tax purposes and its owner is not in bankruptcy, it is unlikely that this bankruptcy exception will be applicable.

(b) Sale of Sold Assets to Plan Sponsor.

The extent to which the Debtors recognize gain will depend on whether the sale of the Sold Assets to the Plan Sponsor qualifies as a tax-free reorganization under the Internal Revenue Code. Although not entirely free from doubt, it is believed that the sale does not so qualify. Accordingly, the sale of the Sold Assets to the Plan Sponsor will be a taxable event, resulting in taxable gain to the Debtors in an amount equal to the difference between (1) the amount of cash received by the Debtors, the "issue price" of the noncontingent portion of the Plan Sponsor Promissory Note, and the fair market value of any other property received by the Debtors (including, without limitation, the contingent portion of the Plan Sponsor Promissory Note) and (2) the Debtors' adjusted tax basis of the Sold Assets. This taxable gain is expected to be substantial. However, tax deductions generated as a result of the satisfaction of certain of the Claims (as more particularly described below) are expected to offset such taxable gain.

(c) Transfers of Assets other than Cash to Trusts.

Assuming that the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation Trust~~, and the Residual Assets Liquidation Trust~~ qualify as grantor trusts owned by their respective ~~beneficiaries~~**tax owners**, and that the Asbestos Trust and the Environmental Custodial Trusts qualify as qualified settlement funds (as discussed above), the Debtors will be treated as having made a taxable disposition of the assets transferred to the ~~Litigation Trust~~**Liquidation Trust (except to the extent the Debtors are Liquidation Trust Tax Owners)**, the SCC Litigation Trust~~, the Residual Assets Liquidation Trust~~ **(except to the extent the Debtors are SCC Litigation Trust Tax Owners)**, the Asbestos Trust, and the Environmental Custodial Trusts. As a result, the Debtors will generally recognize gain or loss on the transfer of any such assets other than cash in an amount equal to the difference between (1) the fair market value of ~~the assets~~**such** transferred **assets** and (2) the Debtors' adjusted tax basis in ~~the~~**such** transferred assets.

(d) Deductibility of Amounts Transferred in Satisfaction of Asbestos, Toxic Tort, and Certain Environmental Claims.

The Debtors should be entitled to a deduction for all or substantially all of the amount of cash and the fair market value of other assets paid in satisfaction of the Unsecured Asbestos Personal Injury Claims and Toxic Tort Claims, and for a substantial portion of the amounts paid in satisfaction of the environmental Claims, once the usual requirements imposed on accrual basis taxpayers with respect to the satisfaction of liabilities are met. Assuming that the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation Trust~~, and the Residual Assets Liquidation Trust~~ qualify as grantor trusts owned by their respective ~~beneficiaries~~**tax owners**, and that the Asbestos Trust and the Environmental Custodial Trusts qualify as qualified settlement funds (as discussed above), these requirements should generally be met at the time Cash or assets are transferred to the ~~Litigation~~**Liquidation** Trust, the SCC Litigation Trust, ~~the Residual Assets Liquidation Trust, the~~ Asbestos Trust, and the Environmental Custodial Trusts.

The Debtors will not be allowed a deduction for payments to the Trusts to the extent that such payments represent insurance proceeds received by the Debtors. In such case, payments of amounts representing insurance proceeds should not cause recognition of income to the Debtors. Alternatively, if the Debtors' transfer of amounts representing insurance proceeds were to cause recognition of income by the Debtors, the Debtors should be entitled to a corresponding deduction for the payment of such amounts to the Trusts.

Similarly, the Debtors will not be allowed a deduction for payments to the Trusts to the extent the Debtors have a right to reimbursement (with a positive fair market value) with respect to such payments from any third party.

Any deductions for payments made to the Trusts first would reduce or eliminate the Debtors' federal taxable income for the taxable year in which the payments are made. To the extent these deductions created a taxable loss for such year, the loss would constitute a net operating loss.

10.4 Federal Income Tax Consequences to Holders of Claims.

(a) General.

The tax consequences of the Plan to a holder of a Claim will depend, in part, on the type of consideration the holder receives in exchange for the Claim, whether the holder reports income on the accrual or cash-basis method, and whether the holder receives distributions under the Plan in more than one taxable year. This discussion assumes (as described under Section 10.3(b) above) that the sale of the Sold Assets to the Plan Sponsor does not qualify as a tax-free reorganization.

In general, subject to the discussion below with respect to Unsecured Asbestos Personal Injury Claims and payments to Claimants on account of personal physical injury or sickness, a holder of a Claim that receives cash or property in satisfaction of its Claim will recognize (a) ordinary interest income to the extent such payments are attributable to interest that has accrued but has not been previously taken into income by the holder with respect to the Claim and (b) gain or loss in an amount equal to the difference between (1) the amount of cash and the fair market value of other property received (or deemed to be received) by such holder in satisfaction of such Claim (other than amounts attributable to accrued interest, which is taxed as described above) and (2) the holder's adjusted tax basis in such Claim. For federal income tax purposes, the transfer of assets to the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust will be treated as a deemed transfer of property to the ~~Litigation~~**Liquidation** Trust Tax Owners~~,~~ **and** the SCC Litigation Trust ~~Beneficiaries, and the Residual Assets Liquidation Trust Beneficiaries~~**Tax Owners** (as of the Initial Distribution Date), respectively, followed by a deemed transfer by such ~~Tax Owners~~**tax owners** to their respective trusts. The fair market value of the assets that are so treated as having been transferred to a ~~Tax Owners~~**tax owner**, and the fair market value of the portion of the ~~Litigation~~**Liquidation** Trust~~,~~ **or** SCC Litigation ~~Trust, or Residual Assets Liquidation~~ Trust assets that is treated for federal income tax purposes as having been transferred to any ~~Tax Owners~~**tax owner** as a result of the allowance or disallowance of a ~~Dispute Claim or a~~ Disputed ~~Secured Claims Reserve~~**Claim**, shall be determined by the ~~Litigation~~**Liquidation** Trustee~~,~~ **or** SCC Litigation ~~Trustee, or Residual Assets Liquidation~~ Trustee, as applicable, and all parties (including, without limitation, the ~~Litigation~~**Liquidation** Trustee, the SCC Litigation Trustee, the ~~Residual Assets~~ Liquidation ~~Trustee, the Litigation~~ Trust Tax Owners, the SCC Litigation Trust Tax Owners, ~~the Residual Assets Liquidation Trust Tax Owners,~~ and the transferors, for tax purposes, of any assets transferred to the ~~Litigation~~**Liquidation** Trust~~, the SCC Litigation Trust,~~ or the ~~Residual Assets Liquidation~~**SCC Litigation** Trust) are required to utilize such fair market values determined by the ~~Litigation~~**Liquidation** Trustee~~, the SCC Litigation Trustee,~~ and the ~~Residual Assets Liquidation~~**SCC Litigation** Trustee for all federal income tax purposes.

Unsecured Asbestos Personal Injury Claims will be channeled to the Asbestos Trust. As a result, the Asbestos Trust will be the recipient of Cash under the Plan. Neither the Asbestos Trust nor the holders of the Unsecured Asbestos Personal Injury Claims will be taxed at the time of such transfer to the Asbestos Trust. Instead, holders of such Claims shall be treated as receiving cash or property when they receive distributions from the Asbestos Trust.

All distributions to holders of Claims will be subject to any applicable withholding and backup withholding.

Payments under the Plan to Claimants with respect to damages on account of personal physical injuries or physical sickness will not be includable in such Claimants' gross income pursuant to section 104 of the Internal Revenue Code. However, to the extent payments under the Plan to Claimants are attributable to medical expense deductions allowed under section 213 of the Internal Revenue Code for a prior taxable year, such payments will be taxable as ordinary income to the recipient. Payments under the Plan to Claimants representing punitive damages or interest will generally be taxable as ordinary income to the recipient. Payments under the Plan to a Claimant attributable to attorneys' fees of such Claimant may be taxable as ordinary income to the Claimant depending upon the unique circumstances of such Claimant. If taxable, such a Claimant may also be entitled to deduct such payments as an expense (subject to certain limitations). Some portion of the amounts received by holders of Unsecured Asbestos Personal Injury Claims and certain Toxic Tort Claims may qualify for the treatment described in this paragraph.

Under the Plan, each Allowed Class 2 Secured Claim, at the option of the Debtors, shall be Reinstated. In the event that (a) a Secured Claim is treated as debt for tax purposes, (b) such Secured Claim is Reinstated, (c) such Reinstatement constitutes a "significant modification" of the Secured Claim for tax purposes, and (d) such Reinstatement

does not constitute a tax-free recapitalization, the holder of such Secured Claim would generally have taxable gain or loss to the extent that the "issue price" of the reinstated Secured Claim is greater than or less than, respectively, the holder's tax basis in the Secured Claim. If the Reinstatement of a Secured Claim does not constitute a significant modification, or constitutes a tax-free recapitalization, the holder of the Secured Claim would generally not recognize gain or loss as a result of such Reinstatement, except with respect to payments for accrued interest, fees, expenses, charges, or principal (to the extent that the holder previously took a bad debt deduction with respect to such principal) received by the holder in connection with the Reinstatement. Whether the Reinstatement of a Secured Claim would constitute a significant modification that is not a tax-free recapitalization depends on the specific facts and circumstances. Holders of Secured Claims should consult their own tax advisors to determine the tax consequences of Reinstatement.

Where gain or loss is recognized by a holder of Claims under the foregoing rules, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was acquired at a market discount, and whether and to what extent the holder had previously claimed a bad debt deduction.

Holders of Claims are strongly urged to consult their tax advisors with respect to the tax treatment under the Plan of their particular Claims.

(b) Ownership of ~~Litigation Trust Interests, SCC Litigation~~**Liquidation** Trust Interests and ~~Residual Assets Liquidation~~**SCC Litigation** Trust Interests.

All income and gain of the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust which is earned after the deemed transfer described above will be taxed to the ~~Litigation~~**Liquidation** Trust Tax Owners~~,~~ **and** the SCC Litigation ~~Trust Tax Owners, and the Residual Assets Liquidation~~ Trust Tax Owners, respectively, on a current basis, regardless of when such income may be distributed. Any items of income, gain, deduction, credit, or loss of the ~~Litigation~~**Liquidation** Trust~~,~~ **and** the SCC Litigation ~~Trust, and the Residual Assets Liquidation~~ Trust shall be allocated for federal income tax purposes among current or former ~~Litigation~~**Liquidation** Trust ~~Benef~~ Tax Owners~~,~~ **and** SCC Litigation ~~Trust Tax Owners, and Residual Assets Liquidation~~ Trust Tax Owners, respectively, by the ~~Litigation~~**Liquidation** Trustee~~,~~ **and** the SCC Litigation ~~Trustee, and the Residual Assets Liquidation~~ Trustee, as applicable. Such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former ~~Litigation~~**Liquidation** Trust Tax Owners~~,~~ **and** SCC Litigation ~~Trust Tax Owners, and Residual Assets Liquidation~~ Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

Claimants are urged to consult their tax advisors regarding the potential tax consequences of receiving, holding and disposing of ~~Litigation Trust Interests, SCC Litigation~~Liquidation Trust Interests and ~~Residual Assets Liquidation~~SCC Litigation Trust Interests.

(c) Distributions After the Effective Date.

If a holder of an Allowed Claim receives distributions pursuant to the Plan subsequent to the Effective Date, a portion of such distributions may be treated as imputed interest under the imputed interest provisions of the Code. Such imputed interest may accrue over time, in which case a holder may be required to include such imputed interest in income prior to the actual distributions. Any loss and a portion of any gain realized by such holder may be subject to deferral. Furthermore, the "installment sale" rules of the Code may apply to gain recognized by such holder. Special rules apply to installment sales in which the total amount to be realized is contingent and some of these rules may, in certain circumstances, provide for disadvantageous recovery of a holder's basis.

All holders of Claims are urged to consult their tax advisors regarding the possible application of (and ability to elect out of) the installment method of reporting gain and the possible application of the imputed interest rules.

10.5 Information Reporting; Backup Withholding Tax.

Payments made pursuant to the Plan will generally be subject to applicable federal income tax information reporting and withholding requirements. The Internal Revenue Code imposes backup withholding tax on certain payments,

including payments of interest, if a taxpayer (a) fails to furnish its correct taxpayer identification number (generally on IRS Form W-9), (b) furnishes an incorrect taxpayer identification number, (c) is notified by the IRS that it has previously failed to report properly items subject to backup withholding tax, or (d) fails to certify, under penalty of perjury, that such taxpayer has furnished its correct taxpayer identification number and that the IRS has not notified such taxpayer that it is subject to backup withholding tax. However, taxpayers that are corporations generally are excluded from these information reporting and backup withholding tax rules provided that evidence of such corporate status is furnished to the payor. Backup withholding is not an additional federal income tax. Any amounts withheld under the backup withholding tax rules will be allowed as a credit against a taxpayer's federal income tax liability, if any, or will be refunded to the extent the amounts withheld exceed the taxpayer's actual tax liability, if such taxpayer furnishes required information to the IRS. A taxpayer that does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. Each taxpayer should consult its own tax advisor regarding the information reporting and backup withholding tax rules as they relate to distributions under the Plan.

10.6 Importance of Obtaining Professional Tax Assistance.

The foregoing discussion is intended only as a summary of certain federal income tax consequences of the Plan, and is not a substitute for careful tax planning with a tax professional. The tax consequences are in many cases uncertain and may vary depending on the individual circumstances of a holder of Claims. **Accordingly, holders of Claims are urged to consult with their tax advisors about the federal, state, local, and foreign tax consequences of the Plan.**

SECTION 11
FINANCIAL INFORMATION

11.1 General.

An analysis of the Debtors' financial condition appears in the historic unaudited financial information for the fiscal years 2005, 2006, 2007, and 2008, attached to this Disclosure Statement as **Exhibit D**. This information is provided to permit holders of Claims and Interests to better understand the Debtors' financial condition.

The Debtors are required to file monthly operating reports with the Bankruptcy Court. Such financial information is on file with the clerk of the Bankruptcy Court and publicly available for review on the Bankruptcy Court's public website: *www.ecf.txsb.uscourts.gov*, or at the Debtors' restructuring website: *www.asarcoreorg.com*.

11.2 Funding for Plan Administration Expenses.

~~In addition to the Available Plan Funds, the Plan Administrator may satisfy obligations under the Plan to holders of unpaid Claims from the following sources: (a) excess Cash in the Plan Administration Reserve, as determined by the Plan Administrator, after consultation with and approval by the Plan Administration Committee; (b) proceeds recovered from the settlement or litigation of any of the Vested Causes of Action (as listed in **Exhibit 14-A** to the Plan); and (c) proceeds received from the sale of, or income generated by, any Remaining Assets.~~

The Plan Administration Reserve ~~includes $50 million~~[1]**contains** that ASARCO has set aside to cover various contingencies that may arise after the Effective Date, ~~with another [$___] million set aside for the Claim allowance process and miscellaneous fees and expenses. Another [$___] million is to be used by the Litigation Trustee to prosecute litigation~~**including $5 million in the Unpaid Cure Claims Reserve, $12.5 to $25 million in the Prepetition ASARCO Environmental Trust Escrow (depending upon whether AMC makes the May 2009 payment on the note, as set forth in Article 10.8(c) of the Plan), $20 million in the Indemnification Escrow, $10 million in the Liquidation Trust Reserve, and $15 million in the SCC Liquidation Reserve. The Plan Administrator shall also establish and fund various other bank accounts pursuant to Article 10.2(c) of the Plan to address Reorganized ASARCO's administrative expenses**.

11.3 Reorganized Debtors' Business Operations.

---

[1] ~~This amount will be reduced to $37.5 million if AMC makes the May 2009 payment on the note, as set forth in Article 10.8(c) of the Plan.~~

The ASARCO Residual Assets, including, without limitation, the Plan Administrative Reserve, the Vested Causes of Action (as listed in Exhibit 14-A to the Plan), stock in Freeport McMoRan Copper & Gold Inc., Ag-Land FS, Gateway Co-op, and Revett Minerals, the coal royalty noted in Section 2.11(a) above, and various insurance policies, shall vest in Reorganized ASARCO on the Effective Date. Notwithstanding the foregoing, ASARCO reserves the right to contribute one or more of the ASARCO Residual Assets to Reorganized Covington, in ASARCO's sole discretion, as it shall deem appropriate in order to obtain Confirmation of the Plan.

ASARCO owns approximately 20 acres of real property in Madera Canyon, located in Santa Cruz County, Arizona. The land is valued at $1 million, and was purchased as part of a planned land exchange with the United States Forest Service that was never effectuated. Six cabins, five of which are habitable, are on the property. The Madera Property is leased to Mr. and Mrs. Richard J. Lansky, and generates rental income of $500 per month. Pursuant to the Plan, the Madera ~~property~~**Property** shall be transferred to Reorganized Covington, and ASARCO shall assume the lease with the Lanskys and assign it to Reorganized Covington. To the best of the Debtors' knowledge, Covington presently has no assets or liabilities.

SECTION 12
SOURCES OF INFORMATION PROVIDED AND THE ACCOUNTING METHOD USED

12.1 Sources of Information.

The information set forth in this Disclosure Statement and the attached exhibits was provided by the Debtors, the Committees, the FCR, the Plan Sponsor, and their respective advisors. The financial information in **Exhibit D** to this Disclosure Statement was provided by the Debtors.

12.2 Accounting Method.

The Debtors' books and records (a) present fairly in all material respects the consolidated financial position of ASARCO as of the respective dates thereof, and the consolidated results of operations of ASARCO for the periods covered thereby and (b) have been prepared in all material respects in accordance with generally accepted accounting principles applied on a basis consistent with the past practices of ASARCO during the pendency of the Reorganization Cases, in each case, subject to (i) the absence of footnotes thereto~~,~~**;** (ii) in the case of interim financial statements, the absence of normal year-end adjustments~~,~~**;** and (iii) audit adjustments resulting from the independent accountants' audit, review and finalization of the ASARCO's financial statements for the years ended December 31, 2005, 2006, 2007, and 2008.

SECTION 13
REQUIREMENTS FOR CONFIRMATION OF THE PLAN AND VOTING PROCEDURES

13.1 Acceptance or Rejection of the Plan.

Under the Bankruptcy Code, only classes of claims and interests that are impaired under a plan of reorganization can vote to accept or reject that plan. Under section 1124 of the Bankruptcy Code, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest in that class, that plan:

- leaves unaltered the legal, equitable, and contractual rights to which that claim or interest entitles its holder; or
- notwithstanding any contractual provision or applicable law that entitles the holder of that claim or interest to demand or receive accelerated payment of that claim or interest after the occurrence of a default:
    - cures that default, if other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code;
    - reinstates the maturity of that claim or interest as it existed prior to that default;
    - compensates the holder of that claim or interest for any damages incurred as a result of that holder's reasonable reliance on that contractual provision or applicable law; and

- does not otherwise alter the legal, equitable, or contractual rights to which that claim or interest entitles its holder.

Under the Debtors' Plan, ~~Classes~~**Class** 1 and **Class** 5 are unimpaired; therefore, the holders of Claims in such Classes are conclusively presumed under section 1126(f) of the Bankruptcy Code to have accepted the Plan. The Debtors shall solicit the votes of all holders of Secured Claims in Class 2, but if the Debtors elect to Reinstate certain sub-Classes of Class 2, the Reinstated Claims are unimpaired and so the votes of the Secured Claimant in those sub-Classes shall not be counted.

The Debtors shall solicit the votes of **each sub-Class of** Class 4. If the Bankruptcy Court determines that this Class is unimpaired, then holders of Unsecured Asbestos Personal Injury Claims in **each sub-Class of** Class 4 shall be conclusively presumed to have accepted the Plan for purposes of section 1129 of the Bankruptcy Code. In that event, the Bankruptcy Court may determine that such holders are also conclusively presumed to have accepted the Plan for purposes of section 524(g) of the Bankruptcy Code, or may require the votes of Claimants in **each sub-Class of** Class 4 to be counted in order to determine whether the 75 percent voting requirement of section 524(g) is satisfied. If the Bankruptcy Court determines that Class 4 is impaired, the Ballots cast by holders of Class 4**A and Class 4B** Claims shall be used to determine whether **each sub-Class of** Class 4 accepts or rejects the Plan for purposes of sections 1129 and 524(g) of the Bankruptcy Code.

Classes 6 through 10 shall not receive or retain any property on account of their Claims or Interests; therefore, the holders of Claims and Interests in such Classes are conclusively presumed under section 1126(g) of the Bankruptcy Code to have rejected the Plan.

Class 3 and the Secured Claims in any sub-Classes of Class 2 as to which the Debtors make the Cash payment election are impaired under the Plan; therefore, the holders of Claims in such Classes are entitled to vote to accept or reject the Plan. As noted above, the Debtors shall solicit the votes of all holders of Secured Claims in Class 2, but only the votes of the Secured Claimants in sub-Classes as to which the Debtors make the Cash payment election will be counted.

Any Class of Claims or Interests that does not have a holder of an Allowed Claim or Interest or a Claim or Interest temporarily allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plan for purposes of voting to accept or reject the Plan and for purposes of determining acceptance or rejection of the Plan by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

13.2 Confirmation Hearing.

Section 1128(a) of the Bankruptcy Code requires the court, after notice, to hold a hearing on confirmation of a proposed plan. The Confirmation Hearing has been scheduled to commence on **_____ __, ____ at __:__ _.m.** before the Honorable Richard S. Schmidt, United States Bankruptcy Judge for the Southern District of Texas, in his courtroom located at 1133 N. Shoreline Blvd., Second Floor, Corpus Christi, Texas. In order to obtain the protections of section 524(g) of the Bankruptcy Code, the Confirmation Order must be issued or affirmed by the District Court. Thus, the Bankruptcy Court and the District Court may jointly conduct the Confirmation Hearing. Alternatively, if solely the Bankruptcy Court conducts the Confirmation Hearing and enters the Confirmation Order, the Debtors shall ask the District Court to affirm the Confirmation Order. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Unless otherwise directed or permitted by the Bankruptcy Court, any objection to Confirmation of the Plan must (a) be in writing~~;~~**.** (b) conform to the Bankruptcy Rules~~;~~**.** (c) set forth the name of the objecting party~~;~~**.** (d) identify the nature of Claims or Interests held or asserted by the objector against the Debtors' Estates or property~~;~~**.** (e) state the basis for the objection and the specific grounds therefore~~;~~**.** and (f) be filed with the clerk of the Bankruptcy Court, together with proof of service, and served upon each of the following so as to be received in the offices of each such Persons no later than _____ __, ____at 4:00 p.m., Prevailing Central Time: (1) Jack L. Kinzie, Judith Ross, James R. Prince, **Marty Green,** Baker Botts L.L.P., 2001 Ross Avenue, Dallas, Texas 75201-2980; (2) Tony M. Davis, Mary Millwood Gregory, Baker Botts L.L.P., One Shell Plaza, 910 Louisiana, Houston, Texas 77002-4995; (3) Shelby A. Jordan, Jordan, Hyden, Womble, Culbreth & Holzer, P.C., Suite 900, Bank of America, 500 North Shoreline, Corpus Christi, Texas 78471; (4) Stacey J. Rappaport, Robert A. Winter, Milbank Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005; (5) Charles A. Beckham, Jr., Trey Monsour, Haynes and Boone LLP, 1 Houston Center, 1221 McKinney, Suite 2100,

Houston, Texas 77010; (6) James C. McCarroll, Reed Smith LLP, 599 Lexington Avenue, 29th Floor, New York, NY 10022; (7) Paul M. Singer, Reed Smith LLP, 435 Sixth Avenue, Pittsburgh, PA 15219; (8) Derek J. Baker, Reed Smith LLP, 2500 One Liberty Place, Philadelphia, PA 19103; (9) Sander L. Esserman, Jacob Newton, Stutzman, Bromberg, Esserman & Plifka, 2323 Bryan Street, Suite 2200, Dallas, Texas 75201; (10) John H. Tate, II, Raymond W. Battaglia, Debra L. Innocenti, Oppenheimer, Blend, Harrison & Tate, Inc., 711 Navarro, Sixth Floor, San Antonio, Texas 78205; (11) David L. Dain and Alan S. Tenenbaum, United States Department of Justice, Environmental Enforcement Section, 601 D Street NW, Washington, DC 20004 (overnight mail only); (12) Douglas P. Bartner, Randy Martin, Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022; (13) Richard M. Seltzer, Cohen, Weiss and Simon LLP, 330 West 42nd Street, New York, NY 10025; and (14) United States Trustee, Attn: Charles F. McVay, 606 N. Carancahua St., Ste. 1107, Corpus Christi, TX 78476.

13.3 Requirements for Confirmation.

(a) Consensual Confirmation Under Section 1129(a) of the Bankruptcy Code.

At the Confirmation Hearing, the Bankruptcy Court shall be asked to determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. These requirements include, among others, judicial findings that:

- the Plan complies with applicable provisions of the Bankruptcy Code;
- the Debtors have complied with the applicable provisions of the Bankruptcy Code;
- the Plan has been proposed in good faith and not by any means forbidden by law;
- any payment made or to be made by the Debtors or by any Person acquiring property under the Plan for services, costs, or expenses in or in connection with the Reorganization Cases, or in connection with the Plan and incident to the Reorganization Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable;
- the Debtors have disclosed the identity and affiliations of any individual proposed to serve as a director or an officer of the Reorganized Debtors after Confirmation of the Plan and that the appointment to, or continuance in, such office by such individual is consistent with the interests of holders of Claims and Interests and with public policy;
- the Debtors have disclosed the identity of any insider that shall be employed or retained by the Reorganized Debtors, and the nature of any compensation for such insider;
- the Plan is in the best interests of the holders of Claims and Interests; that is, each holder of a Claim or Interest in an impaired Class either has accepted the Plan or shall receive or retain under the Plan on account of such Claim or Interest property with a value, as of the Effective Date, that is not less than the amount that the holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date;
- except to the extent the Plan meets the "Nonconsensual Confirmation" standards discussed below, each Class of Claims or Interests has either accepted the Plan or is not impaired under the Plan;
- except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the Plan provides that Administrative Claims and Priority Claims shall be paid in full on the Effective Date and that Priority Tax Claims shall be either paid in full on the Effective Date or shall receive on account of such Claims deferred cash payments, over a period not exceeding six years after the date of assessment of such Claims, of a value, as of the Effective Date, equal to the Allowed Amount of such Claims;
- at least one impaired and non-insider Class of Claims has accepted the Plan;

- that the Plan is feasible; that is, Confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, unless such liquidation or reorganization is proposed in the Plan;

- all fees payable under section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, have been paid or the Plan provides for the payment of all such fees on the Effective Date; and

- the Plan provides for the continuation after the Effective Date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to section 1114(e)(1)(B) or (g) of the Bankruptcy Code, at any time prior to Confirmation of the Plan, for the duration of the period the Debtors have obligated themselves to provide such benefits.

The Debtors believe that the Plan satisfies all applicable requirements of section 1129(a) of the Bankruptcy Code.

Best Interests Test. Under the best interests test, the Plan is confirmable if, with respect to each impaired Class of Claims or Interests, each holder of a Claim or Interest in that Class either:

- has accepted the Plan; or

- shall receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders in each Class of Claims or Interests would receive if the Debtors were liquidated, the Bankruptcy Court must estimate the dollar amount the Debtors' assets and properties would generate if liquidated by a chapter 7 trustee. The Cash amount that would be available for satisfaction of the Allowed Claims and Interests of the Debtors would consist of the proceeds resulting from the disposition of the assets of the Debtors, augmented by the Cash held by the Debtors at the time of the commencement of the chapter 7 cases. That Cash amount would be reduced by the costs and expenses of the liquidation and by any additional Administrative Claims and Priority Claims that would result from the termination of the Debtors' businesses and the use of chapter 7 proceedings for the purposes of liquidation. The Liquidation Analysis prepared by the Debtors is attached as **Exhibit E** to this Disclosure Statement.

Based upon the analysis set forth in **Exhibit E**, the Debtors firmly believe that the distributions that would be made in a chapter 7 case would be substantially smaller than the distributions contemplated by the Plan. The Debtors therefore believe that the Plan is in the best interests of all holders of Claims and Interests.

(b) Feasibility of the Plan. In order for the Plan to be confirmed, the Bankruptcy Court also must determine that the Plan is feasible – that is, that the need for further reorganization or a subsequent liquidation of the Debtors is not likely to result following Confirmation of the Plan. In determining whether a plan of reorganization is feasible, a court shall consider:

- the adequacy of the proposed capital structure of the reorganized entity;

- the earning power of that entity;

- the overall economic conditions in which that entity shall operate;

- the capability of its management;

- the continuity of its management; and

- any other factors the court deems relevant to the successful operation of the reorganized entity to perform the provisions of the plan of reorganization.

(c) Acceptance by an Impaired Class.

Because the Plan impairs (adversely affects) Claims in ~~Classes~~**Class** 2 (assuming that the Debtors make the Cash payment election in regards to some sub-Classes of the Class 2 Secured Claims) and **Class** 3 (and, if the Bankruptcy Court so determines, Class 4**A and Class 4B**), section 1129(a)(10) of the Bankruptcy Code requires that for the Plan to be confirmed, at least one impaired Class must accept the Plan by the requisite vote. ~~All~~**An** impaired Class of Claims shall have accepted the Plan if and only if at least two-thirds in amount and more than one-half in number of the Allowed Claims in such Class that vote have voted to accept the Plan.

(d) Nonconsensual Confirmation under Section 1129(b) of the Bankruptcy Code.

Although section 1129(a)(8) of the Bankruptcy Code requires that a plan be accepted by each class that is impaired by such plan, section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may still confirm the Plan at the request of the Debtors if all requirements of section 1129(a) except section 1129(a)(8) are met and if, with respect to each Class of Claims or Interests that is impaired under the Plan and has not voted to accept the Plan, the Plan "does not discriminate unfairly" and is "fair and equitable." A plan confirmed on the basis of this provision is commonly referred to as a "cramdown" plan. In the event an impaired Class of Claims or Interests does not accept the Plan, the Debtors may seek cramdown confirmation of the Plan with respect to any such non-accepting Class. **The Debtors believe that, with respect to such Classes, the Plan meets the requirements of section 1129(b) of the Bankruptcy Code.**

- Unfair Discrimination. A plan of reorganization does not discriminate unfairly if a dissenting class is treated substantially equally to other similarly situated classes and no class receives more than it is legally entitled to receive for its claims or equity interests. **The Debtors believe that the Plan meets this requirement.**

- Fair and Equitable Test. "Fair and equitable" has different meanings for Secured Claims, Unsecured Claims, and Interests.

With respect to a Secured Claim, "fair and equitable" means that the Plan provides either (1) that the holder of a Secured Claim in an impaired Class retains the Liens securing such Claim, whether the property subject to such Liens is retained by the Debtor or transferred to another Entity, to the extent of the amount of such Allowed Claim, and that the holder of such Claim receives on account of such Claim deferred cash payments totaling at least the amount of such Allowed Claim, of a value, as of the Effective Date, of at least the value of such holder's interest in the Estate's interest in such property; (2) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the Liens securing such Claim, free and clear of such Liens, with such Liens to attach to the proceeds of such sale, and the treatment of such Liens on proceeds under subsections (1) or (2) hereof; or (3) the realization by such holder of the "indubitable equivalent" of such Claim.

With respect to an Unsecured Claim, "fair and equitable" means either the Plan provides that each holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the Plan, equal to the amount of such Allowed Claim; or the holder of any Claim or Interest that is junior to the Claims of such Class shall not receive or retain any property under the Plan on account of such junior Claim or Interest.

With respect to an Interest, "fair and equitable" means either each holder of an Interest in an impaired Class receives or retains property of a value, as of the Effective Date of the Plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such Interest; or the holder of any Interest that is junior to the Interests of such Class shall not receive or retain any property under the Plan on account of such junior Interest.

The "absolute priority" rule requires that where there is a dissenting class of Interests, they are treated in a fair and equitable manner. Under the absolute priority rule, secured creditors are paid on their Claims before unsecured creditors, who in turn must be paid in full before equity holders can receive a distribution under a plan of reorganization. The Plan complies with the absolute priority rule as to all Classes, including the Classes of Interests.

At the Confirmation Hearing, the Debtors will establish that the value of all of the consideration to be distributed to the holders of Class 3 Claims on the date of the hearing is less than any reasonable estimated amount of these Claims. If the Bankruptcy Court determines otherwise, Article 4.3 of the Plan will become applicable. The Plan thus complies with the absolute priority rule.

The Debtors believe that the Plan will meet the fair and equitable test in the event that an impaired Class of Claims or Interests does not accept the Plan, and that the Plan meets the fair and equitable test with regard to ~~the~~ Classes 6 through 10, which are deemed to reject the Plan, and that the Plan does not discriminate unfairly with respect to any Class of Claims and Interests.

(e) Requirements for Injunction Under Section 524(g) of the Bankruptcy Code.

Section 524(g) of the Bankruptcy Code authorizes the court to enjoin Entities from taking action to collect, recover, or receive payment or recovery with respect to any Unsecured Asbestos Personal Injury Claim that is to be paid in whole or in part by a trust created by a plan of reorganization that satisfies the requirements of the Bankruptcy Code. The injunction also may bar any action based on such Claims or Demands against the Debtors that are directed at third parties.

To obtain the injunction, a trust must be established that:

- assumes the Debtors' asbestos liabilities;
- is funded in whole or in part by securities of one or more of the Debtors and with an obligation by the Debtors to make future payments;
- owns or is entitled to own a majority of the voting shares of the Debtors, each Debtor's parent corporation, or subsidiaries that are also Debtors; and
- uses its assets or income to satisfy Claims and Demands.

As a requirement before issuing an injunction under section 524(g) of the Bankruptcy Code, the court must determine that:

- the Debtors are likely to be subject to substantial Demands for payments arising out of the same or similar conduct or events that give rise to the Unsecured Asbestos Personal Injury Claims that are addressed by the injunction;
- the actual amounts, numbers, and timing of such Demands cannot be determined;
- pursuit of such Demands outside the procedures prescribed by the plan is likely to threaten the Plan's purpose to deal equitably with Claims and Demands; and
- the Asbestos Trust shall operate through mechanisms such as structural, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Claims and Demands, or other comparable mechanisms that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, Claims and Demands that involve similar Claims in substantially the same manner.

- ~~the~~**The** court also must ensure that the terms of any proposed section 524(g) injunction are set out in the Plan and Disclosure Statement and that 75 percent of the holders of Unsecured Asbestos Personal Injury Claims who vote on the Plan vote to approve or are deemed to approve it**. The Debtors assert that under section 1126 of the Bankruptcy Code such creditors, if unimpaired, can be deemed to have accepted the Plan. The FCR and the Asbestos Subsidiary Committee disagree**.

The Injunctions will be valid and enforceable as to Demands made after the Plan is confirmed only if a legal representative is appointed to protect the rights of Persons that might subsequently assert Demands and if the court determines that applying the Injunctions to future claimants in favor of the beneficiaries of the Injunction is fair and equitable with respect to the Persons that might subsequently assert such Demands, in light of the benefits provided, or to be provided, to the trust on behalf of the Debtors or another beneficiary of the Injunctions.

The Confirmation Order must be issued or affirmed by the District Court that has jurisdiction over the Reorganization Cases. After the expiration of the time for appeal of the order, the Injunctions become valid and enforceable.

The Debtors believe that they shall be able to satisfy all the requirements of section 524(g), so long as the requisite number of holders of Unsecured Asbestos Personal Injury Claims vote in favor of the Plan or such Claims are not impaired under the Plan. **The FCR and the Asbestos Subsidiary Committee disagree that such Claims are unimpaired under the Plan.**

The FCR asserts that he has the legal right to exercise veto power over the Debtors' obtaining an injunction pursuant to section 524(g) of the Bankruptcy Code if he determines that the treatment of Demands is not satisfactory. The Debtors disagree and do not believe that the FCR has such veto power as long as the court determines that the Plan is fair and equitable to the holders of Demands and the other requirements of section 524(g) are otherwise met.

13.4 Conditions to Effectiveness.

In addition to the requirements for confirmation of the Plan, the terms of the Plan provide that the Plan may not become effective unless, among other things, (a) the Bankruptcy Court has approved the Disclosure Statement; (b) the Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction; (c) the Plan Documents necessary or appropriate to implement the Plan have been executed, delivered, and filed where applicable; (d) the Trusts have been funded as provided in Article 9.1(f) of the Plan; (e) the Confirmation Order approves the sale of the Sold Assets to the Plan Sponsor on the Closing Date; and (f) the District Court has made or affirmed the findings of fact and conclusions of law set forth in Article 9.1(b) of the Plan. *See* Article 9.1 of the Plan for a more complete discussion of the conditions to effectiveness of the Plan.

The Debtors, in their sole discretion, may waive any of the conditions to effectiveness in Article 9.1 of the Plan by filing a notice of such waiver with the clerk of the Bankruptcy Court and by serving a copy of such notice on the Plan Sponsor, the U.S. Trustee, the Committees, the FCR, and the DOJ; *provided, however*, that:

(a) the DOJ and any affected state must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(e)(1), (f), (i), (j), and (l) of the Plan;

(b) the Asbestos Claimants' Committee and the FCR must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(e)(1) and (f) of the Plan; and

(c) the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(c)(2), (e)(1)(B), and (m) of the Plan;

and *provided further*, that in each instance described in clauses (a), (b), and (c) above, such consent shall not be unreasonably withheld, delayed, or conditioned.

13.5 Effect of Confirmation and Effectiveness.

If the Plan is confirmed and becomes effective, the Plan shall be binding upon the Debtors, all holders of Claims and Interests, and all other parties in interest, regardless of whether they have accepted or rejected the Plan.

13.6 Notice of Effective Date.

Reorganized ASARCO shall give notice of the Effective Date within five Business Days after its occurrence.

13.7 Non-Occurrence of Effective Date.

In the event that the Effective Date does not occur, all parties shall be returned to the position they would have held had the Confirmation Order not been entered, and nothing in the Plan, Disclosure Statement, ~~or~~ any Plan Document, or any pleading or statement in court shall be deemed to constitute an admission or waiver of any sort or in any way to limit, impair, or alter the rights of any Entity.

RECOMMENDATION AND CONCLUSION

The Debtors strongly recommend that all holders of impaired Claims in Classes 2 through 4 vote to accept the Plan and return their ballots in the enclosed envelope to the Balloting Agent *so that they are received*, on or before **4:00 p.m.,** Prevailing Central Time, on _____ __, ____.

In the view of the Debtors, the Plan provides the best available alternative for providing equitable and expeditious distributions to holders of Claims and Interests out of the Debtors' Estates. Your support of the Plan will enable it to be implemented and help ensure its success.

[REST OF PAGE DELIBERATELY BLANK]

The undersigned have executed this Disclosure Statement as of the ~~27~~11th day of ~~April~~May, 2009.

Respectfully submitted,

ASARCO LLC, a Delaware limited liability company

By: */s/ Joseph F. Lapinsky*
Joseph F. Lapinsky
Chief Executive Officer and President

ALC, INC., a Tennessee corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President

ALTA MINING AND DEVELOPMENT COMPANY, a Utah corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

AMERICAN SMELTING AND REFINING COMPANY, a New Jersey corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

AR MEXICAN EXPLORATIONS, INC., a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

AR SACATON, LLC, a Delaware limited liability company

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

ASARCO CONSULTING, INC., a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

ASARCO EXPLORATION COMPANY, INC., a New York corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

ASARCO MASTER, INC., a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

ASARCO OIL AND GAS COMPANY, INC., a New York corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

BLACKHAWK MINING AND DEVELOPMENT COMPANY, LIMITED, an Idaho corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

BRIDGEVIEW MANAGEMENT COMPANY, INC., a New Jersey corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

CAPCO PIPE COMPANY, INC., an Alabama corporation

By: */s/ William Perrell*
William Perrell
President and Secretary

CEMENT ASBESTOS PRODUCTS COMPANY, an Alabama corporation

By: */s/ William Perrell*
William Perrell
President and Secretary

COVINGTON LAND COMPANY, a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

ENCYCLE, INC., a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

GOVERNMENT GULCH MINING COMPANY LIMITED, an Idaho corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

GREEN HILL CLEVELAND MINING COMPANY, a Nevada corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

LAC D'AMIANTE DU QUÉBEC LTÉE, a Delaware corporation

By: */s/ William Perrell*
William Perrell
President and Secretary

LAKE ASBESTOS OF QUEBEC, LTD., a Delaware corporation

By: */s/ William Perrell*
William Perrell
President and Secretary

LAQ CANADA, LTD., a Delaware corporation

By: */s/ William Perrell*
William Perrell
President and Secretary

PERU MINING EXPLORATION AND DEVELOPMENT COMPANY, a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

SOUTHERN PERU HOLDINGS, LLC, a Delaware limited liability company

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

TULIPAN COMPANY, INC., a Delaware corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

WYOMING MINING AND MILLING COMPANY, an Idaho corporation

By: */s/ Douglas E. McAllister*
Douglas E. McAllister
President and Secretary

Document comparison done by Workshare DeltaView on Monday, May 11, 2009 5:03:03 PM

Input:	
Document 1	PowerDocs://HOU01/1109133/9
Document 2	PowerDocs://HOU01/1114020/5
Rendering set	1-redline statistics only

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	778
Deletions	725
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	1503