IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

In re:	§	**Case No. 2:09-CV-00177**
ASARCO LLC, *et al.*,	§	**Chapter 11**
Debtors.	§	**Jointly Administered**

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**

PARENT'S POST-CONFIRMATION HEARING ADVISORY TO THE COURT REGARDING STATUS OF NEGOTIATIONS TOWARD SUCCESSOR AGREEMENT TO THE EXISTING CBA

I. INTRODUCTION

1. At the conclusion of the October 19, 2009 confirmation hearing, this Court directed the Parent and the Union to meet privately at the Courthouse immediately following the hearing to discuss their differences concerning the negotiation toward a Successor Labor Agreement.[1] The two parties met for approximately an hour and then jointly reported back to the Court as follows: (i) the Parent confirmed that the Existing CBA would be assumed by Reorganized ASARCO, LLC upon consummation of the confirmed Parent's Plan; (ii) the Union

[1] The Bankruptcy Court found that the Collective Bargaining Agreement (hereinafter referred to as the "Existing CBA") will be in place until at least June 30, 2010. The term "Successor Labor Agreement" is meant to refer to a new CBA with the Reorganized ASARCO that will replace the Existing CBA that is being assumed by Reorganized ASARCO.

declined as of the time of the meeting to accept the Parent's written offer made to the Union several weeks prior to the hearing to extend the term of the Existing CBA by an additional year, from June 30, 2010 to June 30, 2011; (iii) the Parent and the Union had determined that certain language in the Existing CBA would have to be amended in order to provide upon consummation of the confirmed Parent's Plan for Union membership on the Board of Reorganized ASARCO, LLC, and the Parent stated its willingness to amend the Existing CBA such that, upon Union acceptance of such an amendment prior to effectiveness of the confirmed Parent's Plan, the Union would be granted a Board seat; (iv) the Union declined as of the time of the meeting to accept the Parent's offer to so amend the Existing CBA; (v) the two parties agreed that, as a matter of process in any post-hearing negotiations with respect to a Successor Labor Agreement, it would be best for the Parent to make a comprehensive proposal to the Union, and the Parent agreed to work towards that objective; and (vi) the parties agreed that no timeframe or deadlines would be established or expected in connection with delivery of a comprehensive proposal, delivery of a responsive proposal by the Union, or the conduct of further negotiations. The Court urged the parties to address and attempt to resolve their differences, but also stated that its decision concerning plan confirmation and acceptance of the Bankruptcy Court's Report and Recommendation would not be delayed pending the outcome of any additional collective bargaining negotiations between the Parent and the Union.

2. The Parent had prepared this Advisory Report to the Court with respect to the post-hearing status of negotiations toward a Successor Labor Agreement, with the intention of filing it this day. Prior to filing the pleading, however, the Court issued an Order in which it expressed its concern that historically "discussions [between the Parent and the Union] seemed to be locked in inertia" and the Court "had not been updated by the parties on the progress of [the comprehensive] proposal," and concluded that "[t]herefore, the Court, out of an abundance of

caution that inertia has once again paralyzed these talks, hereby Orders the Parent to make a comprehensive proposal to the Union by **November 24, 2009**." The Parent moves forward with the filing of this Advisory Report to inform the Court as to the efforts that have been undertaken by the Parent and the Debtors' management to date and certain concerns that are amplified by the Court's Order, but with the knowledge that in certain respects it may be inconsistent with the Court's ruling.

II. THE POST-PLAN CONFIRMATION AND POST-BANKRUPTCY STATUS OF THE COLLECTIVE BARGAINING AGREEMENT

3. As the Bankruptcy Court found, the Existing CBA remains in effect and will continue in effect until at least June 30, 2010 (or for one additional year if the Union accepts the Parent's formal written offer to extend the term to June 30, 2011). In view of this finding, the Debtors and the Union will operate through the Effective Date of the Parent's Plan under the terms of the Existing CBA and, upon emergence from bankruptcy, Reorganized ASARCO and the Union will continue to operate under the terms of the Existing CBA (as it may be amended to extend the term) such that neither party will be faced with a circumstance in which there will be no Collective Bargaining Agreement or no bargaining obligation.[2] The parties, as observed by the Bankruptcy Court, will have "one to two years to negotiate a new CBA." Reorganized ASARCO and the Union thus should have sufficient time to negotiate in an orderly fashion a Successor Labor Agreement that will be in their mutual interests, while at the same time benefiting from the Existing CBA which was acknowledged by one of the Union's testifying witnesses at the Confirmation Hearing to be the best collective bargaining agreement with a copper mining company in the United States. Indeed, the Bankruptcy Court itself characterized the Existing CBA as a "crown jewel."

[2] Counsel for the Union noted on the record at the hearing that "the Union reserved its right as to the status of where things would be in the absence of [a new] agreement." Official District Court October 19, 2009 Hearing Transcript at 215.

4. Beyond having sufficient time, the parties also have the incentive to negotiate a Successor Labor Agreement. As the Bankruptcy Court concluded: "If the Parent's plan is consummated, the Parent and Union will have every incentive to work together before the CBA terminates…." Amended Recommendation ¶ 228 (citing Ruiz Proffer at ¶¶ 13-15; Supp. de la Parra Proffer at ¶ 16; Confirmation Hearing Tr. at 232:2-20)). In the meantime, while a Successor Labor Agreement is being negotiated the Union has been offered the unique opportunity in the copper industry to have a representative seated on the Board of Reorganized ASARCO through the term (or extended term) of the Existing CBA, after which time all protections afforded by the labor laws regarding negotiations of a new contract will be applicable.[3] *See* Amended Recommendation ¶ 242. To put it another way, even after the Existing CBA expires, and until the parties negotiate a new agreement or to an impasse, the Union-represented employees will continue to enjoy all of the economic benefits contained in the Existing CBA, including the current wage rates, pension benefits, 401K plan, highly favorable health insurance coverage (premiums for RX, dental, vision, and medical of $26 per month for family, and $8 per month per employee), employee copper price bonus,[4] and supplemental unemployment benefits in the event of layoff.

5. At least until the Existing CBA expires, the Union also will continue to enjoy an extensive institutional role with Reorganized ASARCO through numerous Joint Labor Management committees contractually mandated under the Existing CBA. The Union and employees are empowered under these provisions to deal with certain topics and issues,

[3] Under the labor laws, where there is a CBA in place, neither party can unilaterally modify or abrogate that CBA. *See generally* 29 U.S.C § 158(d).

[4] The copper price bonus provides for quarterly bonus payments to each employee covered by the Existing CBA based on the average London Medal Exchange price per pound and ranges from a low of $270 per quarter to over $2,800 per quarter. The third quarter 2009 individual payouts under this plan were $1,134, and if current prices (2.9435 per pound) are maintained the fourth quarter bonus would equal $1,458. Under this bonus structure, the employees covered by the Existing CBA have been paid millions of dollars.

including bargaining unit work and outsourcing, safety and health, environmental concerns, civil rights concerns, workplace procedures, job evaluation, workplace problem solving, and strategic considerations regarding the current and future scope and direction of the business.

III. TIME CONSTRAINTS REGARDING CONSUMMATION OF THE PARENT'S PLAN AND THEIR IMPACT ON LABOR NEGOTIATIONS

6. As the Parent informed this Court at the October 19 hearing, the Parent has obtained a financing commitment from a consortium of Banks in the aggregate amount of $1.4 billion (up to $1.5 billion) to support its funding obligations under the Parent's Plan. That financing commitment expires on December 23, 2009. The Parent paid a $22.5 million fee to its Bank Lenders prior to the conclusion of the Confirmation Hearing and the Bankruptcy Court's issuance of its Initial Report and Recommendation in order to obtain that financing commitment. The Parent continues to pay substantial daily (in excess of $130,000) "ticking fees" to its Bank Lenders to maintain that commitment, and paid an additional $22.5 million in commitment fees on November 4, 2009.

7. Well before the Confirmation Hearing commenced, the Parent had deposited into escrow securities then valued at $2.2 billion (presently valued at in excess of $2.8 billion) as a forfeitable good faith deposit to support its Plan. The underlying escrow agreement specifically provides that the Parent must go effective and close on its Plan within 30 days after the entry by this Court of a Confirmation Order, or risk forfeiting its deposit. The Parent supplemented the shares of stock deposited in escrow, again prior to the conclusion of the Confirmation Hearing and the Bankruptcy Court's issuance of its Initial Report and Recommendation, with the deposit of an additional $500 million in cash. The forfeitable cash and securities ensure that the Parent will timely meet its obligation to close.

8. Once the Parent knows that its Plan has been confirmed, the Parent's management likely will need most, if not all, of the 30 day period after entry of the Confirmation Order in

which to close the transaction. It will need all of that time to focus on and address the multitude of matters that are the focus of ongoing diligence efforts and dialogue with the Debtors' management, employees, vendors, customer base, and governmental regulators that are predicate to a closing. These timing concerns suggest the need for the entry of a Confirmation Order by no later than the last week of November in order to effectuate a timely closing and achieve the paramount objective of making payment in full to creditors prior to year end. Given the obvious time constraints imposed by the looming expiration of its financing commitment and its obligation to close promptly after entry of a Confirmation Order, as well as the numerous areas of focus both on transition and closing matters and on the intense learning curve necessary for a knowledgeable and productive formal negotiating dialogue with the Union, the Parent is concerned that negotiation to finality of a mutually satisfactory Successor Labor Agreement may be very difficult to achieve in the limited available timeframe.[5]

IV. SUBSTANTIAL OPERATIONAL AND FINANCIAL INFORMATION MUST BE COLLECTED AND ANALYZED TO EVALUATE THE EXISTING CBA AND MAKE INFORMED DECISIONS ABOUT LONG TERM COMMITMENTS THAT CAN PRUDENTLY BE MADE IN A SUCCESSOR LABOR AGREEMENT

9. The negotiation of a Successor Labor Agreement is an important undertaking for both the Parent and the Union because the terms and conditions agreed to in the Successor Labor

[5] This concern was exacerbated by the publication of a Union press release authored by its International President, a copy of which is attached hereto as Exhibit "A," on October 27, 2009, just one week after the October 19 hearing at which this Court suggested to the parties that they work cooperatively toward a Successor Labor Agreement. This press release was disseminated and directed by the Union to all shareholders and investors of Grupo Mexico, the holding company that owns the Parent and will backstop the Parent's funding commitments under its Plan, and Southern Copper Corporation, a controlling interest in the common stock of which is the principal asset of the Parent. The Parent has deposited shares of Southern Copper Corporation common stock into the escrow that supports the stay issued by this Court with respect to the Parent's appeal of the SCC Judgment, and into the escrow that holds the forfeitable good faith deposit securing the Parent's performance of its funding commitments under its Plan. Moreover, the Parent will pledge shares of Southern Copper Corporation common stock as collateral for the Bank financing that will assist the Parent in meeting its funding obligations in consummating its Plan. The Union's scurrilous release constitutes nothing less than a broadside attack on and public bashing of the Parent and its affiliates, and creates an environment which dims any prospect of a constructive and productive dialogue with the Union that could result in reaching a consensual agreement on a long term agreement that would be accepted by the rank and file in such a compressed timeframe.

Agreement will define their relationship for years to come. A precondition to the Parent's ability to advance a comprehensive proposal and ultimately reach a mutually acceptable Successor Labor Agreement is that both parties need a reasonable period of time to work out their differences in a knowledgeable and constructive manner. The Bankruptcy Court recognized this when it found that the Parent and the Union had not reached a negotiating impasse and neither party had bargained in bad faith, but rather that they had "simply run out of time," concluding that "given enough time the Parent and Union would reach an agreement." (*See* Amended Recommendation ¶ 264).

10. The Existing CBA has a three year term and was, according to the Bankruptcy Court, achieved only "after months of arduous negotiations." *See* Amended Recommendation ¶ 14. The Existing CBA integrated, and contained within it substantial changes from, the prior collective bargaining agreements the Debtors had entered into with several different unions. Those changes included new provisions and substantially revised provisions that contemplated new ways of doing things. The Debtors and the Union certainly could have agreed to a longer term for the Existing CBA but rather chose to term it at three years, thereby providing the parties with an opportunity to revisit the agreement before too much time had elapsed but after both had sufficient time to determine what was working well and what wasn't working so well and should be changed. The Parent's present offer to extend the term of the Existing CBA for an additional year to June 2011 and to entertain mediation to work out the terms of a Successor Labor Agreement is consistent with this concept. Under the circumstances, additional time will enhance the chances that there will be an informed give-and-take process in the negotiations and that the Successor Labor Agreement will be truly mutual.

11. The Parent needs to gather and analyze substantial information in order to draft an appropriate comprehensive collective bargaining agreement proposal and participate in

constructive bargaining for a mutually satisfactory and sustainable Successor Labor Agreement. The Parent does not have, but needs, at least the following general categories of information: costing information; workforce demographic information; and information regarding current management's experience with, and perceptions regarding, the Existing CBA and the problems and pitfalls thereunder.

12. Costing information must be analyzed on an overall, per location, and operational subgroup (production, maintenance, etc.) basis, including data regarding: pay for time worked (wages, overtime, ratio of overtime to straight time, premium payments, bonuses, etc.); pay for time not worked (holidays, vacations, supplemental unemployment benefits, etc.); and benefits (Social Security, FUTA, workers compensation (including actuarial projections), 401K, health and welfare benefits (including actuarial projections), and retiree benefits (including actuarial projections).

13. Necessary work force demographic information includes: the number of employees in the bargaining unit at each location and in each category or job classification; descriptions and explanations of the different jobs in the bargaining unit; turnover experience at each location; absenteeism at each location; accumulated seniority in the workforce; areas of persistent shortage and related problems, such as high turnover positions; positions that are difficult to fill; and accumulated vacation in the bargaining unit as a staffing factor for coverage purposes.

14. Any prudent negotiations for a new long term arrangement, *i.e.*, anything longer than extension of the Existing CBA through June 2011, also requires the systematic and detailed gathering of information from first level management up, including management perceptions of: contract provisions that are workable and those that are not; problem areas that impede productivity or output; provisions of the contract that are difficult to interpret and apply because

of language gaps, ambiguity or because the language is too specific for certain situations; language or provisions that are so problematic that it is necessary to manage around them; and based upon the foregoing analysis, identification of language that should be revised.

15. The CBA provides for numerous Joint Labor Management committees and decision making, and this level of involvement in management decision-making potentially may have a significant operational impact. In order to be able to negotiate a longer term agreement, the Parent needs an opportunity to systematically review, first with existing management and thereafter with the Union, the experiences under the Existing CBA with these various committees. Some of these committees and their jurisdictions are listed below:

- The Bargaining Unit Work Committee (deals with utilization of outside contractors and requires Committee approval to enter into agreements to use outside contractors)
- Joint Safety and Health Committee (involved in the review and development of safety procedures and safety and health inspection and monitoring by OSHA, MSHA and NIOSH, and in reviewing company responses to safety concerns)
- Joint Environmental Sub-Committee of the Safety and Health Committee, (established at each location to review and report on environmental matters)
- Civil Rights Committee (empowered to review and investigate claims of civil rights violations and such matters as workplace harassment)
- Job Evaluation Committee (empowered to review any changes proposed by the Company concerning the duties of an existing job or to create new jobs, and to negotiate any differences concerning same)
- Workplace Problem Solving Committee (required to meet at each location monthly to address improvements in productivity and efficiency, multi-skill training, expansion

of the helper classification, cost reduction techniques, enhancement of employee job satisfaction and other topics as may be agreed to by the parties)

- Strategic Labor Management Committee (composed of upper management and union leadership, and required to meet at least semi-annually to discuss business operating results, contemplated transactions and business training)
- Plant or Area Problem Solving Team (empowered to address workplace changes and the impact on employees)
- Plant Training Committee (empowered to review training needs, to assess the skills required for jobs in the plant, and to examine productivity, as well as how productivity and efficiencies can be improved through additional training of employees)

16. Additionally, making a comprehensive proposal and entering into a mutually agreeable Successor Labor Agreement requires that the Parent be able to more fully understand certain issues that may have arisen under the Existing CBA, including the following: the grievance and arbitration experience under the CBA; bargaining unit work and the exceptions thereto, including new construction work and surge maintenance work, and the extent to which the Company has used outside contractors vs. bargaining unit employees; the extent to which the existing job classifications should be maintained as is or consolidated and/or otherwise altered; and actual experiences under the Memorandum of Understanding regarding flexibility in order to promote efficiency and productivity.

17. Negotiation of a long term labor agreement also requires an understanding of the extent to which there are regulatory or compliance issues related to employee matters, including, in particular, safety and employment discrimination. ASARCO is subject to the jurisdiction of the Mine Safety and Health Administration under the United States Department of Labor and

various state laws. During the time that the Debtor has been in operation of the ASARCO facilities, there have been at least two alleged mining related deaths, both of which, according to published news reports, occurred at the Ray complex. Published news reports also indicate that MSHA has been actively conducting an investigation of the deaths and related matters. The Parent needs information about ASARCO's compliance with MSHA requirements, Arizona OSHA requirements, OSHA requirements at its facilities in Texas, and EEO affirmative action and discrimination compliance.

V. THE ISSUES IN DISPUTE BETWEEN THE PARTIES ARE NOT SUSCEPTIBLE TO EASY OR QUICK RESOLUTION

18. When the parties last formally negotiated on July 24, 2009, there was one major and overriding difference between them – the acceptable length of a Successor Labor Agreement and the consequence, if the parties were unable to negotiate a successor labor agreement, of final offer arbitration limited to a wage adjustment and pension improvement.[6]

19. The Union had proposed a Successor Labor Agreement with a six year term (nine years with respect to retiree benefits and upstream guarantees), along with acceptance of its position and language on each of the disputed issues identified below. In contrast, the Parent had offered to honor the Existing CBA through expiration of its term at the end of June 2010 (since offered to be extended through June 2011), and had proposed mediation to facilitate the bargaining of a Successor Labor Agreement. The Union's proposed six year extension of the Exiting CBA with final offer arbitration limited solely to upward wage adjustments and pension improvements is central to acceptable resolution of the other significant issues. No meeting of

[6] The Union's proposal for final offer arbitration specified that if the parties were unable to reach an agreement by the Existing CBA expiration date, the Existing CBA would be extended for a six year period and a final offer arbitration would be held to determine solely the amount of wage increases and pension improvement. Such a proposal, if agreed to by the Parent or Reorganized ASARCO, clearly would allow the Union to object to any proposals to change the Existing CBA. In fact, such a provision would disincentivize the Union to agree to alter any provision in the Existing CBA since, under its proposal, it would be assured of a six year extension plus wage and pension improvements.

the minds can be achieved on a six year term (or any term for that matter) without also achieving agreement on the other material provisions over which the Parent and Union have conflicting views, some of which are hotly disputed. Stated another way, while some or all of the remaining items may be acceptable to the Parent, the Parent is unwilling to agree to all of those items for the six year period proposed by the Union.

20. Embedded within the extended six year term issue are at least ten significant provisions in dispute between the parties. Those provisions include the following:

1) Successorship, *i.e.*, the applicability of the successor clause and what it means upstream. The Union is seeking the same successorship language as in the Special Successorship Clause grafted upon the Existing CBA, and to apply that clause upstream to the Parent (and above the Parent to Grupo) and its affiliates. The Parent views the clause as granting the Union veto power over corporate transactions and is concerned that agreeing to this provision will empower the Union to block transactions in which the Union has no legitimate interest.
2) Board of Directors. The Parent has evidenced a willingness to consider this idea. However, it is not willing to consider this extraordinary concept in a Successor Labor Agreement without some experience with the arrangement under the Existing CBA.
3) Capital Expenditures. Both the Parent and the Union have a legitimate interest in making sure that there is adequate funding of capital improvements for Reorganized ASARCO. The gulf exists in defining whether the Company will be permitted to take into account the impact of the proposed expenditures on efficiency, productivity, profitability, and other legitimate factors in deciding which expenditures to make.

4) Union Approval of Upstream Transactions. The Parent has agreed in principle to this concept, but seeks protection in the form of mandatory arbitration if Union approval is withheld, something to which the Union has persistently been unwilling to agree.

5) Limitations on Use and Processing of Product. The Union, as it explained in the hearing before this Court, is of the view that, except during maintenance and repair outages or temporary production outages or shortfalls, all of the ore mined at the Company's facilities should be processed in the Company's existing smelter, refinery and processing facilities. The consequence of this limitation is that it would prevent the rational use of capital resources that any business at least would want to consider, such as (although not made as a proposal) the processing of ore mined in Mexico at facilities in the U.S. and vice versa, and selling concentrate, anodes or scrap to, or buying such materials from, other entities.

6) Upstreaming of Dividends. The basic difference between the parties here is the Union's proposal to use credit statistics, as well as the need to obtain a credit rating, to determine whether the Company can pay dividends. This contrasts with the Parent's more reasonable and manageable proposal that there would be a complete ban on upstreaming any dividends at all for two years, and that dividends could be upstreamed thereafter only if Reorganized ASARCO has sufficient capital reserves to meet its annual projections for capital expenditures and is making the required actuarially determined annual contributions to its pension plans.

7) Funded Indebtedness Limits. The Parent was willing to agree to the Union proposal on funded indebtedness, but sought flexibility in the form of the measuring stick, *i.e.*, achieving a rating of Ba2 for Moody's or BB from S&P as contrasted with the Ba1 or

BB+ rating level proposed by the Union, and agreement that indebtedness guaranteed by the asset-rich Parent should not be included in the determination.

8) –10) Extension of Retiree Healthcare; Upstream Party Guaranty of Reorganized ASARCO's Obligations Under the CBA; and Guaranteed Employment Levels of 90% and a 40-hour Workweek. Each of these open Union proposals involves extremely long term assurances and upstream guaranties that are extraordinary in the copper mining industry. They cannot be resolved in isolation.

VI. PARENT'S CURRENT EFFORTS IN PREPARATION FOR COMPREHENSIVE NEGOTIATIONS WITH THE UNION

21. Commencing with meetings between senior management of the Parent and the Debtors in Tucson, Arizona on October 8 and 9, 2009, and continuing with four successive days of in-depth meetings between the Debtors' operational management at the mine site level and their counterparts at the Parent on November 2 through 5, 2009, the Parent has requested and received voluminous amounts of information from the Debtors regarding operational and financial performance, transition, and closing matters. The Parent is in the process of analyzing that data in preparation for a timely closing of a transaction.

22. Additionally, senior management of the Parent and the Parent's labor counsel met in Tucson with senior management of the Debtors responsible for labor relations and the Debtors' outside counsel on November 3, 2009. As an outgrowth of that meeting, it was mutually agreed that the most productive path toward developing a workable comprehensive labor proposal would require several full days of in-depth meetings with the General Managers, HR Managers, and Supervisors at the Mission Mine, Silver Bell Mine, Ray Mine, Hayden Mine, and Hayden and Amarillo Smelters to obtain the perspectives of on-site management and operational personnel with respect to operational issues under the Existing CBA. The parties presently are in the process of scheduling those meetings.

23. These efforts are instrumental in putting the Parent in a position to make a comprehensive proposal regarding a Successor Labor Agreement. The Parent was informed in the recent meetings that the Debtors' management team spent four or five months during the pendency of the chapter 11 case in intensive "bottoms-up" analysis of the several preceding collective bargaining agreements before entering into the four or five month process that culminated in the Existing CBA that consolidates the prior agreements. The Parent has been advised that current management has not yet commenced, but strongly advocates, that a similar process be implemented in advance of Successor Labor Agreement negotiations, and obviously the Parent only now is in a position to participate in that process.

VII. CONCLUSION

24. The Parent submits this Advisory Report to inform the Court as to the status of the Parent's efforts to put itself in a position to make a comprehensive proposal to the Union with respect to a Successor Labor Agreement. The Parent has been displaced from management and control, and thus knowledge of operational issues and financial performance, for almost four years. Given the breadth of issues in dispute with the Union, the significant learning curve that confronts the Parent (and even the existing management team) regarding the application of operational and financial experience under the Existing CBA to a Successor Labor Agreement, and externally imposed time constraints, the Parent suggests that it would be difficult to expect that a comprehensive proposal can be developed by the Parent, responsive positions can be taken with authority by the Union, meaningful negotiations can proceed to final agreement among the negotiators, and approval can be obtained by the rank and file prior to a late-November confirmation of the Parent's Plan, or even consummation of the Parent's plan prior to the December 23, 2009 expiration of its financing commitment. The Parent hopes that the Court and the Union draw comfort from the Parent's proposals to extend the Existing CBA through June

2011 and offer formal mediation as an overlay to the process of negotiation toward a Successor Labor Agreement. Obviously, the Parent will comply with any order of the Court, but requests that the Court consider the concerns expressed herein and hopes that this pleading may add perspective to further rulings of the Court.

Dated: November 12, 2009

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UNITED STEELWORKERS
USW
UNITY AND STRENGTH FOR WORKERS

Leo W. Gerard
International President

October 27, 2009

Dear Grupo Mexico and Southern Copper shareholders and analysts:

We are contacting investors in Grupo Mexico and its subsidiary Southern Copper Corporation (SCC) because we are concerned that the lost production associated with the companies' recent mismanagement of labor relations may have cost over $2 billion in operating income. The companies have repeatedly overstated the prospect for quickly resolving costly strikes through Mexican courts. Unless management changes course, we believe Grupo Mexico and SCC shareholder value will continue to be squandered as shareholder value will literally remain underground.

Grupo Mexico has been negatively impacted by ongoing strikes at three locations in Mexico – Cananea, San Martin and Taxco – that ensued on July 31, 2007. The table below illustrates the impact of these strikes on earnings before taxes and interest (EBIT). The Company has already reported a cumulative loss of EBIT of $1.6 billion. If the strikes run through 2009, we estimate another $720 million in lost EBIT, which brings total lost EBIT to $2.3 billion or 33% of the estimated reported Company EBIT for 2007-2009.

The President of Grupo Minero Mexico recently acknowledged that the Company had suffered losses of 40 billion Mexican pesos in its Mexican operations due to the strikes at San Martin, Taxco and principally Cananea.[i] This equates to roughly $3 billion U.S., which compares to the $1.6 billion impact on operating income of strikes at Mexican operations in 2007 and 2008 and our estimate of $0.7 billion loss for 2009.

	Actual Results		Forecasts		
US$ million	**2007**	**2008**	**2009**	**2010**	**Cumulative Est. Operating Loss**
Revenue	$6,086	$4,851	$3,346	$4,434	
EBIT	3,496	2,202	1,285	1,967	
EBITDA	3,825	2,529	1,670	2,469	
Lost EBIT	$488	$1,100	$720		$2,308
% of Reported EBIT	14%	50%	56%		33%

Sources:
First Call is source for revenue and EBIT/EBITDA forecasts.
Lost EBIT for 2007 and 2008 is from Company's 10-K filings.
Lost EBIT for 2009 is estimated, and reflects a 27% drop in the average copper price from $3.13 for 2008 to $2.30 for 2009.

EXHIBIT A

Assuming the strikes run through 2009, SCC will likely have suffered lost copper and zinc production of 1 billion pounds and 130 million pounds, respectively. The table below summarizes estimated lost revenue based on lost production tonnage and average copper and zinc prices.

Lost Earnings before Interest and Taxes (EBIT)

	2007	2008	2009 *	Total
Lost Revenue (US$ million)				
Copper	$576	$1,332	$979	$2,887
Zinc	38	44	37	119
Total	$614	$1,376	$1,016	$3,007
Lost EBIT (US$ million)	**$488**	**$1,100**	**$720**	**$2,308**
Reduced production (million pounds)				
Copper	178.4	425.6	425.6	1,029.6
Zinc	25.6	52.0	52.0	129.6
Prices				
Copper (COMEX)	3.23	3.13	2.30	
Zinc (LME)	1.47	0.85	0.72	

Sources
2008 10-K, p. 79, 2007 10-K, p. 78, Q2 2009 10-Q, p. 38
2009 data is estimated

Assumptions
Lost revenue is the calculated as the Company's reported lost tonnage multiplied by the average price for the period.
Lost EBIT for 2009 is 35% less than in 2008, due to projected 27% drop in average copper prices.
Reduced production in 2009 is assumed to be the same as in 2008 to reflect the strike running through all of 2009.

SCC has claimed the cause of the ongoing strikes in Mexico is a power grab by leaders of the National Union of Mine and Metal Workers of the Mexican Republic (SNTMMSRM), the union that represents workers at the three struck locations.[ii] However, the company has not met with SNTMMSRM to attempt to negotiate a new labor agreement since the strikes began over two years ago, while over 40 companies have reached agreements with SNTMMSRM in 2009 alone – including international firms such as Goldcorp, Bombardier and Arcelor Mittal.[iii]

Rather than representing a power grab by SNTMMSRM, we believe Grupo Mexico's failure to resolve its ongoing labor disputes in Mexico is an example of the company's failure to effectively manage labor relations in all countries that it operates, including Mexico, the U.S. and Peru. In 2005 in the U.S., all hourly employees of ASARCO, LLC, then controlled by Grupo Mexico, engaged in a strike that lasted for more than four months. The strike was only settled after ASARCO filed a Chapter 11 bankruptcy petition and other creditor constituencies intervened. Later, Grupo Mexico exited from the day-to-day management of ASARCO. Today, Grupo Mexico and Sterlite, an affiliate of an Indian company, both seek to gain control of ASARCO. While Sterlite

has negotiated a new labor agreement with USW, Grupo Mexico has failed to do so. If Grupo Mexico were to re-take control of ASARCO without a labor agreement, labor unrest could follow.

In Peru, workers at SCC operations struck in 2002, 2004, 2007 and 2008.[iv] Although this does not match the more than nine labor stoppages in the last seven years at Cananea, it is another clear indication that Grupo Mexico's failed approach to labor relations costs investors.[v]

Grupo Mexico and SCC have apparently decided to rely on the Mexican judicial system to resolve the Cananea labor dispute. SCC stated in its Q3 2009 earnings call that it expects an appeal by SNTMMSRM of a Mexican Federal Labor Board decision that Grupo Mexico could terminate its collective bargaining relationship with SNTMMSRM at Cananea to be resolved by the end of 2009.[vi] However Grupo Mexico stated in its Q2 2009 call that it expects this appeal to be resolved in August 2009[vii], with Grupo Mexico's CFO stating that this "litigation will be definitely resolved" in August[viii].

This is not the first time that Grupo Mexico has overstated the prospect of resolving the ongoing strikes at its Mexican operations in the near term. Subsidiary SCC has on multiple occasions represented its views that these strikes would end soon:

- On SCC's Q3 2008 earnings conference call, the company's CFO stated that once the strike is declared illegal, "the next step would be to regain control of the property and the operations…", failing to mention the possibility of a potentially prolonged appeals process.[ix]
- On SCC's Q2 2008 earnings conference call, the company's CFO stated with regard to the Cananea strike that "[w]e have very good expectations…that this problem can be resolved before the end of the year."[x]
- On SCC's Q3 2007 earnings conference call, the company's CFO stated that "we believe the strike should end during the fourth quarter."[xi]

It is quite possible that this litigation will not be resolved anytime soon. The Collegiate Tribunal hearing the appeal could hold in SNTMMSRM's favor, or the court may ask the Mexican Federal Labor Board to explain the basis for its conclusion that force majeure existed, or the Tribunal could send the case back to the Board with orders to consider evidence submitted by the union and the workers that was not considered by the Board. After going to the Board again, the case would return to the Tribunal at least once more. Even if the Tribunal were to decide in the company's favor, this decision could be appealed to the Supreme Court, a very time-consuming process. In any event, investors should expect SNTMMSRM to litigate vigorously this attack upon its right to continue representing Grupo Mexico employees.

Until Grupo Mexico and SCC management change their approach to labor relations, we believe the strikes in Mexico will continue, labor conflict will stand in the way of profitable opportunities in the U.S. and Peru and shareholder value will be compromised.

Sincerely,

Leo W. Gerard

Leo W. Gerard
International President

[i] Xavier Garcia de Quevedo, President of Grupo Minera Mexico as quoted in Milenio on September 25, 2009. Garcia de Quevedo did not specify the kind of losses he was referring to, such as revenue, EBIT, etc.
[ii] FD (Fair Disclosure) Wire (February 3, 2009) Q4 2008 SCC Earnings Conference Call – Final; FD (Fair Disclosure) Wire (October 25, 2007) Q3 2007 SCC Earnings Conference Call - Final
[iii] Information provided by the SNTMMSRM.
[iv] *SCC 10-K's*. (2 March 2009, 29 February 2008, 16 March 2005). Filed before the U.S. Securities and Exchange Commission. U.S.
[v] *SCC 10-Q*. (6 November 2008). Filed before the U.S. Securities and Exchange Commission. U.S.
[vi] FD (Fair Disclosure) Wire (October 23, 2009) Q3 2009 SCC Earnings Conference Call - Final
[vii] FD (Fair Disclosure) Wire (July 23, 2009) Q2 2009 Grupo Mexico SA DE CV Earnings Conference Call – Final; FD (Fair Disclosure) Wire (July 22, 2009) Q2 2009 SCC Earnings Conference Call - Final
[viii] FD (Fair Disclosure) Wire (July 23, 2009) Q2 2009 Grupo Mexico SA DE CV Earnings Conference Call – Final
[ix] FD (Fair Disclosure) Wire (October 28, 2008) Q3 2008 SCC Earnings Conference Call - Final
[x] FD (Fair Disclosure) Wire (July 25, 2008) Q2 2008 SCC Earnings Conference Call - Final
[xi] FD (Fair Disclosure) Wire (October 25, 2007) Q3 2007 SCC Earnings Conference Call - Final