

April 21, 2009

From: Kinzie, Jack

To: 'Richard_Schmidt@txs.uscourts.gov'

Cc: Alan.Tenenbaum@usdoj.gov ; Amy.Gillespie@usdoj.gov ; Amy.Horner@sol.doi.gov ; anthony.cox@hsblaw.com ; Ashley.Bartram@oag.state.tx.us ; barry.stein@sol.doi.gov ; bkirley@mt.gov ; brousseau@sbep-law.com ; Charles.Beckham@haynesboone.com ; DApice@sbep-law.com ; david.dain@usdoj.gov ; dbaker@reedsmith.com ; dbartner@shearman.com ; DCohen2@milbank.com ; dinnocenti@obht.com ; djury@usw.org ; ejones@bnswwlaw.com ; ElliottF@atg.wa.gov ; Eric.Albert@usdoj.gov ; Esserman, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; jrearden@gibsondunn.com ; JTate@obht.com ; judgepate@robertcpatelaw.com ; Leticia_Garza@txs.uscourts.gov ; LevinsonS@hbdlawyers.com ; Marty.Brimmage@haynesboone.com ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; RMoore@milbank.com ; RSeltzer@cwsny.com ; rwinter@milbank.com ; Trey.Monsour@haynesboone.com ; 'Amy.Gillespie@usdoj.gov' ; 'Amy.Horner@sol.doi.gov' ; 'anthony.cox@hsblaw.com' ; 'Ashley.Bartram@oag.state.tx.us' ; 'barry.stein@sol.doi.gov' ; 'bkirley@mt.gov' ; 'brousseau@sbep-law.com' ; 'charles.beckham@haynesboone.com' ; 'dapice@sbep-law.com' ; 'david.dain@usdoj.gov' ; 'DBaker@ReedSmith.com' ; 'dbartner@shearman.com' ; 'dcohen@milbank.com' ; 'alan.tenenbaum@usdoj.gov' ; 'dinnocenti@obht.com' ; 'djury@usw.org' ; 'ejones@bnswwlaw.com' ; 'ElliottF@atg.wa.gov' ; 'Eric.Albert@usdoj.gov' ; Esserman, Sander; 'Felsenthal@sbep-law.com' ; 'gibbons.melissa@epa.gov' ; 'Hal.Morris@oag.state.tx.us' ; 'james.brandt@lw.com' ; 'jmccarroll@reedsmith.com' ; 'joseph.mikitish@azag.gov' ; 'jtate@obht.com' ; 'judgepate@robertcpatelaw.com' ; 'LevinsonS@hbdlawyers.com' ; 'marty.brimmage@haynesboone.com' ; 'MarySueW@atg.wa.gov' ; 'mcapdeville@mt.gov' ; 'Melinda.Franek@lw.com' ; Newton, Jacob; 'polin.robert@epa.gov' ; 'psinger@reedsmith.com' ; 'RBattaglia@obht.com' ; 'rcollins@mt.gov' ; 'RMoore@milbank.com' ; 'roberts.robert@epa.gov' ; 'rseltzer@cwsny.com' ; 'rwinter@milbank.com' ; 'sanders.steven@epa.gov' ; 'shelley.woods@ago.mo.gov' ; 'steiner-riley.cara@epa.gov' ; 'trey.monsour@haynesboone.com' ; 'veronica.bates@hsblaw.com' ; 'wolfj@hbdlawyers.com' ; 'rseltzer@cwsny.com' ; 'djury@usw.org' ; 'tmayer@kramerlevin.com' ; 'plamberson@winstead.com' ; 'bwallander@velaw.com' ; 'ghorowitz@kramerlevin.com' ; 'wroll@Shearman.com' ; 'dinnocenti@obht.com' ; 'rick.zeise@azag.gov' ; 'Gregory.Papeika@Shearman.com' ; 'Randall.Martin@Shearman.com' ; 'cnk@stevenslee.com' ; 'lpg@stevenslee.com' ; 'jck@stevenslee.com' ; 'chufft@velaw.com' ; 'alfredo.perez@weil.com'

Sent: Tue Apr 21 16:07:04 2009

Subject: RE: ASARCO

On behalf of the Debtor and Sterlite I am authorized to answer yes to both of your questions.

Jack L. Kinzie 

Baker Botts L.L.P.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----Original Message-----

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]

Sent: Tuesday, April 21, 2009 3:54 PM

To: Kinzie, Jack

Cc: Alan.Tenenbaum@usdoj.gov; Amy.Gillespie@usdoj.gov; Amy.Horner@sol.doi.gov;
anthony.cox@hsblaw.com; Ashley.Bartram@oag.state.tx.us; barry.stein@sol.doi.gov; bkirley@mt.gov;
brousseau@sbep-law.com; Charles.Beckham@haynesboone.com; DApice@sbep-law.com;
david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; DCohen2@milbank.com;
dinnocenti@obht.com; djury@usw.org; ejones@bnswwlaw.com; ElliottF@atg.wa.gov;
Eric.Albert@usdoj.gov; Esserman, Sander; Felsenthal@sbep-law.com; gibbons.melissa@epa.gov;
Hal.Morris@oag.state.tx.us; james.brandt@lw.com; jmccarroll@reedsmith.com;
joseph.mikitish@azag.gov; jrearden@gibsondunn.com; JTate@obht.com;
judgepate@robertcpatelaw.com; Leticia_Garza@txs.uscourts.gov; LevinsonS@hbdlawyers.com;
Marty.Brimmage@haynesboone.com; MarySueW@atg.wa.gov; mcapdeville@mt.gov;
RMoore@milbank.com; RSeltzer@cwsny.com; rwinter@milbank.com; Trey.Monsour@haynesboone.com
Subject: RE: ASARCO

Do the provisions in paragraph 6 of your proposed Order also include the abstention provision? Further does paragraph 6 preclude Sterlite receiving a release (absent a manipulative breach)if it terminates the New Sterlite PSA and a plan of reorganization filed by the Parent (or any other entity permitted to file a plan in these cases) and is not supported by the Debtors (or abstained by the debtors) is confirmed by this Court within 180 days following the termination?

Richard S. Schmidt

April 21, 2009

From: Kinzie, Jack

Sent: Tuesday, April 21, 2009 2:21 PM

To: Richard_Schmidt@txs.uscourts.gov; Moore, Robert; Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; Beckham, Charles; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; Esserman, Sander; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; 'Monsour, Trey A.'; Jennifer Reardon (jrearden@gibsondunn.com); RSeltzer@cwsny.com

Cc: Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

Dear Judge Schmidt,

I have been authorized by Sterlite's counsel to inform the court that Sterlite approves the following statement and agrees that it may be included in any order approving the pending Rule 9019 motion:

If the Board does not support an alternative plan, then confirmation and consummation of that plan will not result in a release of liability to Sterlite (absent a Manipulative Breach by the Debtor). If the Board determines that the highest and best option for the estate is the consummation of an alternative plan, the 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 PSA of the Board's support of an alternative plan.

The Debtor's amended proposed order now includes this language.

We have circulated the amended proposed order for comment and we have been unable to reach agreement on the proposed form of order.

Kind regards,

Jack L. Kinzie

Baker Botts L.L.P.

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April 18, 2009

From: [jack.kinzie@bakerbotts.com]

Sent: 04/18/2009 12:02 PM EST

To: Richard Schmidt; <Charles.Beckham@haynesboone.com>

Cc: <Alan.Tenenbaum@usdoj.gov>; <Amy.Gillespie@usdoj.gov>; <Amy.Horner@sol.doi.gov>; <anthony.cox@hsblaw.com>; <Ashley.Bartram@oag.state.tx.us>; <barry.stein@sol.doi.gov>; <bkirley@mt.gov>; <brousseau@sbep-law.com>; <DAPice@sbep-law.com>; <david.dain@usdoj.gov>; <dbaker@reedsmith.com>; <dbartner@shearman.com>; <dcohen@milbank.com>; <dinnocenti@obht.com>; <djury@usw.org>; <ejones@bnswwlaw.com>; <ElliottF@atg.wa.gov>; <Eric.Albert@usdoj.gov>; <esserman@sbep-law.com>; <Felsenthal@sbep-law.com>; <gibbons.melissa@epa.gov>; <Hal.Morris@oag.state.tx.us>; <james.brandt@lw.com>; <jmccarroll@reedsmith.com>; <joseph.mikitish@azag.gov>; <JTate@obht.com>; <judgepate@robertcpatelaw.com>; <LevinsonS@hbdlawyers.com>; <Marty.Brimmage@haynesboone.com>; <MarySueW@atg.wa.gov>; <mcapdeville@mt.gov>

Subject: Re: ASARCO

Dear Judge Schmidt,

The following are Sterlite's and the Debtors' joint responses to the issues you raised yesterday:

The Court: Please confirm that the release and bid procedures provide that Sterlite will not receive a release if a plan of reorganization is filed by any entity permitted to file a plan in these cases (absent the willful breach or fraud) unless the plan is supported by the Debtor.

Response: Confirmed.

The Court: Further, the debtor can only support a plan in which the proponent bids \$51 million more than the Sterlite bid and provides a release to Sterlite. Thus the debtor can not support any plan which fails to give Sterlite a release.

Response: Confirmed, except that the debtor can support a stand-alone plan that is more favorable to stakeholders than the Sterlite PSA. A stand alone plan would need to be better by the \$26MM break-up fee, but not the additional \$25MM Superior Proposal Threshold.

Further, there are circumstances in which the Debtor may support another plan and Sterlite does not receive a release.

The Court: Are there any circumstances that the confirmation of a plan by this court which conveys the assets to someone other than Sterlite in a plan not supported by the debtor will grant Sterlite a release (other than the willful breach provisions)?

Response: No

We hope this helps.

Kind regards,

Jack Kinzie

April 17, 2009

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM To <esserman@sbeplaw.com>, <Richard_Schmidt@txs.uscourts.gov>
cc <Alan.Tenenbaum@usdoj.gov>, <Amy.Gillespie@usdoj.gov>, <Amy.Horner@sol.doi.gov>, <anthony.cox@hsblaw.com>, <Ashley.Bartram@oag.state.tx.us>, <barry.stein@sol.doi.gov>, <bkirley@mt.gov>, <brousseau@sbeplaw.com>, <Charles.Beckham@haynesboone.com>, <DApice@sbeplaw.com>, <david.dain@usdoj.gov>, <dbaker@reedsmith.com>, <dbartner@shearman.com>, <dcohen@milbank.com>, <dinnocenti@obht.com>, <djury@usw.org>, <ejones@bnsnlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <Felsenthal@sbeplaw.com>, <gibbons.melissa@epa.gov>, <Hal.Morris@oag.state.tx.us>, <james.brandt@lw.com>, <jmccarroll@reedsmith.com>, <joseph.mikitish@azag.gov>, <JTate@obht.com>, <judgepate@robertcpatelaw.com>, <LevinsonS@hbdlawyers.com>, <marty.brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>

Subject Re: ASARCO

The Debtor and Sterlite do not believe this is a change to the New Sterlite PSA, but rather is a reflection of the agreement.

From: Sander L. Esserman

To: Kinzie, Jack; Richard_Schmidt@txs.uscourts.gov

Cc: alan.tenenbaum@usdoj.gov ; Amy.Gillespie@usdoj.gov ; Amy.Horner@sol.doi.gov ; anthony.cox@hsblaw.com ; Ashley.Bartram@oag.state.tx.us ; barry.stein@sol.doi.gov ; bkirley@mt.gov ; Robert T. Brousseau ; charles.beckham@haynesboone.com ; Peter D'Apice ; david.dain@usdoj.gov ; DBaker@ReedSmith.com ; dbartner@shearman.com ; dcohen@milbank.com ; dinnocenti@obht.com ; djury@usw.org ; ejones@bnsnlaw.com ; ElliottF@atg.wa.gov ; Eric.Albert@usdoj.gov ; Steven A. Felsenthal ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; james.brandt@lw.com ; jmccarroll@ReedSmith.com ; joseph.mikitish@azag.gov ; jtate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; marty.brimmage@haynesboone.com ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Newton, Jacob ; polin.robert@epa.gov ; psinger@ReedSmith.com ; RBattaglia@obht.com ; rcollins@mt.gov ; RMoore@milbank.com ; roberts.robert@epa.gov ; rseltzer@cwsny.com ; rwinter@milbank.com ; sanders.steven@epa.gov ; shelley.woods@ago.mo.gov ; steiner-riley.cara@epa.gov ; troy.monsour@haynesboone.com ; veronica.bates@hsblaw.com ; wolfj@hbdlawyers.com ; rseltzer@cwsny.com ; djury@usw.org ; tmayer@kramerlevin.com ; plamberson@winstead.com ; bwallander@velaw.com ; ghorowitz@kramerlevin.com ; wroll@shearman.com ; dinnocenti@obht.com ; rick.zeise@azag.gov ; Gregory.Papeika@shearman.com ; Randall.Martin@shearman.com ; cnk@stevenslee.com ; lpg@stevenslee.com ; jck@stevenslee.com ; chufft@velaw.com ; alfredo.perez@weil.com

Sent: Fri Apr 17 11:47:01 2009

Subject: RE: ASARCO

Your Honor--it is our view and reading of the PSA with Sterlite that the language proposed by Debtor's counsel below is not a change from the PSA, if it is a change to the document we think it appropriate that such be pointed out.

Sandy Esserman

**Sander L. Esserman
Stutzman, Bromberg, Esserman & Plifka
2323 Bryan Street, Suite 2200
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From: jack.kinzie@bakerbotts.com [mailto:jack.kinzie@bakerbotts.com]

Sent: Friday, April 17, 2009 10:02 AM

To: Richard_Schmidt@txs.uscourts.gov

Cc: alan.tenenbaum@usdoj.gov; Amy.Gillespie@usdoj.gov; Amy.Horner@sol.doi.gov; anthony.cox@hsblaw.com; Ashley.Bartram@oag.state.tx.us; barry.stein@sol.doi.gov; bkirley@mt.gov; Robert T. Brousseau; charles.beckham@haynesboone.com; Peter D'Apice; david.dain@usdoj.gov; DBaker@ReedSmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswwlaw.com; ElliottF@atg.wa.gov; Eric.Albert@usdoj.gov; Sander L. Esserman; Steven A. Felsenthal; gibbons.melissa@epa.gov; Hal.Morris@oag.state.tx.us; james.brandt@lw.com; jmccarroll@ReedSmith.com; joseph.mikitish@azag.gov; jtate@obht.com; judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com; marty.brimmage@haynesboone.com; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com; Jacob L. Newton; polin.robert@epa.gov; psinger@ReedSmith.com; RBattaglia@obht.com; rcollins@mt.gov; RMoore@milbank.com; roberts.robert@epa.gov; rseltzer@cwsny.com; rwinter@milbank.com; sanders.steven@epa.gov; shelley.woods@ago.mo.gov; steiner-riley.cara@epa.gov; trey.monsour@haynesboone.com; veronica.bates@hsblaw.com; wolfj@hbdlawyers.com; rseltzer@cwsny.com; djury@usw.org; tmayer@kramerlevin.com; plamberson@winstead.com; bwallander@velaw.com; ghorowitz@kramerlevin.com; wroll@shearman.com; dinnocenti@obht.com; rick.zeise@azag.gov; Gregory.Papeika@shearman.com; Randall.Martin@shearman.com; cnk@stevenslee.com; lpg@stevenslee.com; jck@stevenslee.com; chufft@velaw.com; alfredo.perez@weil.com

Subject: RE: ASARCO

Dear Judge Schmidt,

I also have been authorized by Sterlite's counsel to inform the Court that it would agree that the following language may be included in any order approving the Debtors' Sterlite 9019 Motion and that such language is a correct statement and consistent with the New Sterlite PSA:

"Sterlite will not receive a release of liability under the Original PSA if, among other reasons contemplated by the New PSA, a plan of reorganization filed by the Parent (or any other entity permitted to file a plan in these cases) and not supported by the Debtors, is confirmed by this Court."

I hope this assists the Court in its deliberation.

Best regards,

Jack L. Kinzie

Baker Botts L.L.P.

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April 15, 2009

-----Original Message-----

From: Kinzie, Jack
Sent: Wednesday, April 15, 2009 11:41 AM
To: Richard_Schmidt@txs.uscourts.gov
Cc: 'alan.tenenbaum@usdoj.gov'; 'Amy.Gillespie@usdoj.gov'; 'Amy.Horner@sol.doi.gov'; 'anthony.cox@hsblaw.com'; 'Ashley.Bartram@oag.state.tx.us'; 'barry.stein@sol.doi.gov'; 'bkirley@mt.gov'; 'brousseau@sbep-law.com'; 'charles.beckham@haynesboone.com'; 'd'apice@sbep-law.com'; 'david.dain@usdoj.gov'; 'DBaker@ReedSmith.com'; 'dbartner@shearman.com'; 'dcohen@milbank.com'; 'dinnocenti@obht.com'; 'djury@usw.org'; 'ejones@bnsblaw.com'; 'ElliottF@atg.wa.gov'; 'Eric.Albert@usdoj.gov'; Esserman, Sander; 'Felsenthal@sbep-law.com'; 'gibbons.melissa@epa.gov'; 'Hal.Morris@oag.state.tx.us'; 'james.brandt@lw.com'; 'jmccarroll@reedsmith.com'; 'joseph.mikitish@azag.gov'; 'jtate@obht.com'; 'judgepate@robertcpatelaw.com'; 'LevinsonS@hbdlawyers.com'; 'marty.brimmage@haynesboone.com'; 'MarySueW@atg.wa.gov'; 'mcapdeville@mt.gov'; 'Melinda.Franek@lw.com'; Newton, Jacob; 'polin.robert@epa.gov'; 'psinger@reedsmith.com'; 'RBattaglia@obht.com'; 'rcollins@mt.gov'; 'RMoore@milbank.com'; 'roberts.robert@epa.gov'; 'rseltzer@cwsny.com'; 'rwinter@milbank.com'; 'sanders.steven@epa.gov'; 'shelley.woods@ago.mo.gov'; 'steiner-riley.cara@epa.gov'; 'trey.monsour@haynesboone.com'; 'veronica.bates@hsblaw.com'; 'wolfj@hbdlawyers.com'; 'rseltzer@cwsny.com'; 'djury@usw.org'; 'tmayer@kramerlevin.com'; 'plamberson@winstead.com'; 'bwallander@velaw.com'; 'ghorowitz@kramerlevin.com'; 'wroll@Shearman.com'; 'dinnocenti@obht.com'; 'rick.zeise@azag.gov'; 'Gregory.Papeika@Shearman.com'; 'Randall.Martin@Shearman.com'; 'cnk@stevenslee.com'; 'lpg@stevenslee.com'; 'jck@stevenslee.com'; 'chufft@velaw.com'

Subject: ASARCO

I have been authorized by Sterlite's counsel to inform the Court that Sterlite agrees to Your Honor's request for additional time up to a week to rule on the Rule 9019 motion, and that section 13.1(h)(i) of the New Sterlite PSA shall be amended accordingly to replace the date of April 15, 2009 with the date of April 22, 2009.

Best regards,

Jack L. Kinzie

Baker Botts L.L.P.

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