

From: Richard_Schmidt@txs.uscourts.gov
To: Moore, Robert;
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; Beckham, Charles; [d"apice@sbep-law.com](mailto:d); david.dain@usdoj.gov; DBaker@ReedSmith.com; dbartner@shearman.com; Cohen, David S.; dinnocenti@obht.com; djones@porterhedges.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; jack.kinzie@bakerbotts.com; james.brandt@lw.com; jmccarroll@ReedSmith.com; joseph.mikitish@azag.gov; JTate@obht.com; judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Monsour, Trey A.;
Subject: Re: ASARCO
Date: Wednesday, April 22, 2009 12:00:55 PM
Attachments:

Please submit an exhibit containing the emails that you want included in the record.
Richard S. Schmidt

"Moore, Robert" <RMoore@milbank.com>

04/22/2009 11:55 AM

To <jack.kinzie@bakerbotts.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>, <d"apice@sbep-law.com>, <david.dain@usdoj.gov>, <DBaker@ReedSmith.com>, <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, <Alan.Tenenbaum@usdoj.gov>, <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>, <Richard_Schmidt@txs.uscourts.gov>, <djones@porterhedges.com>, <Trey.Monsour@haynesboone.com>

cc

Subject Re: ASARCO

The Parent's objection to the form of proposed Order submitted by the Debtors in advance of the Court's ruling, as modified by the email exchange trailing below, remains.

The proposed modification, and Mr. Kinzie's representations on behalf of the Debtors and Sterlite in Mr. Kinzie's emails of yesterday, do nothing to address the Settlement and Release Agreement's contractually-imposed abrogation of the obvious fiduciary duties of the Debtor in Possession's Board, and presume all three Board members would act in unison.

Moreover, the modifications do nothing to remove the exposure of the estate to the "unintended consequence" under the "Release Condition" set forth in Section 2.1(c)(iv), of a release of the Sterlite litigation claims, valued by the Debtor's Board at in excess of \$400 million, upon approval of a "Superior Proposal" made by the Parent (or any other third party). Upon such approval, the Board would be required to terminate the new Sterlite PSA in order to consummate the Superior Proposal, even if the Board abstained from supporting it.

There was significant agreement in the Monday April 20 status hearing discussions that the Parent proposal contemplated in the Section 524(g) support agreement filed on April 17 by the Asbestos Representatives is susceptible to evaluation and could be viewed by Sterlite and other parties under the Superior Proposal definition (which, through the Acquisition Proposal definition picks up recapitalizations). No order should risk loss of a \$400 million - plus asset for no consideration.

As an additional matter, the Parent requests that the numerous exchanges with the court over the past several days be included in the record of the April 16 and 17 hearings on the Sterlite Release and Sale Agreement.

Sincerely, Bob Moore.

Robert Jay Moore
Partner, Financial Restructuring Group
Milbank, Tweed, Hadley & McCloy LLP
601 S. Figueroa Street, 30th Floor
Los Angeles, CA 90017
(213) 892-4501
rmoore@milbank.com

Sent from my BlackBerry Wireless Handheld

From: jack.kinzie@bakerbotts.com

To: 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 ; Cohen, David S.; alan.tenenbaum@usdoj.gov ; dinnocenti@obht.com ; djury@usw.org ; ejones@bnswlaw.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 ; Melinda.Franek@lw.com ; Newton@sbep-law.com ; polin.robert@epa.gov ; psinger@ReedSmith.com ; RBattaglia@obht.com ; rcollins@mt.gov ; Moore, Robert; roberts.robert@epa.gov ; rseltzer@cwsny.com ; Winter, Robert; 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 ; RSeltzer@cwsny.com ; jrearden@gibsondunn.com

Sent: Tue Apr 21 13:43:54 2009

Subject: FW: ASARCO

Please see the email exchange below. Some of you have already received this, but I wanted to make sure this was widely distributed.

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: Kinzie, Jack

Sent: Tuesday, April 21, 2009 3:35 PM

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

Subject: RE: ASARCO

I am authorized to state for Sterlite as well as the Debtor that neither objects.

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 3:09 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

Does the Debtor or Sterlite oppose the insertion of the words "or if the Board abstains from supporting an alternative plan" after the words "an alternative plan" in the statement below?
Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions

or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Monday, April 20, 2009 9:12 AM
To: Moore, Robert
Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.
Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

04/20/2009 05:10

AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>
cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnsrlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support

it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of

the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoore@milbank.com

www.milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnswwlaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert" <rwinter@milbank.com>
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein;

bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"

<Charles.

Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; shelly.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: 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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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; shelly.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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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From: [Moore, Robert](#)

To: [jack.kinzie@bakerbotts.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](#); Beckham, Charles; [d"apice@sbep-law.com](#); [david.dain@usdoj.gov](#); [DBaker@ReedSmith.com](#); [dbartner@shearman.com](#); Cohen, David S.; [Alan.Tenenbaum@usdoj.gov](#); [dinnocenti@obht.com](#); [djury@usw.org](#); [ejones@bnswlaw.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](#); [Brimmage, Marty L.](#); [MarySueW@atg.wa.gov](#); [mcapdeville@mt.gov](#); [Richard_Schmidt@txs.uscourts.gov](#); [djones@porterhedges.com](#); [Monsour, Trey A.](#);

CC:

Subject: Re: ASARCO

Date: Wednesday, April 22, 2009 11:57:20 AM

Attachments:

The Parent's objection to the form of proposed Order submitted by the Debtors in advance of the Court's ruling, as modified by the email exchange trailing below, remains.

The proposed modification, and Mr. Kinzie's representations on behalf of the Debtors and Sterlite in Mr. Kinzie's emails of yesterday, do nothing to address the Settlement and Release Agreement's contractually-imposed abrogation of the obvious fiduciary duties of the Debtor in Possession's Board, and presume all three Board members would act in unison.

Moreover, the modifications do nothing to remove the exposure of the estate to the "unintended consequence" under the "Release Condition" set forth in Section 2.1(c)(iv), of a release of the Sterlite litigation claims, valued by the Debtor's Board at in excess of \$400 million, upon approval of a "Superior Proposal" made by the Parent (or any other third party). Upon such approval, the Board would be required to terminate the new Sterlite PSA in order to consummate the Superior Proposal, even if the Board abstained from supporting it.

There was significant agreement in the Monday April 20 status hearing discussions that the Parent proposal contemplated in the Section 524(g) support agreement filed on April 17 by the Asbestos Representatives is susceptible to evaluation and could be viewed by Sterlite and other parties under the Superior Proposal definition (which, through the Acquisition Proposal definition picks up recapitalizations). No order should risk loss of a \$400 million - plus asset for no consideration.

As an additional matter, the Parent requests that the numerous exchanges with the court over the past several days be included in the record of the April 16 and 17 hearings on the Sterlite Release and Sale Agreement.

Sincerely, Bob Moore.
Robert Jay Moore
Partner, Financial Restructuring Group
Milbank, Tweed, Hadley & McCloy LLP
601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017
(213) 892-4501
rmoore@milbank.com

Sent from my BlackBerry Wireless Handheld

From: jack.kinzie@bakerbotts.com

To: 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 ; Cohen, David S.; alan.tenenbaum@usdoj.gov ; 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 ; Melinda.Franek@lw.com ; Newton@sbep-law.com ; polin.robert@epa.gov ; psinger@ReedSmith.com ; RBattaglia@obht.com ; rcollins@mt.gov ; Moore, Robert; roberts.robert@epa.gov ; rseltzer@cwsny.com ; Winter, Robert; 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 ; RSeltzer@cwsny.com ; jrearden@gibsondunn.com

Sent: Tue Apr 21 13:43:54 2009

Subject: FW: ASARCO

Please see the email exchange below. Some of you have already received this, but I wanted to make sure this was widely distributed.

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: Kinzie, Jack

Sent: Tuesday, April 21, 2009 3:35 PM

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

Subject: RE: ASARCO

I am authorized to state for Sterlite as well as the Debtor that neither objects.

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 3:09 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@bnsnlaw.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

Does the Debtor or Sterlite oppose the insertion of the words "or if the Board abstains from supporting an alternative plan" after the words "an alternative plan" in the statement below?

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave

Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

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

Sent: Monday, April 20, 2009 9:12 AM

To: Moore, Robert

Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.

Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>

04/20/2009 05:10

AM

cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnswwlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which

stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite! This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite

to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank
Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoore@milbank.com

www.milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

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

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the

Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnsblaw.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@robertpatelaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.
Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>,
<mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A."
<Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; shelly.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: 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@bnsblaw.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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727

214.674.6727 (cell)
214.661.4727 (fax)

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From: [Jacob L. Newton](mailto:Jacob.L.Newton)
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; Beckham, Charles; Peter D"Apice; 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; 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; jrearden@gibsondunn.com; JTate@obht.com; judgepate@robertcpatelaw.com; Leticia_Garza@txs.uscourts.gov; LevinsonS@hbdlawyers.com; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; RMoore@milbank.com; RSeltzer@cwsny.com; rwinter@milbank.com; Monsour, Trey A.; 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; Beckham, Charles; Peter D"Apice; 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; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com; 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; Monsour, Trey A.; 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; jack.kinzie@bakerbotts.com;

Subject: ASARCO

Date: Tuesday, April 21, 2009 5:02:32 PM

Attachments:

Your Honor, the Debtors have just filed an amended proposed order granting the Sterlite 9019 Motion. The Asbestos Committee has also uploaded an alternative proposed order for your consideration. Our proposed order grants the 9019 motion but limits the findings to those appropriate and supported by the record at the hearings held last week. In addition, our proposed order addresses the concerns raised by the Court, including by providing that Sterlite will not be released (nor will it receive a break up fee) in the event that a Parent plan is confirmed.

Our proposed order is filed at docket no. 10919.

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From: jack.kinzie@bakerbotts.com [mailto:jack.kinzie@bakerbotts.com]

Sent: Tuesday, April 21, 2009 4:07 PM

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; DCohen2@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; 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; Robert T. Brousseau; charles.beckham@haynesboone.com; Peter D'Apice; 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; 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

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@bnsrlaw.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

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@bnsrlaw.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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]
Sent: Monday, April 20, 2009 10:11 AM
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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert
Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov
Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Monday, April 20, 2009 9:12 AM
To: Moore, Robert
Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.
Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time. Please arrange for a conference call.
Richard S. Schmidt

"Moore, Robert"
<RMoore@milbank.com>

04/20/2009 05:10 AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>
cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnsrlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is

entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite! This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition."

The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a

"Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate. Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoore@milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnswwlaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert" <rwinter@milbank.com>
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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@bnsblaw.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@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@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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt
<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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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(214) 969-4999
Email: esserman@sbep-law.com

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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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 
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214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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From: jack.kinzie@bakerbotts.com

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; Beckham, Charles; 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@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; jrearden@gibsondunn.com; JTate@obht.com; judgepate@robertcpatelaw.com; Leticia_Garza@txs.uscourts.gov; LevinsonS@hbdlawyers.com; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; RMoore@milbank.com; RSeltzer@cwsny.com; rwinter@milbank.com; Monsour, Trey A.; 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; Beckham, Charles; [d"apice@sbep-law.com](mailto:d); 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@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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com; Newton@sbep-law.com; 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; Monsour, Trey A.; 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

Date: Tuesday, April 21, 2009 4:08:48 PM

Attachments:

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

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions

or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Monday, April 20, 2009 9:12 AM
To: Moore, Robert
Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.
Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

04/20/2009 05:10 AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>
cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnswwlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed,

as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at

\$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c) (iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c) (iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c) (v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that

counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

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rmoore@milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

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

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack;

james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.
Sent: Fri Apr 17 14:32:11 2009
Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; 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: 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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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=====

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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

From: jack.kinzie@bakerbotts.com
To: 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; Beckham, Charles; [d"apice@sbep-law.com](mailto:d); david.dain@usdoj.gov; DBaker@ReedSmith.com; dbartner@shearman.com; dcohen@milbank.com; alan.tenenbaum@usdoj.gov; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com; Newton@sbep-law.com; 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; Monsour, Trey A.; 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;
CC:
Subject: FW: ASARCO
Date: Tuesday, April 21, 2009 3:59:55 PM
Attachments:

Sorry, again, for the duplication.

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

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

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

Sent: Monday, April 20, 2009 9:12 AM

To: Moore, Robert

Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.

Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

04/20/2009 05:10

AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>

cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnsblaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed,

as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by

Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and

which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoore@milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnsww.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert" <rwinter@milbank.com>
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein;

bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnswlaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"

<Charles.

Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; shelly.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: 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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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=====

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From: Richard_Schmidt@txs.uscourts.gov
To: jack.kinzie@bakerbotts.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; [Beckham, Charles](mailto:Beckham.Charles); 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@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; jrearden@gibsondunn.com; JTate@obht.com; judgepate@robertcpatelaw.com; Leticia_Garza@txs.uscourts.gov; LevinsonS@hbdlawyers.com; [Brimmage, Marty L.](mailto:Brimmage,MartyL); MarySueW@atg.wa.gov; mcapdeville@mt.gov; RMoore@milbank.com; RSeltzer@cwsny.com; rwinter@milbank.com; [Monsour, Trey A.](mailto:Monsour,TreyA);
Subject: RE: ASARCO
Date: Tuesday, April 21, 2009 3:54:02 PM
Attachments:

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

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>

<Trey.Monsour@haynesboone.com>,
<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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov
Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

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

Sent: Monday, April 20, 2009 9:12 AM

To: Moore, Robert

Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.

Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

04/20/2009 05:10

AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>
cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnsnlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability

to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that

scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoores@milbank.com

www.milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

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

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnsblaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.

kinzie@bakerbotts.com>

04/17/2009 11:59

AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; trey.monsour@haynesboone.com ; veronica.bates@hsblaw.com

com ; wolfj@hbdlawyers.com ; rselzter@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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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; rselzter@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; rselzter@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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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=====

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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

From: jack.kinzie@bakerbotts.com
To: 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; Beckham, Charles; [d"apice@sbep-law.com](mailto:d); david.dain@usdoj.gov; DBaker@ReedSmith.com; dbartner@shearman.com;
dcohen@milbank.com; alan.tenenbaum@usdoj.gov; dinnocenti@obht.com;
djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov;
mcapdeville@mt.gov; Melinda.Franek@lw.com; Newton@sbep-law.com; 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; [Monsour, Trey A.](mailto:Monsour,Trey A.); 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;
RSeltzer@cwsny.com; jrearden@gibsondunn.com;
CC:
Subject: FW: ASARCO
Date: Tuesday, April 21, 2009 3:47:15 PM
Attachments:

Please see the email exchange below. Some of you have already received this, but I wanted to make sure this was widely distributed.

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: Kinzie, Jack
Sent: Tuesday, April 21, 2009 3:35 PM
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

Subject: RE: ASARCO

I am authorized to state for Sterlite as well as the Debtor that neither objects.

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 3:09 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

Does the Debtor or Sterlite oppose the insertion of the words "or if the Board abstains from supporting an alternative plan" after the words "an alternative plan" in the statement below?

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980

214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

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

Sent: Monday, April 20, 2009 9:12 AM

To: Moore, Robert

Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.

Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>

04/20/2009 05:10
AM

cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnswwlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which

stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite! This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite

to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank
Robert Jay Moore

Partner, Financial Restructuring

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rmoore@milbank.com
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From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

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

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the

Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnsblaw.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@robertpatelaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; shelly.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
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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@bnsblaw.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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727

214.674.6727 (cell)
214.661.4727 (fax)

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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

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=====

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From: jack.kinzie@bakerbotts.com
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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; DCohen2@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; jrearden@gibsondunn.com; JTate@obht.com; judgepate@robertcpatelaw.com; Leticia_Garza@txs.uscourts.gov; LevinsonS@hbdlawyers.com; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; RMoore@milbank.com; RSeltzer@cwsny.com; rwinter@milbank.com; Monsour, Trey A.;
Subject: RE: ASARCO
Date: Tuesday, April 21, 2009 3:35:29 PM
Attachments:

I am authorized to state for Sterlite as well as the Debtor that neither objects.

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 3:09 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@bnswlaw.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

Does the Debtor or Sterlite oppose the insertion of the words "or if the Board abstains from supporting an alternative plan" after the words "an alternative plan" in the statement below?
Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

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

Sent: Monday, April 20, 2009 9:12 AM

To: Moore, Robert

Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.

Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"
<RMoore@milbank.com>

04/20/2009 05:10
AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>
cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnswwlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following

consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's

plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoore@milbank.com

www.milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

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

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnsblaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; shelly.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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727

214.674.6727 (cell)
214.661.4727 (fax)

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=====

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From: Richard_Schmidt@txs.uscourts.gov
To: jack.kinzie@bakerbotts.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; [Beckham, Charles](mailto:Beckham.Charles); 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@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; jrearden@gibsondunn.com; JTate@obht.com; judgepate@robertcpatelaw.com; Leticia_Garza@txs.uscourts.gov; LevinsonS@hbdlawyers.com; [Brimmage, Marty L.](mailto:Brimmage,MartyL); MarySueW@atg.wa.gov; mcapdeville@mt.gov; RMoore@milbank.com; RSeltzer@cwsny.com; rwinter@milbank.com; [Monsour, Trey A.](mailto:Monsour,TreyA);
Subject: RE: ASARCO
Date: Tuesday, April 21, 2009 3:08:56 PM
Attachments:

Does the Debtor or Sterlite oppose the insertion of the words "or if the Board abstains from supporting an alternative plan" after the words "an alternative plan" in the statement below?
Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/21/2009 02:21 PM

To <Richard_Schmidt@txs.uscourts.gov>, <RMoore@milbank.com>, <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@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>, <rwinter@milbank.com>, <Trey.Monsour@haynesboone.com>, <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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Monday, April 20, 2009 9:12 AM
To: Moore, Robert
Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.
Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert"

<RMoore@milbank.com>

04/20/2009 05:10 AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>
cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnsmlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors

had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoore@milbank.com

www.milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein;

bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>;

"Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley

Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley"

<bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david

dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.

com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.

org>; "ejones" <ejones@bnsrlaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.

Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>;

"gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james

brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.

mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>;

"LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.

com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey

A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert"

<rwinter@milbank.com>

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie.

We expect to be able to respond by Monday morning. Notwithstanding the response from Mr.

Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the

Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a

Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnsblaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.

kinzie@bakerbotts.com>

04/17/2009 11:59

AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; trey.monsour@haynesboone.com ; veronica.bates@hsblaw.com

com ; wolfj@hbdlawyers.com ; rselzter@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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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; rselzter@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; rselzter@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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

=====

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=====

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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

From: jack.kinzie@bakerbotts.com
To: Richard_Schmidt@txs.uscourts.gov; RMoore@milbank.com; 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; [Beckham, Charles](#); DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; DCohen2@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; [Brimmage, Marty L.](#); MarySueW@atg.wa.gov; mcapdeville@mt.gov; rwinter@milbank.com; [Monsour, Trey A.](#); jrearden@gibsondunn.com; RSeltzer@cwsny.com;
CC: Leticia_Garza@txs.uscourts.gov;
Subject: RE: ASARCO
Date: Tuesday, April 21, 2009 2:22:00 PM
Attachments:

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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)

214.661.4727 (fax)

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

From: Monsour, Trey A. [mailto:Trey.Monsour@haynesboone.com]

Sent: Monday, April 20, 2009 10:11 AM

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; Kinzie, Jack; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert

Cc: Monsour, Trey A.; Leticia_Garza@txs.uscourts.gov

Subject: RE: ASARCO

For the 4:00 p.m. Status Conference today, please contact Court Call at 1-866-582-6878 to schedule your participation. I have contacted and reserved Court Call. If you have any questions or problems, feel free to call me at 214-651-5137 or send me an email at trey.monsour@haynesboone.com.

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

Sent: Monday, April 20, 2009 9:12 AM

To: Moore, Robert

Cc: 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; Felsenthal; gibbons melissa; Hal Morris; jack kinzie; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Winter, Robert; Monsour, Trey A.

Subject: RE: ASARCO

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.

Please arrange for a conference call.

Richard S. Schmidt

"Moore, Robert" <RMoore@milbank.com>

04/20/2009 05:10 AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>

cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnsrlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were

confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

601 S. Figueroa Street, 30th Floor

Los Angeles, CA 90017-5735

Off Dir: (213) 892-4501; Fax: (213) 892-4701

Cell: (213) 300-7500

rmoores@milbank.com

www.milbank.com

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

Sent: Sunday, April 19, 2009 12:49 PM

To: Beckham, Charles; jack kinzie

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert

Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]

Sent: 04/19/2009 02:29 PM EST

To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>

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

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnswlaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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@bnsblaw.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@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@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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; 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: 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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnsblaw.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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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From: Romina.Mulloy@bakerbotts.com
To: JTate@obht.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; Beckham, Charles; 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; jack.kinzie@bakerbotts.com; james.brandt@lw.com; JMcCarroll@reedsmith.com; joseph.mikitish@azag.gov; judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; rmoore@milbank.com; rseltzer@cwsny.com; SJordan@jhwclaw.com; [Monsour, Trey A.](mailto:Monsour,TreyA.); wroll@Shearman.com; RBattaglia@obht.com; jack.kinzie@bakerbotts.com;
Subject: RE: Revised Sterlite 9019 Order
Date: Tuesday, April 21, 2009 2:18:46 PM
Attachments: [Sterlite 9019 Proposed Order.DOC](#)

We appreciate your position John.

Attached please find the final proposed order, which we will be submitting to the Court this afternoon and which adds new language as set forth in paragraph 7, page 6.

Regards,

Romina Mulloy-Levine 

BAKER BOTTS L.L.P.

2001 Ross Avenue

Dallas, TX 75201

voice: 214.953.6466

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

From: JTate@obht.com [mailto:JTate@obht.com]

Sent: Tuesday, April 21, 2009 11:51 AM

To: Mulloy-Levine, Romina

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; dcohen@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; Kinzie, Jack; james.brandt@lw.com; JMcCarroll@reedsmith.com; joseph.mikitish@azag.gov; judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com; Marty.Brimmage@haynesboone.com; MarySueW@atg.wa.gov; mcapdeville@mt.gov; rmoore@milbank.com; Mulloy-Levine, Romina; rselzter@cwsny.com; Jordan, Shelby (sjordan@jhwclaw.com); Trey.Monsour@haynesboone.com; wroll@Shearman.com; RBattaglia@obht.com

Subject: RE: Revised Sterlite 9019 Order

Romina: the FCR has numerous objections to the form of this proposed order, especially in light of Judge Schmidt's concerns and questions raised at the hearing and the status conference yesterday. We anticipate him issuing some ruling at tomorrow's 2:00pm hearings. If the Judge does not prepare his own form of order then the parties should confer on an acceptable form of order conforming to his ruling. Regards, John

John H. Tate, II
 OPPENHEIMER, BLEND, HARRISON, & TATE, Inc.
 711 Navarro, Sixth Floor
 San Antonio, TX 78205
 210/224-2000
 Fax: 210/224-7540

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**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
	§	

ORDER PURSUANT TO §§ 363, 105 AND FED. R. BANKR. P. 9019, APPROVING SETTLEMENT AND RELEASE AND REVISED BID PROTECTIONS CONTAINED IN THE NEW PURCHASE AND SALE AGREEMENT BETWEEN ASARCO LLC AND CERTAIN OF ITS SUBSIDIARIES, AND STERLITE (USA), INC., AND FOR RELATED RELIEF

Upon consideration of the *Motion For Order, Pursuant to §§ 363, 105 and Fed. R. Bankr. P. 9019, Approving Settlement and Release and Revised Bid Protections Contained in the New Purchase and Sale Agreement Between ASARCO LLC and Certain of its Subsidiaries and Sterlite (USA), Inc., and for Related Relief* (the “Motion”);¹ and the relief requested in the Motion being in the best interests of ASARCO LLC (“ASARCO”) and debtors in the above-captioned cases (collectively, the “Debtors”), their estates, and their creditors and supported by sound business reasons; and the Court having reviewed the Motion and having heard evidence and arguments in support of the relief requested therein at a hearing before the Court on April 13 and 14, 2009 and the status conference on April 20, 2009 (the “Hearing”); and the Court having determined that the bases set forth in the Motion and as further supported by the evidence at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court in these cases; and after due deliberation and sufficient cause appearing therefor, it is

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion, provided, however, that the term “New Sterlite PSA” shall mean the New Sterlite PSA, as amended as of April 15, 2009.

FOUND AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. The relief requested in the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (O). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Pursuant to Bankruptcy Rule 2002, due and proper notice of the Motion was provided, and no other or further notice need be provided.

C. ASARCO has fully marketed the sale of the Assets such that further marketing after the go-shop period is unlikely to identify new qualified bidders, absent a dramatic increase in copper prices. ASARCO has demonstrated that it has made reasonable efforts to identify all bidders that would be interested and able to engage in this process, and ASARCO has provided all potential bidders with an opportunity for adequate due diligence.

D. The entire package of Revised Bid Protections: (i) is fair and reasonable, and provides a benefit to the Debtors, their estates, and to all creditors; (ii) is designed to maximize the value of ASARCO's estate; and (iii) was negotiated by the parties in good faith and at arm's length.

E. In negotiating and approving the New Sterlite PSA, which contains the Release, the Back-Up Bid Option, and the Revised Bid Protections:

1. The Board met its fiduciary obligations and discharged its fiduciary duties;
2. The Board took all reasonable and necessary actions to inform itself of all relevant factors and acted on an informed basis;
3. ASARCO negotiated at arm's length and in good faith;
4. The Board acted in good faith and with that amount of care which ordinarily careful and prudent persons would use in similar circumstances;
5. ASARCO and the Board acted in the honest and informed belief that entering into the New Sterlite PSA with these provisions was in the best interests of the Debtors, their estates, and all creditors and stakeholders;
6. ASARCO and the Board refrained from self-dealing or any other action that would injure the Debtors, their estates, and all creditors and stakeholders;
7. ASARCO and the Board demonstrated compelling and sound business justifications for taking such action; and
8. ASARCO and the Board acted in the best interests of the Debtors, their estates, and all creditors and stakeholders.

- F. Specifically with respect to the Break-up Fee and Expense Reimbursement:
1. ASARCO and the Board have demonstrated a compelling and sound business justification for authorizing the payment of the Break-up Fee under the circumstances, timing and procedures set forth in the Motion and the New Sterlite PSA;
 2. The Break-up Fee and Expense Reimbursement are fair and reasonable, and provide a benefit to the Debtors, their estates, and to all creditors and stakeholders;
 3. The Break-up Fee and Expense Reimbursement, combined with the entire package of Revised Bid Protections, represented a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder;
 4. Absent authorization of the Break-up Fee and Expense Reimbursement, the Debtors may lose the opportunity to obtain the highest and best proposal for their Assets;
 5. The Break-up Fee and Expense Reimbursement were negotiated by the parties in good faith and at arm's length; and
 6. ASARCO's payment to Sterlite of the Break-up Fee and Expense Reimbursement, if any: (i) represents actual and necessary costs and expenses of preserving ASARCO's estate, within the meaning of section 503(b) of the Bankruptcy Code; (ii) is a substantial benefit to ASARCO's estate; (iii) does not constitute penalties, but reasonable estimates of the damages or expenses to be suffered by Sterlite in the event the transaction contemplated by the New Sterlite PSA is not consummated under the circumstances set forth therein; and (iv) is reasonable and appropriate, in light of, among other things, the size and nature of the proposed sale, the efforts that will have been expended by Sterlite in negotiating and seeking approval of the New Sterlite PSA, and the benefits Sterlite will have provided to the Debtors' estates and creditors and all parties in interest herein.
- G. Specifically with respect to the No-Shop Covenant with Fiduciary Out:
1. ASARCO and the Board have demonstrated a compelling and sound business justification for the No-Shop Covenant under the circumstances, timing and procedures set forth in the Motion;
 2. In light of the Go-Shop Covenant pending entry of this Order and the Fiduciary Out, the No-Shop Covenant: (i) is fair, reasonable and appropriate, (ii) is designed to maximize the value of ASARCO's estate, and (iii) allows the Board to comply with its fiduciary duties;
 3. The Superior Proposal Threshold is reasonable under the circumstances;

4. The No-Shop Covenant was negotiated by the parties in good faith and at arm's length; and
5. The No-Shop Covenant is a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder. Absent authorization of the No-Shop Covenant, the Debtors may lose the opportunity to obtain the highest and best proposal for their Assets.

H. Specifically with respect to the Matching Right:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for the Matching Right under the circumstances, timing and procedures set forth in the Motion;
2. The Matching Right is fair, reasonable, and appropriate and is designed to maximize the value of ASARCO's estate;
3. The Matching Right was negotiated by the parties in good faith and at arm's length; and
4. The Matching Right is a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder. Absent authorization of the Matching Right, the Debtors may lose the opportunity to obtain the highest and best proposal for their Assets.

I. In consideration of the factors set forth in *TMT Trailer*² and *Connecticut Gen. Life Ins. Co.*³ including: (i) the probability of success in the litigation, with due consideration of the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (iii) the paramount interest of creditors with proper deference to their reasonable views; (iv) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and (v) all other factors bearing on the wisdom of the compromise, the settlement and compromise and, specifically, the Release and the Back-Up Bid Option contained in the New Sterlite PSA, is the result of good-faith, arm's-length bargaining and represents a reasonable, fair and equitable resolution of the controversy between ASARCO and Sterlite relating to the Original Sterlite PSA.

J. Ample evidence in the record before the Court addresses the factors set forth in paragraph I above. For example, the evidence before the Court showed that:

1. The Sterlite parties have no assets or operations and do not conduct business in the United States or the United Kingdom;

² *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

³ *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995).

2. Because Sterlite has no assets in the United States, even if ASARCO were to obtain a judgment against Sterlite, (i) ASARCO would have no meaningful recourse to enforce that judgment in the United States, and (ii) collection efforts abroad would most likely involve seeking enforcement of Indian law, the outcome of which is highly uncertain;
3. The uncertainty, inefficiencies, delay, and expense in trying to enforce a U.S. judgment in the Indian courts system make it reasonable to conclude that ASARCO would not achieve any material collection on any judgment against the Sterlite parties in the foreseeable future;
4. ASARCO would face similar hurdles attempting to enforce a judgment in any of the other countries where the Sterlite parties have assets or operations, because none of these countries has reciprocal judgment recognition treaties with the United States;
5. To the extent there are non-judicial avenues to pressure Sterlite to comply with a judgment, these also are replete with uncertainties and risks and offer no meaningful assurance of collection;
6. Throughout the negotiation, Sterlite refused to entertain any purchase and sale transaction that did not include a release of all claims under the Original Sterlite PSA;
7. The majority of the key creditors in these cases, including the governmental environmental creditors and the general unsecured creditors represented by the ASARCO Committee, support the settlement and compromise;
8. Under the proposed settlement, creditors holding the vast majority of the debt in these cases (i.e., asbestos and governmental environmental creditors) maintain the ability to vote to reject the proposed Sterlite plan;
9. There is no evidence of fraud or collusion. The compromise is the result of extensive, hard-fought, arm's length negotiations over a period of almost five months, in which the key creditors (including the Department of Justice, the ASARCO Committee, and the Asbestos Committee) were actively involved;
10. Expert testimony established that the aggregate consideration to be paid to ASARCO under the New Sterlite PSA more than adequately compensates ASARCO for the Release;
11. Closing the New Sterlite PSA will enable the Debtor to confirm a plan that will result in the payment of administrative priority claims in full and will provide for initial cash distributions to unsecured creditors of approximately 70 cents on the dollar; and
12. The New Sterlite PSA minimizes: (i) the ongoing risk to the estate's constituents of fluctuating commodity prices; (ii) exposure to the Debtor's unique

operating cost structure and management limitations; and (iii) the ongoing uncertainties of the current financial markets.

K. The entry of this Order is in the best interests of the Debtors, their estates, all creditors and stakeholders, and all other parties in interest; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted in all respects, as modified herein.
2. The failure specifically to include or reference any particular provision, section or article of the New Sterlite PSA in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Revised Bid Protections, the Back-Up Bid Option, and the settlement and Release contained in the New Sterlite PSA be authorized and approved in their entirety. In the event of a conflict between the terms of the New Sterlite PSA and this Order (or the Motion), the terms of the New Sterlite PSA shall control.
3. Any objections to the entry of this Order that have not been withdrawn, waived, resolved or settled and all reservations of rights included therein, are hereby overruled; *provided, however*, that all rights of Sterlite and its affiliates to raise any objection or make any claim with respect to any matter described herein, including without limitation (a) the characterization of the Original Sterlite PSA or the New Sterlite PSA, or (b) their conduct and rights in connection with these cases and the transaction described herein are fully reserved.
4. The entire settlement and compromise set forth in the New Sterlite PSA, including without limitation the Release in Section 2.1, is approved in all respects.
5. The Release shall not be granted or otherwise effective until one of the Release Conditions (as defined in the New Sterlite PSA and described in the Motion) occurs.
6. Sterlite will not receive a release of liability under the Original Sterlite PSA if, among other reasons contemplated by the New Sterlite 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.
7. 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 New Sterlite PSA of the Board's support of an alternative plan.
8. The Revised Bid Protections and the Back-Up Bid Option are approved in all respects.
9. The Break-up Fee and Expense Reimbursement are hereby approved pursuant to sections 105, 363, 503, 507, and 1123 of the Bankruptcy Code.

10. If ASARCO is required under the New Sterlite PSA to pay a Break-up Fee or Expense Reimbursement, it is authorized to pay the Break-up Fee or Expense Reimbursement, which shall be deemed to be an administrative expense pursuant to section 503(b) of the Bankruptcy Code.

11. None of the relief granted by this order impairs or effects in any way: (a) the contentions of ASARCO or of Ron and Linda Deen (“Deen”) regarding the ownership of an approximately 12 acre tract of land in Pinal County, Arizona (this tract of land is more particularly described in pleadings previously filed in this case), or (b) any rights that either ASARCO or Deen have under applicable Arizona law, federal bankruptcy law, or any other law, and this order shall have no effect of any kind in any later proceedings regarding ASARCO’s claim to ownership or the purported rights of Deens, if any, in the 12 acres.

12. ASARCO is authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established under this Order.

13. This Order shall be binding upon, and inure to the benefit of, Sterlite and its affiliates, successors and assigns and the Debtors, including any chapter 7 or 11 trustee or other fiduciary appointed for the estates of the Debtors, whether in this case, subsequent bankruptcy cases or upon dismissal of any of these Reorganization Cases.

14. Notwithstanding Rule 6004(g) of the Bankruptcy Rules, this Order shall not be stayed for ten days after the entry hereof and this Order shall be effective and enforceable immediately upon signature hereof.

15. The Court shall retain jurisdiction over any matters related to or arising from the implementation and enforcement of this Order.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

From: JTate@obht.com
To: Romina.Mulloy@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; DBartner@Shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; jack.kinzie@bakerbotts.com; james.brandt@lw.com; JMcCarroll@reedsmith.com; joseph.mikitish@azag.gov; judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; rmoore@milbank.com; Romina.Mulloy@bakerbotts.com; rseltzer@cwsny.com; sjordan@jhwclaw.com; Monsour, Trey A.; wroll@Shearman.com; RBattaglia@obht.com;
Subject: RE: Revised Sterlite 9019 Order
Date: Tuesday, April 21, 2009 11:51:01 AM
Attachments:

Romina: the FCR has numerous objections to the form of this proposed order, especially in light of Judge Schmidt's concerns and questions raised at the hearing and the status conference yesterday. We anticipate him issuing some ruling at tomorrow's 2:00pm hearings. If the Judge does not prepare his own form of order then the parties should confer on an acceptable form of order conforming to his ruling. Regards, John

John H. Tate, II
OPPENHEIMER, BLEND, HARRISON, & TATE, Inc.
711 Navarro, Sixth Floor
San Antonio, TX 78205
210/224-2000
Fax: 210/224-7540

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From: Richard_Schmidt@txs.uscourts.gov
To: Moore, Robert;
CC: [Alan Tenenbaum](mailto:Alan.Tenenbaum@usdoj.gov); [Amy Gillespie](mailto:Amy.Gillespie@usdoj.gov); [Amy Horner](mailto:Amy.Horner@sol.doi.gov); [anthony cox](mailto:anthony.cox@hsblaw.com); [Ashley Bartram](mailto:Ashley.Bartram@oag.state.tx.us); [barry stein](mailto:barry.stein@sol.doi.gov); [bkirley](mailto:bkirley@mt.gov); [brousseau](mailto:brousseau@sbep-law.com); [Beckham, Charles](mailto:DApice@sbep-law.com); [DApice](mailto:DApice@sbep-law.com); [david dain](mailto:david.dain@usdoj.gov); [dbaker](mailto:dbaker@reedsmith.com); [dbartner](mailto:dbartner@shearman.com); [Cohen, David S.](mailto:Cohen,David.S@milbank.com); [dinnocenti](mailto:dinnocenti@obht.com); [djury](mailto:djury@usw.org); [ejones](mailto:ejones@bnswwlaw.com); [ElliottF](mailto:ElliottF@atg.wa.gov); [Eric Albert](mailto:Eric.Albert@usdoj.gov); [esserman](mailto:esserman@sbep-law.com); [Felsenthal](mailto:Felsenthal@sbep-law.com); [gibbons melissa](mailto:gibbons.melissa@epa.gov); [Hal Morris](mailto:Hal.Morris@oag.state.tx.us); [jack kinzie](mailto:james.brandt@lw.com); [james brandt](mailto:james.brandt@lw.com); [jmccarroll](mailto:jmccarroll@reedsmith.com); [joseph mikitish](mailto:joseph.mikitish@azag.gov); [JTate](mailto:JTate@obht.com); [judgepate](mailto:judgepate@robertcpatelaw.com); [LevinsonS](mailto:LevinsonS@hbdlawyers.com); [Brimmage, Marty L.](mailto:Marty.Brimmage@haynesboone.com); [MarySueW](mailto:Marty.Sue.W@atg.wa.gov); [mcapdeville](mailto:mcapdeville@mt.gov); [Winter, Robert](mailto:Winter,Robert@haynesboone.com); [Monsour, Trey A.](mailto:Monsour,Trey.A@haynesboone.com);

Subject: RE: ASARCO
Date: Monday, April 20, 2009 9:11:51 AM
Attachments:

I would like to discuss the release provisions at a Status Hearing this afternoon at 4:00 PM Central time.
Please arrange for a conference call.
Richard S. Schmidt

"Moore, Robert" <RMoore@milbank.com>

04/20/2009 05:10 AM

To <Richard_Schmidt@txs.uscourts.gov>, "Beckham, Charles" <Charles.Beckham@haynesboone.com>, "jack kinzie" <jack.kinzie@bakerbotts.com>

cc "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>, "Amy Gillespie" <Amy.Gillespie@usdoj.gov>, "Amy Horner" <Amy.Horner@sol.doi.gov>, "anthony cox" <anthony.cox@hsblaw.com>, "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>, "barry stein" <barry.stein@sol.doi.gov>, "bkirley" <bkirley@mt.gov>, "brousseau" <brousseau@sbep-law.com>, "DApice" <DApice@sbep-law.com>, "david dain" <david.dain@usdoj.gov>, "dbaker" <dbaker@reedsmith.com>, "dbartner" <dbartner@shearman.com>, "Cohen, David S." <DCohen2@milbank.com>, "dinnocenti" <dinnocenti@obht.com>, "djury" <djury@usw.org>, "ejones" <ejones@bnswwlaw.com>, "ElliottF" <ElliottF@atg.wa.gov>, "Eric Albert" <Eric.Albert@usdoj.gov>, "esserman" <esserman@sbep-law.com>, "Felsenthal" <Felsenthal@sbep-law.com>, "gibbons melissa" <gibbons.melissa@epa.gov>, "Hal Morris" <Hal.Morris@oag.state.tx.us>, "james brandt" <james.brandt@lw.com>, "jmccarroll" <jmccarroll@reedsmith.com>, "joseph mikitish" <joseph.mikitish@azag.gov>, "JTate" <JTate@obht.com>, "judgepate" <judgepate@robertcpatelaw.com>, "LevinsonS" <LevinsonS@hbdlawyers.com>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, "MarySueW" <MarySueW@atg.wa.gov>, "mcapdeville" <mcapdeville@mt.gov>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>, "Winter, Robert" <rwinter@milbank.com>

Subject RE: ASARCO

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite

Settlement and new PSA and thus release of the claims against Sterlite!

This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c)(ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the

Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1(c)(v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate.

Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank

Robert Jay Moore

Partner, Financial Restructuring

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Los Angeles, CA 90017-5735

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From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 12:49 PM
To: Beckham, Charles; jack kinzie
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert
Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnswwlaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert" <rwinter@milbank.com>
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the

original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnswlaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles"
<Charles.
Beckham@haynesboone.
com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; 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: 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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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@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'

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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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From: [Moore, Robert](#)
To: Richard_Schmidt@txs.uscourts.gov; [Beckham, Charles](#); [jack kinzie](#);
CC: [Alan Tenenbaum](#); [Amy Gillespie](#); [Amy Horner](#); [anthony cox](#); [Ashley Bartram](#);
[barry stein](#); [bkirley](#); [brousseau](#); [DApice](#); [david dain](#); [dbaker](#); [dbartner](#); [Cohen, David S.](#); [dinnocenti](#); [djury](#); [ejones](#); [ElliottF](#); [Eric Albert](#); [esserman](#); [Felsenthal](#);
[gibbons melissa](#); [Hal Morris](#); [james brandt](#); [jmccarroll](#); [joseph mikitish](#); [JTate](#);
[judgepate](#); [LevinsonS](#); [Brimmage, Marty L.](#); [MarySueW](#); [mcapdeville](#);
[Monsour, Trey A.](#); [Winter, Robert](#);
Subject: RE: ASARCO
Date: Monday, April 20, 2009 5:12:01 AM
Attachments:

Dear Judge Schmidt:

The Parent does not agree with several of the statements made by Debtors' counsel in email exchanges with Your Honor and certain other parties over the course of the weekend regarding whether Sterlite could receive a release if a plan other than the Debtors' plan is confirmed, as explained in greater detail below. Furthermore, the Parent believes that the Debtors' email responses do not fully address Your Honor's inquiries and that several of the findings of fact and conclusions of law set forth in the proposed revised form of order circulated by counsel for the Debtors are entirely unsupported by the record.

The Parent believes that the confusion created by the email exchanges among certain parties (which at some point ceased to include a significant number of the parties in interest who appeared at the April 16 and 17 hearings) is more properly addressed on the record at a noticed status conference. The Parent suggests that the Court set a status conference on this matter, which parties may attend either by telephone or in person, in conjunction with or prior to the hearing on the Parent's motion to withdraw the reference with respect to the Debtors' proposed environmental claims settlement agreements and CERCLA Consent Decrees presently scheduled for 2 pm CDT on Wednesday, April 22.

If an order is entered approving the Debtors' Bankruptcy Rule 9019 Sterlite settlement motion and the accompanying bid procedures regarding the new Sterlite PSA, the Parent understands that the following consequences flow from entry:

First, the Debtor's Board, and thus the Debtor in Possession (which stands in the shoes of a bankruptcy Trustee), is prohibited from supporting anything other than a "Superior Proposal" or a "Stand-Alone Plan." Both of these terms are defined to include any proposal that would "result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by [the Sterlite Settlement and new PSA]," but in both instances so as to exclude "any costs or benefits of any claims

which may be made against [the Sterlite entities] under the Original PSA." Thus, once the proposed settlement order is entered, even if the Board believes the Parent's plan, which retains the Sterlite breach of contract claim (assumed at trial to be in the amount of approximately \$3 billion, less mitigation), would result in a transaction more favorable to ASARCO and its stakeholders than the new Sterlite PSA, the Board is forbidden by contract from considering and supporting that plan - the penalty being breach of the Sterlite Settlement and new PSA and thus release of the claims against Sterlite! This provision, precluding the Board from considering the value of a \$3 billion litigation claim against Sterlite while preserving its ability to value the claim against the Parent, is a total abrogation of the inherent fiduciary duty that the Board of a debtor in possession (like a Trustee) has to maximize recovery from the estate's assets.

Second, if the Parent's plan is considered to fit within the definition of a "Superior Proposal" or a "Stand-Alone Plan" and the Debtors support it, which they would be fiduciary duty-bound to do, then under section 2.1(c) (ii) and (iii) the Sterlite release becomes effective regardless of the fact that no value at all has been given to the estate by Sterlite, eliminating a source of recovery that the Debtors apparently value at \$400-800 million (based upon Chairman Lovett's and Mr. Mack's testimony) and that Mr. Krishnan himself agreed is valued by Sterlite at \$400 million. This \$400 million-plus giveaway constitutes either an obviously grossly unreasonable and unsupportable break-up fee (on top of the \$26 million granted to the very party who brazenly repudiated its prior contract so as to renegotiate a lower purchase price) or, again, a violation of the basic fiduciary duty of the Board to maximize the estate's recovery on the Sterlite claim.

Third, under section 2.1(c)(iv), the Sterlite release is triggered if the Debtors (a) fail to timely hit certain defined benchmarks, including the "Confirmation Deadline," the "Termination Date," a disclosure statement approval deadline of May 31, 2009, and the failure to obtain the support of the FCR and the 75%-plus voting consent from asbestos claimants required under section 524(g), and (b) a "Superior Proposal" or a "Stand-Alone Plan" is confirmed within 180 days. Regardless of Debtors' counsel's apparent opposition even to consideration of the Parent's plan, assume for the moment that one of the above benchmarks were not timely satisfied and the competing Parent's plan were confirmed. The Debtors' Board, of course, would have to comply with the Court's order, would be required to terminate the Sterlite-based plan, and would take the steps necessary to close and consummate the Parent's plan - thereby satisfying the termination and consummation requirements under section 2.1(c)(iv) that constitute a "Release Condition." The Parent believes that the situation described above will allow Sterlite to argue that the ASARCO Board supports the Parent's plan, and therefore that the conditions for release have been triggered.

Forth, the same analysis is true for an offer from Glencore or any other bidder. If Glencore were to offer \$1.2 billion (as Barclays told it was

the bid to hit), then combined with the Sterlite release valued at \$400 million or more, the Court and the other parties could reasonably conclude that a Glencore offer that keeps alive the Sterlite litigation would yield \$1.6 billion-plus in consideration, separate and apart from the value of litigation claims against the Parent - clearly greater than the present value of the consideration under the Sterlite PSA. Yet the Debtors would be prohibited from supporting that transaction, something Mr. Lovett acknowledged on the stand which clearly made him uncomfortable. (In fact, he suggested that the right approach in that scenario would be for the Board and the Debtors to urge creditors to vote against the Debtors' own Sterlite-sponsored plan, although that course of action clearly would raise questions as to whether the Debtors had committed a "Manipulative Breach," which in turn triggers a full Sterlite release under section 2.1 (c) (v).)

Finally, the Debtors' plan is unconfirmable without a complete waiver of the section 524(g) requirement by Sterlite, which under section 11.1(b) is a condition precedent to the obligation of Sterlite to close and which condition is contained in the settlement agreement's very definition of "Plan Confirmation Order." Committing the Debtors to turn a blind eye to all other transactions at the risk of granting Sterlite an unwarranted release cannot be in the best interests of the estate. Notably, the statements made during the hearing regarding the somewhat inconsistent and absolutely unprecedented alternative modifications that counsel for Sterlite and counsel for the Debtors, respectively, proposed to address the section 524(g) issues are not addressed at all in the revised form of order the Debtors' counsel circulated by email late Sunday afternoon.

The Parent notes for the record that on April 17, 2009, with the consent and encouragement of the Parent, the Official Committee of Asbestos Claimants made a Notice of Filing of Redacted Agreement in Principle to which is attached the Agreement under which the FCR and the Committee agreed to support the Parent's plan, including granting a section 524(g) injunction, and to oppose the Debtors' Sterlite-sponsored plan, deny the consent of the FCR and recommend that asbestos claimants vote against granting a section 524(g) injunction under the Sterlite-sponsored plan.

These comments are without prejudice to the more complete objections raised in the Parent's formal opposition to the 9019 motion and the record of the hearing.

Sincerely, Bob Moore.

Milbank
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From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 12:49 PM
To: Beckham, Charles; jack kinzie
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; Cohen, David S.; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville; Monsour, Trey A.; Moore, Robert; Winter, Robert
Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnsblaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert" <rwinter@milbank.com>
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: jack kinzie; Beckham, Charles
Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.

kinzie@bakerbotts.com>

04/17/2009 11:59

AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ; shelly.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: 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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Email: esserman@sbep-law.com

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@bnswlaw.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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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@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'

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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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Circular 230, in which case you should seek advice based on your particular circumstances from an independent tax advisor.

=====

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From: Romina.Mulloy@bakerbotts.com

To: [Beckham, Charles](#); 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](#); 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; [Brimmage, Marty L.](#); MarySueW@atg.wa.gov; mcapdeville@mt.gov; [Monsour, Trey A.](#); rmoore@milbank.com; esserman@sbep-law.com;

CC: jack.kinzie@bakerbotts.com;

Subject: Revised Sterlite 9019 Order

Date: Sunday, April 19, 2009 6:41:05 PM

Attachments: [Sterlite 9019 Proposed Order.DOC](#)
[Redline.doc](#)

Attached please find a further revised proposed order that clarifies the impact of confirmation of a plan not supported by the debtors, as well as a redline version comparing the current version to the version originally filed with the Court.

Regards,
Romina Mulloy-Levine
BAKER BOTTS L.L.P.
2001 Ross Avenue
Dallas, TX 75201
voice: 214.953.6466
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<<Sterlite 9019 Proposed Order.DOC>> <<Redline.doc>>

**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
	§	

**ORDER PURSUANT TO §§ 363, 105 AND FED. R. BANKR. P. 9019, APPROVING
SETTLEMENT AND RELEASE AND REVISED BID PROTECTIONS CONTAINED
IN THE NEW PURCHASE AND SALE AGREEMENT BETWEEN ASARCO LLC
AND CERTAIN OF ITS SUBSIDIARIES, AND STERLITE (USA), INC.,
AND FOR RELATED RELIEF**

Upon consideration of the *Motion For Order, Pursuant to §§ 363, 105 and Fed. R. Bankr. P. 9019, Approving Settlement and Release and Revised Bid Protections Contained in the New Purchase and Sale Agreement Between ASARCO LLC and Certain of its Subsidiaries and Sterlite (USA), Inc., and for Related Relief* (the “Motion”);¹ and the relief requested in the Motion being in the best interests of ASARCO LLC (“ASARCO”) and debtors in the above-captioned cases (collectively, the “Debtors”), their estates, and their creditors and supported by sound business reasons; and the Court having reviewed the Motion and having heard evidence and arguments in support of the relief requested therein at a hearing before the Court on April 13 and 14, 2009 (the “Hearing”); and the Court having determined that the bases set forth in the Motion and as further supported by the evidence at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court in these cases; and after due deliberation and sufficient cause appearing therefor, it is

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

FOUND AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. The relief requested in the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (O). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Pursuant to Bankruptcy Rule 2002, due and proper notice of the Motion was provided, and no other or further notice need be provided.

C. ASARCO has fully marketed the sale of the Assets such that further marketing after the go-shop period is unlikely to identify new qualified bidders, absent a dramatic increase in copper prices. ASARCO has demonstrated that it has made reasonable efforts to identify all bidders that would be interested and able to engage in this process, and ASARCO has provided all potential bidders with an opportunity for adequate due diligence.

D. In negotiating and approving the New Sterlite PSA, which contains the Release, the Back-Up Bid Option, and the Revised Bid Protections:

1. The Board met its fiduciary obligations and discharged its fiduciary duties;
2. The Board took all reasonable and necessary actions to inform itself of all relevant factors and acted on an informed basis;
3. ASARCO negotiated at arm's length and in good faith;
4. The Board acted in good faith and with that amount of care which ordinarily careful and prudent persons would use in similar circumstances;
5. ASARCO and the Board acted in the honest and informed belief that entering into the New Sterlite PSA with these provisions was in the best interests of the Debtors, their estates and all creditors and stakeholders;
6. ASARCO and the Board refrained from self-dealing or any other action that would injure the Debtors, their estates, and all creditors and stakeholders;
7. ASARCO and the Board demonstrated compelling and sound business justifications for taking such action; and
8. ASARCO and the Board acted in the best interests of the Debtors, their estates, and all creditors and stakeholders.

E. Specifically with respect to the Break-up Fee and Expense Reimbursement:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for authorizing the payment of the Break-up Fee under the circumstances, timing and procedures set forth in the Motion and the New Sterlite PSA;

2. The Break-up Fee and Expense Reimbursement are fair and reasonable, and provide a benefit to the Debtors, their estates, and to all creditors;
3. The Break-up Fee and Expense Reimbursement, combined with the entire package of Revised Bid Protections, represented a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder;
4. Absent authorization of the Break-up Fee and Expense Reimbursement, the Debtors may lose the opportunity to obtain the highest and best proposal for their Assets;
5. The Break-up Fee and Expense Reimbursement were negotiated by the parties in good faith and at arm's length; and
6. ASARCO's payment to Sterlite of the Break-up Fee and Expense Reimbursement, if any: (i) represents actual and necessary costs and expenses of preserving ASARCO's estate, within the meaning of section 503(b) of the Bankruptcy Code; (ii) is a substantial benefit to ASARCO's estate; (iii) does not constitute penalties, but reasonable estimates of the damages or expenses to be suffered by Sterlite in the event the transaction contemplated by the New Sterlite PSA is not consummated under the circumstances set forth therein, and (iv) is reasonable and appropriate, in light of, among other things: the size and nature of the proposed sale, the efforts that will have been expended by Sterlite in negotiating and seeking approval of the New Sterlite PSA, and the benefits Sterlite will have provided to the Debtors' estates and creditors and all parties in interest herein.

F. Specifically with respect to the No-Shop Covenant with Fiduciary Out:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for the No-Shop Covenant under the circumstances, timing and procedures set forth in the Motion;
2. In light of the Go-Shop Covenant pending entry of this Order and the Fiduciary Out, the No-Shop Covenant: (i) is fair, reasonable and appropriate, (ii) is designed to maximize the value of ASARCO's estate, and (iii) allows the Board to comply with its fiduciary duties;
3. The Superior Proposal Threshold is reasonable under the circumstances;
4. The No-Shop Covenant was negotiated by the parties in good faith and at arm's length; and
5. The No-Shop Covenant is a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder. Absent authorization of the No-Shop Covenant, the Debtors may lose the opportunity to obtain the highest and best proposal for their Assets.

G. Specifically with respect to the Matching Right:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for the Matching Right under the circumstances, timing and procedures set forth in the Motion;
2. The Matching Right is fair, reasonable and appropriate, and is designed to maximize the value of ASARCO's estate;
3. The Matching Right was negotiated by the parties in good faith and at arm's length; and
4. The Matching Right is a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder. Absent authorization of the Matching Right, the Debtors may lose the opportunity to obtain the highest and best proposal for their Assets.

H. In consideration of the factors set forth in *TMT Trailer*² and *Connecticut Gen. Life Ins. Co.*³ including: (i) the probability of success in the litigation, with due consideration of the uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (iii) the paramount interest of creditors with proper deference to their reasonable views; (iv) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion; and (v) all other factors bearing on the wisdom of the compromise, the settlement and compromise and, specifically, the Release and the Back-Up Bid Option contained in the New Sterlite PSA, is the result of good-faith, arm's-length bargaining and represents a reasonable, fair and equitable resolution of the controversy between ASARCO and Sterlite relating to the Original Sterlite PSA.

I. There is ample evidence in the record before the Court that addresses the factors set forth in paragraph H above.

J. The entry of this Order is in the best interests of the Debtors, their estates, all creditors and stakeholders, and all other parties in interest; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted in all respects, as modified herein.
2. The failure specifically to include or reference any particular provision, section or article of the New Sterlite PSA in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Revised Bid Protections, the Back-Up Bid Option, and the settlement and Release contained in the New Sterlite PSA be authorized and

² *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

³ *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995).

approved in their entirety. In the event of a conflict between the terms of the New Sterlite PSA and this Order (or the Motion), the terms of the New Sterlite PSA shall control.

3. Any objections to the entry of this Order that have not been withdrawn, waived, resolved or settled and all reservations of rights included therein, are hereby overruled; *provided, however*, that all rights of Sterlite and its affiliates to raise any objection or make any claim with respect to any matter described herein, including without limitation (a) the characterization of the Original Sterlite PSA or the New Sterlite PSA, or (b) their conduct and rights in connection with these cases and the transaction described herein are fully reserved.

4. The entire settlement and compromise set forth in the New Sterlite PSA, including without limitation the Release in Section 2.1, is approved in all respects.

5. The Release shall not be granted or otherwise effective until one of the Release Conditions (as defined in the New Sterlite PSA and described in the Motion) occurs.

6. 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.

7. The Revised Bid Protections and the Back-Up Bid Option are approved in all respects.

8. The Break-up Fee and Expense Reimbursement are hereby approved pursuant to sections 105, 363, 503, 507 and 1123 of the Bankruptcy Code.

9. If ASARCO is required under the New Sterlite PSA to pay a Break-up Fee or Expense Reimbursement, it is authorized to pay the Break-up Fee or Expense Reimbursement, which shall be deemed to be an administrative expense pursuant to section 503(b) of the Bankruptcy Code.

10. None of the relief granted by this order impairs or effects in any way: (a) the contentions of ASARCO or of Ron and Linda Deen ("Deen") regarding the ownership of an approximately 12 acre tract of land in Pinal County, Arizona (this tract of land is more particularly described in pleadings previously filed in this case), or (b) any rights that either ASARCO or Deen have under applicable Arizona law, federal bankruptcy law, or any other law, and this order shall have no effect of any kind in any later proceedings regarding ASARCO's claim to ownership or the purported rights of Deens, if any, in the 12 acres.

11. ASARCO is authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established under this Order.

12. This Order shall be binding upon, and inure to the benefit of, Sterlite and its affiliates, successors and assigns and the Debtors, including any chapter 7 or 11 trustee or other fiduciary appointed for the estates of the Debtors, whether in this case, subsequent bankruptcy cases or upon dismissal of any of these Reorganization Cases.

13. Notwithstanding Rule 6004(g) of the Bankruptcy Rules, this Order shall not be stayed for ten days after the entry hereof and this Order shall be effective and enforceable immediately upon signature hereof.

14. The Court shall retain jurisdiction over any matters related to or arising from the implementation and enforcement of this Order.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

**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
	§	

ORDER PURSUANT TO §§ 363, 105 AND FED. R. BANKR. P. 9019, APPROVING SETTLEMENT AND RELEASE AND REVISED BID PROTECTIONS CONTAINED IN THE NEW PURCHASE AND SALE AGREEMENT BETWEEN ASARCO LLC AND CERTAIN OF ITS SUBSIDIARIES, AND STERLITE (USA), INC., AND FOR RELATED RELIEF

Upon consideration of the *Motion For Order, Pursuant to §§ 363, 105 and Fed. R. Bankr. P. 9019, Approving Settlement and Release and Revised Bid Protections Contained in the New Purchase and Sale Agreement Between ASARCO LLC and Certain of its Subsidiaries and Sterlite (USA), Inc., and for Related Relief* (the “Motion”);¹ and the relief requested in the Motion being in the best interests of ASARCO LLC (“ASARCO”) and debtors in the above-captioned cases (collectively, the “Debtors”), their estates, and their creditors and supported by sound business reasons; and the Court having reviewed the Motion and having heard evidence and arguments in support of the relief requested therein at a hearing before the Court on April 9, ~~13~~ **and 14**, 2009 (the “Hearing”); and the Court having determined that the bases set forth in the Motion and as further supported by the evidence at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before the Court in these cases; and after due deliberation and sufficient cause appearing therefor, it is

FOUND AND DETERMINED THAT:

A. The Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. The relief requested in the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(N) and (O). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Pursuant to Bankruptcy Rule 2002, due and proper notice of the Motion was provided, and no other or further notice need be provided.

C. ASARCO has fully marketed the sale of the Assets such that ~~no further marketing is likely to resort in additional viable bidders~~ **after the go-shop period is unlikely to identify new qualified bidders, absent a dramatic increase in copper prices.** ASARCO has demonstrated that it has made reasonable efforts to identify all bidders that would be interested and able to engage in this process, and ASARCO has provided all potential bidders with an opportunity for adequate due diligence.

D. In negotiating and approving the New Sterlite PSA ~~containing,~~ **which contains** the Release, the Back-Up Bid Option, and the Revised Bid Protections, ~~ASARCO and the Board:~~

1. ~~Met~~ **The Board met** its fiduciary obligations and discharged its fiduciary duties;
2. ~~Took~~ **The Board took** all reasonable and necessary actions to inform itself of ~~prevailing market conditions, and the Board~~ **all relevant factors and** acted on an informed basis;
3. **ASARCO negotiated at arm's length and in good faith;**
4. ~~3. Negotiated at arm's length and~~ **The Board** acted in good faith and with that amount of care which ordinarily careful and prudent persons would use in similar circumstances;
5. ~~4. Acted~~ **ASARCO and the Board acted** in the honest and informed belief that entering into the New Sterlite PSA with these provisions was in the best interests of the Debtors, their estates and all creditors and stakeholders;
6. ~~5. Refrained~~ **ASARCO and the Board refrained** from self-dealing or any other action that would injure the Debtors, their estates, and all creditors and stakeholders;
7. ~~6. Demonstrated~~ **ASARCO and the Board demonstrated** compelling and sound business justifications for taking such action; and

¹ All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

~~7. Acted~~ **ASARCO and the Board acted** in the best interests of the Debtors, their estates, and all creditors and stakeholders.

E. Specifically with respect to the Break-up Fee and Expense Reimbursement:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for authorizing the payment of the Break-up Fee under the circumstances, timing and procedures set forth in the Motion and the New Sterlite PSA;
2. The Break-up Fee and Expense Reimbursement are fair and reasonable, and provide a benefit to the Debtors, their estates, and to all creditors ~~and stakeholders;~~
3. ~~The Break-up Fee and Expense Reimbursement were negotiated by the parties in good faith and at arm's length;~~ **The Break-up Fee and Expense Reimbursement, combined with the entire package of Revised Bid Protections, represented a material inducement for Sterlite to enter into the New Sterlite PSA and provide the consideration provided thereunder;**
4. ~~The Break-up Fee and Expense Reimbursement are material inducements for and conditions of Sterlite's entering into the New Sterlite PSA. Sterlite is unwilling to commit to consummate the transaction contemplated under the terms of the New Sterlite PSA unless the Break-up Fee and Expense Reimbursement are included. Absent authorization of the Break-up Fee and Expense Reimbursement, the Debtors may lose the opportunity to obtain the highest and best offer~~ **proposal** for their Assets;
5. **The Break-up Fee and Expense Reimbursement were negotiated by the parties in good faith and at arm's length;** and
6. ~~5.~~ **ASARCO's payment to Sterlite of the Break-up Fee and Expense Reimbursement are, if any: (i) represents actual and necessary costs and expenses of preserving ASARCO's estate, within the meaning of section 503(b) of the Bankruptcy Code; (ii) is a substantial benefit to ASARCO's estate; (iii) does not constitute penalties, but reasonable estimates of the damages or expenses to be suffered by Sterlite in the event the transaction contemplated by the New Sterlite PSA is not consummated under the circumstances set forth therein, and (iv) is reasonable and appropriate, in light of, among other things: the size and nature of the proposed sale; the substantial efforts that will have been expended by Sterlite in negotiating and seeking approval of the New Sterlite PSA, and the benefits Sterlite will have provided to the Debtors' estates and creditors and all parties in interest herein.**

F. Specifically with respect to the No-Shop Covenant with Fiduciary Out:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for the No-Shop Covenant under the circumstances, timing and procedures set forth in the Motion;
2. In light of the Go-Shop Covenant pending entry of this Order and the Fiduciary Out, the No-Shop Covenant: (i) is fair, reasonable and appropriate, ~~and~~ (ii) is designed to maximize the value of ASARCO's estate, and (iii) allows the Board to comply with its fiduciary duties;
3. The Superior Proposal Threshold is reasonable under the circumstances;
4. The No-Shop Covenant was negotiated by the parties in good faith and at arm's-length; and
5. The No-Shop Covenant is a material inducement for ~~and condition of Sterlite's entering~~ to enter into the New Sterlite PSA. ~~Sterlite is unwilling to commit to consummate the transaction contemplated under the terms of the New Sterlite PSA unless it is assured that the No Shop Covenant is intact~~ and provide the consideration provided thereunder. Absent authorization of the No-Shop Covenant, the Debtors may lose the opportunity to obtain the highest and best offer proposal for their Assets.

G. Specifically with respect to the Matching Right:

1. ASARCO and the Board have demonstrated a compelling and sound business justification for the Matching Right under the circumstances, timing and procedures set forth in the Motion;
2. The Matching Right is fair, reasonable and appropriate, and is designed to maximize the value of ASARCO's estate;
3. The Matching Right was negotiated by the parties in good faith and at arm's-length; and
4. The Matching Right is a material inducement for ~~and condition of Sterlite's entering~~ to enter into the New Sterlite PSA. ~~Sterlite is unwilling to commit to consummate the transaction contemplated under the terms of the New Sterlite PSA unless the Matching Right is included~~ and provide the consideration provided thereunder. Absent authorization of the Matching Right, the Debtors may lose the opportunity to obtain the highest and best offer proposal for their Assets.

H. In consideration of the factors set forth in *TMT Trailer*² and *Connecticut Gen. Life Ins. Co.*³ including: (i) the probability of success in the litigation, with due consideration of the

² *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968).

uncertainty in fact and law; (ii) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay; (iii) the paramount interest of creditors with proper deference to their reasonable views; (iv) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion;³ and (v) all other factors bearing on the wisdom of the compromise, the settlement and compromise and, specifically, the Release **and the Back-Up Bid Option** contained in the New Sterlite PSA, is the result of good-faith, arm's-length bargaining and represents a reasonable, fair and equitable resolution of the controversy between ASARCO and Sterlite relating to the Original Sterlite PSA.

I. There is ample evidence in the record before the Court that addresses the factors set forth in paragraph H above.

J. I—The entry of this Order is in the best interests of the Debtors, their estates, all creditors and stakeholders, and all other parties in interest; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is granted in all respects, **as modified herein.**
2. The failure specifically to include or reference any particular provision, section or article of the New Sterlite PSA in this Order shall not diminish or impair the effectiveness of such procedure, it being the intent of the Court that the Revised Bid Protections, the Back-Up Bid Option, and the settlement and Release contained in the New Sterlite PSA be authorized and approved in their entirety. In the event of a conflict between the terms of the New Sterlite PSA and this Order (or the Motion), the terms of the New Sterlite PSA shall control.
3. Any objections to the entry of this Order that have not been withdrawn, waived, resolved or settled and all reservations of rights included therein, are hereby overruled; *provided, however,* that all rights of Sterlite and its affiliates to raise any objection or make any claim with respect to any matter described herein, including without limitation (a) the characterization of the Original Sterlite PSA or the New Sterlite PSA, or (b) their conduct and rights in connection with these cases and the transaction described herein are fully reserved.
4. The entire settlement and compromise set forth in the New Sterlite PSA, including without limitation the Release in Section 2.1, is approved in all respects.
5. The Release shall not be granted or otherwise effective until one of the Release Conditions (as defined in the New Sterlite PSA and described in the Motion) occurs.
6. **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.**

³ *Connecticut Gen. Life Ins. Co. v. United Cos. Fin. Corp. (In re Foster Mortgage Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995).

7. ~~6.~~The Revised Bid Protections and the Back-Up Bid Option are approved in all respects.

8. ~~7.~~The Break-up Fee and Expense Reimbursement are hereby approved pursuant to sections 105, 363, 503, 507 and 1123 of the Bankruptcy Code.

9. ~~8.~~If ASARCO is required under the New Sterlite PSA to pay a Break-up Fee or Expense Reimbursement, it is authorized, ~~empowered, and directed~~ to pay the Break-up Fee or Expense Reimbursement, which shall be deemed to be an administrative expense pursuant to section 503(b) of the Bankruptcy Code, ~~without further order of the Court.~~

10. **None of the relief granted by this order impairs or effects in any way: (a) the contentions of ASARCO or of Ron and Linda Deen ("Deen") regarding the ownership of an approximately 12 acre tract of land in Pinal County, Arizona (this tract of land is more particularly described in pleadings previously filed in this case), or (b) any rights that either ASARCO or Deen have under applicable Arizona law, federal bankruptcy law, or any other law, and this order shall have no effect of any kind in any later proceedings regarding ASARCO's claim to ownership or the purported rights of Deens, if any, in the 12 acres.**

11. ~~9.~~ASARCO is authorized and empowered to take such steps, expend such sums of money, and do such other things as may be necessary to implement and effect the terms and requirements established under this Order.

12. ~~10.~~This Order shall be binding upon, and inure to the benefit of, Sterlite and its affiliates, successors and assigns and the Debtors, including any chapter 7 or 11 trustee or other fiduciary appointed for the estates of the Debtors, whether in this case, subsequent bankruptcy cases or upon dismissal of any of these Reorganization Cases.

13. ~~11.~~Notwithstanding Rule 6004(g) of the Bankruptcy Rules, this Order shall not be stayed for ten days after the entry hereof and this Order shall be effective and enforceable immediately upon signature hereof.

14. ~~12.~~The Court shall retain jurisdiction over any matters related to or arising from the implementation and enforcement of this Order.

Dated:

RICHARD S. SCHMIDT
UNITED STATES BANKRUPTCY JUDGE

Document comparison done by DeltaView on Sunday, April 19, 2009 6:19:49 PM

Input:	
Document 1	PowerDocs://DAL02/537323/1
Document 2	PowerDocs://DAL02/537323/6
Rendering set	Bold Double Underline-Strikethrough

Legend:	
<u>Insertion</u>	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Redline Summary:		
No.	Change	Text
1-2	Change	"DAL02:537323.1" changed to "DAL02:537323.6"
3-4	Change	"Court on April 9, 2009 (the "Hearing");" changed to "Court on April 13 and 14, 2009 (the "Hearing");"
5	Change	"Assets such that no further marketing" changed to "Assets such that further marketing"
6-7	Change	"further marketing is...bidders. ASARCO has" changed to "further marketing after...prices. ASARCO has"
8-9	Change	"Sterlite PSA containing the Release," changed to "Sterlite PSA, which contains the Release,"
10	Change	"Back-Up Bid Option and the Revised" changed to "Back-Up Bid Option, and the Revised"
11	Change	"Protections, ASARCO and the Board:" changed to "Protections:"
12-13	Change	"1. Met its fiduciary" changed to "1. The Board met its fiduciary"

14-15	Change	"2. Took all reasonable" changed to "2. The Board took all reasonable"
16-17	Change	"inform itself of...the Board acted on an" changed to "inform itself of all...factors and acted on an"
18-19	Insertion	3. ASARCO negotiated at...and in good faith;
20-21	Change	"acted in good" changed to "3. Negotiated at arm's...Board acted in good"
22-23	Change	"in the honest" changed to "4. Acted ASARCO and the Board acted in the honest"
24-25	Change	"from self-dealing" changed to "5. Refrained ASARCO and...from self-dealing"
26-27	Change	"compelling" changed to "6. Demonstrated ASARCO and...demonstrated compelling"
28	Change	"such action and" changed to "such action; and"
29-30	Change	"in the best" changed to "7. Acted ASARCO and the Board acted in the best"
31	Change	"all creditors and stakeholders;" changed to "all creditors;"
32-33	Change	"3. The Break-up Fee and...and at arm's-length;" changed to "3. The Break-up Fee and...provided thereunder;"
34	Change	"4. The Break-up Fee and... Absent authorization" changed to "4. Absent authorization"
35-36	Change	"highest and best offer for their Assets" changed to "highest and best proposal for their Assets"
37	Insertion	their Assets;
38-39	Change	"and" changed to "5. The Break-up Fee and...and at arm's length; and"
40	Change	"ASARCO" changed to "5. ASARCO"
41-42	Change	"Reimbursement are (i)" changed to "Reimbursement, if any: (i)"
43	Change	"(i) actual and necessary" changed to "(i) represents actual and necessary"
44-45	Change	"Bankruptcy Code, (ii)" changed to "Bankruptcy Code; (ii)"

46-47	Change	"(ii) of substantial" changed to "(ii) is a substantial"
48-49	Change	"s estate, (iii)" changed to "s estate; (iii)"
50	Change	"(iii) not" changed to "(iii) does not"
51	Change	"not penalties," changed to "not constitute penalties,"
52	Change	"the damages to be suffered" changed to "the damages or expenses to be suffered"
53	Change	"therein, and (iv) reasonable and" changed to "therein, and (iv) is reasonable and"
54-55	Change	"proposed sale; the" changed to "proposed sale, the"
56	Change	"the substantial efforts that" changed to "the efforts that"
57	Change	"by Sterlite and the benefits" changed to "by Sterlite in...PSA, and the benefits"
58	Change	"No-Shop Covenant is fair, reasonable" changed to "No-Shop Covenant: (i) is fair, reasonable"
59-60	Change	"appropriate, and is designed" changed to "appropriate, (ii) is designed"
61	Change	"s estate;" changed to "s estate, and (iii)...its fiduciary duties;"
62	Change	"s-" changed to "s"
63	Change	"length and" changed to "length; and"
64	Change	"inducement for and condition of Sterlite" changed to "inducement for Sterlite"
65-66	Change	"Sterlite's entering into the New" changed to "Sterlite to enter into the New"
67-68	Change	"Sterlite PSA. Sterlite... Absent authorization" changed to "Sterlite PSA and provide... Absent authorization"
69-70	Change	"highest and best offer for their Assets." changed to "highest and best proposal for their Assets."
71	Change	"s-" changed to "s"
72	Change	"length and" changed to "length; and"
73	Change	"inducement for and condition of Sterlite" changed to "inducement for Sterlite"

74-75	Change	"Sterlite's entering into the New" changed to "Sterlite to enter into the New"
76-77	Change	"Sterlite PSA. Sterlite... Absent authorization" changed to "Sterlite PSA and provide... Absent authorization"
78-79	Change	"highest and best offer for their Assets." changed to "highest and best proposal for their Assets."
80	Change	"or collusion and (v) all" changed to "or collusion; and (v) all"
81	Change	"the Release contained in" changed to "the Release and the...Bid Option contained in"
82-83	Insertion	I. There is ample...in paragraph H above.
84	Change	"The entry of" changed to "I. The entry of"
85-86	Change	"all respects.2. The failure" changed to "all respects, as modified herein.2. The failure"
87-88	Insertion	6. Sterlite will not...confirmed by this Court.
89	Change	"The Revised" changed to "6. The Revised"
90	Change	"The Break-up" changed to "7. The Break-up"
91	Change	"If ASARCO is" changed to "8. If ASARCO is"
92	Change	"is authorized, empowered, and directed to pay the" changed to "is authorized to pay the"
93	Change	"Bankruptcy Code, without...order of the Court." changed to "Bankruptcy Code."
94-95	Insertion	10. None of the relief...if any, in the 12 acres.
96	Change	"ASARCO is authorized" changed to "9. ASARCO is authorized"
97	Change	"This Order shall" changed to "10. This Order shall"
98	Change	"Notwithstanding" changed to "11. Notwithstanding"
99	Change	"The Court shall" changed to "12. The Court shall"

Statistics:	
	Count
Insertions	52
Deletions	47
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	99

From: [Sander L. Esserman](#)

To: [Richard_Schmidt@txs.uscourts.gov](#); [Beckham, Charles](#); [jack.kinzie@bakerbotts.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](#); [Robert T. Brousseau](#); [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](#); [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](#); [Brimmage, Marty L.](#); [MarySueW@atg.wa.gov](#); [mcapdeville@mt.gov](#); [Monsour, Trey A.](#); [rmoore@milbank.com](#);

Subject: Re: ASARCO

Date: Sunday, April 19, 2009 2:53:56 PM

Attachments:

If the parent's plan results in consideration of say for example--1.4 billion dollars which is well in excess of Sterlite's--and the Board seeing such plan supports it (because for example they have no choice under their fiduciary duties to the estate) I believe under the current Debtor agreement, that would be a superior proposal which would result in a release of Sterlite and is not considered a stand alone plan. I hope I am wrong, but afraid I am correct in this example. Any order entered could trump this by providing for no release of Sterlite in this situation.

Sandy Esserman

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

From: [Richard_Schmidt@txs.uscourts.gov](#) <[Richard_Schmidt@txs.uscourts.gov](#)>

To: Beckham, Charles <Charles.Beckham@haynesboone.com>; jack kinzie <jack.kinzie@bakerbotts.com>
CC: Alan Tenenbaum <Alan.Tenenbaum@usdoj.gov>; Amy Gillespie <Amy.Gillespie@usdoj.gov>; Amy Horner <Amy.Horner@sol.doi.gov>; anthony cox <anthony.cox@hsblaw.com>; Ashley Bartram <Ashley.Bartram@oag.state.tx.us>; barry stein <barry.stein@sol.doi.gov>; bkirley <bkirley@mt.gov>; Robert T. Brousseau <brousseau@sbep-law.com>; Peter D'Apice <DApice@sbep-law.com>; david dain <david.dain@usdoj.gov>; dbaker <dbaker@reedsmith.com>; dbartner <dbartner@shearman.com>; dcohen <dcohen@milbank.com>; dinnocenti <dinnocenti@obht.com>; djury <djury@usw.org>; ejones <ejones@bnswwlaw.com>; ElliottF <ElliottF@atg.wa.gov>; Eric Albert <Eric.Albert@usdoj.gov>; Sander L. Esserman <Esserman@sbep-law.com>; Steven A. Felsenthal <Felsenthal@sbep-law.com>; gibbons melissa <gibbons.melissa@epa.gov>; Hal Morris <Hal.Morris@oag.state.tx.us>; james brandt <james.brandt@lw.com>; jmccarroll <jmccarroll@reedsmith.com>; joseph mikitish <joseph.mikitish@azag.gov>; JTate <JTate@obht.com>; judgepate <judgepate@robertcpatelaw.com>; LevinsonS <LevinsonS@hbdlawyers.com>; Brimmage, Marty L. <Marty.Brimmage@haynesboone.com>; MarySueW <MarySueW@atg.wa.gov>; mcapdeville <mcapdeville@mt.gov>; Monsour, Trey A. <Trey.Monsour@haynesboone.com>; Moore, Robert <RMoore@milbank.com>; Winter, Robert <rwinter@milbank.com>
Sent: Sun Apr 19 14:49:17 2009
Subject: Re: ASARCO

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnswwlaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.

com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate" <judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>; "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW" <MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A." <Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>; "Winter, Robert" <rwinter@milbank.com>
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and

the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To

<Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject

RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Friday, April 17, 2009 1:47 PM
To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com
Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To

<esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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@bnswlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnswlaw.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 ; 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: 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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com <<mailto:esserman@sbep-law.com>>

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.
brimmagine@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 g
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: 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'

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@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'

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 g
Baker Botts L.L.P.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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From: Richard_Schmidt@txs.uscourts.gov
To: [Beckham, Charles](#); [jack kinzie](#);
CC: [Alan Tenenbaum](#); [Amy Gillespie](#); [Amy Horner](#); [anthony cox](#);
[Ashley Bartram](#); [barry stein](#); [bkirley](#); [brousseau](#); [DApice](#);
[david dain](#); [dbaker](#); [dbartner](#); [dcohen](#); [dinnocenti](#); [djury](#);
[ejones](#); [ElliottF](#); [Eric Albert](#); [esserman](#); [Felsenthal](#); [gibbons](#)
[melissa](#); [Hal Morris](#); [james brandt](#); [jmccarroll](#); [joseph mikitish](#);
[JTate](#); [judgepate](#); [LevinsonS](#); [Brimmage, Marty L.](#);
[MarySueW](#); [mcapdeville](#); [Monsour, Trey A.](#); [Moore, Robert](#);
[Winter, Robert](#);
Subject: Re: ASARCO
Date: Sunday, April 19, 2009 2:47:49 PM
Attachments:

Further hearing by phone will be necessary if no agreement is reached. I still do not understand when the debtor could support a parent plan and thus result in a release to Sterlite. Can the parent plan be considered a stand alone plan?

From: "Beckham, Charles" [Charles.Beckham@haynesboone.com]
Sent: 04/19/2009 02:29 PM EST
To: Richard Schmidt; "jack kinzie" <jack.kinzie@bakerbotts.com>
Cc: "Alan Tenenbaum" <Alan.Tenenbaum@usdoj.gov>; "Amy Gillespie" <Amy.Gillespie@usdoj.gov>; "Amy Horner" <Amy.Horner@sol.doi.gov>; "anthony cox" <anthony.cox@hsblaw.com>; "Ashley Bartram" <Ashley.Bartram@oag.state.tx.us>; "barry stein" <barry.stein@sol.doi.gov>; "bkirley" <bkirley@mt.gov>; "brousseau" <brousseau@sbep-law.com>; "DApice" <DApice@sbep-law.com>; "david dain" <david.dain@usdoj.gov>; "dbaker" <dbaker@reedsmith.com>; "dbartner" <dbartner@shearman.com>; "dcohen" <dcohen@milbank.com>; "dinnocenti" <dinnocenti@obht.com>; "djury" <djury@usw.org>; "ejones" <ejones@bnswlaw.com>; "ElliottF" <ElliottF@atg.wa.gov>; "Eric Albert" <Eric.Albert@usdoj.gov>; "esserman" <esserman@sbep-law.com>; "Felsenthal" <Felsenthal@sbep-law.com>; "gibbons melissa" <gibbons.melissa@epa.gov>; "Hal Morris" <Hal.Morris@oag.state.tx.us>; "james brandt" <james.brandt@lw.com>; "jmccarroll" <jmccarroll@reedsmith.com>; "joseph mikitish" <joseph.mikitish@azag.gov>; "JTate" <JTate@obht.com>; "judgepate"

<judgepate@robertcpatelaw.com>; "LevinsonS" <LevinsonS@hbdlawyers.com>;
"Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>; "MarySueW"
<MarySueW@atg.wa.gov>; "mcapdeville" <mcapdeville@mt.gov>; "Monsour, Trey A."
<Trey.Monsour@haynesboone.com>; "Moore, Robert" <RMoore@milbank.com>;
"Winter, Robert" <rwinter@milbank.com>

Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

uscourts.gov]

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.

kinzie@bakerbotts.com>

To <esserman@sbep-law.com>, <Richard_Schmidt@txs.uscourts.gov>

04/17/2009 11:59

AM

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>, <dcohen@milbank.com>, <dinnocenti@obht.com>, <djury@usw.org>, <ejones@bnswwlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnswwlaw.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 ; rselzer@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 ; rselzer@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
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(214) 969-4910
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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@bnswlaw.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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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@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'

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.

2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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From: [Sander L. Esserman](#)

To: [Beckham, Charles](#); [Richard_Schmidt@txs.uscourts.gov](#); [jack.kinzie@bakerbotts.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](#); [Robert T. Brousseau](#); [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](#); [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](#); [Brimmage, Marty L.](#); [MarySueW@atg.wa.gov](#); [mcapdeville@mt.gov](#); [Monsour, Trey A.](#); [rmoore@milbank.com](#);

Subject: Re: ASARCO

Date: Sunday, April 19, 2009 2:45:03 PM

Attachments:

I would also point out to the parties and the Court that our Committee filed on Friday the redacted version of the agreement between the Committee and the parent---not under seal. It can be accessed on line.

Sandy Esserman

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

From: Sander L. Esserman <Esserman@sbep-law.com>
To: 'Charles.Beckham@haynesboone.com' <Charles.Beckham@haynesboone.com>; 'Richard_Schmidt@txs.uscourts.gov' <Richard_Schmidt@txs.uscourts.gov>; 'jack.kinzie@bakerbotts.com' <jack.kinzie@bakerbotts.com>
CC: 'alan.tenenbaum@usdoj.gov' <alan.tenenbaum@usdoj.gov>; 'Amy.Gillespie@usdoj.gov' <Amy.Gillespie@usdoj.gov>; 'Amy.Horner@sol.doi.gov' <Amy.Horner@sol.doi.gov>

gov>; 'anthony.cox@hsblaw.com' <anthony.cox@hsblaw.com>; 'Ashley.Bartram@oag.state.tx.us' <Ashley.Bartram@oag.state.tx.us>; 'barry.stein@sol.doi.gov' <barry.stein@sol.doi.gov>; 'bkirley@mt.gov' <bkirley@mt.gov>; Robert T. Brousseau <brousseau@sbep-law.com>; Peter D'Apice <DApice@sbep-law.com>; 'david.dain@usdoj.gov' <david.dain@usdoj.gov>; 'dbaker@reedsmith.com' <dbaker@reedsmith.com>; 'DBartner@Shearman.com' <DBartner@Shearman.com>; 'dcohen@milbank.com' <dcohen@milbank.com>; 'dinnocenti@obht.com' <dinnocenti@obht.com>; 'djury@usw.org' <djury@usw.org>; 'ejones@bnswwlaw.com' <ejones@bnswwlaw.com>; 'ElliottF@atg.wa.gov' <ElliottF@atg.wa.gov>; 'Eric.Albert@usdoj.gov' <Eric.Albert@usdoj.gov>; Steven A. Felsenthal <Felsenthal@sbep-law.com>; 'gibbons.melissa@epa.gov' <gibbons.melissa@epa.gov>; 'hal.morris@oag.state.tx.us' <hal.morris@oag.state.tx.us>; 'james.brandt@lw.com' <james.brandt@lw.com>; 'JMcCarroll@ReedSmith.com' <JMcCarroll@ReedSmith.com>; 'joseph.mikitish@azag.gov' <joseph.mikitish@azag.gov>; 'JTate@obht.com' <JTate@obht.com>; 'judgepate@robertcpatelaw.com' <judgepate@robertcpatelaw.com>; 'LevinsonS@hbdlawyers.com' <LevinsonS@hbdlawyers.com>; 'Marty.Brimmage@haynesboone.com' <Marty.Brimmage@haynesboone.com>; 'MarySueW@atg.wa.gov' <MarySueW@atg.wa.gov>; 'mcapdeville@mt.gov' <mcapdeville@mt.gov>; 'Trey.Monsour@haynesboone.com' <Trey.Monsour@haynesboone.com>

Sent: Sun Apr 19 14:35:59 2009
Subject: Re: ASARCO

We would wish to be heard, especially on the issue of a parent plan supported by the Debtor's board not resulting in a release of Sterite.

Our Committee of course still opposes the Motion. A hearing might be helpful, even by telephone conference.

Sandy Esserman

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

From: Beckham, Charles <Charles.Beckham@haynesboone.com>
To: Richard_Schmidt@txs.uscourts.gov <Richard_Schmidt@txs.uscourts.gov>; jack kinzie <jack.kinzie@bakerbotts.com>
CC: Alan Tenenbaum <Alan.Tenenbaum@usdoj.gov>; Amy Gillespie <Amy.Gillespie@usdoj.gov>; Amy Horner <Amy.Horner@sol.doi.gov>; anthony cox <anthony.cox@hsblaw.com>; Ashley Bartram <Ashley.Bartram@oag.state.tx.us>; barry stein <barry.stein@sol.doi.gov>; bkirley <bkirley@mt.gov>; Robert T. Brousseau <brousseau@sbep-law.com>; Peter D'Apice <DApice@sbep-law.com>; david dain <david.dain@usdoj.gov>; dbaker <dbaker@reedsmith.com>; dbartner

<dbartner@shearman.com>; dcohen <dcohen@milbank.com>; dinnocenti <dinnocenti@obht.com>; djury <djury@usw.org>; ejones <ejones@bnswlaw.com>; ElliottF <ElliottF@atg.wa.gov>; Eric Albert <Eric.Albert@usdoj.gov>; Sander L. Esserman <Esserman@sbep-law.com>; Steven A. Felsenthal <Felsenthal@sbep-law.com>; gibbons melissa <gibbons.melissa@epa.gov>; Hal Morris <Hal.Morris@oag.state.tx.us>; james brandt <james.brandt@lw.com>; jmccarroll <jmccarroll@reedsmith.com>; joseph mikitish <joseph.mikitish@azag.gov>; JTate <JTate@obht.com>; judgepate <judgepate@robertcpatelaw.com>; LevinsonS <LevinsonS@hbdlawyers.com>; Brimmage, Marty L. <Marty.Brimmage@haynesboone.com>; MarySueW <MarySueW@atg.wa.gov>; mcapdeville <mcapdeville@mt.gov>; Monsour, Trey A. <Trey.Monsour@haynesboone.com>; Moore, Robert <RMoore@milbank.com>; Winter, Robert <rwinter@milbank.com>
Sent: Sun Apr 19 14:29:57 2009
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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@bnsblaw.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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To

<Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject

RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this

request by e-mail rather than filing a formal motion with the Court.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Friday, April 17, 2009 1:47 PM
To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com
Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To

<esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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@bnswlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnswlaw.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 ; 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: 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

Dallas, Texas 75201-2689

(214) 969-4910

(214) 969-4999

Email: esserman@sbep-law.com <<mailto:esserman@sbep-law.com>>

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;

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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 g
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: 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 g
Baker Botts L.L.P.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by U.S. Treasury Regulations, Haynes and Boone, LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any

transaction or matter addressed herein.

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From: [Sander L. Esserman](#)

To: [Beckham, Charles](#); [Richard_Schmidt@txs.uscourts.gov](#); [jack.kinzie@bakerbotts.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](#); [Robert T. Brousseau](#); [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](#); [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](#); [Brimmage, Marty L.](#); [MarySueW@atg.wa.gov](#); [mcapdeville@mt.gov](#); [Monsour, Trey A.](#);

Subject: Re: ASARCO

Date: Sunday, April 19, 2009 2:36:02 PM

Attachments:

We would wish to be heard, especially on the issue of a parent plan supported by the Debtor's board not resulting in a release of Sterite.

Our Committee of course still opposes the Motion. A hearing might be helpful, even by telephone conference.

Sandy Esserman

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

From: Beckham, Charles <Charles.Beckham@haynesboone.com>

To: Richard_Schmidt@txs.uscourts.gov <Richard_Schmidt@txs.uscourts.gov>; jack kinzie <jack.kinzie@bakerbotts.com>

CC: Alan Tenenbaum <Alan.Tenenbaum@usdoj.gov>; Amy Gillespie <Amy.

Gillespie@usdoj.gov>; Amy Horner <Amy.Horner@sol.doi.gov>; anthony cox <anthony.cox@hsblaw.com>; Ashley Bartram <Ashley.Bartram@oag.state.tx.us>; barry stein <barry.stein@sol.doi.gov>; bkirley <bkirley@mt.gov>; Robert T. Brousseau <brousseau@sbep-law.com>; Peter D'Apice <DApice@sbep-law.com>; david dain <david.dain@usdoj.gov>; dbaker <dbaker@reedsmith.com>; dbartner <dbartner@shearman.com>; dcohen <dcohen@milbank.com>; dinnocenti <dinnocenti@obht.com>; djury <djury@usw.org>; ejones <ejones@bnswlaw.com>; ElliottF <ElliottF@atg.wa.gov>; Eric Albert <Eric.Albert@usdoj.gov>; Sander L. Esserman <Esserman@sbep-law.com>; Steven A. Felsenthal <Felsenthal@sbep-law.com>; gibbons melissa <gibbons.melissa@epa.gov>; Hal Morris <Hal.Morris@oag.state.tx.us>; james brandt <james.brandt@lw.com>; jmccarroll <jmccarroll@reedsmith.com>; joseph mikitish <joseph.mikitish@azag.gov>; JTate <JTate@obht.com>; judgepate <judgepate@robertcpatelaw.com>; LevinsonS <LevinsonS@hbdlawyers.com>; Brimmage, Marty L. <Marty.Brimmage@haynesboone.com>; MarySueW <MarySueW@atg.wa.gov>; mcapdeville <mcapdeville@mt.gov>; Monsour, Trey A. <Trey.Monsour@haynesboone.com>; Moore, Robert <RMoore@milbank.com>; Winter, Robert <rwinter@milbank.com>
Sent: Sun Apr 19 14:29:57 2009
Subject: RE: ASARCO

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

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

Sent: Sunday, April 19, 2009 1:51 PM

To: jack kinzie; Beckham, Charles

Cc: Alan Tenenbaum; Amy Gillespie; Amy Horner; anthony cox; Ashley Bartram; barry stein; bkirley; brousseau; DApice; david dain; dbaker; dbartner; dcohen; dinnocenti;

djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To

<Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject

RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Friday, April 17, 2009 1:47 PM
To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com
Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To

<esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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@bnswlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnswlaw.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 ; 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: 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
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Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com <<mailto:esserman@sbep-law.com>>

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@bnswlaw.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 g
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: 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 g

Baker Botts L.L.P.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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From: [Sander L. Esserman](#)

To: [Richard_Schmidt@txs.uscourts.gov](#); [jack.kinzie@bakerbotts.com](#); [Beckham, Charles](#);

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](#); [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](#); [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](#); [Brimmage, Marty L.](#); [MarySueW@atg.wa.gov](#); [mcapdeville@mt.gov](#); [rmoore@milbank.com](#);

Subject: Re: ASARCO

Date: Sunday, April 19, 2009 2:30:01 PM

Attachments:

If your Honor is inclined to grant the motion of the Debtor, we think it is important that the order state that any parent plan confirmed by the Court will not result in a release of Sterlite whether the Board supports the parent's plan or not.

It was my understanding that if the parent submits a plan that is supported by the Board because it is a superior proposal under the agreement negotiated by the Debtor, then Sterlite would be released. I am concerned that might well occur, because the Board might be duty bound to support the parent's plan. An order which would be clear on this point might assist the process--if such would be the ruling of your Honor--or perhaps if the Debtor and Sterlite would agree to that, that might also advance things.

Sandy Esserman

Ps-I think Robert Moore was left off the original email.

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

From: Richard_Schmidt@txs.uscourts.gov <Richard_Schmidt@txs.uscourts.gov>
To: jack kinzie <jack.kinzie@bakerbotts.com>; Charles Beckham <Charles.Beckham@haynesboone.com>
CC: Alan Tenenbaum <Alan.Tenenbaum@usdoj.gov>; Amy Gillespie <Amy.Gillespie@usdoj.gov>; Amy Horner <Amy.Horner@sol.doi.gov>; anthony cox <anthony.cox@hsblaw.com>; Ashley Bartram <Ashley.Bartram@oag.state.tx.us>; barry stein <barry.stein@sol.doi.gov>; bkirley <bkirley@mt.gov>; Robert T. Brousseau <brousseau@sbep-law.com>; Peter D'Apice <D'Apice@sbep-law.com>; david dain <david.dain@usdoj.gov>; dbaker <dbaker@reedsmith.com>; dbartner <dbartner@shearman.com>; dcohen <dcohen@milbank.com>; dinnocenti <dinnocenti@obht.com>; djury <djury@usw.org>; ejones <ejones@bnswwlaw.com>; ElliottF <ElliottF@atg.wa.gov>; Eric Albert <Eric.Albert@usdoj.gov>; Sander L. Esserman <Esserman@sbep-law.com>; Steven A. Felsenthal <Felsenthal@sbep-law.com>; gibbons melissa <gibbons.melissa@epa.gov>; Hal Morris <Hal.Morris@oag.state.tx.us>; james brandt <james.brandt@lw.com>; jmccarroll <jmccarroll@reedsmith.com>; joseph mikitish <joseph.mikitish@azag.gov>; JTate <JTate@obht.com>; judgepate <judgepate@robertcpatelaw.com>; LevinsonS <LevinsonS@hbdlawyers.com>; Marty Brimmage <Marty.Brimmage@haynesboone.com>; MarySueW <MarySueW@atg.wa.gov>; mcapdeville <mcapdeville@mt.gov>
Sent: Sun Apr 19 13:51:02 2009
Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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>; <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@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>

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To

<Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>
Subject

RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; 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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To

<esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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@bnswlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnsrlaw.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 ; 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: 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

Dallas, Texas 75201-2689

(214) 969-4910

(214) 969-4999

Email: esserman@sbep-law.com <<mailto:esserman@sbep-law.com>>

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@bnswlaw.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 g
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: 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 g
Baker Botts L.L.P.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

From: [Beckham, Charles](#)
To: ["Richard_Schmidt@txs.uscourts.gov"](mailto:Richard_Schmidt@txs.uscourts.gov); [jack kinzie](#);
CC: [Alan Tenenbaum](#); [Amy Gillespie](#); [Amy Horner](#); [anthony cox](#); [Ashley Bartram](#); [barry stein](#); [bkirley](#); [brousseau](#); [DApice](#); [david dain](#); [dbaker](#); [dbartner](#); [dcohen](#); [dinnocenti](#); [djury](#); [ejones](#); [ElliottF](#); [Eric Albert](#); [esserman](#); [Felsenthal](#); [gibbons melissa](#); [Hal Morris](#); [james brandt](#); [jmccarroll](#); [joseph mikitish](#); [JTate](#); [judgepate](#); [LevinsonS](#); [Brimmage, Marty L.](#); [MarySueW](#); [mcapdeville](#); [Monsour, Trey A.](#); ["Moore, Robert"](#); ["Winter, Robert"](#);
Subject: RE: ASARCO
Date: Sunday, April 19, 2009 2:29:58 PM
Attachments:

Dear Judge Schmidt,

The Parent is preparing a response to the issues raised in the correspondence from Mr. Kinzie. We expect to be able to respond by Monday morning. Notwithstanding the response from Mr. Kinzie and subject to the Parent's complete response, the Parent still opposes approval of the Sterlite 9019 Motion. Additionally, the Parent continues to encourage the Court to conduct a Status hearing so that all parties may be heard on these issues.

Moreover, I am not certain of the source of this e-mail list but in reviewing it I noticed that the original list did not include all of my co-counsel from Milbank. I have now added my Milbank colleagues. I don't know if there are other interested parties who are not on this list as well. They may wish to be heard on these issues as well.

From: Richard_Schmidt@txs.uscourts.gov [mailto:Richard_Schmidt@txs.uscourts.gov]
Sent: Sunday, April 19, 2009 1:51 PM
To: [jack kinzie](#); [Beckham, Charles](#)
Cc: [Alan Tenenbaum](#); [Amy Gillespie](#); [Amy Horner](#); [anthony cox](#); [Ashley Bartram](#); [barry stein](#); [bkirley](#); [brousseau](#); [DApice](#); [david dain](#); [dbaker](#); [dbartner](#); [dcohen](#);

dinnocenti; djury; ejones; ElliottF; Eric Albert; esserman; Felsenthal; gibbons melissa; Hal Morris; james brandt; jmccarroll; joseph mikitish; JTate; judgepate; LevinsonS; Brimmage, Marty L.; MarySueW; mcapdeville

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and

using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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@bnswlaw.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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@bnswlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnswlaw.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 ;
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steven@epa.gov ; shelley.woods@ago.mo.gov ; steiner-riley.cara@epa.gov ;
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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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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@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'

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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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From: jack.kinzie@bakerbotts.com
To: Richard_Schmidt@txs.uscourts.gov; [Beckham, Charles](#);
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;
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judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com;
[Brimmage, Marty L.](#); MarySueW@atg.wa.gov;
mcapdeville@mt.gov;
Subject: Re: ASARCO
Date: Sunday, April 19, 2009 2:17:53 PM
Attachments:

Your Honor, we will circulate our proposed order to the other recipients of this email for comment.

From: Richard_Schmidt@txs.uscourts.gov
To: Kinzie, Jack; Charles Beckham
Cc: Alan Tenenbaum ; Amy Gillespie ; Amy Horner ; anthony cox ; Ashley Bartram ; barry stein ; bkirley ; brousseau ; DApice ; david dain ; dbaker ; dbartner ; dcohen ; dinnocenti ; djury ; ejones ; ElliottF ; Eric Albert ; Esserman, Sander; Felsenthal ; gibbons melissa ; Hal Morris ; james brandt ; jmccarroll ; joseph mikitish ; JTate ; judgepate ; LevinsonS ; Marty Brimmage ; MarySueW ; mcapdeville
Sent: Sun Apr 19 13:51:02 2009

Subject: Re: ASARCO

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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@bnswlaw.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 ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the

inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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@bnsnlaw.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that

you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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@bnswwlaw.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 ;

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Newton, Jacob; polin.robert@epa.gov ; psinger@ReedSmith.com ;
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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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

-----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@bnsww.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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by U.S. Treasury Regulations, Haynes and Boone, LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

From: Richard_Schmidt@txs.uscourts.gov
To: [jack kinzie](#); [Beckham, Charles](#);
CC: [Alan Tenenbaum](#); [Amy Gillespie](#); [Amy Horner](#); [anthony cox](#);
[Ashley Bartram](#); [barry stein](#); [bkirley](#); [brousseau](#); [DApice](#);
[david dain](#); [dbaker](#); [dbartner](#); [dcohen](#); [dinnocenti](#); [djury](#);
[ejones](#); [ElliottF](#); [Eric Albert](#); [esserman](#); [Felsenthal](#); [gibbons](#)
[melissa](#); [Hal Morris](#); [james brandt](#); [jmccarroll](#); [joseph mikitish](#);
[JTate](#); [judgepate](#); [LevinsonS](#); [Brimmage, Marty L.](#);
[MarySueW](#); [mcapdeville](#);
Subject: Re: ASARCO
Date: Sunday, April 19, 2009 1:49:32 PM
Attachments:

In light of these responses, is there agreement among the debtor, Sterlite, the parent and the committees on language in an order approving the bid procedures?

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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.

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If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.com>

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Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.com

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Subject: Re: ASARCO

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Richard S. Schmidt

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04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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>, <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>

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 ;
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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

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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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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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214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by U.S. Treasury Regulations, Haynes and Boone, LLP informs you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

CONFIDENTIALITY NOTICE: This electronic mail transmission is confidential, may be privileged and should be read or retained only by the intended recipient. If you have received this transmission in error, please immediately notify the sender and delete it from your system.

From: jack.kinzie@bakerbotts.com
To: Richard_Schmidt@txs.uscourts.gov; [Beckham, Charles](#);
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;
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judgepate@robertcpatelaw.com; LevinsonS@hbdlawyers.com;
[Brimmage, Marty L.](#); MarySueW@atg.wa.gov;
mcapdeville@mt.gov;
Subject: Re: ASARCO
Date: Saturday, April 18, 2009 12:08:04 PM
Attachments:

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

From: Richard_Schmidt@txs.uscourts.gov

To: Beckham, Charles

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, Sander; Felsenthal@sbep-law.com ; gibbons.melissa@epa.gov ; Hal.Morris@oag.state.tx.us ; Kinzie, Jack; james.brandt@lw.com ; jmccarroll@reedsmith.com ; joseph.mikitish@azag.gov ; JTate@obht.com ; judgepate@robertcpatelaw.com ; LevinsonS@hbdlawyers.com ; Brimmage, Marty L. ; MarySueW@atg.wa.gov ; mcapdeville@mt.gov ; Melinda.Franek@lw.com ; Monsour, Trey A.

Sent: Fri Apr 17 14:32:11 2009

Subject: RE: ASARCO

First, let me apologize for the text of my previous email. I am on the road and

using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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@bnswlaw.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@sbep-law.com; david.dain@usdoj.gov; dbaker@reedsmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

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04/17/2009 11:59 AM

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Sandy Esserman

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"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 
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-----Original Message-----

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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@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'

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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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From: Richard_Schmidt@txs.uscourts.gov
To: [Beckham, Charles;](#)
CC: Alan.Tenenbaum@usdoj.gov; Amy.Gillespie@usdoj.gov;
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JTate@obht.com; judgepate@robertcpatelaw.com;
LevinsonS@hbdlawyers.com; [Brimmage, Marty L.;](#)
MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com; [Monsour, Trey A.;](#)
Subject: RE: ASARCO
Date: Friday, April 17, 2009 2:32:18 PM
Attachments:

First, let me apologize for the text of my previous email. I am on the road and using my laptop and blackberry. I meant to say "please confirm that the release and bid procedure 'provide that' Sterlite will not receive..."

Next, I don't think further hearing is necessary if there is a simple answer to the inquiry. Another question is, 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)?

If my inquiries are unclear, let me know.

Richard S. Schmidt

"Beckham, Charles" <Charles.Beckham@haynesboone.com>

04/17/2009 01:56 PM

To <Richard_Schmidt@txs.uscourts.gov>, <jack.kinzie@bakerbotts.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>, "Brimmage, Marty L." <Marty.Brimmage@haynesboone.com>, <MarySueW@atg.wa.gov>, <mcapdeville@mt.gov>, <Melinda.Franek@lw.com>, "Monsour, Trey A." <Trey.Monsour@haynesboone.com>

Subject RE: ASARCO

Dear Judge Schmidt,

Given some of the questions raised by today's e-mails, the Parent requests that you schedule a Status Hearing on the Sterlite 9019 Motion so that all parties may be heard. Please pardon the informality of this request but given the time issues and the informal communications of the parties to you today, I thought it would be better to make this request by e-mail rather than filing a formal motion with the Court.

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

uscourts.gov]

Sent: Friday, April 17, 2009 1:47 PM

To: jack.kinzie@bakerbotts.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; Beckham, Charles; DApice@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@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; Brimmage, Marty L.; MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com

Subject: Re: ASARCO

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.

kinzie@bakerbotts.com>

To <esserman@sbep-law.com>, <Richard_Schmidt@txs.uscourts.gov>

04/17/2009 11:59

AM

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>, <dcohen@milbank.com>, <dinnocenti@obht.com>, <djury@usw.org>, <ejones@bnswwlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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@bnswwlaw.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.

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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
Dallas, Texas 75201-2689
(214) 969-4910
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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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Kinzie, Jack

Sent: Wednesday, April 15, 2009 11:41 AM

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Subject: ASARCO

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Best regards,
Jack L. Kinzie 

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Subject: RE: ASARCO
Date: Friday, April 17, 2009 1:56:57 PM
Attachments:

Dear Judge Schmidt,

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Sent: Friday, April 17, 2009 1:47 PM

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Thus the debtor can not support any plan which fails to give Sterlite a release.

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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@bnswlaw.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 ; 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: 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

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(214) 969-4999
Email: esserman@sbep-law.com

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@bnswlaw.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.

brimage@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; rsetzer@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; rsetzer@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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

-----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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

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To: jack.kinzie@bakerbotts.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; [Beckham, Charles](mailto:Beckham,Charles); DApice@sbep-law.com; david.dain@usdoj.gov;
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LevinsonS@hbdlawyers.com; Brimmage, Marty L.;
MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com;
Subject: Re: ASARCO
Date: Friday, April 17, 2009 1:46:49 PM
Attachments:

Thank you for your clarification.

Please confirm that the release and bid procedures 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. 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.

Richard S. Schmidt

<jack.kinzie@bakerbotts.com>

04/17/2009 11:59 AM

To <esserman@sbep-law.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@sbep-law.com>, <Charles.Beckham@haynesboone.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@bnswlaw.com>, <ElliottF@atg.wa.gov>, <Eric.Albert@usdoj.gov>, <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>

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

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Sent: Fri Apr 17 11:47:01 2009

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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@bnswlaw.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; shelly.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
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Sent: Wednesday, April 15, 2009 11:41 AM

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[Brimmage, Marty L.](mailto:Brimmage,MartyL); MarySueW@atg.wa.gov;
mcapdeville@mt.gov; Melinda.Franek@lw.com;
Subject: Re: ASARCO
Date: Friday, April 17, 2009 12:02:25 PM
Attachments:

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

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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@bnswlaw.com ; ElliottF@atg.wa.

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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@bnswlaw.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,

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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.
2001 Ross Ave
Dallas, Texas 75201-2980
214.953.6727
214.674.6727 (cell)
214.661.4727 (fax)

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

From: Kinzie, Jack

Sent: Wednesday, April 15, 2009 11:41 AM

To: Richard_Schmidt@txs.uscourts.gov

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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.

2001 Ross Ave

Dallas, Texas 75201-2980

214.953.6727

214.674.6727 (cell)

214.661.4727 (fax)

From: [Sander L. Esserman](#)

To: jack.kinzie@bakerbotts.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; Robert T. Brousseau; Beckham, Charles; 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; 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; Brimmage, Marty L.; 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; Monsour, Trey A.; 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

Date: Friday, April 17, 2009 11:47:02 AM

Attachments:

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
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
Email: esserman@sbep-law.com

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Subject: ASARCO

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Subject: RE: ASARCO

Date: Friday, April 17, 2009 10:02:31 AM

Attachments:

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To: [jack kinzie](mailto:jack_kinzie);
CC: [alan tenenbaum](mailto:alan_tenenbaum); [Amy Gillespie](mailto:Amy_Gillespie); [Amy Horner](mailto:Amy_Horner); [anthony cox](mailto:anthony_cox); [Ashley Bartram](mailto:Ashley_Bartram); [barry stein](mailto:barry_stein); bkirley; brousseau; Beckham, Charles; [d"apice](mailto:d_apice); [david dain](mailto:david_dain); DBaker; dbartner; dcohen; dinnocenti; djury; ejones; ElliottF; [Eric Albert](mailto:Eric_Albert); esserman; Felsenthal; [gibbons melissa](mailto:gibbons_melissa); [Hal Morris](mailto:Hal_Morris); [james brandt](mailto:james_brandt); jmccarroll; [joseph mikitish](mailto:joseph_mikitish); jtate; judgepate; LevinsonS; Brimmage, [Marty L.](mailto:Marty_L); MarySueW; mcapdeville; [Melinda Franek@lw.com](mailto:Melinda_Franek@lw.com); Newton@sbep-law.com; 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; Monsour, [Trey A.](mailto:Trey_A); 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: Re: ASARCO

Date: Wednesday, April 15, 2009 2:53:14 PM

Attachments:

Thank you

From: [jack.kinzie@bakerbotts.com]

Sent: 04/15/2009 11:41 AM EST

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To: esserman@sbep-law.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; Beckham.Charles; DApice@sbep-law.com; david.dain@usdoj.gov; DBaker@ReedSmith.com; dbartner@shearman.com; dcohen@milbank.com; dinnocenti@obht.com; djury@usw.org; ejones@bnswlaw.com; ElliottF@atg.wa.gov; Eric.Albert@usdoj.gov; 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; [Brimmage, Marty L.](mailto:Brimmage,MartyL); MarySueW@atg.wa.gov; mcapdeville@mt.gov; Melinda.Franek@lw.com; Newton@sbep-law.com; 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; [Monsour, Trey A.](mailto:Monsour,TreyA); 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; Newton@sbep-law.com; DApice@sbep-law.com;

Subject: RE: ASARCO

Date: Wednesday, April 15, 2009 12:20:55 PM

Attachments:

It is likely the debtor will amend its plan, perhaps on several occasions between now and confirmation. If the plan amendment gives rise to a new or additional disclosure requirements which you or any party believes the debtor has not met, you will certainly be entitled to raise that issue at the appropriate time. Most, nearly all, of the proposed disclosure statement will remain as it is, and if you have objections to this disclosure statement, I believe it is appropriate that you raise them now in accordance with the CMO so that the debtor can address them.

Most disclosure statement objections in this Court are sustained, so ask for disclosure that you believe is inadequate, and it is likely that you shall receive.

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: Sander L. Esserman [mailto:Esserman@sbep-law.com]

Sent: Wednesday, April 15, 2009 11:49 AM

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; 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; 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;
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Papeika@shearman.com; Randall.Martin@shearman.com;
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Subject: RE: ASARCO

Has there been any change in the date that the disclosure statement objections are due. It seems logical in light of the hearings and discussions on the record about the Sterlite plan that such deadline should be continued from the current deadline of this Friday.

Sandy

Sander L. Esserman
Stutzman, Bromberg, Esserman & Plifka
2323 Bryan Street, Suite 2200
Dallas, Texas 75201-2689
(214) 969-4910
(214) 969-4999
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From: jack.kinzie@bakerbotts.com [mailto:jack.kinzie@bakerbotts.com]
Sent: Wednesday, April 15, 2009 11:41 AM
To: Richard_Schmidt@txs.uscourts.gov
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Subject: ASARCO

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Best regards,
Jack L. Kinzie 
Baker Botts L.L.P.
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Subject: RE: ASARCO

Date: Wednesday, April 15, 2009 11:49:10 AM

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Best regards,

Jack L. Kinzie



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Subject: ASARCO

Date: Wednesday, April 15, 2009 11:41:53 AM

Attachments:

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Exhibit 69

REDACTED

NOT A SOLICITATION
SUBJECT TO BANKRUPTCY PROCESS

**AGREEMENT IN PRINCIPLE REGARDING
SUMMARY TERMS OF
CHAPTER 11 PLAN FOR
ASARCO LLC AND SUBSIDIARIES**

This AGREEMENT IN PRINCIPLE (as the same may be amended, modified or supplemented from time to time, the "**Agreement**") is made and entered into as of April 12, 2009 by and among ASARCO Incorporated, a Delaware corporation (the "**Parent**"), Americas Mining Corporation, a Delaware corporation ("**AMC**"), and collectively with the Parent, the "**Plan Sponsor**", Robert C. Pate, in his capacity as the Future Claims Representative (the "**FCR**"), and the Official Committee of Unsecured Creditors for the Subsidiary Debtors (the "**Subsidiary Committee**"). The Plan Sponsor, the FCR and the Subsidiary Committee hereinafter are referred to individually as a "**Party**" and collectively as the "**Parties**."

W I T N E S S E T H:

WHEREAS, ASARCO LLC, a Delaware limited liability company ("**ASARCO**"), and certain of its affiliates (ASARCO together with such affiliates, the "**Debtors**") are Debtors and Debtors in Possession in an administratively consolidated bankruptcy case captioned *In re ASARCO LLC, et al.*, Case No. 05-21207 (the "**Case**"), pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "**Court**");

WHEREAS, the Plan Sponsor, directly and indirectly, own all of the outstanding equity interests of ASARCO;

WHEREAS, the Plan Sponsor intends to sponsor a chapter 11 plan of reorganization for the Debtors substantially on the terms described herein (the "**Reorganization Plan**");

WHEREAS, the Subsidiary Committee and the FCR (collectively, the "**Asbestos Representatives**") have been appointed in the bankruptcy cases of the Subsidiary Debtors to represent individuals holding Asbestos Claims and/or Demands against ASARCO and/or the Subsidiary Debtors (collectively, "**Asbestos Claims**"); and

WHEREAS, the Parties have reached agreement in principle to support confirmation and consummation of the Reorganization Plan and the steps described in this Agreement to achieve that objective;

NOW, THEREFORE, in consideration of the premises and mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

¹ Capitalized terms used herein, and not otherwise defined, shall have the meanings ascribed to them in Schedule I hereto.

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I. Transaction.

(a) **Mutual Support.** The Parties shall oppose the pending motion pursuant to Bankruptcy Rule 9019 with respect to the proposed compromise and settlement of all claims held by the Debtors and their estates against Sterlite (USA), Inc. and Sterlite Industries (India) Ltd. (collectively, "**Sterlite**"), the proposed sale of the Debtors' assets to Sterlite, the establishment of bid procedures with respect to such proposed sale, and a proposed plan of reorganization for the Debtors based upon such proposed settlement and sale (the "**Debtors' Plan**"). At any hearing in the Case with respect to the proposed Sterlite transactions, the Asbestos Representatives shall announce that they oppose the Debtors' current proposed compromise and settlement, sale, bid procedures or the Debtors' Plan, and will not deliver (as to the FCR) and will not recommend (as to the Subsidiary Committee) that their constituents deliver sufficient votes to support a Bankruptcy Code section 524(g) injunction under the terms of such Debtors' Plan.

(b) **Interim Steps.** At the April 13, 2009, hearing, the Parties shall make the following disclosures to the Court and other parties in interest:

- i. The Plan Sponsor shall deposit the sum of \$1.3 billion in Cash or Cash equivalents (which may include shares of Southern Copper Corporation stock) (the "**Plan Sponsor Initial Contribution**") into an escrow account to be established in a U.S. domestic bank to backstop the Plan Sponsor's obligations under this Agreement. The Plan Sponsor shall deposit the Plan Sponsor Initial Contribution into such escrow account within 60 days of the date of this Agreement. To the extent the Plan Sponsor Initial Contribution is funded with Cash equivalents, the Plan Sponsor may replace such portion with Cash at any time.
- ii. The Reorganization Plan shall provide for the treatment of Asbestos Claims in the manner described herein, including a Bankruptcy Code section 524(g) injunction.
- iii. The Asbestos Representatives shall request and support the Debtors' withdrawal of the Debtors' pending motion with respect to the proposed Sterlite compromise and settlement, Sterlite sale, and proposed bid procedures and the Debtors' Plan and disclosure statement, and shall support confirmation and consummation of the Reorganization Plan.
- iv. The Asbestos Representatives shall support the Plan Sponsor in seeking the withdrawal or postponement of any motions presently pending or subsequently filed by the Debtors seeking approval of any matters outside the ordinary course of business of the Debtors, unless such motions are supported by the Plan Sponsor.
- v. The Asbestos Representatives shall support a stay pending appeal of any judgment, when entered, by Judge Andrew S. Hanen of the United States District Court for the Southern District of Texas, Brownsville Division, in Civil Action No. 07-00018 (the "**Brownsville Litigation**"), pending

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confirmation and consummation of the Reorganization Plan; provided, however, that AMC shall continue to agree to the non-transferability of the shares of Southern Copper Corporation that are the subject of the Brownsville Litigation and AMC shall continue to abide by any other agreement it enters into in connection with, or any order entered in, the Brownsville Litigation.

II. Premises of Plan

- Overview:** The Plan Sponsor shall promptly propose, and the Asbestos Representatives shall support, the Reorganization Plan on the terms described herein, in form and substance reasonably acceptable to the Asbestos Representatives; provided that the Asbestos Representatives may, in the exercise of their fiduciary duties, support another transaction that is feasible and confirmable, will yield materially greater recovery to the holders of Asbestos Claims, and provides aggregate consideration to all creditors that is greater than that provided under the Reorganization Plan.
- Assets:** Reorganized ASARCO shall retain ownership of all assets except for those assets specifically designated as Excluded Assets in a supplemental filing to be made no later than ten (10) days prior to a confirmation hearing on the Reorganization Plan, which Excluded Assets will be liquidated or disposed of pursuant to the Reorganization Plan.
- No Breakup Fee:** The Plan Sponsor does not require a breakup fee to effectuate the Reorganization Plan.
- Timing:** The Effective Date of the Reorganization Plan is anticipated to be on or before August 31, 2009, or such later date as may be required by reason of the Court's calendar.

Treatment and Classification of Claims:

**Administrative and
Priority Claims:**

Each allowed administrative claim (to the extent not previously paid) shall be paid in full, in Cash, on the later of (a) the Effective Date or (b) the date on which each such claim becomes an allowed claim; provided, however, that (i) claims representing ordinary course obligations shall be assumed by Reorganized ASARCO and paid or performed in the ordinary course, and (ii) claims of professional advisors (including any success fee) shall be paid after their respective final fee applications have been approved. Priority claims will be paid in accordance with the Bankruptcy Code.

Secured Claims:

At the discretion of the Plan Sponsor, (a) allowed Secured Claims shall be reinstated in accordance with section 1124(2) of the

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Bankruptcy Code, (b) holders of allowed Secured Claims shall be paid in Cash the full value of their respective collateral on the later of (i) the Effective Date or (ii) the date on which each such claim becomes an allowed claim; (c) Reorganized ASARCO shall surrender to the claimant collateral securing such allowed Secured Claims; or (d) allowed Secured Claims shall be treated in any other manner such as to render them unimpaired.

**Asbestos Claims
Against ASARCO:**

The Reorganization Plan shall establish a trust pursuant to section 524(g) of the Bankruptcy Code (the "*Asbestos Trust*"). Asbestos Claims shall be treated as follows:

- (i) All liquidated, undisputed, non-contingent Asbestos Claims against ASARCO LLC (which are believed to be based on settlement agreements entered into by ASARCO LLC (or its predecessor ASARCO Inc.) prior to the Petition Date shall be treated pursuant to Asbestos Claim distribution procedures approved by the Court.
- (ii) All other unliquidated, disputed or contingent Asbestos Claims (including claims arising from those settlements entered into prepetition that were conditioned upon the effectiveness of a "prepackaged" plan of reorganization including a section 524(g) trust) shall be allowed in the aggregate amount of \$1.0 billion.
- (iii) The Asbestos Claims shall be channeled to the Asbestos Trust, and the holders of such Asbestos Claims shall look solely to the Asbestos Trust for payment on such Asbestos Claims. The Asbestos Trust shall be established and funded on the Effective Date with (a) Cash in the amount of \$500 million, (b) a promissory note made payable by Reorganized ASARCO in the original principal amount of \$250 million with the terms described below, (c) rights to all insurance proceeds with respect to Asbestos Claims, and (d) Cash in the amount of \$27.5 million to administer the Asbestos Trust, which shall be allowed as an Administrative Claim. Among other things, a cooperation agreement regarding treatment of and access to information in the possession of the Debtors relating to Asbestos Claims will be negotiated in good faith by the Parties. The promissory note shall be for a term of one year from the Effective Date, shall bear interest at the rate of 6.0% per annum, and shall be secured by (a) a first lien on the assets of Reorganized ASARCO, and (b) a pledge by the Plan Sponsor of 51% of the equity in Reorganized ASARCO.

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The promissory note shall be prepayable at any time, without penalty.

Bond Claims:

REDACTED

Other Unsecured Claims:

REDACTED

Remediation Obligations: Environmental liabilities with respect to the Owned Strategic Properties will be reinstated and satisfied in the ordinary course of business.

General Unsecured Equity Interests: Upon confirmation of the Reorganization Plan, the equity of Reorganized ASARCO shall be retained by the Plan Sponsor.

Other Features of the Reorganization Plan:

Collective Bargaining Agreement: Pursuant to the Reorganization Plan, the Plan Sponsors intend to maintain the current Collective Bargaining Agreements with such modifications as are mutually agreed with the Unions; provided, however, that if the Unions withhold their consent to this Agreement and/or to the Reorganization Plan, the Plan Sponsor reserves all rights and remedies against the Unions. Discussions will be reconvened between the Plan Sponsor and the Unions to address labor matters.

Retained Employees: The Plan Sponsor intends to provide the Retained Employees with the same compensation and benefits (including salary) for one year following the Effective Date as was provided to such employees prior to the Effective Date, subject to management's authority to

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make adjustments to wages and benefits in the ordinary course as necessary to address the needs of the business and market conditions.

Conditions Precedent to Confirmation:

Confirmation is contingent upon the form of all required documentation, including the confirmation order, trust agreements and protocols, being in form and substance satisfactory to the Plan Sponsor. Insofar as the Asbestos Claim-related trust agreements and protocols are concerned, such trusts and protocols shall be in a form and substance satisfactory to the Subsidiary Committee and the FCR and, in consultation with the Plan Sponsor, otherwise consistent with the Bankruptcy Code and applicable laws.

Conditions Precedent to Plan Effective Date:

The Effective Date is contingent upon satisfaction of the following conditions:

(a) The Bankruptcy Court shall have entered an order confirming the Reorganization Plan, in form and substance satisfactory to the Plan Sponsor, that has become a final order; and

(b) All required documentation, including trust agreements and protocols, shall be in form and substance satisfactory to the Plan Sponsor. Insofar as the Asbestos Claim-related trust agreements and protocols are concerned, such trusts and protocols shall be in a form and substance satisfactory to the Subsidiary Committee and the FCR and, in consultation with the Plan Sponsor, otherwise consistent with the Bankruptcy Code and applicable laws.

Exculpation, Discharge and Releases:

The Reorganization Plan shall contain customary exculpation provisions for chapter 11 and plan related activities, for all parties involved in the Reorganization Plan process (including the Plan Sponsor and its affiliates).

Upon the Effective Date of the Reorganization Plan, all claims or causes of action identified on Schedule 2 shall be dismissed with prejudice. Without limitation, the Plan Sponsor and any affiliate shall be relieved from judgment in the Brownsville Litigation and the Parties shall take all steps necessary to cause the judgment in the Brownsville Litigation to have no further force and effect.

The Reorganization Plan shall provide for complete satisfaction, discharge, and release of all claims and demands of any nature whatsoever, including past, present and future environmental liability of ASARCO and Reorganized ASARCO (and to the

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extent applicable, the Plan Sponsor and their affiliates), and each of their Representatives, against ASARCO LLC and any of the other Debtors, the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates, or any of their assets, properties, or interests in property. Upon the Effective Date, all claims, demands, and equity interests shall be satisfied, discharged and released in full except as specifically provided elsewhere in the Reorganization Plan or as required to render the Reorganization Plan confirmable.

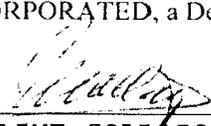
The Reorganization Plan shall provide that all other entities are forever barred from asserting claims against the Reorganized Debtors, the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates, or any of their assets, properties, or interests in property, and shall include an injunction to the full extent contemplated by section 524(g) of the Bankruptcy Code to protect the Reorganized Debtors, the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates, or any of their assets, properties, or interests in property, from, claims, demands, causes of action, or rights of setoff or recoupment based upon any act or omission, transaction, or other activity, event, or occurrence of any kind or nature that occurred prior to the Effective Date of the Reorganization Plan, whether or not the facts of or legal bases therefore were known or existed prior to the Effective Date, that was or could have been asserted against the Debtors, or any of them, or against the Parent, Americas Mining Corporation, Grupo México, S.A.B. de C.V., Southern Copper Corporation and each of their affiliates that are derivative of claims, demands, causes of action, or rights of setoff or recoupment against the Debtors, or any of them, unless expressly provided for in the Reorganization Plan or otherwise prohibited by applicable law.

The Reorganization Plan shall provide that neither the Debtors, nor any other party, in any capacity, is discharged, released or relieved of Pension Benefit Guaranty Corporation liability with respect to the pension plans under any law, governmental policy, or regulatory provision.

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PLAN SPONSOR:

ASARCO INCORPORATED, a Delaware corporation

By: 
Name: JAIME COLLAZO
Title: CEO + PRESIDENT

By: _____
Name:
Title:

AMERICAS MINING CORPORATION, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: _____
Name:
Title:

SUBSIDIARY COMMITTEE:

Official Committee of Unsecured Creditors for the Subsidiary Debtors

By: _____
Name:
Title:

By: _____
Name:
Title:

April __, 2009

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PLAN SPONSOR:

ASARCO INCORPORATED, a Delaware corporation

By: _____
Name:
Title:

[Handwritten signature]

By: _____
Name: *Jorge Laguarda P.*
Title: *Vice President and General Counsel*

AMERICAS MINING CORPORATION, a Delaware corporation

By: _____
Name: *Roberto J. de la Torre*
Title: *General Counsel*

By: _____
Name: *Jorge Laguarda P.*
Title: *Assistant Secretary*

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: _____
Name:
Title:

SUBSIDIARY COMMITTEE:

Official Committee of Unsecured Creditors for the Subsidiary Debtors

By: _____
Name:
Title:

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PLAN SPONSOR:

ASARCO INCORPORATED, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

AMERICAS MINING CORPORATION, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: Robert C. Pate 2:58 pm CDT
Name: Robert C. Pate
Title: Future Claims Rep.

SUBSIDIARY COMMITTEE:

Official Committee of Unsecured Creditors for the Subsidiary Debtors

By: _____
Name:
Title:

By: _____
Name:
Title:

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STEVEN & JUDY KAZAN

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PLAN SPONSOR:

ASARCO INCORPORATED, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

AMERICAS MINING CORPORATION, a Delaware corporation

By: _____
Name:
Title:

By: _____
Name:
Title:

FCR:

ROBERT C. PATE, in his capacity as Future Claims Representative

By: _____
Name:
Title:

SUBSIDIARY COMMITTEE:

Official Committee of Unsecured Creditors for the Subsidiary Debtors

By: Steven Kazan
Name: STEVEN KAZAN
Title: CO-CHAIR OF COMMITTEE

By: _____
Name:
Title: APRIL 12, 2009

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SCHEDULE 1

DEFINITIONS

2003 Consent Decree: shall mean the certain Consent Decree between and among the United States of America, ASARCO LLC, and SPHC, entered February 3, 2003.

AMC: shall mean Americas Mining Corporation.

ASARCO Bonds: shall mean the (i) Nueces River Authority Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 in the aggregate principal amount of \$27.74 million (5.60% due January 2027); (ii) ASARCO Incorporated 7 7/8% Debentures due 2013 in the aggregate principal amount of \$100 million; (iii) Nueces River Authority Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998A in the aggregate principal amount of \$22.2 million (5.60% due April 2018); (iv) Lewis and Clark County, Montana Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 in the aggregate principal amount of \$33.16 million (5.60% due January 2027); (v) Industrial Development Authority of the County of Gila, Arizona Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 in the aggregate principal amount of \$71.9 million (5.55% due January 2027); (vi) ASARCO Incorporated 8 1/2% Debentures due 2025 in the aggregate principal amount of \$150 million; and (vii) Lewis and Clark County, Montana Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 in the aggregate principal amount of \$34.8 million (5.85% due October 2033).

Asbestos Claims: shall mean all asbestos claims asserted or that may be asserted against the Subsidiary Debtors and ASARCO LLC.

Bankruptcy Code: shall mean title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

CBA: shall mean the Collective Bargaining Agreement between ASARCO LLC and the Unions dated January 1, 2007.

Consent Decree Promissory Note: shall mean the certain Promissory Note in the amount of \$100 million executed by Americas Mining Corporation and delivered to SPHC pursuant to the terms of the 2003 Consent Decree.

Court: shall mean the United States Bankruptcy Court for the Southern District of Texas.

Demands: shall have the meaning set forth in Section 524(g)(5) of the Bankruptcy Code.

Effective Date: shall mean the Reorganization Plan's effective date, which is anticipated to be on or before [**August 31, 2009**].

Environmental Claims: shall mean all environmental claims and remediation obligations (past and future response costs and natural resource damages) identified for the Non-Owned Sites and the Owned Sites.

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Excluded Assets: shall mean such assets as are designated by the Plan Sponsor in a plan supplement to be filed no later than ten (10) days prior to the confirmation hearing; provided, however, that such supplement shall not include the primary operating assets of the Debtors.

General Unsecured Claims: shall mean unsecured claims other than Environmental Claims, Asbestos Claims, Bond Claims and Other Insured Claims.

LAQ: shall mean Lac d'Amiante du Quebec L'tée.

Other Insured Claims: shall mean unsecured claims for which insurance proceeds are available, other than Asbestos Claims, Environmental Claims and Toxic Tort Claims.

Owned Strategic Sites: shall mean the owned sites identified in the attached Schedule 3.

Parent: shall mean ASARCO Incorporated.

Reorganization Plan: shall mean a plan of reorganization for ASARCO LLC on substantially the terms described in this Term Sheet and otherwise in form and substance satisfactory to the Parent.

Reorganized ASARCO: shall mean ASARCO LLC on and after the Effective Date.

Retained Employees: shall mean all employees of ASARCO LLC who are employed on the Effective Date, including those actively at work or on vacation, leave of absence or other approved absence from work and individuals who have received offers of employment but have not reported to work. Retained Employees shall not include employees of ASARCO LLC and the Subsidiary Debtors whose principal services relate to litigation and/or bankruptcy administration.

Plan Sponsor: shall mean, collectively, AMC and the Parent.

Subsidiary Debtors: shall mean the subsidiaries of ASARCO LLC that are debtors in chapter 11 and that have exposure to asbestos liability.

Toxic Tort Claims: shall mean all alleged damages related to toxic tort, personal injury, environmental property damage and related breach-of-settlement claims resulting from alleged exposure to lead or toxic substances at ASARCO LLC's sites in Hayden, Arizona, Tar Creek, Oklahoma, and El Paso, Texas.

Unions: shall mean the USW, acting on behalf of itself and the other labor organizations as collective bargaining representatives of ASARCO employees.

USW: shall mean the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO.

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SCHEDULE 2

RELEASED LITIGATION

DOCKET NO.	PLAINTIFFS	DEFENDANTS	NATURE OF ACTION
District Court, Southern District of Texas			
07-00018	ASARCO LLC, Southern Peru Holdings, LLC	Americas Mining Corporation ("AMC")	Fraudulent Transfer
07-00203 (Removed 0 5/02/07)	Phillip Nelson Burns, ASARCO LLC, Southern Peru Holdings, LLC, Mirjana Pavkovich, Warren Elmer Halpap,	Grupo Mexico S.A. de C.V.	Constructive and actual fraud, fraudulent conveyance
Bankruptcy Court, Southern District of Texas			
07-02009	ASARCO LLC	Americas Mining Corporation	Fraudulent transfer
07-02011	ASARCO LLC	AMC, ASARCO Incorporated, Enthone Inc. f/k/a Enthone-OMI, Inc., EI Liquidation, Inc. f/k/a Enthone, Incorporated, OMI International Corporation, Counter-Claimant - CAPCO Pipe Company, Inc., Counter-Defendant - AMC, ASARCO Incorporated, Rinker Materials South Central, Inc. f/k/a American Limestone Company, Enthone Inc. f/k/a Enthone-OMI, Inc., EI Liquidation, Inc. f/k/a Enthone, Incorporated, OMI International Corporation	Tax Refund Complaint: seeking declaration that the refund is property of ASARCO LLC.
07-02062	ASARCO LLC	Servicios de Apoyo Administrativo, S.A. de C.V	Recovery of money/property

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DOCKET NO.	PLAINTIFFS	DEFENDANTS	NATURE OF ACTION
07-02063	ASARCO LLC	Mexicana de Cobre, S.A. de C.V.	Preferential or fraudulent transfer
07-02064	ASARCO LLC	Minera Mexico Internacional, Inc.	Preferential or fraudulent transfer; and objection to Claim No. 11067
07-02071	ASARCO LLC, AR Sacaton, LLC	Americas Mining Corporation, Tri-Point Development, LLC, CMR/Casa Grande, LLC, Vanguard Properties, Inc., First American Title Insurance Company	Fraudulent transfer
07-02072	ASARCO LLC	Grupo Mexico, S.A. de C.V.	Preferential or fraudulent transfer
07-02073	ASARCO LLC	Minera Mexico S.A. de C.V.	Preferential or fraudulent transfer
07-02075	ASARCO LLC	Americas Mining Corporation, ASARCO Incorporated	Preferential or fraudulent transfer
07-02077	Official Committee of Unsecured Creditors of ASARCO, LLC, <i>on Behalf of the ASARCO, LLC Bankruptcy Estate</i>	Genaro Larrea Mota-Velasco, German Larrea Mota-Velasco, Xavier Garcia de Quevedo Topete, Oscar Gonzalez Rocha, Alfredo Casar Perez, Daniel Tellechea Salido, Manuel Calderon Cardenas, Alberto de la Parra Zavala, Armando Fausto Ortega Gomez	Breach of Fiduciary Duties

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SCHEDULE 3

OWNED STRATEGIC SITES

SITE
Ray Mine, AZ
Mission Mine, AZ
Hayden, AZ
Silver Bell, AZ
KCC Smelter, AZ
Amarillo Site, TX