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)**
	§	

JOINT DISCLOSURE STATEMENT IN SUPPORT OF THE RESPECTIVE PLANS OF REORGANIZATION PROPOSED BY (1) THE DEBTORS; (2) ASARCO INCORPORATED AND AMERICAS MINING CORPORATION; AND (3) HARBINGER CAPITAL PARTNERS MASTER FUND I, LTD.

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Dated: July 6, 2009

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INTRODUCTION

Please consult (a) the Glossary of Defined Terms for the Debtors' Plan Documents attached as ***Exhibit A-1*** *to this Disclosure Statement for the meaning of defined terms in the Debtors' Plan Documents and in the sections of this Disclosure Statement prepared by the Debtors; (b) the Glossary of Defined Terms for the Parent's Plan Documents attached as* ***Exhibit A-2*** *to this Disclosure Statement for the meaning of defined terms in the Parent's Plan Documents and in the sections of this Disclosure Statement prepared by the Parent and AMC; and (c) the Glossary of Defined Terms for Harbinger's Plan Documents attached as* ***Exhibit A-3*** *to this Disclosure Statement for the meaning of defined terms in Harbinger's Plan and in the sections of this Disclosure Statement prepared by Harbinger.*

The following text uses defined terms from the Debtors' Glossary.

Three separate plans of reorganization have been proposed for the Debtors: one by the Debtors, one by the Parent and AMC, and one by Harbinger.

ASARCO LLC and the Subsidiary Debtors have proposed, and are soliciting acceptances of, *the Sixth Amended Plan of Reorganization for the Debtors under Chapter 11 of the United States Bankruptcy Code, As Modified*, which is referred to herein as the Debtors' Plan. A copy of the Debtors' Plan is attached hereto as **Exhibit B-1**.

The Parent and AMC have proposed, and are soliciting acceptances of, *ASARCO Incorporated and Americas Mining Corporation's Modified Fifth Amended Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code*, which is referred to herein as the Parent's Plan. A copy of the Parent's Plan is attached hereto as **Exhibit B-2**.

Harbinger has proposed, and is soliciting acceptances of, the *Second Amended Chapter 11 Plan filed by Harbinger Capital Partners Master Fund I, Ltd.*, which is referred to herein as Harbinger's Plan. A copy of Harbinger's Plan is attached hereto as **Exhibit B-3**.

This solicitation is conducted in order to obtain sufficient acceptances to enable one of the Plans to be confirmed by the Bankruptcy Court pursuant to the provisions of section 1129 of the Bankruptcy Code. As is explained in the Summary of Voting Procedures below, Classes of Claims that are entitled to vote on the Plans will vote separately with respect to each Plan, and may vote to accept all Plans, reject all Plans, accept one or more of the Plans while rejecting the other Plans, or not vote on any Plan. However, the Bankruptcy Court can only confirm one plan; if two or more Plans are confirmable under section 1129 of the Bankruptcy Code, the Bankruptcy Court will consider the preferences of holders of Claims and Interests in determining which of the Plans to confirm. Accordingly, preferences are being solicited from all holders of Claims and Interests.

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

Pursuant to the Disclosure Order dated July 2, 2009, attached hereto as **Exhibit C**, the Bankruptcy Court (a) approved this Disclosure Statement, in accordance with section 1125 of the Bankruptcy Code, as containing "adequate information" to enable a hypothetical, reasonable investor typical of holders of Claims against and Interests in the Debtors to make an informed judgment as to whether to vote to accept or reject any or all of the Plans, and (b) authorized its use in connection with the solicitation of votes with respect to the Plans. **APPROVAL OF THIS DISCLOSURE STATEMENT, HOWEVER, DOES NOT CONSTITUTE A DETERMINATION BY THE BANKRUPTCY COURT AS TO THE FAIRNESS OR MERITS OF ANY OF THE PLANS.** No solicitation of votes on the Plans may be made except pursuant to this Disclosure Statement and in accordance with section 1125 of the Bankruptcy Code.

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

attachments to each of the Plans. If any inconsistency exists between the terms of the Plans and this Disclosure Statement, the terms and provisions of the Plans shall control.

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

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

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

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

As noted herein, certain sections of this Disclosure Statement have been prepared solely by the Debtors, certain sections have been prepared solely by the Parent and AMC, and certain sections have been prepared solely by Harbinger. The Debtors, the Parent and AMC, and Harbinger do not necessarily agree or disagree with any of the statements or representations in sections prepared by the others and expressly reserve all rights to contest any such statements or representations, if appropriate.

As noted at various points herein, this Disclosure Statement contains statements included at the request of various parties in interest. The Debtors, the Parent and AMC, and Harbinger make no representations as to the accuracy of such statements. Moreover, the lack of a specific reference to the position of the Debtors, the Parent and AMC, or Harbinger regarding any such statements should not be taken as the agreement of the Debtors, the Parent and AMC, or Harbinger with all or any part of such statements.

SUMMARY OF VOTING PROCEDURES

The following text uses defined terms from the Debtors' Glossary.

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

A. WHO CAN VOTE?

Pursuant to the provisions of the Bankruptcy Code, only classes of claims which are (1) "impaired" by a plan of reorganization, and (2) entitled to receive a distribution under the plan are entitled to vote on the plan.

1. The Debtors' Plan.

Under the Debtors' Plan, Claims in Classes 2, 3, and 4 are impaired (unless any sub-Classes of Class 2 Secured Claims are Reinstated, in which case the Claims in the sub-Classes that are Reinstated shall be unimpaired), and, accordingly, the holders of Claims in those Classes are entitled to vote to accept or reject the Debtors' Plan. Claims in Classes 1 and 5 and, as previously noted, any Class 2 Secured Claims that are Reinstated are unimpaired by the Debtors' Plan, and the holders of Claims in such Classes are conclusively presumed by operation of the Bankruptcy Code to have accepted the Debtors' Plan.

Claims in Classes 6 and 7 of the Debtors' Plan, and Interests in Classes 8, 9, and 10 of the Debtors' Plan, shall not receive or retain any property on account of their Claims and Interests, and the holders of Claims and Interests in such Classes are conclusively presumed by operation of the Bankruptcy Code to have voted to reject the Debtors' Plan.

2. The Parent's Plan.

Under the Parent's Plan, Claims in Classes 2 (as to any Claimants receiving the Cash payment option), 3, and 4 are impaired and receiving distributions under the Parent's Plan, and, accordingly, the holders of Claims in those Classes are entitled to vote to accept or reject the Parent's Plan. Claims in Classes 1, 5, and 8 and, as previously noted, any Claims in Class 2 other than those receiving the Cash payment option are unimpaired by the Parent's Plan, and the holders of Claims in such Classes are conclusively presumed by operation of the Bankruptcy Code to have accepted the Parent's Plan.

Claims in Classes 6 and 7, and Interests in Class 9, shall not receive or retain any property on account of their Claims and Interests, and the holders of Claims and Interests in such Classes are conclusively presumed by operation of the Bankruptcy Code to have voted to reject the Parent's Plan.

3. Harbinger's Plan.

Under Harbinger's Plan, Claims in Classes 2, 3, and 4 are impaired (unless any sub-Classes of Class 2 Secured Claims are Reinstated, in which case the Claims in the sub-Classes that are Reinstated shall be unimpaired), and, accordingly, the holders of Claims in those Classes are entitled to vote to accept or reject Harbinger's Plan. Claims in Classes 1 and 5 and, as previously noted, any Class 2 Secured Claims that are Reinstated are unimpaired by Harbinger's Plan, and the holders of Claims in such Classes are conclusively presumed by operation of the Bankruptcy Code to have accepted Harbinger's Plan.

Claims in Classes 6 and 7 of Harbinger's Plan, and Interests in Class 8 of Harbinger's Plan, are impaired and are deemed to have voted to reject Harbinger's Plan.

Interests in Classes 9 and 10 of Harbinger's Plan, shall not receive or retain any property on account of their Interests, and the holders of Interests in such Classes are conclusively presumed by operation of the Bankruptcy Code to have voted to reject Harbinger's Plan.

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

The Bankruptcy Court has established **July 2, 2009** as the Voting Record Date for purposes of determining which holders of Claims are entitled to vote to accept or reject the Plans.

B. WHAT IS THE DEADLINE FOR VOTING?

In order for your vote to be counted for voting purposes, Ballots accepting or rejecting the Plans, including Master Ballots submitted by (1) nominees for Bondholders and (2) attorneys for Unsecured Asbestos Personal Injury Claimants must be *physically* received by the Balloting Agent no later than **4:00 p.m., Prevailing Central Time, on August 5, 2009.** Please allow adequate time for delivery.

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

C. WHERE AND HOW DO I RETURN MY BALLOT?

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

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

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

D. CAN MY ATTORNEY VOTE FOR ME?

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

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

With respect to Bondholders' Claims, a Nominee may hold the relevant Claims rather than the Bondholders themselves. To tabulate votes for the Bondholders, the Balloting Agent will deliver solicitation packages to the Bondholders and Nominees of record as of the Voting Record Date. Additionally, the Balloting Agent will distribute Master Ballots to the Nominees. The Debtors, through the Balloting Agent, will instruct the Bondholders to mail their Ballots to the Nominees in time for the Nominees to cast votes to accept or reject any or all of the Plans and to make election (if any) on behalf of, and in accordance with, the Ballots cast by the Bondholders through the Master Ballots. The Balloting Agent will then tabulate the Master Ballots.

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

Ballots cast by Nominees on behalf of Bondholders must be received by the Debtors' Balloting Agent at the address listed on the Ballot by **August 5, 2009 at 4:00 p.m., Prevailing Central Time**. Ballots may be returned by mail, hand delivery, or overnight courier. However, the Balloting Agent is unable to accept Ballots by email or facsimile. Please allow enough time for delivery.

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

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

Ballots cast by attorneys on behalf of their clients must be received by the Debtors' Balloting Agent at the address listed on the Ballot by **August 5, 2009, at 4:00 p.m., Prevailing Central Time**. Ballots may be returned by mail, hand delivery, or overnight courier. However, the Balloting Agent is unable to accept Ballots by email or facsimile. Please allow enough time for delivery.

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

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

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

If you are a holder of a Claim entitled to vote on the Plans and (1) did not receive a Ballot; (2) received a damaged Ballot; or (3) lost your Ballot (and you are not voting through your attorney), you should contact the Balloting Agent, by writing to **ASARCO BALLOTING, c/o ALIXPARTNERS, LLP, 2100 MCKINNEY AVENUE, SUITE 800, DALLAS, TEXAS 75201**, calling 1-888-727-9235 or 1-972-535-7137, or emailing *CMS_Noticing@alixpartners.com* (reference "ASARCO" in the subject line). You may also obtain additional information on the Debtors' restructuring website: *www.asarcoreorg.com*.

I. CAN I CHANGE MY VOTE?

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

J. DO I NEED TO VOTE ON THE DEBTORS' PLAN, THE PARENT'S PLAN, AND HARBINGER'S PLAN?

The Bankruptcy Court has approved this Disclosure Statement. As explained in the instructions accompanying your Ballot, the Ballots permit votes to accept or reject one or more of these Plans or none of the Plans, and to express a preference between the three Plans.

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

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

OVERVIEW OF THE DEBTORS' PROPOSED PLAN AND THE DEBTORS' PLAN COMPARISONS

The following text has been prepared by the Debtors with reference to the Debtors' Plan and using defined terms from the Debtors' Glossary. All statements and representations are the sole responsibility of the Debtors. The Parent and AMC and Harbinger do not necessarily agree or disagree with any of the statements or representations in this section and each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

The Debtors urge Claimants to vote in favor of, and to indicate a preference for, the Debtors' Plan because the Debtors believe it provides Claimants with the best possible alternative among the Plans. The Debtors' Plan proposes significant Cash returns to Claimants on the Effective Date, with the possibility that Class 3 (General Unsecured Claims) and Class 4 (Unsecured Asbestos Personal Injury Claims) will ultimately receive payment of 100 percent of the Allowed Amount of their Claims, PLUS payment of Post-Petition Interest and attorneys' fees as permitted under applicable law if recoveries are obtained from certain litigation. The Debtors currently estimate that Post-Petition Interest alone for Class 3 and Class 4 would total between $514.7 million and $546.8 million (depending on the Claims estimate one uses for the computation). Although this is a sizable figure, ASARCO has the SCC Final Judgment against AMC that is valued at $7.48 billion as of June 2, 2009 (if collected in full as of that date), an amount more than sufficient to pay creditors' Claims in full. Although the SCC Final Judgment is currently being appealed by AMC and the possibility exists that the SCC Final Judgment will be reversed or modified on appeal, the Debtors believe that the grounds asserted by AMC for reversal or modification of the SCC Final Judgment lack legal and factual merit. Accordingly, the Debtors believe that the Debtors' Plan provides Claimants with a realistic opportunity to be Paid in Full in these Reorganization Cases, including Post-Petition Interest and attorneys' fees. The Debtors further believe that this result is achievable within a reasonable period of time because claims in the SCC Litigation have been reduced to judgment and AMC has been required to post collateral sufficient to satisfy that judgment to obtain a stay pending appeal. (For additional discussion of the SCC Litigation, please see Section 2.24(c) below.)

By contrast, the Debtors believe that the Parent's Plan is inferior to the Debtors' Plan for a variety of reasons. First, the Debtors believe it is uncertain if the Parent's Plan, if confirmed, will ever be effectuated because the Parent will have little money at risk with respect to the Parent's Plan until AFTER confirmation or such funds are subject to so many "outs" under the Parent's Plan as to not truly be "at risk." The Parent disagrees. Secondly, the Parent's Plan eliminates the possibility that creditors' Claims will be Paid in Full, because it explicitly provides that Class 3 and Class 4

Claimants CANNOT receive Post-Petition Interest or attorney's fees. According to the Debtors' estimates, the Parent's Plan requires that Claimants waive their right to collect over $514 million! Third, the Parent's Plan offers significant operational risk in that it requires that the Debtors generate at least $280 million of net operating income during the first year after the Effective Date to satisfy the promissory note the Parent proposes to issue to the Asbestos Trust on account of Class 4 asbestos Claimants. The Debtors believe that the Reorganized Debtors may be unlikely to generate this significant amount of Cash absent very favorable copper prices, which are very volatile. This risk is magnified by the distinct possibility that the Parent will NOT be able to reach agreement with the Unions, which based on the Parent's past history with the Unions, appears likely. If no agreement is reached and a labor strike occurs as a result of the confirmation of the Parent's Plan, the ability of the Reorganized Debtors to generate operating income would be in significant doubt. Finally, in order for Claimants to be paid 100 percent of the principal amount of their Claims under the Parent's Plan, the Parent's litigation trust has to generate material recoveries. The largest asset of that trust is the claims against Sterlite, the collection of which the Debtors believe would be highly speculative and take many, many years to realize. (*See* Section 2.28(d) below for discussion of risks associated with litigation against Sterlite.)

The Parent notes that it has guaranteed the promissory note to the Asbestos Trust, minimizing the risks to Class 4 Unsecured Asbestos Personal Injury Claimants. Moreover, under the Debtors' Plan, the Parent notes that creditors are receiving a significant portion of their recovery through a nine-year note in the face amount of $770 million; if a labor strike or the volatility in copper prices jeopardizes recoveries under a $280 million promissory note payable in one year under the Parent's Plan, a significant portion of that risk is also applicable to the nine-year copper note under the Debtors' Plan. With respect to the SCC Litigation, the Parent refers creditors to its description of the litigation set forth in Section 2.24(c)(2) below.

The Debtors believe that Harbinger's Plan also is inferior to the Debtors' Plan for a variety of reasons. First and foremost, the Cash component of the consideration under Harbinger's Plan is only $500 million. Secondly, Harbinger's Plan lacks the support of the asbestos representatives and therefore presents significant confirmation risks. Accordingly, the Debtors believe that the Debtors' Plan offers Claimants the best opportunity to be Paid in Full and is in the best interest of creditors.

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

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

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

The Plan Sponsor of the Debtors' Plan has reached an agreement on a new collective bargaining agreement with the United Steelworkers that unequivocally meets the requirements of the special successorship clause of the CBA, which was approved by the Bankruptcy Court (as discussed below in Section 2.16(b)). The Parent and Harbinger have concededly not reached such an agreement with the United Steelworkers. Therefore, the Debtors assert that there is a major confirmation and consummation risk under the plans proposed by the Parent and by Harbinger that does not exist under the Debtors' Plan; however, it is not a condition to confirmation of the Parent's Plan or to consummation of the Parent's Plan that the Parent and Reorganized ASARCO have entered into a new collective bargaining agreement for the period following the Effective Date. Nevertheless, the Debtors note that the absence of such an agreement under the Parent's Plan may have a significant detrimental impact on the Reorganized Debtors' ability to meet their ongoing obligations, including the Debtors' ability to satisfy the $280 million Asbestos Note, if the Parent's Plan is confirmed and a labor strike ensues. This risk is absent under the Debtors' Plan.

The Parent notes that the consideration payable to creditors under the Parent's Plan is largely in Cash (other than the $280 million note for the Class 4 Asbestos Personal Injury Claimants) and therefore disagrees with the Debtors that creditors face a consummation risk under the Parent's Plan.

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

- Holders of Administrative Claims, Priority Tax Claims, and Priority Claims shall be paid the Allowed Amount of their Claims;
- Holders of Secured Claims, at the applicable Debtor's option, shall be either paid the Allowed Amount of their Claims with any applicable post-petition interest or reinstated;
- Holders of Convenience Claims shall be paid the Allowed Amount of their Claims;
- Holders of Unsecured Asbestos Personal Injury Claims shall be entitled to receive distributions from the Asbestos Trust in accordance with the Asbestos Trust Agreement and the Asbestos TDP. The Asbestos Trust shall be funded with (a) the Asbestos Ratable Portion of (1) all remaining Available Plan Funds, (2) the Liquidation Trust Interests, and (3) the SCC Litigation Trust Interests; (b) 100 percent of the interests in Reorganized Covington; (c) the Asbestos Insurance Recoveries; and (d) $27.5 million in Cash for purposes of Asbestos Trust Expenses;
- Holders of Allowed General Unsecured Claims shall receive the Class 3 Claimant's Ratable Portion of distributions of (a) all remaining Available Plan Funds; (b) the Liquidation Trust Interests; and (c) the SCC Litigation Trust Interests; and
- Holders of Late-Filed Claims, Subordinated Claims, and Interests shall not receive or retain any property under the Debtors' Plan on account of their Claims and Interests (unless, as noted below, the Bankruptcy Court determines that the Plan Consideration is sufficient to permit distributions to such holders).

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

The Debtors' Plan provides that if the Bankruptcy Court determines that the value, as of the Confirmation Date, of the Plan Consideration exceeds the amount necessary for Claims in Class 3 and Class 4 to be Paid in Full, then the holders of Late-Filed Claims, Subordinated Claims, and Interests in ASARCO may, after General Unsecured Claims are Paid in Full and the distributions to the Asbestos Trust on behalf of holders of Unsecured Asbestos Personal Injury Claims and Demands are made, become entitled to receive interests in the Liquidation Trust and the SCC Litigation Trust.

The Liquidation Trust and the SCC Litigation Trust shall also be established, with interests therein issued to holders of General Unsecured Claims and the Asbestos Trust (on behalf of holders of Asbestos Personal Injury Claims and Demands) and, if required by the Bankruptcy Court, to the holders of Late-Filed Claims, Subordinated Claims, and Interests in ASARCO.

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

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

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

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

The Debtors' Plan provides for the Subsidiary Debtors (other than Covington) to be substantively consolidated with and into ASARCO. Alternatively, the Debtors reserve the right to consolidate those debtors into ASARCO pursuant to section 1123(a)(5)(C) of the Bankruptcy Code, in which case, votes on the Debtors' Plan shall be counted on a Debtor-by-Debtor basis. As a third alternative, the Debtors reserve the right to proceed with the Debtors' Plan as to only ASARCO, Covington, ASARCO Master, SPHC, AR Sacaton, and the Asbestos Subsidiary Debtors, with the Subsidiary Debtors (other than Covington, ASARCO Master, SPHC, AR Sacaton, and the Asbestos Subsidiary Debtors) hereafter filing one or more separate plans under chapter 11 of the Bankruptcy Code or converting their cases to liquidation cases under chapter 7 of the Bankruptcy Code.

The Plan Administrator shall hold all of the interests in Reorganized ASARCO for the benefit of holders of Class 3 and Class 4 Claims, and shall manage its business operations.

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

Summary Description of Classes and Distributions to Holders of Claims and Interests Under the Debtors' Plan

The classification of Claims and Interests, the estimated aggregate amount of Claims in each Class, and the amount and nature of distributions to holders of Claims or Interests in each Class under the Debtors' Plan are summarized in the table below, based on the agreement by holders of Class 4 Unsecured Asbestos Personal Injury Claims to accept an Allowed Claim in the amount of $1 billion and a pro rata distribution based on $750 million. **Please read Section 3 of this Disclosure Statement and Article III of the Debtors' Plan for more detailed and complete information.**

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

Although no assurances can be given, the Debtors believe that Classes 3 and 4 could receive a Cash distribution on the Initial Distribution Date that will result in a Cash recovery ranging from 75 percent to 87 percent of the principal amount of their Claims (based on the agreement by holders of Class 4 Unsecured Asbestos Personal Injury Claims to accept an Allowed Claim in the amount of $1 billion and a pro rata distribution based on $750 million). Classes 3 and 4 would also receive Liquidation Trust Interests and SCC Litigation Trust Interests. These distribution percentages are based on many assumptions and estimates, and actual results could be significantly higher or lower for a number of reasons. For example, the amount of the Cash distribution to these Classes is dependent upon, among other things, copper prices which have been, and continue to be, volatile. The non-Cash consideration, whose value depends on a number of factors, including the outcome of litigation, may ultimately be worth significantly more or less than the Debtors currently estimate. Moreover, the estimates developed for the Claims could vary significantly from the amounts for which those Claims settle or are actually Allowed by the Bankruptcy Court. Substantial disputes exist between the Debtors and the Bondholders, including as to the Bondholders' entitlement to post-petition interest, the appropriate rate of post-petition interest to be paid on the Bondholders' Claims, and whether the Bondholders are entitled to a "make-whole premium" that those Bondholders assert could total in excess of $100 million.

Unclassified Claims Under the Debtors' Plan

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

Description of Claims Under the Debtors' Plan	Description of Distributions or Treatment Under the Debtors' Plan	Estimated Aggregate Amount of Allowed or Asserted Claims	Estimated Recovery
Administrative Claims	Shall generally receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date (except as otherwise provided in the Debtors' Plan)	$445 to $481 million (both amounts assume that the Parent's Administrative Claim is denied administrative priority and treated as a General Unsecured Claim. *See* Section 2.18(b) below for a discussion of Debtor's objection to Parent's Administrative Claim)	100%
Priority Tax Claims	Shall receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date	$4 million	100%

Demands and Classified Claims and Interests Under the Debtors' Plan

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

Description of Claims, Demands, and Interests Under the Debtors' Plan	Description of Distributions or Treatment Under the Debtors' Plan	Status/Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Demands	Estimated Cash Recovery
Class 3 – General Unsecured Claims	Shall receive such holder's Class 3 Claimant's Ratable Portion of Plan Consideration, consisting of Cash, Liquidation Trust Interests, and SCC Litigation Trust Interests	**Impaired** Entitled to Vote	$2.0 to $2.4 billion	75% to 87% projected Cash recovery, plus interests in • SCC Litigation Trust (to be funded with the SCC Final Judgment; see Section 2.24(c)) and • Liquidation Trust (the present value of the Plan Sponsor Promissory Note is already included in the projected Cash recovery numbers and is valued at $308.7 million assuming the price of copper remains below $2.72/lb for the life of the note. If the average price in any given year during the life of the note is above $2.72/lb, the present value will increase.) The higher Cash recovery estimate above assumes the Parent's Administrative Claim is disallowed in full, while the lower Cash recovery estimate assumes the Claim is Allowed in the asserted amount of $161.7 million. If the Tax Sharing Agreement terminated in 2007 (which is a disputed issue before the Bankruptcy Court), the Debtors contend that the Parent's Administrative Claim would decrease to $9.2 million and the Cash recovery range would be adjusted to 78% to 87%.

IMPORTANT NOTE: THE DEBTORS' PLAN PROVIDES CREDITORS WITH THE OPPORTUNITY (ALTHOUGH NO ASSURANCES CAN BE GIVEN) TO BE PAID IN FULL WITH INTEREST AND ATTORNEYS' FEES IF THE SCC FINAL JUDGMENT IS AFFIRMED ON APPEAL OR IS RESOLVED CONSENSUALLY IN A SUFFICIENT AMOUNT. THE DEBTORS CURRENTLY ESTIMATE POST-PETITION INTEREST FOR CLASS 3 TO BE BETWEEN $379.5 AND $411.7 MILLION (DEPENDING UPON WHETHER THE AGGREGATE CLAIM AMOUNT IS ASSUMED AT THE DEBTORS' KNOWN AND PRELIMINARY ESTIMATES OR AT THE DEBTORS' HIGH ESTIMATES). THE FOLLOWING CHART SHOWS THE POTENTIAL RECOVERIES TO CLASS 3 UNDER VARIOUS SCENARIOS. ASSUMING A MINIMUM $500 MILLION RECOVERY FROM THE SCC LITIGATION, THE PRINCIPAL AMOUNT OF ALL CLAIMS IS FULLY SATISFIED AND A PORTION OF INTEREST IS THEN PAID UNDER THE DEBTORS' PLAN.

	Known & Preliminary Estimates		High Estimates	
Illustrative Potential Value of SCC Litigation Trust (USD mm)	Principal	Post-Petition Interest	Principal	Post-Petition Interest
$500	100.0%	26.7%	90.4%	0.0%
$750	100.0%	75.2%	98.2%	0.0%
$1,000	100.0%	100.0%	100.0%	30.5%
$1,250	100.0%	100.0%	100.0%	76.2%
$1,500	100.0%	100.0%	100.0%	100.0%

Description of Claims, Demands, and Interests Under the Debtors' Plan	Description of Distributions or Treatment Under the Debtors' Plan	Status/Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Demands	Estimated Cash Recovery
Demands and Class 4 – Unsecured Asbestos Personal Injury Claims	Shall be channeled to the Asbestos Trust, and processed, liquidated, and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement The Asbestos Trust shall receive (a) the Asbestos Ratable Portion of Plan Consideration, consisting of Cash, Liquidation Trust Interests, and SCC Litigation Trust Interests; (b) the Asbestos Insurance Recoveries; (c) 100% of the interests in Reorganized Covington; and (d) $27.5 million in Cash for purposes of Asbestos Trust Expenses	**Impaired** Entitled to Vote	$1 billion	75% to 87% projected Cash recovery (based on the agreement by holders of Class 4 Unsecured Asbestos Personal Injury Claims to accept an Allowed Claim in the amount of $1 billion and a pro rata distribution based on $750 million), plus interests in • SCC Litigation Trust (to be funded with the SCC Final Judgment; see Section 2.24(c)) and • Liquidation Trust (the present value of the Plan Sponsor Promissory Note is already included in the projected Cash recovery numbers and is valued at $308.7 million assuming the price of copper remains below $2.72/lb for the life of the note. If the average price in any given year during the life of the note is above $2.72/lb, the present value will increase.) The higher Cash recovery estimate above assumes the Parent's Administrative Claim is disallowed in full, while the lower Cash recovery estimate assumes the Claim is Allowed in the asserted amount of $161.7 million. If the Tax Sharing Agreement terminated in 2007 (which is a disputed issue before the Bankruptcy Court), the Debtors contend that the Parent's Administrative Claim would decrease to $9.2 million and the Cash recovery range would be adjusted to 78% to 87%.

IMPORTANT NOTE: THE DEBTORS' PLAN PROVIDES CREDITORS WITH THE OPPORTUNITY (ALTHOUGH NO ASSURANCES CAN BE GIVEN) TO BE PAID IN FULL WITH INTEREST AND ATTORNEYS' FEES IF THE SCC FINAL JUDGMENT IS AFFIRMED ON APPEAL OR IS RESOLVED CONSENSUALLY IN A SUFFICIENT AMOUNT. THE DEBTORS CURRENTLY ESTIMATE POST-PETITION INTEREST FOR CLASS 4 TO BE $135 MILLION. THE FOLLOWING CHART SHOWS THE POTENTIAL RECOVERIES TO CLASS 4 UNDER VARIOUS SCENARIOS.

Illustrative Potential Value of SCC Litigation Trust (USD mm)	Known & Preliminary Estimates		High Estimates	
	Principal	Post-Petition Interest	Principal	Post-Petition Interest
$500	100.0%	26.7%	90.4%	0.0%
$750	100.0%	75.2%	98.2%	0.0%
$1,000	100.0%	100.0%	100.0%	30.5%
$1,250	100.0%	100.0%	100.0%	76.2%
$1,500	100.0%	100.0%	100.0%	100.0%

Upon the Effective Date, the Asbestos Trustee has the right to put the pro rata share of the interest in the SCC Litigation which is distributed for the benefit of holders of asbestos Claims to the Plan Sponsor for $160 million. This option is exercisable one time only, but provides Class 4 Claimants with the assurance that they will realize at least $160 million on account of the SCC Litigation Trust Interests if the put is timely exercised.

Description of Claims, Demands, and Interests Under the Debtors' Plan	Description of Distributions or Treatment Under the Debtors' Plan	Status/Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Demands	Estimated Cash Recovery
Class 5 – Convenience Claims	Shall generally receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date	**Unimpaired** Deemed to Accept the Debtors' Plan Not Entitled to Vote	TBD	100%
Class 6 – Late-Filed Claims	Shall not receive or retain any property under the Debtors' Plan on account of such Claims	**Impaired** Deemed to reject the Debtors' Plan Not Entitled to Vote	$10 to $26 million	0%
Class 7 – Subordinated Claims	Shall not receive or retain any property under the Debtors' Plan on account of such Claims	**Impaired** Deemed to reject the Debtors' Plan Not Entitled to Vote	TBD	0%
Class 8 – Interests in ASARCO	Shall not receive or retain any property under the Debtors' Plan on account of such Interests	**Impaired** Deemed to reject the Debtors' Plan Not Entitled to Vote	N/A	0%
Class 9 – Interests in Asbestos Subsidiary Debtors	Shall not receive or retain any property under the Debtors' Plan on account of such Interests	**Impaired** Deemed to reject the Debtors' Plan Not Entitled to Vote	N/A	0%
Class 10 – Interests in Other Subsidiary Debtors	Shall not receive or retain any property under the Debtors' Plan on account of such Interests	**Impaired** Deemed to reject the Debtors' Plan Not Entitled to Vote	N/A	0%

Debtors' Plan Comparison Analysis

To assist creditors in evaluating the three competing Plans in these Reorganization Cases, the Debtors have prepared the following Plan Comparison Chart showing the Debtors' analysis of the aggregate recoveries for each Class of creditors under the three Plans. This chart shows the aggregate recoveries under the Plans and demonstrates that the Debtors' Plan offers a realistic possibility for creditors to be Paid in Full from the $7.48 billion SCC Final Judgment. In contrast, the Parent's Plan caps creditor recoveries and eliminates the possibility that creditors can collect ANY post-petition interest, yet it nevertheless releases that multi-billion dollar judgment against the Parent. Under the Debtors' Plan, there is a reasonable prospect that creditors may recover over $500 million in post-petition interest to which the Debtors believe the creditors may be entitled. The Harbinger Plan, in the Debtors' view, offers insufficient Cash or other consideration for the assets that Harbinger seeks to acquire under the Harbinger Plan.

The Parent has also included certain comparison charts in its Overview of the Plans. The Debtors believe that the analysis contained in its Comparison Chart is more accurate because it assumes:

- **Claims are resolved consistent with the Debtors' Known and Preliminary Claims Analysis, which is the Debtors' best estimate of the outcome of the Claims resolution process (while the Parent assumes the Debtors' High Claims case, which the Debtors view as a "worst case" scenario not likely to occur);**

- **the Debtors are successful in realizing at least approximately 10 percent of the $7.48 billion SCC Judgment (while the Parent assumes the recovery on this substantial asset is ZERO); and**

- **that the recovery on the Sterlite claims that are preserved under the Parent's Plan and under Harbinger's Plan is a more realistic $100 million (while the Parent's Plan assumes a $400 million recovery).**

The Debtors urge creditors to carefully consider this analysis in deciding how they cast their votes with respect to the Plans and in indicating which of the Plans they prefer.

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Debtor's Analysis of Aggregate Recoveries Under Parent's Plan, Debtors' Plan and Harbinger Plan
Assumes Known and Preliminary Claims Estimates (1)

	Parent's Plan (1)			Debtors' Plan			Harbinger Plan		
($ in millions)	Value			Value			Value		
Value Available for Distribution									
Debtor Cash	1,400.0			1,400.0			1,400.0		
SCC Litigation (2)	N/A			750.0			750.0		
Litigation Trust Interests (3)	100.0			-			100.0		
Cash Infusion from Sponsor	1,462.5			1,100.0			500.0		
Sterlite Note	N/A			308.7			-		
Parent Backstop on Asbestos Note	274.8			-			-		
Asbestos Sterlite Judgment Put	-			-			--		
Total Sponsor Contribution	1,737.3			1,408.7			500.0		
Federal Tax Refunds (4)	60.0			60.0			60.0		
Cash holdback	(50.0)			–			–		
Aggregate Plan Consideration	3,247.3			3,618.7			2,810.0		
Cash Portion of Plan Consideration	2,972.5			3,310.0			2,810.0		
Claims Assessment - Waterfall	Claim	Payment	Recovery	Claim	Payment	Recovery	Claim	Payment	Recovery
Admin Claims: Litigation Trust Expenses	–	–	N/A	39.2	39.2	100.0%	39.2	39.2	100.0%
Admin Claims: Blanket Reserve	30.0	30.0	100.0%	30.0	30.0	100.0%	30.0	30.0	100.0%
Admin Claims: Asbestos	27.5	27.5	100.0%	27.5	27.5	100.0%	–	–	N/A
Admin Claims: Perth Amboy Claim	10.0	10.0	100.0%	10.0	10.0	100.0%	10.0	10.0	100.0%
Admin Claims: Contract Cure Claims	5.0	5.0	100.0%	5.0	5.0	100.0%	5.0	5.0	100.0%
Admin Claims: Claim Allowance and Miscellaneous	17.5	17.5	100.0%	17.5	17.5	100.0%	17.5	17.5	100.0%
Admin Claims: Other	36.8	36.8	100.0%	36.8	36.8	100.0%	36.8	36.8	100.0%
Admin Claims: Environmental Custodial Trust	266.5	266.5	100.0%	266.5	266.5	100.0%	266.5	266.5	100.0%
Admin Claims: Residual Environmental Claims	14.0	14.0	100.0%	14.0	14.0	100.0%	14.0	14.0	100.0%
Priority Claims	4.0	4.0	100.0%	4.0	4.0	100.0%	4.0	4.0	100.0%
Secured Claims	-	-	100.0%	-	-	100.0%	-	-	100.0%
Subtotal	**411.3**	**411.3**	**100.0%**	**450.5**	**450.5**	**100.0%**	**423.0**	**423.0**	**100.0%**
Amount Available (Deficit)		*2,836.00*			*3,168.20*			*2,387.00*	
Asbestos									
Demands & Unsecured Asbestos (5)	1,000.0			750.0			750.0		
Cash		500.0			569.8			415.2	
Litigation Recovery (6)		-			96.8			229.6	
Note (4)		274.8			83.4			-	
Post-Petition Interest		-			105.8			-	
Subtotal	1,000.0	774.8	77.5%	750.0	855.8	114.1%	750.0	644.8	86%
Amount Available (Deficit)		2,061.2			2,312.4			1,961.1	
Unsecured Claims Other Than Asbestos									
Bonds	439.8	439.8	100.0%	439.8	501.9	114.1%	439.8	378.1	86%
Toxic Tort	41.7	41.7	100.0%	41.7	47.6	114.1%	41.7	35.9	86%
Other General Unsecured	187.0	187.0	100.0%	187.0	213.4	114.1%	187.0	160.8	86%
Environmental	1,357.9	1,357.9	100.0%	1,357.9	1,549.5	114.1%	1,357.9	1167.4	86%
Convenience	De minimis	De minimis	100.0%	De minimis	De minimis	100.0%	De minimis	De minimis	100.0%
AMC Tax Reimbursement Claim (4)	–	–	100.0%	-	-		-	0	96.8%
Aggregate Post-Petition Interest for Class 3 (included above)	–	–	-0-		286				
Subtotal	2,026.4	**2,026.4**	**100.0%**	**2,026.4**	**2,312.4**	**114.1%**	**2,026.4**	**1,742.2**	**86%**
Amount Available		34.8			-0-			-	
Late Filed Claims									
Late-Filed Claims	9.7	9.7	100.0%	9.7	0	0%	9.7	-	0.0%
Subtotal	9.7	9.7	100.0%	9.7	0	0%	9.7	-	0.0%
Amount Available (Retained by Debtor for benefit of Parent)		*25.1*			-			-	

Notes:

(1) Based on Debtors' current waterfall. Assumes known and preliminary estimates, which the Debtors believe to be the best estimate of ultimate Claims resolution. Principal other differences between the Debtors' chart and the Parent's chart are highlighted in bold.

(2) The Debtors have included a value of $750 million for the SCC Litigation Trust Interests for illustrative purposes to provide a meaningful comparison for creditors of the Parent's projected recoveries in the Parent's comparison chart. Please note that in connection with the confirmation of the Debtors' Plan the Debtors are requesting that (i) the SCC Litigation Trust Interests be the subject of a competitive auction and (ii) the Bankruptcy Court value the SCC Litigation Trust Interests. It is possible that the auction results could indicate a value above or below the amount the Debtors have used for illustrative purposes or that the Debtors, based on the quality of the bids received, may decide that no portion of the SCC Litigation Trust Interests should be sold. It is also possible that the valuation of the SCC Litigation Trust Interests by the Bankruptcy Court could indicate a value above or below the amount the Debtors have used for illustrative purposes.

(3) Full value of litigation against Sterlite estimated at $100 million which the Debtors believe is more realistic in a litigation scenario whereby Sterlite does not also acquire the Sold Assets than what the Parent has suggested because it appropriately takes into account the significant litigation and collection related risks.

(4) Assumes Debtors prevail in tax litigation, which the Debtors anticipate is the most likely outcome.

(5) Notwithstanding the fact that Class 4 Asbestos Claims and Demands are allowed at only $500 million under the Harbinger's Plan, the Debtors have used the $750 million figure agreed to by the Debtors for distribution purposes only under the Debtors' Plan (which is also the amount the Parent has used in its comparison chart for Harbinger) for the Harbinger's Plan as well. If the figure of $500 million were used for the Harbinger Plan, aggregate recoveries to Class 3 General Unsecured Creditors would increase to 94.5 percent under the Harbinger Plan using the Debtors' assumptions contained in this comparison chart. Class 4 Asbestos Personal Injury Claims have the potential to be paid in full under the Harbinger Plan from the proceeds of the SCC Final Judgment and the Sterlite claims if actual Allowed Claims under the asbestos trust exceed the amounts estimated by the Bankruptcy Court if sufficient proceeds from litigation are generated. Under the Asbestos Settlement, the holders of Class 4 Unsecured Asbestos Personal Injury Claims have agreed to an Allowed Claim of $1 billion and to accept a pro rata distribution based on $750 million.

(6) The litigation recovery to asbestos in excess of that necessary to equal an aggregate recovery of $750 million is reflected below under post-petition interest.

IMPORTANT NOTE FROM THE DEBTORS:

RECOVERY TO CREDITORS UNDER PARENT'S PLAN WOULD EXPLICITLY BE CAPPED AT THE PRINCIPAL OF THE ALLOWED AMOUNT OF CLAIMS, WITHOUT POST-PETITION INTEREST. UNDER DEBTORS' PLAN COMPARISON, CREDITORS UNDER THE DEBTORS' PLAN RECEIVE THE ALLOWED AMOUNT OF THEIR CLAIMS, PLUS OVER $391 MILLION IN POST-PETITION INTEREST IF AT LEAST $750 MILLION (OR SLIGHTLY MORE THAN 10 PERCENT OF THE JUDGMENT BASED ON THE JUNE 2, 2009 CLOSING PRICE OF THE SCC STOCK) IS COLLECTED ON ACCOUNT OF THE SCC FINAL JUDGMENT.

IMPORTANT NOTES FROM THE PARENT REGARDING THE DEBTORS' COMPARISON CHART:

1. **The Debtors' comparison chart assumes that the SCC Litigation is worth $750 million. However, the Debtors have indicated they will seek an estimation because this litigation is difficult to value and subject to appellate risk. Moreover, the Sterlite "put" for the SCC Litigation has a present value of $137 million (applying a discount rate of 8 percent). Extrapolating from the value of the Sterlite "put," the only market indication of value so far is $508 million. The Parent refers creditors to section 2.24(c)(2) of this Disclosure Statement for a discussion of the SCC Litigation and the weaknesses with it from the Parent's perspective.**

2. **Sterlite and the Debtors previously agreed that Sterlite would purchase ASARCO for $2.6 billion. Sterlite breached that agreement. Under the Debtor's current plan, which releases the Debtors' breach of contract claims against Sterlite, Sterlite will purchase ASARCO for only $1.1 billion and the Plan Sponsor Promissory Note. Even though Sterlite is now paying at least $1 billion dollars less for ASARCO than under the agreement it**

breached, the Debtors' comparison chart values the Sterlite litigation at only $100 million. The Parent believes that the comparison chart grossly undervalues the Sterlite litigation. If the Parent is correct that the Debtors' claims against Sterlite are worth $400 million to over $1.0 billion, recoveries by General Unsecured Creditors will be significantly higher under the Parent's Plan than those predicted by the Debtors' comparison chart.

3. **The Debtors' comparison chart assumes that the AMC Tax Reimbursement Claim will be disallowed, and therefore mistakenly values its at $0. The Parent believes that AMC will prevail and be entitled to the full amount of its Tax Reimbursement Claims and to ownership of the disputed Tax Refund. Under the Parent's Plan, AMC will waive the AMC tax reimbursement Claim and its claim to the Tax Refund in favor of recoveries by other General Unsecured Creditors. No such waiver will occur under the Debtor's Plan or Harbinger's Plan. If AMC prevails in the tax litigation, recoveries by General Unsecured Creditors under the Debtors' Plan and Harbinger's Plan will be significantly lower than those predicted by the Debtors' comparison chart.**

The Parent's Position Regarding The Debtors' Plan

The Parent contends that the Debtors' Plan is unconfirmable because its treatment of Claims in Class 3 (General Unsecured Claims) and Class 4 (Unsecured Asbestos Personal Injury Claims) violates the absolute priority rule. Specifically, the Parent asserts that uncapped recoveries to the holders of Class 3 and Class 4 Claims, particularly as they relate to the proceeds from the SCC Final Judgment, render the Debtors' Plan unconfirmable. If the Parent's legal and factual theories are correct, then there is a risk the Debtors' Plan cannot be confirmed without a provision limiting these recoveries. The Debtors believe their plan complies, in all respects, with the provisions of Bankruptcy Code section 1129(a) and (b), including the absolute priority rule, and should be confirmed. Under section 1129 of the Bankruptcy Code, a creditor may not receive more than payment in full of their claims with post-petition interest. Under the Debtors' Plan, holders of General Unsecured Claims and the Asbestos Trust (on behalf of Unsecured Asbestos Personal Injury Claims and Demands) are receiving Cash and interests in the Liquidation Trust and the SCC Litigation Trust.

Because the value of the SCC Final Judgment, the primary asset contributed to the SCC Litigation Trust, is difficult to value and subject to appellate risks, Article 4.3 of the Debtors' Plan contemplates that the Bankruptcy Court shall determine the value, as of the Confirmation Date, of Plan Consideration, including the value of the aggregate interests in the Liquidation Trust and the aggregate interests in SCC Litigation Trust. In addition, the Debtors will request that the Bankruptcy Court determine that the value, as of the Confirmation Date, of the Plan Consideration that is to be distributed on account of Class 3 Claims and Class 4 Claims under the Debtors' Plan (without regard to Article 4.3(b) thereof) does not exceed the amount necessary for Claims in Class 3 and Class 4 to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash). If the Bankruptcy Court determines that the distribution of the Plan Consideration on account of Class 3 and Class 4 Claims will not result in such Claims being paid more than an amount necessary for such Claims to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash), then 100 percent of the interests in the Liquidation Trust and 100 percent of the interests in the SCC Litigation Trust (excluding any interests in the SCC Litigation Trust that are successfully sold pursuant to an auction occurring on or before the Effective Date of the Debtors' Plan) shall be distributed to Class 3 Claimants and for the benefit of Class 4 Claimants in accordance with Article 4.2 and Article VI of the Debtors' Plan.

If the Bankruptcy Court determines that the value of the Plan Consideration, as of the Confirmation Date, exceeds the amount necessary for Claims in Class 3 and Class 4 to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash), then the Bankruptcy Court shall determine the percentage of interests in the SCC Litigation Trust necessary to be distributed on the Effective Date (after taking into account the distribution of the Plan Consideration other than the SCC Litigation Trust Interests) for the aggregate value of the Plan Consideration to be in an amount necessary for Claims in Class 3 and Class 4 to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash), but no more. That percentage of interests in the SCC Litigation Trust shall be issued and distributed to Class 3 and for the benefit of Class 4 in accordance with Article 4.2 of the Debtors' Plan. By way of illustration, if the value of the SCC Litigation Trust were determined to be $1 billion on the Effective Date and the amount necessary for the Claims in Class 3 and Class 4 to be Paid in Full (after the credit for the Plan Consideration distributed on account of such Claims on the Effective Date) were to total $800 million, 80 percent of the interests in the SCC Litigation Trust would be distributed to Class 3 and Class 4 in accordance with Article 4.2 of the Debtors' Plan. After the distribution to Class 3 and Class 4, the remaining interests in the SCC Litigation Trust (in the foregoing illustration, the remaining 20 percent of such interests) shall be distributed until the value of such interests, based on the Bankruptcy Court's valuation, is fully exhausted, in the following order:

First, on account of the Allowed Amounts of any Class 6 Claims, on a Pro Rata basis, until such Claims are Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash); *provided, however,* the SCC Litigation Trust Interests, if any, distributed to the Class 6 Claimants shall at all times be a subordinated interest that is not entitled to receive distributions from the SCC Litigation Trust unless and until Claimants in Class 3 and Class 4 (or their assignees or other successors in interest, which shall be deemed to include the counterparties to the Put Option if the Put Option is exercised) are Paid in Full on account of the Allowed Claims of Claimants in Class 3 and Class 4;

Second, on account of Class 7 Claims, on a Pro Rata basis, until such Claims are Paid in Full; *provided, however*, the SCC Litigation Trust Interests, if any, distributed to the Class 7 Claimants shall at all times be a subordinated interest that is not entitled to receive distributions from the SCC Litigation Trust unless and until Claimants in Class 3, Class 4, and Class 6 (or their assignees or other successors in interest, which shall be deemed to include the counterparties

to the Put Option if the Put Option is exercised) are Paid in Full on account of the Allowed Claims of Claimants in Class 3, Class 4, and Class 6; and

Third, on account of Class 8 Interests, on a Pro Rata basis; *provided, however*, the SCC Litigation Trust Interests, if any, distributed to the holders of Class 8 Interests shall at all times be a subordinated interest that is not entitled to receive distributions from the SCC Litigation Trust unless and until the aggregate distributions from the SCC Litigation Trust to Claims in Classes 3, 4, 6, and 7 (or their assignees or other successors in interest, which shall be deemed to include the counterparties to the Put Option if the Put Option is exercised) are Paid in Full based on the amount at which those Claims are Allowed by the Plan Administrator or as determined by the Bankruptcy Court.

In any event, the Plan Consideration (including the interests in the Liquidation Trust and in the SCC Litigation Trust) shall pass without limitation or restriction to the recipients under the Debtors' Plan (as well as to any successful bidder at an auction of the interests in the SCC Litigation Trust, upon satisfaction of the terms of such auction) and such recipients shall be entitled to retain all Cash or other property ultimately realized from the Plan Consideration (or from the auctioned SCC Litigation Interests) even if the amount ultimately realized in the future exceeds the amount necessary for such Claimants to have been Paid in Full under the Debtors' Plan (or the amounts paid in connection with any auction of interests in the SCC Litigation Trust). For avoidance of doubt, the Bankruptcy Court's determination under this provision shall constitute a finding that the damages recoverable by the SCC Litigation Trust on account of the SCC Final Judgment shall not be subject to any limitation, reduction, or cap attributable to the aggregate claims owed by the Debtors or that are to be paid or otherwise satisfied under the Debtors' Plan. The Parent has indicated that it will vigorously oppose such a finding, and will likely appeal such a finding, if made.

ASARCO is considering seeking to sell or auction all or a portion of its interest in the SCC Litigation in anticipation of Confirmation to, among other things, attempt to monetize the SCC Final Judgment and better assess the market value of the SCC Litigation. If such an auction is pursued, ASARCO believes the auction will provide a mechanism to value the SCC Final Judgment in a competitive auction process in which competing bids will be solicited and the highest and best bid will win (subject to a reserve price). If the auction process does not yield a value sufficient to pay all Claims in full with post-petition interest, then ASARCO believes the Bankruptcy Court could find, based on, among other factors, this market test, that as of the Confirmation Date, distributions of Plan Consideration in accordance with the Debtors' Plan will not result in either Class 3 or Class 4 Claimants receiving more value than the Allowed Amounts of their Claims, and that the Debtors' Plan thus may be confirmed over the Parent's objection. If the Bankruptcy Court determines for any reason that the Plan Consideration exceeds the Allowed Amounts of Claims paid under the Debtors' Plan, the Debtors' Plan explicitly provides that the absolute priority rule is followed and the requirements of the Bankruptcy Code have therefore been met. The Parent contends that the Parent's Plan contains an implicit bid for the SCC Litigation equal to the difference between the total consideration to be provided by the Parent under the Parent's Plan and ASARCO's enterprise value. The Parent believes that this implicit bid sets the floor for any sale of the SCC Litigation. The Debtors strenuously disagree that the Parent's Plan constitutes a "bid" for the SCC Litigation and assert that, if the Parent wishes to bid on the SCC Litigation, it must do so in accordance with the auction procedures to be approved by the Court.

OVERVIEW OF THE PARENT'S AND AMC'S PROPOSED PLAN

The following text has been prepared by the Parent and AMC with reference to the Parent's Plan and using defined terms from the Parent's Glossary. All statements and representations are the sole responsibility of the Parent and AMC. The Debtors and Harbinger do not necessarily agree or disagree with any of the statements or representations in this section and expressly reserve their rights to contest any such statements or representations, if appropriate.

The following is a brief summary of certain material provisions of the Parent's Plan. By necessity, this summary is incomplete and is qualified in its entirety by reference to the more detailed information appearing elsewhere in this Disclosure Statement, the attached exhibits, and the Parent's Plan and the exhibits thereto, each as amended from time to time. Your rights may be affected by implementation of the Parent's Plan, so please read the entire Disclosure Statement and the Parent's Plan carefully before deciding how to vote. To the extent there are any inconsistencies between the Disclosure Statement and the Parent's Plan, the Parent's Plan shall control.

The Parent has proposed a plan of reorganization for the Debtors that is premised upon the Parent receiving 100 percent of the equity interest in Reorganized ASARCO and a release of all Claims by the Debtors against the Parent and its Affiliates, including the $7.48 billion SCC Final Judgment, upon exit from bankruptcy in exchange for contributing new value to the Debtors' Estates consisting of (a) Cash in the amount of $1.4625 billion; (b) the issuance of a $280 million note payable to the Section 524(g) Trust, guaranteed by AMC and fully secured by a pledge of 51 percent of the New Equity Interests in Reorganized ASARCO and by all of Reorganized ASARCO's assets; (c) a release of the

Parent's Claims against the Estate, including a Claim for reimbursement of $161.7 million for taxes the Parent asserts it may ultimately be required to pay with respect to the Debtors' income (but which claim the Debtors assert (1) is not currently due and is vastly overstated; (2) will be offset substantially by deductions generated by the satisfaction of claims under the Debtors' Plan, if confirmed, and completely by deductions generated by confirmation of the Parent's Plan, if confirmed; (3) is subject to other defenses of the Debtor; and (4) even if allowed, is more than offset by the value of the SCC Final Judgment); and a Claim to a tax refund that is presently estimated to be worth approximately $60 million (and to which the Debtors assert the Parent has no entitlement); and (d) the provision of a $200 million Working Capital Facility to fund Reorganized ASARCO's operations upon emergence from bankruptcy. The Parent's Plan also provides for the creation of a litigation trust for the benefit of all Class 3 General Unsecured Claims.

To demonstrate its intention and ability to fully and timely consummate the Parent's Plan, the Parent has established an Escrow Account into which the Parent has deposited Cash equivalents worth more than $1.3 billion. The Parent is working with a consortium of financial institutions to replace the Cash equivalents with Cash that will be available to fund its obligations under the Parent's Plan at closing. As additional assurance that the Parent will timely consummate the Parent's Plan, the Parent is in the process of amending the Escrow Account agreement to provide for a $125 million good faith Deposit.

If approved, the Parent's Plan will implement a reorganization that will address the Debtors' liabilities, including environmental and asbestos-related liabilities, in a comprehensive and complete manner. The Parent has sought to formulate a plan of reorganization that is fair and equitable to all parties in interest, while allowing the Debtors to restructure and channel all unsecured asbestos-related Claims and Demands against the Debtors to a trust. The Parent believes that these objectives have been met, and that the Parent's Plan provides for the maximum recoveries to, and expeditious and equitable treatment of, all holders of Claims. The Debtors disagree and note that the Parent's Plan explicitly prohibits the payment of post-petition interest to creditors, which effectively eliminates such creditors' rights to collect an amount that the Debtors estimate exceeds $500 million.

A key issue in these Cases has been the resolution of the Debtors' exposure to substantial claims related to asbestos, claims which have been asserted to be as high as $2.2 billion. Under the Parent's Plan, as explained below, asbestos claims and future demands shall together be allowed in the aggregate amount of $1.0 billion and, on the Effective Date, the Section 524(g) Trust shall be established and funded with the Section 524(g) Trust Assets, consisting of $500 million in Cash, a secured one-year note in the principal amount of $280 million that is guaranteed by the Parent, additional Cash in the amount of $27.5 million for the expenses of administering the Section 524(g) Trust, and the proceeds of specified insurance coverage litigation. In exchange, Reorganized ASARCO, the Parent and other specified parties will receive the benefit of a section 524(g) channeling injunction which will cap the estate's exposure to such claims and future demands and to protect Reorganized ASARCO and the Parent, among other parties, from further asbestos liabilities. The Parent believes that the treatment of asbestos claims and future demands described below is superior to that provided by the Debtors' Plan, and that the Asbestos Claimants' Committee and the FCR will support the Parent's Plan and approve the asbestos channeling injunction. The Debtors dispute that the treatment of asbestos Claims and Demands under the Parent's Plan is superior to that offered under the Debtors' Plan and note that the Asbestos Claimant's Committee and the Future Claims Representative also support the Debtors' Plan.

Under the Parent's Plan, the Parent's Plan Administrator approved by the Bankruptcy Court will hold the Parent Contribution, the Distributable Cash, and all non-Cash assets available for distribution under the Parent's Plan, and will be responsible for making all distributions to creditors under the Parent's Plan and for prosecuting objections to Claims.

Various trusts will be established under the Parent's Plan to liquidate certain of the Debtors' assets, assume certain of the Debtors' liabilities, and/or assume responsibility for distributions to certain Classes of Claims and Demands, including the Section 524(g) Trust, the Litigation Trust, and the Environmental Custodial Trusts.

Under the Parent's Plan, on the Effective Date, the following distributions will be made:

- Holders of Allowed Administrative Expense Claims and Priority Unsecured Claims, including Priority Tax Claims, will be Paid in Full.

- Holders of Allowed Secured Claims, at the election of the Parent, will receive Cash equal to the full value of the Collateral Securing such Secured Claims, be Reinstated, receive the Collateral securing such Secured Claims, or receive such other treatment as may be agreed upon between the Parent and the holder of an Allowed Secured Claim.

- Asbestos Personal Injury Claims and Demands will be channeled to, and assumed and satisfied by, a Section 524(g) Trust funded with $500 million in Cash, the $280 million ASARCO Note, the Asbestos Insurance Recoveries, and $27.5 million in funding to administer the Trust.

- Holders of Allowed General Unsecured Claims (including Bondholder Claims, Environmental Unsecured Claims, Toxic Tort Claims, and other General Unsecured Claims) will receive a Pro Rata share of the Available Parent's Plan Funds and a Pro Rata share of the Distributed Litigation Trust Interests, provided that in no event shall such holders receive more than 100 percent of the amount of their Allowed Claims (and further provided that no post-petition interest shall be paid to such holders). If the class of General Unsecured Claims votes to accept the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), then on the Effective Date (1) Environmental Custodial Trusts substantially identical to those under the Debtors' Plan will be established; (2) title to the Designated Sites will be conveyed and transferred into the Environmental Custodial Trusts for the sole benefit of the beneficiaries thereof; (3) Environmental Custodial Trust Claims will be treated as Administrative Claims and the Environmental Custodial Trusts will be funded in Cash in the full amount set forth in the Debtor' Plan and the Environmental 9019 Motion; and (4) the Parent's opposition to the pending Environmental 9019 Motion will be withdrawn and any then pending appeals therefrom or from the District Court Order denying withdrawal of the reference to the Bankruptcy Court with respect thereto will be dismissed. The Debtors believe the Parent's Plan treatment regarding environmental Claims is unclear, particularly as it relates to the administrative portions of such Claims.

- Holders of Late Filed and Subordinated Claims will not receive any distributions under the Parent's Plan, except to the extent that Distributed Litigation Trust Interests and/or funds from the Disputed Claims Reserve are distributed to such holders, and provided that in no event shall such holders receive more than 100 percent of the amount of their Allowed Claims (and further provided that no post-petition interest shall be paid to such holders).

- Environmental Reinstated Claims will be Reinstated and satisfied by Reorganized ASARCO in the ordinary course.

- Finally, under the Parent's Plan, Interests in ASARCO will be canceled and, in exchange for the Parent Contribution, ASARCO Incorporated or its designee will receive the New Equity Interests. The Final Judgment (as defined below) will be completely released under the Parent's Plan.

Following implementation of the Parent's Plan, Reorganized ASARCO will remain liable for Reinstated Environmental Claims, any other Reinstated Claims, and its obligations under the $280 million ASARCO Note. The Parent's Plan's definition of "Reinstatement" mirrors section 1124(2) of the Bankruptcy Code, which sets forth the requirements for reinstating classes of Claims and interests without impairing them. The Parent is confident there will be sufficient Cash to address all Reinstated obligations in the ordinary course of business.

The classification and treatment of Claims under the Parent's Plan is summarized in the charts immediately below. Following the charts is a table describing the projected sources and uses of consideration under the Parent's Plan, including the expected range of recoveries by class. Finally, this section includes a comparison of the Parent's Plan to the Debtors' Plan and Harbinger's Plan.

Classification and Voting Under Parent's Plan

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified. Demands are not Claims for purposes of the Bankruptcy Code; however, under the Parent's Plan, Demands will receive the same treatment as Class 4 Asbestos Personal Injury Claims and, accordingly, are included with Class 4 Asbestos Personal Injury Claims in the chart below.

Unclassified Claims Under the Parent's Plan

Description and Estimate of Claims Under the Parent's Plan	Description of Distributions or Treatment Under the Parent's Plan
Administrative Claims	Shall be Paid in Full, in Cash, on the later of the Effective Date or the date on which such Administrative Claim becomes an Allowed Claim; *provided, however*, that: (a) Allowed Administrative Claims representing (1) post-petition liabilities incurred in the ordinary course of business by any Debtor or (2) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid by Reorganized ASARCO in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto; and (b) the Allowed Administrative Claims of Professional Persons shall be paid pursuant to a Final Order of the Bankruptcy Court. The Settled Asbestos Insurance Companies each shall have an Allowed Administrative Claim for the Pre-524(g) Indemnity, in accordance with the terms and conditions of the Asbestos Insurance Settlement Agreement. If Class 3 (General Unsecured Claims) votes to accept the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), then on the Effective Date (1) Environmental Custodial Trusts substantially identical to those under the Debtors' Plan will be established, (2) title to the Designated Sites will be conveyed and transferred into the Trusts for the sole benefit of the beneficiaries thereof, (3) Environmental Custodial Trust Claims will be treated as Administrative Claims and the Trusts will be funded in Cash in the full amount set forth in the Debtors' Plan and the Environmental 9019 Motion, and (4) the Parent's opposition to the pending Environmental 9019 Motion will be withdrawn and any then pending appeals therefrom or from the District Court Order denying withdrawal of the reference to the Bankruptcy Court with respect thereto will be dismissed. If Class 3 votes to reject the Parent's Plan or expresses a preference for either the Debtors' Plan or Harbinger's Plan, however, the Environmental Trust Claims shall be Disputed Claims until the Parent's opposition to and all appeals from the Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court are exhausted and a final order has been entered by a court of competent jurisdiction regarding the allowed amount and treatment of the Environmental Trust Claims. The Debtors believe the Parent's Plan treatment regarding environmental Claims is unclear, particularly as it relates to the administrative portions of such Claims.
Priority Tax Claims	Shall (1) be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date upon which such Priority Tax Claim becomes an Allowed Claim, or (2) receive treatment in any other manner such that the Allowed Priority Tax Claim is not impaired pursuant to section 1124 of the Bankruptcy Code, including, but not limited to, payment in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.
Demands	Shall be accorded the Section 524(g) Treatment provided to Class 4 Asbestos Personal Injury Claims, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement. The FCR is entitled to make an election regarding whether to accept or reject the Section 524(g) Treatment; *provided, however*, that under the Amended Agreement in Principle, the FCR has agreed to support the Parent's Plan, including the Section 524(g) Treatment. The asbestos representatives have also agreed to support the Debtors' Plan.

Classified Claims and Interests Under the Parent's Plan

Description and Estimate of Claims Under the Parent's Plan	Description of Distributions or Treatment Under the Parent's Plan	Status
Class 1 – Priority Claims	Shall be Paid in Full, in Cash, on the later of the Effective Date or the date on which such Priority Claim becomes an Allowed Claim	**Unimpaired** Deemed to Accept the Parent's Plan Not Entitled to Vote
Class 2 – Secured Claims	Shall, in full satisfaction, settlement, release, extinguishment and discharge of such Claim, at the Parent's election, (1) be paid, in Cash, the full value of the Collateral securing such Allowed Secured Claim on the later of the Effective Date or the date on which such Secured Claim becomes due in the ordinary course, (2) be Reinstated, (3) receive from Reorganized ASARCO all Collateral securing such Allowed Secured Claim, or (4) receive such other treatment as may be agreed upon between the Parent and the holder of such Allowed Secured Claim. Secured Asbestos Personal Injury Claims which are secured by Liens against proceeds of an Asbestos Insurance Policy shall be included in the treatment accorded Class 4 Asbestos Personal Injury Claims, as set forth in Article 4.2(d) of the Parent's Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement.	Will Vote, But Only the Votes of Claimants Receiving the Cash Payment Option Will Be Counted
Class 3 – General Unsecured Claims	Shall receive (1) a Pro Rata share of the Available Parent's Plan Funds, and (2) a Pro Rata share of the Distributed Litigation Trust Interests. In no event shall Class 3 Claims holders receive more than 100 percent of the Allowed Amount of such Class 3 Claims and no post-petition interest shall be paid to such holders.	**Impaired** Entitled to Vote
Class 4 – Asbestos Personal Injury Claims, and Demands	Shall together be allowed in the aggregate amount of $1.0 billion. On the Effective Date, the Section 524(g) Trust shall be established and funded with the Section 524(g) Trust Assets, consisting of $500 million in Cash, a secured one-year note in the principal amount of $280 million, additional Cash in the amount of $27.5 million for the expenses of administering the Section 524(g) Trust, and the proceeds of specified insurance coverage litigation. In exchange, Reorganized ASARCO, the Parent and other specified parties will receive the benefit of a section 524(g) channeling injunction.	**Impaired** Entitled to Vote
Class 5 – Convenience Claims	Shall receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date.	**Unimpaired** Deemed to accept the Parent's Plan Not Entitled to Vote
Class 6 – Late-Filed Claims	Shall not receive or retain any property under the Parent's Plan on account of such Claims.	**Impaired** Deemed to reject the Parent's Plan

Description and Estimate of Claims Under the Parent's Plan	Description of Distributions or Treatment Under the Parent's Plan	Status
Class 7 – Subordinated Claims	Shall not receive or retain any property under the Parent's Plan on account of such Claims.	**Impaired** Deemed to reject the Parent's Plan
Class 8 – Environmental Reinstated Claims	Shall, on the Effective Date, be Reinstated and, from and after the Effective Date, Reorganized ASARCO shall assume, pay, perform, and discharge when due all of its Assumed Environmental Liabilities.	**Unimpaired** Deemed to accept the Parent's Plan Not Entitled to Vote
Class 9 – Interests in ASARCO	Shall be deemed cancelled, and the holder of such Interests shall not receive or retain any property under the Parent's Plan on account of such Interests.	**Impaired** Deemed to reject the Parent's Plan

Projected Recoveries Under Parent's Plan

The following table demonstrates recoveries under the Parent's Plan. Because the Debtors are in control of the Claims allowance process and have indicated that many claims remain unresolved, the following analysis shows recoveries based on the Debtors' low and high estimates for the Claims in each class. Certain adjustments have been made to the Debtors' estimates as follows: (a) no funds are committed for litigation trust expenses because the Parent's Plan contemplates that Reorganized ASARCO will advance or reimburse necessary amounts to the litigation trustee pending collection of litigation proceeds; (b) the Debtors' "blanket reserve" of $55 million for administrative expenses appears too high to the Parent, so it may reserve as little as $30 million; and (c) AMC's tax reimbursement Claim of $161.7 million and its Claim to the federal tax refund of approximately $60 million, both of which presently are subject to dispute and litigation adverse to the Debtors and their Estates are resolved in favor of the Debtors and their Estates by the Parent's Plan. The Debtors believe that the projected recoveries on account of litigation under the Parent's Plan are highly speculative.

With respect to the Litigation Trust recoveries, for illustrative purposes the Parent has used $400 million. The Debtors believe that this amount is extremely aggressive and reflects recoveries that are highly speculative, particularly since the largest claim preserved under the Parent's Plan is the claim against Sterlite, the collectibility of which is highly speculative since Sterlite has no known assets in the United States. The Parent nevertheless notes that the waterfall, with this $400 million assumption, demonstrates a "cushion" of $115.1 to $287.2 million, meaning that, under the Parent's Plan, even if recoveries by the Litigation Trust are lower or the amounts of claims higher, General Unsecured Creditors are still likely to recover 100 percent of the Allowed Amounts of their Claims (excluding any payment on account of post-petition interest). The Parent's Plan does not provide for post-petition interest. The Debtors believe that the projected recoveries on account of litigation under the Parent's Plan are highly speculative.

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Parent's Analysis of Recoveries Under Parent's Plan

($ in millions)	*Value*		*Value*	
Value Available for Distribution				
Debtor Cash On Hand at Effective Date	$ 1,400.0		$ 1,400.0	
Litigation Trust (incl Sterlite) (2)	400.0		400.0	
Cash Infusion from Parent	1,462.5		1,462.5	
Parent Backstop on Asbestos Notes (3)	280.0		280.0	
Total Parent Contribution	1,742.5		1,742.5	
Federal Tax Refund	60.0		60.0	
Working Capital Reserve	(50.0)		(50.0)	
Consideration Available	**3,552.5**		**3,552.5**	

	Debtors' High Claims Estimates			***Debtors' Known & Preliminary Claims Estimates***		
Claims Assessment - Waterfall	*Claim*	*Payment*	*% Pmt*	*Claim*	*Payment*	*% Pmt*
Admin Claims: Litigation Trust Expenses	-	-	N/A	-	-	N/A
Admin Claims: Blanket Reserve	$ 55.0	$ 55.0	100.0%	$ 30.0	$ 30.0	100.0%
Admin Claims: Asbestos	27.5	27.5	100.0%	27.5	27.5	100.0%
Admin Claim: Perth Amboy	19.0	19.0	100.0%	10.0	10.0	100.0%
Contract Cure Claims	5.0	5.0	100.0%	5.0	5.0	100.0%
Claim Allowance Process and Miscellaneous	17.5	17.5	100.0%	17.5	17.5	100.0%
Admin Claims: Other	38.8	38.8	100.0%	36.8	36.8	100.0%
Admin Claims: Environmental Custodial Trust (4)	266.5	266.5	100.0%	266.5	266.5	100.0%
Admin Claims: Residual Environmental	14.0	14.0	100.0%	14.0	14.0	100.0%
Class 1 - Priority Claims	4.0	4.0	100.0%	4.0	4.0	100.0%
Class 2 - Secured Claims	5.0	5.0	100.0%	-	-	N/A
Subtotal	**452.3**	**452.3**	**100.0%**	**411.3**	**411.3**	**100.0%**
Amount Available (Deficit)		*$3,100.2*			*$3,141.2*	
Asbestos						
Demands & Unsecured Asbestos	$1,000.0			$ 1,000.0		
Cash		500.0			500.0	
Note (4)		280.0			280.0	
Subtotal	**1,000.0**	**780.0**	**78.0%**	**1,000.0**	**780.0**	**78.0%**
Amount Available (Deficit)		*$2,320.2*			*$2,361.2*	
Unsecured Claims Other Than Asbestos						
Bonds	$ 439.8	$ 439.8	100.0%	$ 439.8	$ 439.8	100.0%
Toxic Tort	51.7	51.7	100.0%	41.7	41.7	100.0%
Other General Unsecured	330.1	330.1	100.0%	187.0	187.0	100.0%
Environmental Unsecured (3)	1,357.9	1,357.9	100.0%	1,357.9	$ 1,357.9	100.0%
AMC Tax Reimbursement Claim	-	-	N/A	-	-	N/A
Subtotal	**2,179.5**	**$ 2,179.5**	**100.0%**	**2,026.4**	**$ 2,026.4**	**100.0%**
Amount Available (Deficit)		*140.7*			*334.8*	
Late Filed Claims						
Late-Filed Claims	25.6	25.6	100.0%	9.7	9.7	100.0%
Amount Available – "Cushion" (Deficit)		*115.1*			*325.1*	

Notes (continued on next page):

1 Based on Debtors' estimates dated 3/26/2009, as modified by the Parent.

2 The Parent's analysis values the Sterlite claims and other Litigation Trust Claims at $400 million. The Debtors believe that this amount greatly exceeds the amount reasonably recoverable on account of the litigation claims preserved under the Parent's Plan. In fact, the Debtors' expert at the evidentiary trial before the Bankruptcy Court on the Debtors' Sterlite 9019 Motion indicated that it is very possible that, in a litigation scenario, the Debtors would never receive a meaningful recovery at all on account of the claims against Sterlite, which is the principal asset of the Parent's Liquidation Trust. The same expert indicated it might take 20 years or more to realize any recovery on account of such claims. Recovery to creditors is capped at 100 percent of Allowed Amount of Claims.

3 The present value of the Asbestos Note has been computed using an 6.0 percent discount rate.

4 Amounts assume that environmental creditors vote to support the Parent's Plan. If not, Parent will be forced to continue to litigate the proper allowable amounts for custodial trust and environmental Unsecured Claims. For each $100 million that the allowable amounts of environmental Claims are reduced in the aggregate (e.g., reduction by $100 million of the approximately $187 million Claim amount allocated to the Omaha site in the Residual Superfund Settlement Agreement), the percentage recovery in Cash to all Unsecured Claims increases by 4.9 percent.

5 No initial Cash outlay. Does not reduce Value Available for Distribution.

Comparison of Parent's Plan to Debtors' Plan and Harbinger's Plan

The Parent submits that the Parent's Plan provides superior recoveries to the Debtors' Plan and Harbinger's Plan, both in terms of distributions on the Effective Date to creditors holding Allowed Claims and in terms of ultimate distributions. Moreover, the Parent asserts that the Parent's Plan is eminently more confirmable than Harbinger's Plan, which lacks the support of the Asbestos Claimants' Committee and the FCR and therefore proposes solutions to the asbestos liabilities that are unprecedented, contrary to accepted law, unworkable, hotly contested by the Asbestos Claimants' Committee and the FCR, and if approved by the Bankruptcy Court would be subject to appeals that likely would remain viable through appellate determination even in the event of an unstayed appeal, all as discussed more fully in this Disclosure Statement. The Debtors disagree with the Parent's contentions and believes that the Debtors' Plan offers creditors the best chance of recovering the full amount of their claims, plus post-petition interest and attorneys' fees.

Distributions on Effective Date

First, the Parent contends that the Parent's Plan provides for greater consideration to be available to fund distributions on the Effective Date. All three plans utilize the Debtors' Cash on hand, which is estimated by the Parent to be $1.4 billion on the target Effective Date. However, the Parent is also contributing $1.4625 billion in Cash upfront and giving a guaranty (secured by a pledge of 51 percent of the equity of Reorganized ASARCO and by all of Reorganized ASARCO's assets) to support a $280 million promissory note to be contributed to the Section 524(g) Trust for asbestos Claimants. By contrast, the Debtors will have $1.1 billion in Cash and a $770 million secured note (assuming that Sterlite actually closes on its Purchase and Sale Agreement) and Harbinger will have $500 million in Cash to distribute on the Effective Date. Thus, it is clear that creditors will share in a vastly larger pool of funds and receive much higher percentage distributions on the Effective Date under the Parent's Plan.

Moreover, the Parent is waiving, on the Effective Date, a Claim for reimbursement under the tax sharing agreement with ASARCO, asserted in the amount of at least $161.7 million, but which the Debtors dispute and allege should be disallowed in its entirety or, at a minimum, subordinated to the claims of other creditors. The Parent asserts, by contrast, those Claims remain unresolved under the Debtors' Plan and Harbinger's Plan, such that the Debtors and Harbinger would have to establish a reserve based on that $161.7 million, thereby reducing the amount available for distribution on the Effective Date under the Debtors' Plan and Harbinger's Plan. However, the Debtors assert that they have represented the claim in this manner in the waterfall solely to inform creditors fully regarding the potential impact of such claim if it were allowed as asserted, which the Debtors do not believe is probable. Moreover, under the Debtors' Plan and Harbinger's Plan, the Cash reserve ultimately might have to be used to pay such Claims, thus permanently reducing the near term Cash distributions to creditors. In fact, the Debtors' waterfall includes the potential payment of the tax Claim on the "high" side of their estimates, and demonstrates that creditor recoveries ultimately could be reduced by the tax Claim. However, the Debtors assert that they have represented the claim in this manner in the waterfall solely to inform creditors fully regarding the potential impact of such claim if it were allowed as asserted, which the Debtors do not believe is probable. (Note that the analysis below does not contemplate that the Tax Refund will have been received by the Effective Date; however, the Parent expects that issues with respect to the Tax Refund could be resolved soon after the Effective Date occurs.)

The chart on the next page demonstrates the Parent's view of distributions that would be made on the Effective Date of all three Plans (assuming hypothetically for these purposes that in the absence of a Section 524(g) Trust and Injunction Harbinger's Plan is actually confirmable, and using the Debtors' estimate of Allowed Claims for ease of comparison). The estimate of $750 million is used for purposes of Harbinger's Plan to facilitate comparison with the other

two plans. Because a number of Claims remain disputed on the Effective Date, and accordingly disputed reserves will reduce the amount of consideration available for immediate distribution, the chart below uses the high end of the Debtors' estimate of Claims. From this chart, it is plain that immediate recoveries to holders of Allowed General Unsecured Claims (including Bondholder Claims, Toxic Tort Claims, and Environmental Unsecured Claims) – if all Claims are treated as Allowed on the high side of the Debtors' estimates – will be approximately 85.3 percent under the Parent's Plan, 65.0 percent under the Debtors' Plan and 48.4 percent under Harbinger's Plan!

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Parent's Analysis of Immediate Recoveries Under Parent's Plan, Debtors' Plan and Harbinger Plan
Assumes High-End of Debtors' Claims Estimates

	Parent's Plan (1)			Debtors' Plan			Harbinger Plan		
(*$ in millions*)	Value			Value			Value		
Value Available for Distribution									
Debtor Cash	1,400.0			1,400.0			1,400.0		
SCC Litigation	-			-			-		
Litigation Trust Interests (2)	-			-			-		
Cash Infusion from Sponsor	1,462.5			1,100.0			500.0		
Sterlite Note	-			-			-		
Asbestos Litigation Put to Sterlite	-			-			-		
Parent Guaranty of Asbestos Note	-			-			-		
Total Sponsor Contribution	1,462.5			1,100.0			500.0		
Federal Tax Refunds	-			-			-		
Cash holdback	(50.0)			-			-		
Aggregate Plan Consideration	**2,812.5**			**2,500.0**			**1,900.0**		
Cash Portion of Consideration	**2,812.5**			**2,500.0**			**1,900.0**		
Claims Assessment – Waterfall	Claim	Payment	Recovery	Claim	Payment	Recovery	Claim	Payment	Recovery
Admin Claims: Litigation Trust Expenses	-	-	N/A	39.2	39.2	100.0%	39.2	39.2	100.0%
Admin Claims: Blanket Reserve	55.0	55.0	100.0%	55.0	55.0	100.0%	55.0	55.0	100.0%
Admin Claims: Asbestos	27.5	27.5	100.0%	27.5	27.5	100.0%	-	-	N/A
Admin Claims: Perth Amboy Claim	19.0	19.0	100.0%	19.0	19.0	100.0%	19.0	19.0	100.0%
Admin Claims: Contract Cure Claims	5.0	5.0	100.0%	5.0	5.0	100.0%	5.0	5.0	100.0%
Admin Claims: Claim Allowance and Miscellaneous	17.5	17.5	100.0%	17.5	17.5	100.0%	17.5	17.5	100.0%
Admin Claims: Other	38.8	38.8	100.0%	38.8	38.8	100.0%	38.8	38.8	100.0%
Admin Claims: Environmental Custodial Trust (2)	266.5	266.5	100.0%	266.5	266.5	100.0%	266.5	266.5	100.0%
Admin Claims: Residual Environmental Claims	14.0	14.0	100.0%	14.0	14.0	100.0%	14.0	14.0	100.0%
Priority Claims	4.0	4.0	100.0%	4.0	4.0	100.0%	4.0	4.0	100.0%
Secured Claims	5.0	5.0	100.0%	5.0	5.0	100.0%	5.0	5.0	100.0%
Subtotal	**452.3**	**452.3**	**100.0%**	**491.5**	**491.5**	**100.0%**	**464.0**	**464.0**	**100.0%**
Amount Available (Deficit)		*2,360.2*			*2,008.5*			*1,496.0*	
Asbestos									
Demands & Unsecured Asbestos (3)	1,000.0			750.0			750.0		
Cash		500.0			487.3			363.0	
Note / Put		-							
Subtotal	**1,000.0**	**500.0**	**50.0%**	**750.0**	**487.3**	**65.0%**	**750.0**	**363.0**	**46.5%**
Amount Available (Deficit)		*1,860.2*			*1,521.2*			*1,133.0*	
Unsecured Claims Other Than Asbestos									
Bonds	439.8	375.4	85.3%	439.8	285.5	65.0%	439.8	212.8	48.4%
Toxic Tort	51.7	44.1	85.3%	51.7	33.6	65.0%	51.7	25.0	48.4%
Other General Unsecured	330.1	281.7	85.3%	330.1	214.5	65.0%	330.1	159.8	48.4%
Environmental Unsecured (3)	1,357.9	1,159.0	85.3%	1,357.9	882.3	65.0%	1,357.9	657.2	48.4%
Convenience	De minimis	De minimis	100.0%	De minimis	De minimis	100.0%	De minimis	De minimis	100.0%
AMC Tax Reimbursement Claim (4)	-	-	N/A	161.7	105.1	65.0%	161.7	78.3	48.4%
Subtotal	**2,179.5**	**1,860.2**	**85.3%**	**2341.2**	**1,521.2**	**65.0%**	**2,341.2**	**1,130.0**	48.4%
Amount Available (Deficit)		-			-			-	
Late Filed Claims									
Late-Filed Claims	25.6	-	0.0%	25.6	-	0.0%	25.6	-	0.0%
Subtotal	**25.6**	-	**0.0%**	**25.6**	-	**0.0%**	**25.6**	-	**0.0%**
Amount Available (Deficit)		-			-			-	

Notes:

(1) Based on the Debtors' high claims case waterfall dated 3/26/2009, as modified by the Parent.

(2) Amounts assume that environmental creditors vote to support Parent's Plan. If not, Parent will be forced to continue to litigate proper Allowed Amount for custodial trust and environmental Unsecured Claims. For each $100 million that Allowed Amount of environmental Claims are reduced, percentage recovery in Cash to all Unsecured Claims increases by 4.9 percent.

(3) Parent does not believe that Harbinger will be able to limit value of asbestos claims and demands to $500 million, which is a condition to Harbinger's Plan, and therefore has used the $750 million figure agreed to by the Parent and the Debtors. If the figure of $500 million were used for Harbinger, aggregate recoveries to unsecured creditors would increase to 58.5 percent. Based on the Asbestos Settlement entered into between the Asbestos Claimants' Committee, the FCR, the Debtors, and Sterlite, the holders of Class 4 Unsecured Asbestos Personal Injury Claims have agreed to reduce their aggregate Allowed Claim to $1 billion and to accept a Pro Rata distribution based on the $750 million.

(4) Subject to litigation under both the Debtors' Plan and Harbingers' Plan. The Debtors believe the litigation is ripe for resolution and will more likely than not be resolved in the Debtors' favor. The Parent disagrees.

IMPORTANT NOTES FROM THE DEBTORS REGARDING THE PARENT'S COMPARISON CHART:

The Debtors believe the High Claims case used by the Parent is not likely to occur and believe that the Debtors' Known and Preliminary Claims estimates provide a much more realistic project of how the Claims will ultimately be resolved. The Debtors further believe that the Parent has used the High Claims case for its comparison chart to manipulate the analysis in favor of the Parent's Plan.

Ultimate Distributions

Factoring in other sources of consideration that will be made available under the Plans, the Parent maintains that the aggregate distributions that ultimately will be made to holders of Allowed Claims is likely to be highest under the Parent's Plan.

The Parent has committed to work with Reorganized ASARCO to have a disputed Tax Refund worth approximately $60 million be made available for distribution to creditors. Under the Debtors' Plan or Harbinger Plan, ownership of that Tax Refund continues to be disputed and, if the Parent prevails, would be an asset of the Parent and not available to creditors. The Debtors have indicated that they do not believe the Parent is likely to prevail.

Also, under the Parent's Plan the proceeds of litigation against Sterlite and various other parties will be distributed to General Unsecured Creditors. Evidence adduced at the hearing on the Sterlite 9019 Motion indicates that the Claims against Sterlite for its breach of its original Purchase and Sale Agreement are substantial and that a release of liability is likely worth $400 million to Sterlite. Even without valuing the other causes of action that are being contributed to the litigation trust (which presently cannot be valued by the Parent because the Debtors are in control of those actions), the Parent submits that Allowed Claims will likely share in a pool of litigation proceeds that is conservatively worth $400 million, and potentially worth in excess of $1.1 billion. For comparison purposes, the Parent assumes the same $400 million would be realized under Harbinger's Plan and that all of those proceeds would be made available to creditors. The Debtors disagree and believe recovery of $400 million is speculative and that recovery (if any) would likely take many years.

While the Debtors' Plan and Harbinger's Plan purport to distribute proceeds from the SCC Litigation against the Parent, the Parent submits that any recovery on that litigation is highly speculative. As discussed in Section 24(c) hereunder, the Parent has commenced an appeal to the Fifth Circuit Court of Appeals from the judgment entered by Judge Hanen, and believes that numerous internal inconsistencies and other legal and factual errors reflected in that judgment are highly likely to result in the judgment being vacated and leading to either an outright dismissal of the litigation, retrial, or a remand for reconsideration of the damages award. The Parent's Plan calls for a release of the SCC Litigation, and notably, neither the Debtors nor Harbinger assign a range of values to the SCC Litigation, although the Debtors have provided illustrative values in their analysis of the respective Plans. The Debtors' Liquidation Analysis does not assign a specific value to the SCC Litigation. The Debtors have indicated that this is because the litigation will be valued by the Bankruptcy Court at the Confirmation Hearing and because the SCC Litigation is available for creditors both under the Debtors' Plan and in a liquidation scenario. However, it is not available under the Parent's Plan because it is released. For this reason, the Debtors requested that the Parent reflect a value for the SCC Litigation in their liquidation analysis for purposes of comparison. Notwithstanding this request, the Parent has assigned no value to the SCC Litigation. As to the other litigation trust claims, the Debtors have not provided a valuation of those Claims; accordingly, since essentially the same Claims are being placed in trust under all three Plans (other than the claims against the Parent and its affiliates, which are released under the Parent's Plan), the value of such claims has been assumed at zero in all three Plans for comparison purposes.

The chart on the next page demonstrates the Parent's view of aggregate distributions that ultimately would be made under all three Plans (assuming for these purposes that the Debtors' Plan and Harbinger Plan actually are confirmable, and using the Debtors' estimate of Allowed Claims for ease of comparison). From this chart, the Parent submits that the aggregate recoveries to holders of Allowed General Unsecured Claims (including Bondholder Claims, Toxic Tort Claims and Environmental Unsecured Claims) – again, assuming all Claims ultimately are Allowed on the high end of the Debtors' estimates – will be 100.0 percent under the Parent's Plan, 75 percent under the Debtors' Plan and 59.4 percent under Harbinger's Plan.

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Parent's Analysis of Aggregate Recoveries Under Parent's Plan, Debtors' Plan, and Harbinger's Plan
Assumes High-End of Claims Estimates (1)

	Parent's Plan			Debtors' Plan			Harbinger Plan		
($ in millions)	Value			Value			Value		
Value Available for Distribution									
Debtor Cash	1,400.0			1,400.0			1,400.0		
SCC Litigation	N/A			–			–		
Litigation Trust Interests (2)	400.0			N/A			400.0		
Cash Infusion from Sponsor	1,462.5			1,100.0			500.0		
Sterlite Note	N/A			308.7			N/A		
Parent Backstop on Asbestos Note (3)	280.0			N/A			N/A		
Asbestos Litigation Put to Sterlite (4)	-			137.0			-		
Total Sponsor Contribution	1,742.5			1,545.7			500.0		
Federal Tax Refunds (5)	60.0			N/A			N/A		
Cash holdback	(50.0)			–			–		
Aggregate Plan Consideration	**3,552.5**			**2,945.7**			**2,300.0**		
Cash Portion of Plan Consideration	**2,872.5**			**2,500.0**			**1,900.0**		
Claims Assessment - Waterfall	Claim	Payment	Recovery	Claim	Payment	Recovery	Claim	Payment	Recovery
Admin Claims: Litigation Trust Expenses	–	–	N/A	39.2	39.2	100.0%	39.2	39.2	100.0%
Admin Claims: Blanket Reserve	55.0	55.0	100.0%	55.0	55.0	100.0%	55.0	55.0	100.0%
Admin Claims: Asbestos	27.5	27.5	100.0%	27.5	27.5	100.0%	–	–	N/A
Admin Claims: Perth Amboy Claim	19.0	19.0	100.0%	19.0	19.0	100.0%	19.0	19.0	100.0%
Admin Claims: Contract Cure Claims	5.0	5.0	100.0%	5.0	5.0	100.0%	5.0	5.0	100.0%
Admin Claims: Claim Allowance and Miscellaneous	17.5	17.5	100.0%	17.5	17.5	100.0%	17.5	17.5	100.0%
Admin Claims: Other	38.8	38.8	100.0%	38.8	38.8	100.0%	38.8	38.8	100.0%
Admin Claims: Environmental Custodial Trust (6)	266.5	266.5	100.0%	266.5	266.5	100.0%	266.5	266.5	100.0%
Admin Claims: Residual Environmental Claims	14.0	14.0	100.0%	14.0	14.0	100.0%	14.0	14.0	100.0%
Priority Claims	4.0	4.0	100.0%	4.0	4.0	100.0%	4.0	4.0	100.0%
Secured Claims	5.0	5.0	100.0%	5.0	5.0	100.0%	5.0	5.0	100.0%
Subtotal	**452.3**	**452.3**	**100.0%**	**491.5**	**491.5**	**100.0%**	**464.0**	**464.0**	**100.0%**
Amount Available (Deficit)		*3,100.2*			*2,454.2*			*1,836.0*	
Asbestos									
Demands & Unsecured Asbestos (7)	1,000.0			1,000.0			750.0		
Cash		500.0			487.3			445.5	
Note		280.0			74.9				
Put to Sterlite		-			137.0				
Subtotal	1,000.0	**780.0**	**78.0%**	**1,000.0**	**699.2**	**69.9%**	**750.0**	**445.5**	**59.4%**
Amount Available (Deficit)		*2,320.2*			*1,755.0*			*1,390.5*	
Unsecured Claims Other Than Asbestos									
Bonds	439.8	439.8	100.0%	439.8	329.7	75.0%	439.8	261.2	59.4%
Toxic Tort	51.7	51.7	100.0%	51.7	38.8	75.0%	51.7	30.7	59.4%
Other General Unsecured	330.1	330.1	100.0%	330.1	247.4	75.0%	330.1	196.1	59.4%
Environmental (6)	1,357.9	1,357.9	100.0%	1,357.9	1017.9	75.0%	1,357.9	806.5	59.4%
Convenience	De minimis	De minimis	100.0%	De minimis	De minimis	100.0%	De minimis	De minimis	100.0%
AMC Tax Reimbursement Claim	–	–	100.0%	161.7	121.2	75.0%	161.7	96.0	59.4%
Subtotal	2,179.5	**2,179.5**	**100.0%**	**2,341.2**	**1,755.0**	**75.0%**	**2,341.2**	**1,390.5**	**59.4%**
Late Filed Claims									
Late-Filed Claims	25.6	25.6	100.0%	25.6	–	0.0%	25.6	–	0.0%
Amount Available (Deficit)		*115.1*			-			-	

Notes:

(1) Based on the Debtors' high claims case waterfall dated 3/26/2009, as modified by the Parent.
(2) Full value of litigation against Sterlite estimated by the Parent at $400 million. Other litigation claims unable to be valued by Parent. Recovery to creditors under Parent's Plan would explicitly be capped at 100 percent of Allowed Amount of Claims, without payment of any amounts of post-petition interest.
(3) No initial cash outlay. Does not reduce value available for distribution to other creditors. Present value calculated at 6 percent discount rate.
(4) Asbestos Litigation Put to Sterlite is valued at $137 million, based upon conversations with the Asbestos Representatives and applying a discount rate of 8 percent.
(5) Subject to litigation under both the Debtors' Plan and Harbinger's Plan. The Debtors believe the litigation is ripe for resolution and will more likely than not be resolved in the Debtors' favor. The Parent disagrees.
(6) Amounts assume that Class 3 creditors vote to support the Parent's Plan. If not, the Parent will be forced to continue to litigate the proper Allowed Amount for Custodial Trust and Environmental Unsecured Claims. For each $100 million that Allowed Amount of Environmental Claims are reduced, percentage recovery in Cash to all Unsecured Claims increases by 4.9 percent.
(7) The Parent does not believe that Harbinger will be able to limit value of asbestos Claims and Demands to $500 million, which is a condition to Harbinger's Plan, and therefore has used the $750 million figure agreed to by the Parent and the Debtors. Based on the Asbestos Settlement entered into between the Asbestos Claimants' Committee, the FCR, the Debtors, and Sterlite, the holders of Class 4 Unsecured Asbestos Personal Injury Claims have agreed to reduce their aggregate Allowed Claim to $1 billion and to accept a Pro Rata distribution based on the $750 million. If the figure of $500 million were used for Harbinger, aggregate recoveries to unsecured creditors would increase to 64.6 percent.

IMPORTANT NOTES FROM THE DEBTORS REGARDING THE PARENT'S COMPARISON CHART:

1. The Parent has only used the Debtors' High Claims case for its comparison chart because, the Debtors believe, it manipulates the analysis in favor of the Parent's Plan. The Debtors' best estimate of how the Claims will ultimately be resolved is the Known and Preliminary Claims estimates that the Debtors have used in their Comparison Chart.

2. The Parent has overvalued the litigation claims against Sterlite by hundreds of millions of dollars and has failed to value the claims against the Parent under the Debtors' Plan. This error and material omission could cause a swing in value under the Parent's analysis of over a billion dollars in favor of the Parent's Plan.

3. The Parent's Plan DOES NOT offer creditors the opportunity to receive post-petition interest. The Debtors estimate the post-petition interest for Class 3 General Unsecured Claims at the federal judgment rate would be $321.6 million. If the Bondholders are entitled to interest at their contract rate, the post-petition interest for the Bondholders increases from $90.1 to $170 million and the aggregate interest payable to Class 3 General Unsecured Creditors based on the high claims estimate would be $401.1 million. The post-petition interest payable to the Class 4 Unsecured Asbestos Personal Injury Claimants would be $135.1 million (based on a $750 million claim amount). Therefore, the Debtors believe the reference by the Parent to payment of 100 percent to Class 3 and Class 4 is misleading.

4. Under the Parent's Plan and using the Parent's estimates, $115 million of litigation proceeds is returned to the Reorganized Debtor for the benefit of the Parent rather than being distributed to creditors on account of the post-petition interest they are owed. The Parent disagrees that excess proceeds are for the benefit of the Parent; rather, they provide working capital for Reorganized ASARCO which benefits employees and holders of reinstated claims.

FOR A FULL PLAN COMPARISON, CREDITORS ARE URGED TO REVIEW THE DEBTORS' PLAN COMPARISON CHART ON PAGE 14.

Parties' Positions Regarding the Parent's "New Value" Plan

The Parent's Plan is premised upon the Parent receiving 100 percent of the New Equity Interests in Reorganized ASARCO and a release of all claims by the Debtors against the Parent and its Affiliates, including under the SCC Final Judgment, in exchange for the Parent contributing "new value" to the Debtors' Estates. The "new value" formulation was described by the Supreme Court in *Bank of America National Trust and Savings Assoc. v. 203 North LaSalle Street Partnership*, 526 U.S. 434, at 445, and permits a holder of equity (or other junior claim or interest) under certain circumstances to receive ownership interest in a reorganized debtor in exchange for a contribution of new value. Courts in the Firth Circuit, among others, have stated that there are four requirements to qualify for the "new value" exception: the value must be (a) new; (b) in the form of money or money's worth; (c) necessary for a successful reorganization; and (d) reasonably equivalent to the value received in return. *See Southern Pacific Trans. Co. v. Voluntary Purchasing Groups. Inc.*, 252 B.R. 373, 389 (E.D. Texas 2000); *In re Mortgage Inv. Co. of El Paso, Tex.*, 111 B.R. 604, 619 (W.D. Tex. 1996) (citing *Case v. Los Angeles Lumber Products Co.*, 308 U.S. 106 (1939)); *In re Way Apartments, D.T.*, 201 B.R. 444 (N.D. Tex. 1996). The Parent asserts that the Parent's Plan easily meets all the requirements of a permissible "new value" plan. The Debtors and Harbinger disagree.

First, under the Parent's Plan, the Parent will contribute "new value" to Reorganized ASARCO as follows: (a) the Parent Contribution in the amount of $1.4625 billion; (b) the issuance of a $280 million note payable to the Section 524(g) Trust, guaranteed by AMC and fully secured by a pledge of 51 percent of the New Equity Interests in Reorganized ASARCO and all of Reorganized ASARCO's assets; (c) a release of the Parent's claims against the estate, including a claim for reimbursement of $161.7 million for taxes paid on the Debtors' income and a claim to a tax refund that is presently estimated to be worth approximately $60 million; and (d) the provision of a $200 million Working Capital Facility to fund Reorganized ASARCO's operations upon emergence from bankruptcy.

The Debtors and Harbinger assert that the Parent's Plan fails to satisfy the "new value" requirements under applicable law of the Fifth Circuit Court of Appeals for a variety of reasons. First and foremost, the Debtors and Harbinger contend that the Parent receives a release of the SCC Final Judgment (valued at $7.48 billion as of June 2, 2009) for little or no additional consideration. The Debtors and Harbinger reserve the right to assert additional deficiencies regarding the "new value" contributed under the Parent's Plan in their respective confirmation briefing.

Regarding the asserted SCC Final Judgment, the Parent notes that the vast majority of the judgment consists of shares of stock whose market value is subject to substantial fluctuations. In the previous 52 weeks, the share price has fluctuated between $9.12 and $36.91 per share. Therefore the reference to a specific value should be taken solely as an indication of value on June 2, 2009.

Second, the Parent believes that the new value provided by the Parent constitutes "money's worth" as it is in the form of cash and notes, among other items of consideration. These contributions are all immediate forms of tangible property with concrete worth, and expose the Parent to serious economic losses. Thus, the Parent asserts that the Parent's Plan fulfills the "money's worth" requirement.

Third, the Parent believes that the consideration to be provided by the Parent under the Parent's Plan is clearly "necessary" for the Debtors' successful reorganization. All three proposed plans provide some form of plan sponsor consideration as necessary for the proposed reorganization, and no party has proposed that the Debtors can be successfully reorganized without an infusion of cash and other consideration from a plan sponsor. Therefore, the Parent believes that it is self evident that a plan sponsor contribution, such as the new value to be provided by the Parent under the Parent's Plan, is necessary for the Debtors' successful reorganization.

Courts construing the necessity requirement have held that proponents of a new value plan need not show that equity holders are the only source of new capital to satisfy the necessity requirement, but rather that the equity holders are the most feasible source of the new capital. *See Bonner Mall P'ship v. U.S. Bancorp Mortg. Co. (In re Bonner Mall P'ship)*, 2 F.3d 899, 911 n.30 (9th Cir. 1993), *cert. granted*, 510 U.S. 1039 (1994), *vacatur denied and appeal dismissed as moot*, 513 U.S. 18 (1994). The Parent submits that the two competing plans offered by the Debtors and Harbinger offer substantially less consideration and that Harbinger's Plan lacks a meaningful resolution of the asbestos claims, and are inferior and unconfirmable. In contrast, the Parent asserts that the Parent's Plan offers superior recovery to creditors and has the support of the Asbestos Committee and the FCR. The Debtors' Plan also has the support of the asbestos representatives. Accordingly, the Parent asserts that the new value provided in the Parent's Plan is necessary for the implementation of a feasible reorganization of ASARCO.

The Debtors believe the Debtors' Plan offers consideration superior to that of the Parent's Plan. The Debtors' Plan resolves the Sterlite claims for an amount substantially in excess of that realizable under the litigation strategy embodied in the Parent's Plan. Further, the alleged "new value" proposed in the Parent's Plan is inadequate compensation for the release of the SCC Final Judgment (valued at $7.48 billion as of June 2, 2009) alone.

Fourth, the Parent believes that the consideration to be paid by the Parent is reasonably equivalent to the value received in return under the Parent's Plan. The Debtors' assets have been fully marketed through a rigorous sale and auction process, as described in Section 2.28 herein, and three competing plans have been filed. The Debtors asserted and presented evidence through their officers and experts at the trial regarding approval of the Sterlite 9019 Motion that ASARCO's enterprise value is between $700 and $900 million. The Parent asserts that the total consideration provided by the Parent under the Parent's Plan is substantially in excess of the enterprise value calculated by the Debtors and the value offered under either of the competing Plans.

The Debtors and Harbinger assert that the proposed consideration is inadequate given the magnitude of the approximately $7.48 billion (as of June 2, 2009) SCC Final Judgment entered by the District Court.

Moreover, the SCC Final Judgment is subject to compelling challenges on appeal such that the present value of the SCC Final Judgment is highly speculative. In light of the likelihood of reversal of the SCC Final Judgment on appeal, the costs and delays associated with defending the SCC Final Judgment, and the likely lengthy delay in realizing any monetary value, if any, from the SCC Final Judgment, the Parent believes that the consideration to be provided by the Parent in exchange for release of the SCC Final Judgment greatly exceeds the present value of the SCC Final Judgment.

The Debtors and Harbinger contend that the maximum potential value of the SCC Final Judgment prevents the Parent's Plan from fulfilling the reasonably equivalent value requirement. The Debtors and Harbinger assert that the proposed consideration to be provided under the Parent's Plan is inadequate given the magnitude of the approximately $7.48 billion (as of June 2, 2009) SCC Final Judgment entered by the District Court. As noted above, the vast majority of the judgment consists of shares of stock whose market value is subject to substantial fluctuations. In the previous 52 weeks, the share price has fluctuated between $9.12 and $36.91 per share. Therefore the reference to a specific value should be taken solely as an indication of value on a given day.

The Debtors and Harbinger disagree with the Parent's assessment of the weakness of the SCC Judgment on appeal, assert that trading the release of the claims under the SCC Final Judgment in order to pursue the much more speculative recoveries for the Sterlite claims under the Parent's Plan will result in creditors receiving substantially less in terms of the ultimate recovery in these chapter 11 cases and that substantial litigation recoveries under the Parent's Plan could take years to realize if they ever come to fruition at all.

Moreover, the Debtors already have the SCC Final Judgment in hand, secured by the SCC shares held in escrow by the District Court. Litigation with respect to the SCC Final Judgment is substantially complete and in the Debtors' view all relevant appeals likely will be exhausted within less than two years. Therefore, as compared to the litigation of the claims against Sterlite, the SCC Final Judgment represents a much more rapid recovery for creditors, with few if any enforcement and collection issues likely to frustrate the recoveries.

Harbinger contends that the value of the release of the SCC Final Judgment vastly exceeds any arguable value paid for that release under the Parent's Plan. Harbinger agrees with the Parent that the present value of the SCC Final Judgment could appropriately reflect some discount from $7.48 billion value (as of June 2, 2009) to reflect the possibility of reversal on appeal, but no reasonable discount would remotely approach even the highest amount the Parent is arguably offering for the release. Harbinger believes that no reasonable finder of fact could conclude that there is a greater than 50 percent chance of reversal on appeal, and that accordingly the present value of the SCC Final Judgment is well in excess of $3 billion.

Harbinger further contends that the litigation rights released under the Parent's Plan, including the SCC Final Judgment, may otherwise belong to bondholders and other creditors of the Debtors, and that the release of such litigation rights is an alteration of the Bondholders' rights and impairs the Bondholders. The Parent disagrees and will address more completely in Confirmation briefings.

Finally, the Parent asserts that, because the total consideration provided by the Parent under the Parent's Plan offers the maximum Effective Date consideration of any currently proposed plan, avoids the extensive, costly, and time-consuming litigation of appealing the SCC Final Judgment, and makes proceeds available for immediate distribution to

ASARCO creditors, and (according to the Parent) is the only plan that is confirmable on its face, the new value provided by the Parent's Plan constitutes reasonably equivalent value.

The Debtors disagree with these contentions and assert that the Debtors' Plan, which now has the support of all major constituencies in the Reorganization Cases, meets all of the requirements of the Bankruptcy Code, is confirmable, and provides the maximum consideration of any of the proposed Plans.

Harbinger asserts that neither the Debtors' Plan nor the Parent's Plan provides adequate compensation to creditors for the litigation claims that those plans would release and believes that Harbinger's Plan, by preserving both the litigation against Sterlite and the SCC Final Judgment will result in maximum creditor recovery.

Harbinger's Position Regarding the Parent's Plan

Harbinger intends to vote to reject the Parent's Plan. Citigroup Global Markets, Inc. ("Citi") has also indicated that it will also vote to reject the Parent's Plan. Harbinger further asserts that in light of the inadequate consideration provided to General Unsecured Creditors under the Parent's Plan, all other creditors holding Class 3 General Unsecured Claims under the Parent's Plan should vote to reject the Parent's Plan as well.

The Parent contends that Bondholder Claims represent roughly 20 percent of General Unsecured Claims, and therefore Harbinger and Citi do not possess a blocking position with respect to acceptance of the Parent's Plan. Moreover, the Parent may request that the Bankruptcy Court strike any votes cast by Harbinger against the Parent's Plan and in favor of Harbinger's Plan pursuant to section 1126(e) of the Bankruptcy Code. Section 1126(e) allows a court to designate, or disqualify, an entity whose acceptance or rejection of a plan was not in good faith. The Parent believes that Harbinger's efforts to block confirmation of a competing plan may be in bad faith and that its votes should be disregarded under section 1126(e). Harbinger disagrees, and notes that the Parent has not identified any reason for questioning the good faith of Harbinger's actions. Moreover, Harbinger has not disclosed detailed information about the claims it has purchased as required by Bankruptcy Rule 2019, including the nature and amount of the claims and the time they were acquired. Harbinger's continued failure to comply with Bankruptcy Rule 2019 may provide another basis for invalidating its votes or for preventing its participation in the Bankruptcy Cases. Harbinger disagrees, and maintains that it has complied fully with Bankruptcy Rule 2019.

Harbinger asserts that the Parent's Plan is non-confirmable for a number of reasons. Without limitation, Harbinger asserts the following issues with respect to the Parent's Plan. *First*, the Parent's Plan cannot satisfy the best interests of creditors test as required by section 1129(a)(7). Section 1129(a)(7) prohibits a court from approving a plan of reorganization unless, with respect to each class of claims or interests, each holder of a claim or interest (1) has accepted the plan, or (2) will receive or retain under the plan on account of such claim or interest, property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of the Bankruptcy Code. Harbinger asserts that, were the Debtors liquidated today, the Distributable Cash, the Final Claims and claims that the Debtors have against Sterlite are more than adequate to pay Class 3 General Unsecured Creditors under the Parent's Plan in full with post-petition interest. Notably, the Debtors have indicated that, as of June 2, 2009, the SCC Final Judgment for cash and stock had a value of approximately $7.48 billion, which is significantly in excess of the Debtors' estimate of the total Claims against the Debtors. Moreover, although the Debtors' liquidation analysis attributes a value of $100 million to the Debtors' claims against Sterlite, the Parent values such claims at potentially $1.1 billion. As a result, Harbinger asserts that, after properly taking into account the value of the SCC Final Judgment and claims against Sterlite, Class 3 General Unsecured Creditors under the Parent's Plan should be expected to recover 100 percent of the value of their claims (plus post-petition interest). Accordingly, the Parent's Plan, to the extent it proposes to pay Class 3 General Unsecured Creditors anything less than 100 percent of the face value of their claims plus post-petition interest, cannot satisfy the best interests of creditors test.

Second, assuming that creditors holding Class 3 General Unsecured Claims under the Parent's Plan will vote to reject the Parent's Plan, Harbinger believes that the Parent will be unable to demonstrate that its plan does not discriminate unfairly with respect to such impaired dissenting class as required by section 1129(b) of the Bankruptcy Code. Harbinger asserts that, by estimating the aggregate amount of Asbestos Personal Injury Claims and Unknown Asbestos Claims at $1 billion, the Parent's Plan grossly inflates the true amount of those claims. The Asbestos Claimants' Committee and the FCR strongly contest this statement, and note that both the Debtors' Plan and the Parent's Plan include an Allowed Claim of $1 billion for the holders of Class 4 Asbestos Personal Injury Claims. In this regard, Harbinger notes, and directs creditors' attention to, the Parent's prior statements concerning asbestos liabilities including in the Parent's Disclosure Statement in Support of its Second Amended Plan of Reorganization, dated September 25, 2008, which was mailed to all

holders of claims and interests. That prior Disclosure Statement, written before the Parent purchased the Asbestos Claimants' Committee's support, included for example the following statements inconsistent with the Parent's present positions:

- (at page 3) "the Debtors' Plan would not require holders of such Claims to prove their entitlement in Court, but would pay them amounts that, in the [Parent's] estimation, are far in excess of the legitimate amount of such Claims."

- (at page 17) "the corporate veil cannot be pierced to hold ASARCO liable for the asbestos-related liabilities of LAQ and CAPCO. Moreover, even if the corporate veil is pierced, the [Parent] believes that the Asbestos Claimants' Committee and the FCR have significantly overstated the alleged estimated damages, and therefore that the Allowed amount of Asbestos Personal Injury Claims and Demands would be significantly less."

- At pages 18 through 20, a lengthy legal discussion of the Parent's basis for believing that "a court would not find that ASARCO is the alter ego of the Asbestos Subsidiary Debtors."

- (at page 20) "the [Parent] believe[s] that, if the Asbestos Contested Matter were fully tried, the Bankruptcy Court would ultimately determine that, even if ASARCO has any liability for the Derivative Asbestos Claims, the aggregate liability is much closer to the low end of the range above [i.e., between $180 million and $2.655 billion]".

Harbinger believes that the Parent's new position with regard to asbestos liabilities is disingenuous, and that the consideration provided to the Parent's Section 524(g) Trust under the Parent's Plan will result in holders of Asbestos Personal Injury Claims and Unknown Asbestos Claims being paid in excess of 100 percent of the value of their total claims. Accordingly, Harbinger asserts that the Parent's Plan is not confirmable because it unfairly discriminates against Class 3 General Unsecured Claims under the Parent's Plan by paying them less than 100 percent of their claims plus post-petition interest while paying Asbestos Personal Injury Claims and Unknown Asbestos Claims in excess of 100 percent of the value of their total claims. The Parent contends that Harbinger's criticism of the Parent's Plan's treatment of asbestos claimants is meritless, because the Debtors control the claims settlement process and the Debtors' Plan proposes to allow Asbestos Personal Injury Claims and Unknown Asbestos Claims in an amount equal to the amount allowed under the Parent's Plan. Moreover, the Parent believes that holders of General Unsecured Claims are treated fairly under the Parent's Plan because they will receive 100 percent of the Allowed Amounts of their claims. The Parent notes that, by contrast, asbestos claims are paid 78 percent under the Parent's Plan. Harbinger disagrees, noting that (a) the Parent's Plan would fail to pay unsecured creditors any post-petition interest on Allowed Claims, as is required whenever an estate is solvent as Harbinger believes is clearly the case here; and (b) the assertion that asbestos Claims are paid "78 percent under the Parent's Plan" is a meaningless figure based upon an arbitrary and inflated value for asbestos liabilities.

(Harbinger likewise believes that the Debtors' Plan overstates asbestos liabilities and would pay Asbestos Personal Injury Claims and Unknown Asbestos Claims in excess of 100 percent of the value of their total Claims. However, unlike the Parent's Plan, the Debtors' Plan does not impermissibly foreclose payment of post-petition interest.)

Third, assuming that Creditors holding Class 3 General Unsecured Claims under the Parent's Plan will vote to reject the Parent's Plan, Harbinger believes that the Parent will be unable to demonstrate that its plan is fair and equitable with respect to each impaired dissenting class as required by section 1129(b)(1) and (2) of the Bankruptcy Code. Those sections codify the "absolute priority rule" and provide that a plan is not fair and equitable, and thus cannot be confirmed over a dissenting class of unsecured creditors, if the holder of any claim or interest that is junior to the claims of such dissenting class receives or retains any property under the plan on account of such junior claim or interest. Here, Harbinger asserts that the consideration being distributed to the Parent under the Parent's Plan (i.e., (1) the release of the SCC Final Judgment and (2) new equity interests in Reorganized ASARCO) far exceeds the value of any consideration being provided to the Debtors' estates. As a result, because the Parent's Plan does not provide for the payment in full (plus post-petition interest) of Class 3 General Unsecured Claims, Harbinger asserts that the Parent's Plan violates the absolute priority rule and cannot be confirmed.

The Parent believes that the Parent's Plan conforms to the absolute priority rule, and the consideration to be provided by the Parent under the Parent's Plan exceeds the value of the release and the new equity interests.

As an alternative to the Debtors' Plan and the Parent's Plan, Harbinger asserts that Harbinger's Plan, unlike the Parent's Plan, (1) will satisfy the best interests of creditors test as required by section 1129(a)(7) of the Bankruptcy

Code; (2) will not unfairly discriminate against classes of creditors; and (3) will satisfy the fair and equitable requirements of section 1129(b) of the Bankruptcy Code.

OVERVIEW OF HARBINGER'S PROPOSED PLAN

The following text has been prepared by Harbinger with reference to Harbinger's Plan and using defined terms from Harbinger's Glossary. All statements and representations are the sole responsibility of Harbinger. The Debtors and the Parent and AMC do not necessarily agree or disagree with any of the statements or representations in this section and each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

The following is a brief summary of certain material provisions of Harbinger's Plan. By necessity, this summary is incomplete and is qualified by reference to the more detailed information contained in Harbinger's Plan. Except as set forth above and below, because Harbinger's Plan is substantially similar to the Debtors' Plan, reference should be made to the more detailed information contained in the Debtors' Disclosure Statement to the extent not specifically addressed herein.

Harbinger's Plan provides for ASARCO to sell substantially all of its tangible and intangible operating assets free and clear of all liens, Claims interests and encumbrances, to an entity designated by Harbinger (the "Harbinger Plan Sponsor") in exchange for $500,000,000 in Cash and the assumption of certain liabilities. In connection with the sale of the Sold Assets to the Harbinger Plan Sponsor, Harbinger Capital Partners Master Fund I, Ltd.[2] and Citigroup Global Markets Inc.[3] shall provide a $500 million commitment to fund the Harbinger Plan Sponsor and will severally guarantee the Harbinger Plan Sponsor's obligations under the Plan Sponsor PSA up to $125 million.

The Harbinger Plan Sponsor shall take the Sold Assets free and clear of any liabilities relating to claims that are based on any acts or omissions by any of the Debtors. A copy of the proposed purchase and sale agreement is attached hereto as **Exhibit R**.

The majority of the proceeds from such sale, together with other available Plan Consideration, shall be paid to holders of Allowed Claims largely in accordance with the priorities established by the Bankruptcy Code, as follows:

- Holders of Administrative Claims, Priority Tax Claims, and Priority Claims shall be paid the Allowed Amount of their Claims;
- Holders of Secured Claims, at the Harbinger Plan Sponsor's option, shall either be paid the Allowed Amount of their Claims with any applicable post-petition interest or reinstated;
- Holders of Convenience Claims shall be paid the Allowed Amount of their Claims;
- Holders of Allowed Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall receive 100 percent of the interests in Reorganized Covington and their pro rata share (based upon the Class 4 Claims Estimate and as among the Allowed Unsecured Asbestos Personal Injury Claims, Unknown Asbestos Claims and Allowed General Unsecured Claims) of

[2] Harbinger Capital Partners was founded in 2001. It currently manages approximately $6 billion in assets and is led by its Co-Founder and Chief Investment Officer, Philip Falcone, who has over 20 years of investment experience across an array of market cycles. The Harbinger team is disciplined and value oriented, focusing on alpha generating ideas that are uncorrelated to investment cycles.

[3] Citigroup Global Markets Inc. is the investment banking division, and a wholly owned subsidiary, of Citigroup Inc., a publicly traded Corporation (NYSE: C). Headquartered in New York, Citi is a full-service, global investment bank that provides advisory and specialty financing services for corporate and government entities as well as underwriting, sales, research, and trading services for individual and institutional investors. Citigroup Inc. is one of the world's leading financial services firms with more than 200 million customer accounts across six continents and 100 countries, over 300,000 employees and total assets of approximately $1.94 trillion. Citigroup Inc. has a significant presence in investment banking, securities brokerage, asset management, commercial banking, consumer finance, and credit cards, and is a leader in virtually every debt and equity market, including fixed income securities and municipal finance.

the Plan Consideration (which will include Cash as well as the Liquidation Trust Interests and the SCC Litigation Trust Interests);

- Holders of Allowed General Unsecured Claims shall receive their pro rata share (as among the Allowed Unsecured Asbestos Personal Injury Claims, Unknown Asbestos Claims, and Allowed General Unsecured Claims) of the Plan Consideration (which will include Cash as well as the Liquidation Trust Interests and the SCC Litigation Trust Interests);

- Holders of Late-Filed Claims shall receive interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Interest Priorities;

- Holders of Subordinated Claims shall receive interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Interest Priorities; and

- Holders of Interests in ASARCO shall receive (a) interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Interest Priorities and (b) the residual interests in the Asbestos Claims Liquidation Trust.

An Asbestos Claims Liquidation Trust shall be established for the benefit of Unsecured Asbestos Personal Injury Claims, Unknown Asbestos Claims, and the Parent. However, unlike the Debtors' Plan and the Parent's Plan, Harbinger's Plan does not provide for a channeling injunction pursuant to section 524(g) of the Bankruptcy Code. Rather, holders of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims must first be satisfied by recourse against the Asbestos Claims Liquidation Trust. Unsecured Asbestos Personal Injury Claimants will be enjoined from ever asserting Claims against the ASARCO Protected Parties including the Harbinger Plan Sponsor. Holders of Unknown Asbestos Claims would be enjoined from asserting Claims against the ASARCO Protected Parties including the Harbinger Plan Sponsor until such time as they have exhausted the remedies provided by the Asbestos Claims Liquidation Trust Agreement. To the extent any ASARCO Protected Party incurs any liability, damages and costs associated with (a) any Claims arising out of or relating to the Harbinger Plan Sponsor's purchase of the Sold Assets or (b) any Claims related to any Unsecured Asbestos Personal Injury Claim or Unknown Asbestos Claim, the Asbestos Claims Liquidating Trust shall indemnify and hold the ASARCO Protected Party harmless, or otherwise reimburse or compensate the ASARCO Protected Party for any such liability, damages and costs; *provided, however*, that such obligations of the Asbestos Claims Liquidating Trust with respect to such indemnity shall be subordinate in all respects to the payment in full of all Allowed Class 4 Claims.

Unlike the Debtors' Plan, the Litigation Claims contributed to the Liquidation Trust under Harbinger's Plan will include Claims against Sterlite that the Parent has estimated may be worth as much as $3.0 billion, for the benefit of General Unsecured Claims, Unsecured Asbestos Personal Injury Claims, Unknown Asbestos Claims, Late-Filed Claims, Subordinated Claims, and Interests.

In addition, unlike the Parent's Plan, the SCC Litigation Claim (which the Debtors estimate was worth approximately $7.48 billion as of June 2, 2009) will be contributed to the SCC Litigation Trust for the benefit of General Unsecured Claims, Unsecured Asbestos Personal Injury Claims, Unknown Asbestos Claims, Late-Filed Claims, Subordinated Claims, and Interests.

Harbinger's Plan will permit any alternative plan sponsor to purchase substantially all of ASARCO's assets provided that such alternative plan sponsor (a) has made a bid with a Cash purchase price in excess of $500 million; (b) has agreed to perform under Harbinger's Plan and related purchase and sale agreement without any additional conditions or other modifications; (c) has deposited at least $500 million into escrow as assurance of performance; and (d) has negotiated a collective bargaining agreement that is acceptable to the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial, and Service Workers International Union. Harbinger's Plan does not provide for the payment of any "topping fee" to Harbinger in the event that an alternative plan sponsor submits a higher bid.

Summary Description of Classes and Distributions
to Holders of Claims and Interests Under Harbinger's Plan

The classification of Claims and Interests, the estimated aggregate amount of Claims in each Class, and the amount and nature of distributions to holders of Claims or Interests in each Class under Harbinger's Plan are summarized in the table below. **Please read Section 10 of this Disclosure Statement and Article III of Harbinger's Plan for more detailed and complete information.**

In formulating the estimated recovery set forth in the charts below, Harbinger has relied on the Debtors' projections.

Under Harbinger's Plan, Class 4 Claims will be estimated at $500 million. However, the Asbestos Subsidiary Committee and/or the FCR may, within two business days after confirmation of Harbinger's Plan, request that the Bankruptcy Court conduct an evidentiary hearing to establish an alternative estimate. Although no assurances can be given, Harbinger believes that, based on a $500 million Class 4 Claims Estimate, holders of Class 3 Claims would receive a Cash distribution on the Initial Distribution Date equal to approximately 46 percent of the principal amount of their Claims, and the Asbestos Claims Liquidation Trust would receive a cash payment of approximately $230 million.[4]

The value of non-Cash consideration depends on a number of factors, including the outcome of litigation and success in collecting on judgments. As noted above, the principal non-Cash items are the litigation claims to be held by the Liquidation Trust and the SCC Litigation Trust, the latter of which presently takes the form of the SCC Final Judgment from Federal District Court for Cash and SCC stock with a market value of approximately $7.48 billion, as of June 2, 2009. While there is no guarantee as to how much will ultimately be realized on these litigation claims, Harbinger notes that, based on a $500 million Class 4 Claims Estimate, aggregate litigation recoveries of $1.490 billion or more would result in a 100 percent recovery to all Holders of Class 3 Claims.

Substantial disputes exist between the Debtors and the Bondholders, including as to the Bondholders' entitlement to post-petition interest, the appropriate rate of post-petition interest to be paid on the Bondholders' Claims, and whether the Bondholders are entitled to a "make whole premium" that those Bondholders assert could total in excess of $100 million.

Unclassified Claims Under Harbinger's Plan

In accordance with section 1123(a)(1) of the Bankruptcy Code, Administrative Claims and Priority Tax Claims have not been classified.

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

[4] This estimate further assumes, among other things, (1) Cash on hand from operations of $1.3 billion; (2) allowed Bondholder Claims of $440 million; (3) total Administrative Claims of $500 million; and (4) other Claim estimates taken from the Debtors. Harbinger notes that this 46 percent figure differs from the 44.8 percent estimate set forth by the Parent principally because the Parent incorrectly assumes $750 million in allowed Asbestos Person Injury Claims.

Classified Claims and Interests Under Harbinger's Plan

Description of Claims and Unknown Asbestos Claims Under Harbinger's Plan	Description of Distributions or Treatment Under Harbinger's Plan	Status/Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Unknown Asbestos Claims	Estimated Recovery
Class 1 — Priority Claims	Shall receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date or, if later, the date or dates on which such Priority Claim becomes due in the ordinary course	**Unimpaired** Deemed to Accept Harbinger's Plan Not Entitled to Vote	*De Minimis*	100%
Class 2 — Secured Claims	Shall, at Harbinger's election, either (a) receive the Allowed Amount of such holder's Claim, together with any applicable post-petition interest, in Cash, on the later of the Effective Date or the date or dates such Secured Claim becomes due in the ordinary course or (b) be Reinstated on the Effective Date	**Will Vote, But Only the Votes of Claimants Receiving the Cash Payment Option Will Be Counted**	$28 to $33 million	100%
Class 3 — General Unsecured Claims	Shall receive such holder's Pro Rata share of Plan Consideration, consisting of Cash, Liquidation Trust Interests, and SCC Litigation Trust Interests	**Impaired** Entitled to vote	$2.1 to $2.3 billion	46% to 100%[5]
Class 4 — Unsecured Asbestos Personal Injury Claim	Shall receive such holder's Pro Rata share of Plan Consideration, consisting of Cash, Liquidation Trust Interests, and SCC Litigation Trust Interests	**Impaired** Entitled to vote	TBD	46% to 100%[5]
Class 5 — Convenience Claims	Shall generally receive the Allowed Amount of such holder's Claim, in Cash, on the Effective Date	**Unimpaired** Deemed to Accept Harbinger's Plan Not Entitled to Vote	TBD	100%

[5] Based on a $500 million Class 4 Claims Estimate, Harbinger projects an initial payment of approximately 46 percent in Cash to be made on or soon after the Effective Date. To the extent that the recovery on the litigation claims held by the Liquidation Trust and the SCC Litigation Trust (which includes the SCC Litigation and the Sterlite Litigation) equals $1.490 billion or more, taking into account a $500 million Class 4 Claims Estimate, Harbinger asserts that holders of Class 3 Claims will receive a 100 percent recovery.

Description of Claims and Unknown Asbestos Claims Under Harbinger's Plan	Description of Distributions or Treatment Under Harbinger's Plan	Status/Entitled to Vote	Estimated Aggregate Amount of Allowed or Asserted Claims or Unknown Asbestos Claims	Estimated Recovery
Class 6 — Late-Filed Claims	Shall receive interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Priorities	**Impaired** Deemed to reject Harbinger's Plan Not Entitled to vote	$10 to $26 million	TBD
Class 7 — Subordinated Claims	Shall receive interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Priorities	**Impaired** Deemed to reject Harbinger's Plan Not Entitled to vote	TBD	TBD
Class 8 — Interests in ASARCO	Shall receive (i) interests in the Liquidation Trust and the SCC Litigation Trust to be applied in accordance with the Trust Priorities and (ii) residual interests in the Asbestos Claims Liquidation Trust	**Impaired** Deemed to reject Harbinger's Plan Not Entitled to vote	N/A	TBD
Class 9 — Interests in Asbestos Subsidiary Debtors	Shall not receive or retain any property under the Plan on account of such Interests	**Impaired** Deemed to reject Harbinger's Plan Not Entitled to vote	N/A	0%
Class 10 — Interests in Other Subsidiary Debtors	Shall not receive or retain any property under the Plan on account of such Interests	**Impaired** Deemed to reject Harbinger's Plan Not Entitled to vote	N/A	0%

For purposes of distributions on account of interests in the Liquidation Trust and SCC Litigation Trust, the phrase "Trust Interest Priorities" means the priority of payment of all classes of Claims that are receiving interests in the Liquidation Trust and the SCC Litigation Trust on account of which the priority of payments shall be as follows:

(a) First, on account of the Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis, until such Claims are paid in full;

(b) Second, on account of Allowed Amounts of any Class 6 Claims, on a Pro Rata basis, until such Claims are paid in full;

(c) Third, on account of post-petition interest on any Allowed Amounts of any Class 3 Claims, Class 4 Claims or Class 6 Claims calculated at the higher of the applicable non-default contract rate or the federal judgment rate in accordance with section 1962 of title 28 of the United States Code, on a Pro Rata basis, until such Claims are paid in full;

(d) Fourth, on account of Class 7 Claims, on a Pro Rata basis, until such Claims are paid in full; and

(f) Fifth, on account of post-petition interest on any Allowed Amounts of any Class 7 Claims calculated at the higher of the applicable non-default contract rate or the federal judgment rate in

accordance with section 1962 of title 28 of the United States Code, on a Pro Rata basis, until such Claims are paid in full.

Parent's Position Regarding Harbinger's Plan

The Parent believes that Harbinger's Plan is patently unconfirmable. The Asbestos Claimants' Committee and the FCR have stated that they will oppose Harbinger Plan. Harbinger has indicated that it will attempt to overcome this lack of support and confirm a plan containing a non-section 524(g) channeling injunction over the objection of the FCR. The Parent is not aware of any authority supporting Harbinger's position given that Congress, through section 524(g), imposed very specific requirements before a court could approve an asbestos claims channeling injunction. Given the lack of any other authority upon which Harbinger can rely to cram down its asbestos methodology over the opposition of the Asbestos Claimants' Committee and the FCR, the Parent submits that Harbinger's Plan is patently unconfirmable.

The problems with Harbinger's Plan are compounded because Harbinger's Plan and the recovery percentages Harbinger has estimated for Class 3 and Class 4 Claims are premised on the aggregate amount of Asbestos Personal Injury Claims and Demands (Class 4 Claims) being no more than $500 million. Following confirmation, however, Harbinger's Plan allows parties to request an evidentiary hearing to estimate Class 4 Claims. The asbestos Claims and Demands have been asserted to be up to $2.2 billion and the Debtors and the Parent have both allowed asbestos Claims and Demands in the amount of $1.0 billion. It is highly likely that the Court would estimate asbestos Claims and Demands in excess of $500 million, thereby enlarging the claims pool and reducing the distribution percentages under Harbinger's Plan. In that case, the recovery for Class 3 Claims and Class 4 Claims could be much lower than Harbinger predicts. Given the issues described above with respect to the size of the Claims pool and the fact that the Debtors at one time agreed the Asbestos Claims and Demands should be allowed in the amount of $1.25 billion, the Parent submits that Harbinger's Plan can never be confirmed as written.

Harbinger disagrees, and observes that, in now asserting that it "is highly likely that the Court would estimate asbestos Claims and Demands in excess of $500 million," the Parent brazenly contradicts its earlier vehement public statements that it held precisely the opposite belief, including for example the assertions made in the Parent's prior disclosure statement summarized under "Harbinger's Position Regarding the Parent's Plan" above. Harbinger submits that creditors should view this episode as a valuable demonstration that the Parent's professions of belief are unworthy of any credence, and should apply this lesson in evaluating other statements by the Parent, notably including the Parent's supposed beliefs concerning the likelihood that the SCC Final Judgment would be reversed on appeal.

Harbinger disagrees with the positions of the Asbestos Claimants' Committee, FCR, and Parent, and submits that these parties have fundamentally misconstrued the nature of the channeling injunction sought in Harbinger's Plan. Unlike a section 524(g) injunction, the channeling injunction under Harbinger's Plan would not permanently deprive Unknown Asbestos Claimants from pursuing putative causes of action against third parties, including purchasers of the Debtors' assets. Rather, the channeling injunction would merely require Unknown Asbestos Claimants to seek relief from the Asbestos Claims Liquidation Trust so long as, and only so long as, there are assets available to that Trust. Put another way, the channeling injunction uses the excess assets (if any) left after existing Claims are satisfied to create a fund to satisfy Unknown Asbestos Claims and protect ASARCO Protected Parties from such Claims. Unknown Asbestos Claimants could not suffer any cognizable injury by having their Claims channeled to an Asbestos Claims Liquidation Trust that has assets to satisfy such Claims. Harbinger further notes that there is indeed precedent for a limited non-524(g) channeling injunction, notably including *In re National Gypsum*, 219 F.3d 478 (5th Cir. 2000).

SECTION 1
GENERAL INFORMATION AND HISTORICAL BACKGROUND

The following general discussion in Section 1 of the history, business activities, and current management of the Debtors, and the factors leading to the need for bankruptcy relief was prepared by the Debtors and uses defined terms from the Debtors' Glossary. Except where otherwise noted, the Parent and AMC and Harbinger take no position with respect to the Debtors' descriptions and statements.

1.1 History and Business Activities of the Debtors.

A brief description of the history and business of the Debtors is set forth below, and a list of some of the prior names used by the Debtors and entities merged into the Debtors throughout their corporate existence, as well as some of

their predecessors' names, is set forth in **Exhibit G** hereto. The organizational structure of the Debtors and certain related entities, as it currently exists, is set forth in **Exhibit H** hereto.

(a) Business Overview.

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

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

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

As detailed in Sections 2.28 and 10.11 below, the Debtors' Plan and Harbinger's Plan provide for the sale of substantially all of the Debtors' operating assets to their respective Plan Sponsors. Under the Parent's Plan, these assets would revest in Reorganized ASARCO. Those assets can be generally described as follows:

(1) Mission Complex.

The Mission Complex consists of an open-pit mine, two concentrators, a molybdenum line, a warehouse, and maintenance and administration facilities. It is located in Sahuarita, Arizona, 18 miles south of Tucson, Arizona, in Pima County. The principal products produced at the Mission Complex are a concentrate containing copper and silver and a molybdenum concentrate. Copper concentrates produced at the Mission concentrators are shipped to the ASARCO Hayden smelter for conversion into copper anodes. Molybdenum concentrates are sold to an unaffiliated company to be refined into a final molybdenum product.

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

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

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

(2) Ray Complex.

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

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

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

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

(3) Hayden Smelter.

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

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

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

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

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

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

(4) Silver Bell Mine.

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

The Silver Bell mine is located approximately 45 miles northwest of Tucson in Pima County, Arizona. Although ASARCO had completed the purchase of most consolidated mining companies in the area by 1915, geologists did

not begin to reevaluate the mineral properties in the area until 1946. Stripping for the open pit mine began in 1951, but mine and mill operations were suspended in 1984 due to low copper prices.

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

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

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

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

(5) Amarillo Copper Refinery.

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

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

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

(6) Corporate Offices.

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

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

(c) Copper Basin Railway.

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

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

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

(d) Other Assets.

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

(1) El Paso Smelter.

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

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

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

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

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

(2) Globe.

The Globe, Colorado facility was acquired by ASARCO's predecessor in 1899, and operated as a specialty metals producing facility until 2006. The plant initially produced lead but, in response to market demands, changed to the

production of arsenic trioxide and cadmium. In the 1990s the facility converted operations to a high-purity metals plant refining and processing bismuth, litharge, antimony, high-purity copper, and other specialty products.

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

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

(3) East Helena.

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

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

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

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

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

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

(4) AR Sacaton Site.

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

In the early 1960s ASARCO discovered a moderate-sized copper deposit northwest of Casa Grande, Arizona. The construction of the copper concentrator was completed and milling commenced in 1974 and continued until 1984 when economic open pit mine reserves were exhausted. At the time of closing in 1984, Sacaton had an underground

reserve of 16.5 million tons at 1.25 percent copper. In addition, there is also a probable resource of 46 million tons at 0.98 percent copper as stated with a moderate degree of confidence.

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

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

(5) Perth Amboy.

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

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

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

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

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

After investigating the possibility of pursuing a liability transfer, or negotiating an additional custodial trust agreement, the Debtors filed a motion on May 15, 2009 to sell the ASARCO-owned portion of the Perth Amboy, New Jersey site. Pursuant to the motion, ASARCO sought authority to sell the Perth Amboy property to RLF and TRC, or such other higher and better purchaser. ASARCO would sell the property to RLF in exchange for RLF’s payment to ASARCO of $2,000,000 and TRC’s assumption of certain of ASARCO’s liabilities and obligations. RLF and TRC would release, defend, and indemnify ASARCO for the assumed liabilities and obligations in exchange for a remediation reimbursement equal to $12,850,000, which ASARCO would pay to TRC at closing. The assumption of ASARCO’s liabilities and obligations would be effectuated by the buyers’ negotiation of an administrative consent order with the NJDEP for remediation of the property, a remediation funding source in an amount satisfactory to the NJDEP to secure the buyers’ obligations under the administrative consent order, and an environmental insurance policy. Limited objections to the sale motion were filed by PA-PDC and Morris Realty Associates, LLC. The Bankruptcy Court held a hearing on the sale motion on June 12, 2009, and conducted an auction in which RLF/TRC, ELT Houston, LLC, and Morris Realty Associates, LLC were qualified to bid. ELT Houston, LLC was the winning bidder with a bid of $5.1 million and with no changes to the purchase and sale agreement. On June 22, 2009, the Bankruptcy Court entered an order approving the sale motion and declaring ELT Houston, LLC’s offer the highest and best offer for the property. If ELT Houston, LLC is unable to negotiate an administrative consent order with the NJDEP within 60 days, the Perth Amboy property will be transferred to an Environmental Custodial Trust. Such a transfer will have no impact on the funding of the Environmental Custodial Trusts that are being established as part of the settlements approved pursuant to the Environmental 9019 Motion.

(6) Miscellaneous Assets.

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

(e) Subsidiary Debtors.

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

1.2 Current Management of the Debtors.

(a) ASARCO.

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

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

ASARCO's current senior executive officers are:

Name	Title
Joseph F. Lapinsky	Chief Executive Officer and President
Donald B. Mills	Chief Financial Officer
Douglas E. McAllister	Executive Vice President, General Counsel, and Secretary
John B. George	Vice President, Administration
Gary A. Miller	Vice President, Commercial
Manuel E. Ramos Rada	Vice President, Metallurgical Operations
Thomas L. Aldrich	Vice President, Environmental Affairs

Name	Title
John D. Low, Jr.	Vice President, Mining Operations
Oscar Gonzalez Barron	Treasurer
Russell A. Smith	Controller

(b) The Subsidiary Debtors.

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

(c) Compensation and Benefits of Officers and Directors.

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

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

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

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

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

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

Additionally, Mr. Lapinsky shall be entitled to indemnification to the full extent available under Delaware law as an officer of ASARCO, in accordance with the LLC Agreement, and on the same terms afforded the current directors

and Mr. McAllister during his tenure as interim chief executive officer. *See* Section 2.7 below for a description of Mr. McAllister's service as an officer of ASARCO.

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

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

1.3 Factors Leading to the Need for Bankruptcy Relief.

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

(a) Longstanding Insolvency.

In 1999, Grupo México acquired ASARCO in a leveraged buyout. ASARCO was saddled with the debt from the transaction, including an $817 million loan from various banks. After paying down some of that debt by selling two of its non-mining subsidiaries, the company remained indebted on a $450 million revolving credit facility (in addition to the $440 million in bond debt). By late 2001, ASARCO also faced Claims of trade creditors, asbestos claimants, and environmental Claimants – all debts it was unable to pay as they became due. ASARCO monetized insurance policies, sold valuable mining properties for surface value, and curtailed crucial operational stripping for want of funds. These desperate actions afforded the company little relief. At the end of fiscal year 2003, ASARCO had a negative annual cash flow of $151.1 million.

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

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

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

The Debtors and Harbinger disagree with the Parent's conclusions and assert that Debtors' description of the above events contained in Section 2.24(c) of this Disclosure Statement is more accurate and much of the Debtors'

description has been incorporated in the SCC Final Judgment more fully described in Section 2.24(c) of this Disclosure Statement.

(b) Environmental Obligations.

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

(c) Asbestos-Related Claims.

The Debtors' alleged asbestos liabilities relate primarily to historical operations of CAPCO and LAQ. Although LAQ has not milled asbestos since the late 1980s and CAPCO has not produced asbestos-containing products for over a decade, by the late 1990s, both CAPCO and LAQ had been named in thousands of asbestos lawsuits around the country. As a result of the massive asbestos litigation, five of ASARCO's non-operating subsidiaries filed the Asbestos Subsidiary Cases.

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

(d) Labor-Related Issues.

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

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

(e) Bond Debt.

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

Bond	**Maturity**	**Face Value**
CSFB JP Morgan Sec Debentures at 7.875%	April 15, 2013	$100.00m
Nueces River Env Bond (IRB) Series 1998 A 5.60%	April 1, 2018	$22.20m
CSFB Corporate Debentures at 8.50%	May 1, 2025	$150.00m

Bond	**Maturity**	**Face Value**
Gila County - Installment Bond 5.55%	January 1, 2027	$71.90m
Lewis & Clark County Env Bond (IRB) 5.60%	January 1, 2027	$33.16m
Nueces River Env Bond (IRB) 5.60%	January 1, 2027	$27.74m
Lewis & Clark County Env Bond (IRB) 5.85%	October 1, 2033	$34.80m
Total		**$439.8m**

SECTION 2
EVENTS DURING THE REORGANIZATION CASES

Except where otherwise noted, the following general discussion in Section 2.1 through 2.33 of the events during the Reorganization Cases was prepared by the Debtors and uses defined terms from the Debtors' Glossary. Except where otherwise noted, the Parent and AMC and Harbinger take no position with respect to the Debtors' descriptions and statements.

2.1 Commencement of the Reorganization Cases.

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

2.2 First Day Relief.

(a) Asbestos Subsidiary Debtors.

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

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

(b) ASARCO.

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

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

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

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

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

2.3 Retention of Professionals by the Debtors.

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

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

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

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

On August 30, 2005, ASARCO engaged Lehman Brothers as exclusive financial advisor to provide financial advisory and investment banking services with respect to its financial restructuring. From that time until its investment banking and capital markets businesses were acquired by Barclays Capital on September 22, 2008, Lehman Brothers provided assistance to ASARCO in evaluating and addressing the complex financial and economic issues raised by the Reorganization Cases and conducting a process to identify and select a plan sponsor.

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

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

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

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

On June 4, 2009, ASARCO filed an application seeking the retention of Barclays Capital as financial advisor and investment banker to ASARCO in connection with the auction and potential sale of all or a portion of the SCC

Final Judgment, the Grupo Litigation, and the Derivative D&O Litigation. Barclays Capital's marketing efforts have already started, and so ASARCO requested that its application be approved effective as of June 1, 2009. An objection to the application was filed by the Parent and AMC. The Bankruptcy Court held an expedited hearing on the application on June 16, 2009, and took the matter under advisement.

(d) Ordinary Course Professionals.

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

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

2.4 Appointment of Official Committee of Unsecured Creditors for ASARCO.

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

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

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

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

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

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

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

The ASARCO Committee has retained the following professional persons:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Asbestos Subsidiary Committee has retained the following professional persons:

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

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

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

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

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

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

2.6 Appointment of a Future Claims Representative.

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

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

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

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

2.7 Corporate Governance and Appointment of Examiner.

(a) The Debtors' Description.

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

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

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

In mid-2006, the board selected Joseph F. Lapinsky as president and permanent chief executive officer, and Tom S.Q. Yip as vice president and chief financial officer. Their employment agreements were approved, effective July 1, 2006, by the Bankruptcy Court on July 13, 2006. Mr. McAllister became executive vice president and also resumed his former duties as general counsel and secretary. Similarly, the Asbestos Subsidiary Debtors each selected

William Perrell as sole director and president, and his employment was approved by the Bankruptcy Court on August 22, 2006. Mr. Yip later resigned, and Donald Mills now serves as ASARCO's chief financial officer.

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

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

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

On August 13, 2007, the Parent filed a motion seeking to require ASARCO to obtain consent from the Parent before entering into a settlement or compromise that results in a Cash payment or Claim allowance in excess of $10 million. Objections to this request were filed by ASARCO, the ASARCO Committee, the Asbestos Subsidiary Committee, and the FCR. After conducting a hearing thereon, the Bankruptcy Court denied the motion by order entered on November 20, 2007. The Parent filed a notice of appeal from that order, thereby initiating Civil Action No. 07-461. By order entered on April 18, 2008, the District Court denied the appeal as procedurally infirm and substantively without merit. On May 19, 2008, the Parent filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit from the District Court's order, which initiated Docket No. 08-40570. On August 14, 2008, the appeal was dismissed without prejudice to its refiling within 180 days. On February 10, 2009, the Parent and AMC filed a notice of reinstatement of appeal, and the court of appeals reinstated this appeal on February 13, 2009. The Parent and AMC subsequently filed a motion to withdraw the appeal with prejudice and, by order entered on March 30, 2009, the appeal was dismissed.

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

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

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

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

(b) The Parent's Description.

The following discussion was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

As of its Petition Date, ASARCO was operating under that certain Limited Liability Company Agreement, dated February 4, 2005, that provided for management of ASARCO to be vested in a board of directors (the "Board"). On December 15, 2005, the Bankruptcy Court approved a Corporate Governance Stipulation, agreed to by the Committees, the FCR, ASARCO, the Parent, and Carlos Ruiz Sacristan, who was the only member of the Board at the time. Pursuant to the Corporate Governance Stipulation, the Parent currently does not have the normal unilateral power of a sole owner to replace the members of ASARCO's board of directors. Given the inability of the Parent to remove and replace directors at will, the majority of the Board has caused ASARCO to pursue certain actions that, in the Parent's view, are inconsistent with their fiduciary duties to the Parent.

Pursuant to the Sterlite 9019 Order, dated April 22, 2009 [Docket No. 10935], if the Parent's Plan is confirmed, the Bankruptcy Court has ordered the Debtors and the Board to cooperate with the Parent in preparing to make the Parent's Plan go effective, and such cooperation will not trigger a release of Sterlite's liability for the breach of the Original PSA. Specifically the Sterlite 9019 Order provides: "From and after the date of confirmation of an Alternative Plan, ASARCO and its Board shall take such actions as are necessary to effectuate such Alternative Plan and such actions shall not be deemed to be support of such Alternative Plan and shall not be a Release Condition of Sterlite's liability under the Original Sterlite PSA."

2.8 Payment of Prepetition Obligations to Certain Critical Vendors.

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

2.9 Extensions of Exclusivity.

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

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

On April 22, 2009, the Debtors filed a motion seeking to extend their exclusive right to solicit acceptances of their plan until September 30, 2009, which was granted by order entered on May 12, 2009.

On May 21, 2009, Harbinger filed a motion to terminate exclusivity in order to file and solicit acceptances to a plan filed by Harbinger. The Bankruptcy Court granted the motion after conducting a hearing thereon on May 26, 2009.

2.10 Executory Contracts and Unexpired Leases.

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

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

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

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

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

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

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

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

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

By motion filed on August 29, 2008, the Debtors sought to implement a procedure to set cure amounts on executory contracts and unexpired leases to be assumed by a Debtor in accordance with sections 365(b)(1)(A), 1123,

and 105(a) of the Bankruptcy Code, in advance of confirmation. Pursuant to the procedures, the Debtors would send notice of the proposed cure amount to the counter-party to the lease or contract, and the counter-party would have 15 days to object to the proposed cure amount. If the parties are not able to resolve an objection, the Debtors may file a formal motion for approval of the assumption and establishment of the cure amount or address the dispute as part of the confirmation process. The cure procedures were approved by order entered on September 23, 2008.

2.11 Asset Sales.

(a) Real Property Sales.

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

Property	Buyer	Proceeds and Other Consideration Realized by the Estate
Coal rights in Sebastian County, Arkansas, owned by ASARCO	Hartshorne Carbon Company	$500,000 Cash and a royalty to be paid over 35 years
Tacoma, Washington, owned by ASARCO	MC Construction Consultants, Inc.	$4,700,000 Cash and assumption of certain (primarily environmental) liabilities by buyer. ASARCO may also realize additional proceeds of up to $5,000,000 pursuant to a Development Payout Agreement
Hardshell Mine Property in Santa Cruz, Arizona, owned by ASARCO	Arizona Minerals, Inc.[22]	$4,000,000 Cash and $4,500,000 to be paid pursuant to a promissory note secured by a Lien on the property
Tennessee Mines Division, owned by ASARCO	Glencore Ltd.	$63,551,286
Approximately 125.957 acres of vacant real property in El Paso, Texas, owned by ASARCO	MEGACON, LLC	$4,180,263
Salt Lake City real property, owned by ASARCO	Olene S. Walker Housing Loan Fund	$1,732,440

(b) Stock Sales.

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

On April 3, 2008, ASARCO filed a motion seeking authority to sell certain stock free and clear of liens, claims, encumbrances, and interests, which was approved on April 28, 2008. ASARCO is authorized, but not obligated, to sell (1) 388,002 shares of Metlife Company stock; (2) 16,800 shares of Nymex Holdings Inc. stock; (3) 134 shares of Freeport McMoRan Copper & Gold Inc. stock; and (4) 2,956 shares of stock in various agricultural cooperatives, including 1,404 shares of Ag-Land FS, 840 shares of Gateway Co-op, and 712 shares of Riverland FS. While the stock is unencumbered, ASARCO obtained approval, out of an abundance of caution, to sell it free and clear of any Liens, Claims,

[22] The buyer is in bankruptcy in a chapter 11 case pending in the United States Bankruptcy Court for the Western District of Arkansas as Case No. 09-72912. ASARCO intends to enforce its rights, claims, and property interests in the bankruptcy case to the fullest extent of applicable law.

encumbrances, or interests, pursuant to section 363(f) of the Bankruptcy Code. Any such Liens or other encumbrances would attach to the proceeds of the sale of the assets, subject to the rights and defenses of ASARCO, if any, with respect thereto.

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

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

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

2.12 Purchases.

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

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

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

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

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

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

By agreed order entered on March 25, 2008, ASARCO was authorized to assume an equipment lease and related agreements with BNY Capital Resources Corporation, whereby ASARCO leases five haul trucks and various mining equipment, cure defaults, and exercise the option to purchase the equipment under the agreement. ASARCO cured

the defaults and exercised the options to complete the purchase of the five haul trucks and the mining equipment for an aggregate total of approximately $1.7 million.

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

2.13 Proofs of Claim and Administrative Claims.

(a) Bar Dates for Proofs of Claim.

By order entered on April 28, 2006, the Bankruptcy Court set August 1, 2006 as the general bar date, and September 30, 2006 as the asbestos Claims bar date, for the Debtors other than the 2006 Subsidiary Debtors and the 2008 Subsidiary Debtors. An asbestos-related Proof of Claim form was approved for use in connection with all Proofs of Claim for asbestos Claims. Pursuant to the Bar Date Order, asbestos Claimants were permitted to obtain an exemption from filing a Proof of Claim by supplying ASARCO's asbestos Claims-data management consultants, Claro Group, with certain information on the asbestos Claims electronic database prior to June 30, 2006.

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

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

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

(b) Objections to Claims.

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

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

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

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

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

(c) Administrative Claims Bar Date.

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

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

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

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

Article 15.13 of both the Debtors' Plan and the Parent's Plan and Article 15.12 of Harbinger's Plan provide a Subsequent Administrative Claims Bar Date for Administrative Claims that arise after the Initial Administrative Claims Bar Date.

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

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

2.14 Schedules and Statements of Financial Affairs.

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

2.15 Financial.

(a) DIP Financing.

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

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

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

(b) Letter of Credit Facility.

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

On June 15, 2009, ASARCO filed an expedited motion seeking authority to amend and extend the Credit Facility. The proposed amendment would, among other things, extend the maturity date of June 25, 2009 by one year and pay Chase a $5,000 up-front deposit for reasonable fees and expenses for due diligence and documentation. The Bankruptcy Court entered an order approving the motion on June 23, 2009.

(c) Secured Intercompany DIP Credit Facility.

By motion filed on August 5, 2008, ASARCO and the Asbestos Subsidiary Debtors sought approval for ASARCO to loan, on a senior secured basis, up to $10 million to the Asbestos Subsidiary Debtors, and for the Asbestos Subsidiary Debtors to enter into a secured debtor-in-possession term loan credit facility of up to $10 million from ASARCO, pursuant to section 364 of the Bankruptcy Code. The proffer of Douglas McAllister supporting the motion for approval of the Secured Intercompany DIP Credit Facility stated that "To raise cash, ASARCO monetized insurance coverage for asbestos-related liability and used the money to pay its own expenses and other debts rather than to pay settlement agreements previously reached with asbestos plaintiffs. This monetization and diversion practice is documented repeatedly in the findings included in Judge Hanen's recent ruling. ASARCO's debt to the Asbestos Subsidiary Debtors for such actions is more than the $10 million face amount of the Intercompany DIP Loan. Thus, even if the Joint Plan is not confirmed for any reason, ASARCO may offset against such intercompany liability to ensure satisfaction of the loan." *See* Proffer of Douglas E. McAllister in Support of Joint Motion of ASARCO LLC and the Asbestos Subsidiary Debtors for Order Authorizing Secured Intercompany Debtor in Possession Financing, ¶ 15 [Docket No. 9202]. The request was approved by order entered on September 19, 2008.

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

The intercompany loan is secured by a first priority Lien on the Asbestos Subsidiary Debtors' personal property, and amounts due constitute superpriority administrative expense Claims under section 364(c)(1) of the Bankruptcy Code. ASARCO shall credit all amounts due under the intercompany loan as a portion of ASARCO's contribution to the Asbestos Trust under the Debtors' Plan.

The debtor-in-possession term loan credit facility expired on April 1, 2009, but has been extended through July 31, 2009. The total balance under the credit facility was $2.1 million as of April 17, 2009. The Asbestos Subsidiary Committee and the FCR assert that ASARCO's debt to the Asbestos Subsidiary Debtors for monetization and diversion of insurance is more than the $10 million face amount of the loan, which ASARCO admitted during the initial hearing on the motion to approve the loan.

After the Debtors learned that the FCR and the Asbestos Subsidiary Committee had agreed to support a prospective Parent's plan and actively oppose confirmation of the Debtors' Plan, the Debtors informed the FCR and the Asbestos Subsidiary Committee that it had decided not to renew the expired Secured Intercompany DIP Credit Facility. At the request of the Bankruptcy Court, ASARCO extended the facility until May 15, 2009, pursuant to the Agreed Order Extending Intercompany Debtor-in-Possession Financing from ASARCO LLC To The Asbestos Subsidiary Debtors, and then further extended the facility through July 31, 2009, pursuant to the Second Agreed Order Extending Intercompany Debtor-in-Possession Financing from ASARCO LLC To The Asbestos Subsidiary Debtors, which was entered by the Bankruptcy Court on June 2, 2009. Pursuant to the Asbestos Settlement, the Debtors have agreed to extend the Secured Intercompany DIP Credit Facility through the Effective Date.

(d) Cash Collateral.

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

(e) Hedging Program.

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

2.16 Labor Unions and Employee-Related Matters.

(a) The Debtors' Description.

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

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

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

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

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

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

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

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

Under the special successorship provision, ASARCO agreed not to consummate any plan of reorganization, sell or transfer any operating plant or significant part thereof, or engage in any other change-of-control transaction unless the prospective buyer shall have recognized the USW as the bargaining representative for ASARCO workers, and made an agreement with the USW establishing the terms of employment to be effective as of the effective

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

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

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

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

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

(3) Settlement of Retiree Litigation.

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

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

As part of the CBA negotiations, ASARCO, the Unions, and the individual members of the class of retirees reached a final agreement on the resolution of the Arizona litigation, which addresses all the Claims among the parties regarding retiree medical benefits. The Bankruptcy Court approved the settlement agreement by order entered on March 15, 2007.

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

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

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

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

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

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

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

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

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

(7) Settlement of Certain Workers' Compensation Claims.

On June 6, 2008, ASARCO filed a motion seeking approval of its proposed settlement with certain former employees who had asserted workers' compensation Claims with an alleged aggregate value of $6.8 million. They

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

(8) Payment of Union Professional Fees and Expenses.

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

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

(9) Canadian Pension Plan Funding Obligations.

(A) ASARCO.

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

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

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

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

(B) LAQ.

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

Also on June 18, 1986, the parties to the limited partnership agreement entered into the Actuarial Basis for Transfer, which set forth their agreement regarding establishing pension plans for the limited partnership's employees.

Under the agreement, LAB Chrysotile agreed to set up pension plans to cover employees of the limited partnership and the partners agreed to transfer certain assets from their plans to LAB Chrysotile's plans, and in the case of Lac d'Amiante du Canada Ltée, from LAQ's plans. Canadian regulations interfered with the planned transfer of pension assets.

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

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

The Debtors filed an objection to LAB Chrysotile's Proof of Claim. Pursuant to the Bankruptcy Court's discovery and scheduling order, the final pretrial conference on the claim objection will be held on September 4, 2009.

(10) Payment of Employee Benefit Obligations.

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

(11) Workers' Compensation Claims.

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

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

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

(A) Arizona.

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

Approximately 21 current or former workers, as well as the SCF, submitted Proofs of Claim asserting workers' compensation liabilities. The SCF's Proof of Claim includes Claims on behalf of ASARCO's current and former employees with rights to benefits under Arizona workers' compensation law who did not file Proofs of Claim on their own

behalf. The SCF seeks reimbursement of medical benefits actually paid by it and certain indemnity payments made in excess of policy limits, in addition to approximately $6.4 million for medical benefits that may be paid to the injured workers in the future.

(B) Montana.

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

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

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

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

(C) Missouri.

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

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

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

(D) Tennessee.

ASARCO's workers' compensation obligations in Tennessee arise from ASARCO's operation of zinc mines in the eastern part of the state. Over 150 former employees asserted Claims against ASARCO based on hearing loss allegedly suffered while working in these underground mines. As discussed above in Section 2.16(g), the Bankruptcy Court has previously approved settlements of certain workers' compensation Claims arising under Tennessee law.

ASARCO is in settlement negotiations with the holders of the remaining workers' compensation Claims asserted by former employees in Tennessee. Forty-nine Claims are pending resolution.

(E) Other.

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

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

(b) The Parent's Description.

The following discussion was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

(1) Labor Relations.

In January 2007, ASARCO and the labor unions representing its bargaining unit employees (principally the USW) negotiated a New CBA. The New CBA includes a "work assignment flexibility provision" which, the Debtors and USW assert, allows ASARCO to assign a certain percentage of employees across departments and share maintenance crews across plants. The New CBA includes phased-in wage increases for ASARCO's hourly workers, and provides for one-time signing bonuses and other bonuses tied to copper prices. The New CBA contains successorship language and, pursuant to ASARCO's settlement with the Unions, a separate "special successorship clause" was also agreed to whereby ASARCO agreed not to consummate any plan of reorganization or sell or transfer any operating plant or significant part thereof, or engage in any other change-of-control transaction unless the prospective buyer will have (A) recognized the Unions as the bargaining representatives for ASARCO workers; and (B) made an agreement with the Unions establishing the terms of employment to be effective as of the effective date of such plan of reorganization, sale or other change of control. In connection with this provision, the Unions are obligated to negotiate in good faith with any prospective buyer and to offer reasonable terms and conditions and terms and conditions that are substantially the same as those offered to any other prospective buyer, *provided, however*, that the Unions may offer non-identical terms and conditions if those non-identical terms reflect differences in the natures of the prospective buyers. The Unions' commitment to offer fair and reasonable and substantially similar terms is expressly conditioned upon the prospective buyer bargaining in good faith and providing relevant information reasonably requested. The Bankruptcy Court has the power to terminate the special successorship provision entirely if, upon motion of the ASARCO or the ASARCO Committee, the Bankruptcy Court finds that the Unions have breached such obligation or if the Bankruptcy Court finds, in light of exigent circumstances, that termination of the application of the special successorship clause is necessary to the success of the chapter 11 process. Subsequently, ASARCO and the Unions entered into the Second Stipulation and Order Regarding Modification to Collective Bargaining Agreement which states that: (A) as long as the Parent does not exercise control of ASARCO during the Reorganization Cases, the Parent is not a party or signatory to the New CBA and is not bound by any of the New CBA's terms; (B) the special successorship clause applies to a plan of reorganization where the Parent retains a majority of equity or controlling equity in the reorganized debtors (a "Parent Retained Equity Plan"), and if the Bankruptcy Court determines that (i) the USW has failed to satisfy its obligations under the special successorship clause or (ii) in light of exigent circumstances it is necessary to a successful chapter 11 process, the Bankruptcy Court may order that the special successorship clause does not apply; and (C) the Bankruptcy Court retains jurisdiction to determine at a confirmation hearing on any Parent Retained Equity Plan whether any provision of the New CBA would violate the Parent's rights under section 1129(a) or (b) of the Bankruptcy Code and, if the Bankruptcy Court so finds, the Bankruptcy Court has the authority to terminate the New CBA.

The Bankruptcy Court approved the New CBA and the Second Stipulation on March 15, 2007 over the Parent's objection. The following day, ASARCO, the USW, and the Parent entered into another Stipulation and Order, pursuant to which the Parent agreed not to seek a stay of implementation of the Order approving the New CBA, while ASARCO and the USW agreed not to argue that the failure to obtain a stay mooted any appeal thereof. On March 28,

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

The Parent filed a notice of appeal from the order, thereby initiating Civil Action No. 07-133 in the District Court. On June 11, 2007, the USW and ASARCO entered into another Stipulation and Order, which was filed in the pending appellate case and modified the New CBA and the Second Stipulation. This Stipulation and Order provided that the Parent is not a signatory of, a party to, or bound by any of the terms of the New CBA, regardless of its status as direct or indirect owner of the equity in ASARCO, except as provided in the special successorship clause. By order entered on October 14, 2008, the District Court affirmed the Bankruptcy Court's order. The Parent filed a notice of appeal from the District Court's order, thereby initiating Case No. 08-41265 in the Court of Appeals for the Fifth Circuit. The Parent filed an unopposed motion to dismiss this appeal without prejudice to its refiling within 180 days, which was granted by order entered on January 22, 2009. In addition, the Parent alleged that certain of the provisions of the New CBA are illegal under the labor laws, and these provisions are the subject of unfair labor practice charges currently pending before the National Labor Relations Board (the "NLRB"). The Parent voluntarily withdrew all but one of the charges pending before the NLRB and made a proposal to the USW to settle the remaining charge. The USW has not agreed to such proposal.

The Parent and the USW met, at various dates in early 2008, and exchanged proposals for a collective bargaining agreement and met through May, 2008. The Parent offered to accept and assume all terms of the New CBA with what it considers some limited non-economic modifications and what the USW informs the Parent that it regards as significant non-economic modifications. This proposal was not accepted by the USW. That bargaining between the USW and the Parent is currently the subject of unfair labor practice charges that have been filed against the USW and are pending before the NLRB, alleging, among other things, that the USW bargained in bad faith by insisting as a condition of agreement that the Parent agree to illegal and permissive subjects of bargaining and thus engaged in bad faith bargaining within the meaning of the labor laws. The USW vigorously disagrees with the Parent's allegations. The unfair labor practices charges remain pending before the NLRB pursuant to the Parent's motion for reconsideration. The first request for bargaining that either party made to the other party since May 2008 was made by the Parent in May, 2009. The Parent and the USW have resumed bargaining sessions starting with a meeting on June 4, 2009 and followed by another negotiating session on June 26, 2009 both at the USW headquarters in Pittsburgh. At the June 26 meeting, the Parent presented a proposal for a collective bargaining agreement offering to accept and assume all terms, except for certain limited non-economic modifications. The USW believes that these proposed modifications are substantial and material, and the USW told the Parent that the USW was very disappointed with the Parent's proposal. The USW has indicated that it will prepare a counter-proposal and try to deliver it no later than July 15, 2009. The Parent and the USW have scheduled an extended conference call on July 9, 2009 and agreed to hold in person meetings in Phoenix or Albuquerque on July 16 and 17, 2009 and July 23 and 24, 2009.

The Parent confirms that it remains willing to attempt to negotiate, in good faith, an acceptable collective bargaining agreement with the USW and other Unions, but may also pursue its legal remedies including before the Bankruptcy Court as part of the Confirmation Hearing to address the special successorship provision discussed above.

(2) Settlement of Retiree Litigation.

On July 9, 2003, ASARCO, Silver Bell Mining, L.L.C. and Encycle/Texas, Inc. filed an action against the USW and others in federal court in Arizona seeking a declaration that changes to retiree medical benefits made earlier that year were legal under the Labor Management Relations Act and under ERISA. On September 8, 2003, the defendants filed an answer and counterclaimed against ASARCO. On September 19, 2005, ASARCO initiated Adversary Proceeding No. 05-02078, seeking a declaration that the prosecution of Claims against ASARCO and Encycle/Texas violated the automatic stay and requesting an injunction prohibiting prosecution of such Claims during the pendency of the Reorganization Cases. On November 14, 2005, ASARCO obtained an order staying the Arizona litigation pursuant to a stipulation by the parties. As part of the New CBA negotiations, ASARCO, the Unions and the individual members of the class of retirees reached a final agreement on the resolution of the Arizona litigation, which addresses all the Claims

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

(3) Pension Plans.

ASARCO sponsors two defined benefit pension plans, the Pension Plans, which are covered by ERISA. The Parent understands that ASARCO will satisfy its legal obligations to the Pension Plans during the pendency of this proceeding, and through the Effective Date.

The Parent further understands that ASARCO does not intend to terminate the Pension Plans prior to the Effective Date. After the Effective Date, pursuant to the Parent's Plan, Reorganized ASARCO will continue to sponsor the Pension Plans. Accordingly, after the Effective Date, Reorganized ASARCO will continue to be required to make contributions to the Pension Plans in the amounts necessary to meet the minimum funding standards prescribed by 29 U.S.C. § 1082 and 26 U.S.C. § 412, and for the payment of any PBGC premiums prescribed by 29 U.S.C. §§ 1306 and 1307.

The PBGC is a United States government corporation, created under Title IV of ERISA, which guarantees the payment of certain pension benefits upon termination of a pension plan covered by Title IV. The Parent's Plan does not affect in any way, including by discharge, the Debtors' liabilities with respect to the Pension Plans, including their liabilities to PBGC for the Pension Plans' unfunded benefit liabilities under 29 U.S.C. § 1362(b), the Pension Plans' funding deficiencies under 29 U.S.C. § 1362(c), or unpaid PBGC premiums under 29 U.S.C. §§ 1306 and 1307, should either or both of the Pension Plans terminate after the Parent's Plan is confirmed.

Additionally, notwithstanding anything in the Parent's Plan, including Article XI thereunder, or any order confirming the Parent's Plan, no Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action or liabilities whatsoever against any entity with respect to statutory liabilities arising under ERISA concerning the Pension Plans shall be released, exculpated, discharged, enjoined, or otherwise affected by the Plan, nor shall the entry of the Confirmation Order constitute the approval of any release, exculpation, discharge, injunction, or other impairment of any Claims obligations, suits, judgments, damages, demands, debts, rights, cause of action or liabilities whatsoever against any entity with respect to statutory liabilities arising under ERISA concerning the Pension Plans.

PBGC has the statutory authority to seek involuntary termination of a pension plan under certain circumstances. 29 U.S.C. § 1342. In the event that either of the Pension Plans terminates prior to confirmation of the Parent's Plan, PBGC plans to assert that (A) it will have Claims against ASARCO, and each of its controlled group members, jointly and severally, for the Pension Plans' underfunding, 29 U.S.C. § 1362(b), any due and unpaid contributions, 29 U.S.C. § 1362(c), and any unpaid PBGC premiums, 29 U.S.C. §§ 1306 and 1307 and (B) that all or part of these Claims are entitled to priority as an administrative expense Claim or a priority tax Claim. The Parent takes no position with respect to such assertions at this time.

2.17 Insurance.

(a) Insurance Coverage Litigation.

In 2001, ASARCO, LAQ, and CAPCO filed a petition in the 94th District Court of Nueces County, Texas, initiating Cause No. 01-02680-C against certain insurance companies, seeking a declaration that the insurance companies were obligated to defend, indemnify, and/or pay defense costs, including, without limitation, loss or legal expenses, in connection with asbestos Claims pending in various lawsuits filed across the country. The lawsuit is currently pending in the 105th District Court of Nueces County, Texas as Cause No. 01-02680-D. Under the Debtors' Plan, this lawsuit shall be transferred to the Asbestos Trust. The only remaining defendants in the lawsuit are FFIC and certain London market insurers. In the action, ASARCO is seeking reimbursement of prepetition indemnification and defense costs and/or loss or legal expenses, a declaration as to the coverage obligations under insurance policies sold to ASARCO by the insurance companies, and damages under statute and common law on a variety of extracontractual grounds, including bad faith and improper Claims handling. The insurance policies sold to ASARCO by these insurance companies are included on the list of insurance policies attached to the Debtors' Plan as **Exhibit 8**.

FFIC had removed the lawsuit from state court to the District Court, after the April 2005 bankruptcy filings of LAQ and CAPCO, thereby creating Civil Action No. 05-00323. The District Court referred the lawsuit to the Bankruptcy Court, thereby initiating Adversary Proceeding No. 05-02053. The debtors filed a motion to remand the

lawsuit to Nueces County, and FFIC filed a motion for withdrawal of the reference of the lawsuit. On January 25, 2006, the Bankruptcy Court remanded the lawsuit to Nueces County and issued an interim report suggesting that the withdrawal of reference motion was moot. FFIC filed notices of appeal from both of these rulings, thereby initiating Civil Action Nos. 06-00064 (the appeal from the interim report) and 06-00065 (the appeal from the remand order). In orders entered in both appeals on March 7, 2007, the District Court affirmed the Bankruptcy Court's order remanding the lawsuit to state court.

On March 11, 2009, the state court entered an order granting the Debtors' motion for partial summary judgment on FFIC's asbestosis exclusion, which effectively eliminates one of FFIC's principal defenses to coverage in the lawsuit. On June 19, 2009, the state court denied FFIC's motion for partial summary judgment in FFIC's "payment of expenses" clause, preserving for trial the issue of whether FFIC has an obligation to pay loss expenses and/or legal expenses in excess of policy limits. Trial is set for May 2010, with a discovery cutoff of February 1, 2010.

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

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

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

On July 26, 2006, ASARCO filed a motion seeking approval of its settlement with certain participating London market insurers of the insurance coverage litigation discussed in Section 2.17(a) above. The settlement generated $18,943,000.36 for the Debtors' Estates (or nearly 80 percent of the limits of the policies being settled with respect to the settling carriers). The Bankruptcy Court approved the settlement by order entered on September 14, 2006.

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

On April 1, 2009, ASARCO filed a motion seeking approval of its settlement agreement with another insurer, Aviva Canada Incorporated, under substantially the same terms and conditions as approved by the Bankruptcy Court under the settlement agreement with certain participating London market insurers described above. The settlement will generate approximately $1.15 million for the Debtors' Estates (approximately 80 percent of outstanding policy limits for the policies associated with the settling carrier). A limited objection to the proposed settlement was filed by FFIC. This motion was heard on June 30, 2009, and is under advisement.

(c) Escrow of Certain Insurance Proceeds.

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

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

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

2.18 Tax Issues.

(a) The Tax Refund.

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

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

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

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

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

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

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

By stipulation and order entered on January 3, 2008, the Asbestos Subsidiary Debtors designated Covington to act as agent for the ASARCO NJ Consolidated Group with respect to the refund Claim and the Tax Refund; as a result, Count II of the complaint against the Asbestos Subsidiary Debtors was dismissed. By stipulation and order entered on February 25, 2008, ASARCO and CAPCO stipulated that CAPCO is entitled to $51,321 plus a pro rata portion of the statutory interest accrued on the overpayment of tax, less a pro rata portion of any fees payable to Arthur Andersen LLP or Deloitte & Touche LLP relating to the refund Claim or the Tax Refund. The Asbestos Subsidiary Debtors, other

than CAPCO, acknowledged that they have no right or entitlement to the refund Claim or any portion of the Tax Refund. As a result, Count I against the Asbestos Subsidiary Debtors was dismissed.

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

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

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

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

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

At the time that both the Tax Sharing Agreement and the amendment were entered into, the refund Claim had not been allowed. The amendment provides that in the event that any tax refund claimed by ASARCO NJ prior to the date of the amendment should be received by AMC, the Parent, or one of their subsidiaries, such tax refund must promptly be turned over to ASARCO without offset other than for "professional fees that are directly related to preparing, pursuing or other services provided in connection with the claim for refund." ASARCO has not determined whether to assume or reject the Tax Sharing Agreement and the amendment.

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

On or about September 19, 2008, AMC and the Parent filed an Administrative Claim against ASARCO in the amount of $516,200,000 for reimbursement of taxes alleged to be due the Parent under the Tax Sharing Agreement and alleged post-bankruptcy taxes owed to the IRS and other taxing authorities. In an objection filed on January 9, 2009, ASARCO challenged the allowance, priority, and amount of this Claim. On January 23, 2009, the Asbestos Claimants' Committee filed a joinder and supplemental objection regarding ASARCO's objection to the Administrative Claim of AMC and the Parent. The FCR filed a joinder in these objections to the Administrative Claim of AMC and the Parent on

January 28, 2009. The ASARCO Committee filed a joinder in ASARCO's objection to the Administrative Claim of AMC and the Parent on February 4, 2009. On or about March 23, 2009, AMC and the Parent amended this Administrative Claim, reducing the amount asserted to $161,718,015. As with any litigation matter, the outcome of this controversy cannot be predicted at this time.

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

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

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

On May 22, 2009, the Bankruptcy Court conducted a hearing on the Parent's motion to compel the assumption or rejection of the Tax Sharing Agreement. After hearing the arguments of the parties, the Bankruptcy Court ruled that to the extent the Tax Sharing Agreement remains in existent, the Debtors' Plan provides for it to be rejected.

On June 5, 2009, ASARCO filed an adversary proceeding against AMC and the Parent, seeking subordination of their Administrative Claim against ASARCO. The lawsuit is pending in the Bankruptcy Court as Adversary No. 09-02020. ASARCO asserts therein that, to the extent the Parent has an allowable Claim in any amount, the Parent's entitlement to any portion of the Claim must be equitably subordinated to all Allowed General Unsecured Claims because the Parent has acted inequitably to the detriment of ASARCO's creditors, as the District Court found in the SCC Final Judgment. ASARCO also seeks an award of reimbursement from the Parent of ASARCO's attorneys' fees and costs to the fullest extent permissible under law.

Opening arguments were presented on the objection to the Administrative Claim of AMC and the Parent, together with a determination of ownership of the Tax Refund, on June 15, 2009, with the hearing thereon to take place after the hearing on this Disclosure Statement.

On June 26, 2009, ASARCO filed a motion for leave to amend its objection to the Parent's Administrative Claim to add three defenses. After an expedited hearing on June 30, 2009, the Bankruptcy Court granted the motion.

Under the Debtors' Plan, both Adversary Proceeding No. 07-02011 and No. 09-02020 shall vest in Reorganized ASARCO on the Effective Date.

2.19 Asbestos Litigation.

(a) Injunctive Relief Regarding Asbestos Claims.

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

On July 26, 2006, ASARCO and the Asbestos Subsidiary Debtors filed a complaint initiating Adversary Proceeding No. 06-02056, seeking declaratory and injunctive relief to stay or enjoin the prosecution and enforcement of asbestos Claims against any of the participating London market insurers. This request was made in accordance with a provision of ASARCO's settlement agreement with the participating London market insurers (discussed in Section 2.17(b) above), which required ASARCO to use its reasonable best efforts to obtain an injunction pursuant to

section 105(a) of the Bankruptcy Code in favor of the participating London market insurers. On September 14, 2006, the Bankruptcy Court entered a preliminary injunction, which remains in effect.

(b) Estimation of Derivative Asbestos Claims.

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

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

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

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

ASARCO was able to reach an agreement with the Asbestos Subsidiary Committee and the FCR regarding some aspects of the procedure for resolution of the Derivative Asbestos Claims. The settlement agreement provided for a stipulated process in a contested matter under section 502 of the Bankruptcy Code to establish the aggregate amount of ASARCO's liability, if any, for the asbestos-related liability of the Asbestos Subsidiary Debtors. The amount of the Derivative Asbestos Claims, if any, would be incorporated into ASARCO's plan of reorganization, and used for all purposes, including voting, feasibility, best interests of creditors test, fair and equitable test, no unfair discrimination test, distribution, and other plan-confirmation related matters. The Bankruptcy Court entered an order approving the settlement agreement on March 20, 2007. The order included an addendum which resolved concerns raised by FFIC in an objection, and provided for the estimation proceedings to be conducted to provide for "insurance neutrality." By motion filed on November 30, 2007, ASARCO and the Asbestos Subsidiary Debtors sought to extend the insurance neutrality addendum to all insurance companies that are or may become interested parties in the Reorganization Cases, rather than have its benefits and protections afforded only to FFIC. Objections were filed by Century Indemnity Company, American Home Assurance Company and Lexington Insurance Company, and Mt. McKinley Insurance Company and Everest Reinsurance Company. An agreement was eventually reached with all parties other than Mt. McKinley Insurance Company and Everest Reinsurance Company, and an order of the Bankruptcy Court dated May 29, 2008 extends insurance neutrality to all insurance companies other than those two. By stipulation entered by the Bankruptcy Court on May 12, 2009, insurance neutrality was extended to Mt. McKinley Insurance Company and Everest Reinsurance Company.

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

Asbestos Subsidiary Debtors, or both is approximately $64 million. ASARCO does not have a complete listing of judgments or settlements on which it may have been liable, but it estimates that its aggregate liability on these prepetition settlements and judgments for Asbestos Premises Liability Claims is approximately $2 million. ASARCO's liability for judgments and other settlements could be substantially higher. The Asbestos Claimants' expert has opined that the Asbestos Subsidiary Debtors' liquidated prepetition settlements and judgments total approximately $99 million. ASARCO believes this estimate improperly includes settlements and judgments for which no Proof of Claim or electronic data submission has been made and that these settlements and judgments have either been paid prepetition or are barred for failure to comply with the Bankruptcy Court's April 28, 2006 Bar Date Order.

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

On March 30, 2009, the ASARCO Committee filed a motion for entry of a case management order and to establish deadlines for a hearing on estimation of the Derivative Asbestos Claims. The Bankruptcy Court conducted a hearing on the ASARCO Committee's motion on April 13, 2009, at which time the court established a schedule for estimation of the Derivative Asbestos Claims. Pursuant to the Supplement to the Second Amended Case Management Order, the Bankruptcy Court scheduled the estimation hearing on the issue of ASARCO's liability for the Derivative Asbestos Claims and the estimated amount, if any, of that liability to begin on June 22, 2009. By motion filed on May 13, 2009, ASARCO requested that the estimation proceeding also include all direct Asbestos Personal Injury Claims against ASARCO so that ASARCO's total asbestos-related liability would be estimated in the same hearing. At a hearing held thereon on May 29, 2009, the Bankruptcy Court held that ASARCO's request was inconsistent with due process and directed the parties to negotiate a schedule for estimating the direct Asbestos Personal Injury Claims against ASARCO at or before the confirmation hearing on the Plans.

Subsequently on June 12, 2009, ASARCO, the Asbestos Claimants' Committee, the Asbestos Subsidiary Committee, the FCR, and the Plan Sponsor entered into the Asbestos Settlement, resolving the need to estimate the Debtors' aggregate asbestos liability under the Debtors' Plan so long as the holders of Asbestos Personal Injury Claims accept the Debtors' Plan in accordance with the provisions of sections 524(g), 1126, and 1129 of the Bankruptcy Code and otherwise comply with the terms of the Asbestos Settlement. Under the Debtors' Plan, holders of Class 4 Unsecured Asbestos Personal Injury Claims have agreed to reduce their aggregate Claims to $1 billion. For the purpose of computing the initial distribution to the Asbestos Trust on the Effective Date, the aggregate Unsecured Asbestos Personal Injury Claims are deemed to be $750 million and the Asbestos Ratable Portion of distributions of Plan Consideration is computed using this figure. The Debtors believe that the proposed treatment of Unsecured Asbestos Personal Injury Claims as outlined in the Debtors' Plan is appropriate and in the best interest of the Debtors' Estates and constituents because it (1) allows the expeditious resolution of those Claims with respect to ASARCO and (2) funds the Asbestos Trust with (A) the Asbestos Ratable Portion of Plan Consideration; (B) 100 percent of the interests in Reorganized Covington; (C) the Asbestos Insurance Recoveries; and (D) $27.5 million for purposes of Asbestos Trust Expenses. The Asbestos Settlement also provides the Asbestos Trustees the one time right to put all or a portion of the Class C SCC Litigation Trust Interests to Sterlite, exercisable any time after the end of the second year from the Effective Date through the end of the fourth year from the Effective Date, for the sum of $160 million (less any amounts the Asbestos Trust has received on account of its Class C SCC Litigation Trust Interests prior to the date of exercise of its rights under the Put Option).

Based on the Asbestos Settlement, the Debtors, the Asbestos Claimants' Committee, and the FCR now believe that estimation of ASARCO's derivative asbestos liability is unnecessary and would be a waste of judicial and estate resources. Harbinger disagrees.

(c) The Damage Expert Reports.

On March 5, 2007, the parties submitted their estimates of the maximum aggregate asbestos-related liability of the Asbestos Subsidiary Debtors. The estimates ranged from a low of $180 million to a maximum of $2.655 billion. ASARCO believes that subsequent developments, including the depositions of the various experts engaged to calculate such aggregate liabilities revealed serious flaws in the expert damages report submitted on behalf of the Asbestos Claimants' Committee and the FCR. Notwithstanding these issues, however, the Debtors, the Asbestos Claimants' Committee, and the FCR believe that the proposed resolution of the Debtors' aggregate liability on account of the Unsecured Asbestos Personal Injury Claims, as contemplated by the Debtors' Plan, is reasonable and appropriate under these circumstances.

(d) The Asbestos Liability Estimates.

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

None of these liability estimates include the costs associated with the defense of Claims or Claim administration. None of these liability estimates include ASARCO's direct asbestos liability, if any. ASARCO believes any non-derivative liability of ASARCO will be substantially less than the $267 million estimated at the low end by its expert liability on the Derivative Asbestos Claims. The Asbestos Claimants' Committee and the FCR believe that ASARCO's non-derivative asbestos liability may be substantially higher.

(e) The Parent's Position Regarding Asbestos Claims.

The following discussion in Section 2.19(e) was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

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

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

On August 26, 2008, the Parent filed a motion seeking to have the Bankruptcy Court estimate the maximum amount of Asbestos Personal Injury Claims for purposes of distributions under the competing plans proposed

by the Debtors and the Parent. The Debtors, the FCR, the Asbestos Claimants' Committee, and the United States opposed the Parent's estimation motion. At the hearing held on the motion on September 23, 2008, the Bankruptcy Court declined to establish an estimation procedure and ruled that estimation issues would await plan confirmation.

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

The Parent asserts that it made every attempt to participate in the mediation but was consistently denied any meaningful input, and accordingly, the Parent had to undertake an independent review of the Proofs of Claim that were filed against the Debtors asserting asbestos liability. In April 2008, with the Bankruptcy Court's approval, the Parent began filing objections to asbestos-related Proofs of Claim (under seal in order to prevent disclosure of the asbestos Claimants' confidential identities and social security numbers). The Debtors, the Asbestos Subsidiary Committee, the FCR, and certain asbestos Claimants filed responses contesting the Bankruptcy Court's jurisdiction to adjudicate asbestos-related Claims. The objecting parties also protested that the Parent should not be allowed to object to such Claims on an individual basis alleging that such process was not efficient. The Bankruptcy Court conducted a hearing on June 6, 2008 to consider these arguments, requested briefing on whether it had jurisdiction to decide challenges to the validity of asbestos-related Proofs of Claim, heard additional arguments on July 15, 2008, and took the matter under advisement. The Parent ultimately filed objections to 65 of the approximately 102,000 asbestos-related Claims. Of the 65 objections filed, the Parent asserts that 58 of those Claims were withdrawn or expunged by the Bankruptcy Court.

In short, the asbestos Claims have never been adjudicated, and both the Debtors' Plan and the Parent's Plan resolve the need for any such adjudication. The Asbestos Claimants' Committee and the FCR assert that compelling evidence demonstrates that ASARCO's derivative asbestos liability should be estimated at more than $2.1 billion. The Debtors' Second Amended Plan filed on September 25, 2008, contemplated the asbestos Claims to be allowed at the $1.25 billion level, reflecting the Debtors' global settlement, at that time. Under the "Global Settlement" as defined in the Debtors' Second Amended Disclosure Statement, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee and the FCR would agree to reduce the aggregate asbestos-related Claims and Demands to $1.25 billion and the Asbestos Trust would receive an Allowed Claim of $1.25 billion for payment of Unsecured Asbestos Personal Injury Claims and Demands. *See* Debtors' Second Amended Disclosure Statement [Docket No. 9346].

Faced with uncertainty as to the amount of asbestos claims due to the rejection of its earlier efforts to estimate or litigate the claims, and substantial risk with respect to the asserted Alter Ego Theories and the scope of direct Asbestos Personal Injury Claims, the Debtors and the Parent have both negotiated agreements with the FCR and the Asbestos Claimants' Committee regarding the treatment of asbestos claims, including reducing the aggregate amount of asbestos-related claims and demands to $1.0 billion. The Amended Agreement in Principle is attached to the Parent's Plan as **Exhibit 17**. As a result of both agreements, the FCR and the Asbestos Claimants' Committee have agreed to recommend that holders of Asbestos Personal Injury Claims vote in favor of a 524(g) channeling injunction under both the Parent's Plan and the Debtors' Plan and remain neutral as to the Parent's Plan and the Debtors' Plan. The terms of the Amended Agreement in Principle have been incorporated into the Parent's Plan. In summary, under the Parent's Plan, direct and derivative asbestos claims will be allowed in the aggregate amount of $1.0 billion. These claims will be channeled to a trust funded with (a) $500 million in cash; (b) $27.5 million earmarked for administrative costs of the trust; (c) a $280 million promissory note from Reorganized ASARCO with a one-year term and bearing interest at 6 percent, guaranteed by AMC and secured by a first lien on all of Reorganized ASARCO's assets and a pledge from the Parent of 51 percent of the equity interests in Reorganized ASARCO; and (d) rights to insurance proceeds with respect to asbestos claims.

As noted above, the Asbestos Claimants' Committee and the FCR have stated that they will oppose Harbinger's Plan. While Harbinger has indicated that it will attempt to overcome this lack of support and confirm a plan containing a non-section 524(g) channeling injunction over the objection of the FCR, the Parent is not aware of any authority supporting Harbinger's position given that Congress, through section 524(g), imposed very specific requirements before a court could approve an asbestos claims channeling injunction Given the lack of any other authority upon which Harbinger can rely to cram down its asbestos methodology over the opposition of the Asbestos Claimants' Committee and the FCR, the Parent submits that Harbinger's Plan is patently unconfirmable.

Also as noted above, the problems with Harbinger's Plan are compounded because the Harbinger's Plan and the recovery percentages Harbinger has estimated for Class 3 and Class 4 Claims are premised on the aggregate amount of Asbestos Personal Injury Claims and Demands (Class 4 Claims) being no more than $500 million. Following confirmation, however, Harbinger's Plan allows parties to request an evidentiary hearing to estimate Class 4 Claims. The Debtors and the Parent have both allowed asbestos Claims and Demands in the amount of $1 billion. It is highly likely that the Court would estimate asbestos Claims and Demands in excess of $500 million, thereby enlarging the claims pool and reducing the distribution percentages under the Harbinger's Plan. In that case, the recovery for Class 3 Claims and Class 4 Claims could be much lower than Harbinger predicts. Given the issues described above with respect to the size of the Claims pool and the fact that the Debtors at one time agreed the Asbestos Claims and Demands should be allowed in the amount of $1.25 billion, the Parent submits that the Harbinger's Plan can never be confirmed as written. Harbinger disagrees with the Parent's newly-adopted prediction about the potential outcome of an actual estimation of asbestos liabilities, and refers readers to the discussion above (under "Harbinger's Position Regarding the Parent's Plan"), noting that the Parent has offered brazenly contradictory assertions of its own position in this regard, thereby demonstrating the Parent's lack of credibility.

As further noted, Harbinger disagrees with the positions of the Asbestos Claimants' Committee, FCR, and Parent, and submits that these parties have fundamentally misconstrued the nature of the channeling injunction sought in Harbinger's Plan. Unlike a section 524(g) injunction, the channeling injunction under Harbinger's Plan would not permanently deprive Unknown Asbestos Claimants from pursuing putative causes of action against third parties, including purchasers of the Debtors' assets. Rather, the channeling injunction would merely require Unknown Asbestos Claimants to seek relief from the Asbestos Claims Liquidation Trust so long as, and only so long as, there are assets available to that Trust. Put another way, the channeling injunction uses the excess assets (if any) left after existing Claims are satisfied to create a fund to satisfy Unknown Asbestos Claims and protect ASARCO Protected Parties from such Claims. Unknown Asbestos Claimants could not suffer any cognizable injury by having their Claims channeled to an Asbestos Claims Liquidation Trust that has assets to satisfy such Claims. Harbinger further notes that there is indeed precedent for a limited non-524(g) channeling injunction, notably including *In re National Gypsum*, 219 F.3d 478 (5th Cir. 2000).

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

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

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

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

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

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

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

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

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

(a) Environmental Custodial Trust Sites.

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

(b) Residual Environmental Settlement Sites.

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

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

Coeur d'Alene		
Past Costs and Future Oversight	$41,464,000	
Natural Resource Damages	$67,500,000	
Future Response Costs	$373,179,000	
Site Subtotal		$482,143,000
Omaha		
Response Costs	$187,500,000	
Site Subtotal		$187,500,000
Tacoma		
Response Costs	$80,357,000	
Site Subtotal		$80,357,000
TOTAL		**$750,000,000**

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

(1) Coeur d'Alene.

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

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

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

(2) Omaha.

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

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

(3) Tacoma Smelter Plume.

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

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

(c) Miscellaneous Federal and State Environmental Sites.

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

(d) Previously Settled Environmental Sites.

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

(e) PRPs' Claims.

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

After negotiations with a number of PRPs, ASARCO proposed a case management order establishing procedures for disallowance or estimation of the PRPs' Claims, which the Bankruptcy Court approved by order entered on May 9, 2008. The second case management order provides for the PRPs' Claims to be divided into bands and establishes

procedures for discovery, mediation, and hearings on the PRPs' Claims. ASARCO anticipates that the majority, if not all, of the PRPs' Claims in component 6 and some of the Claims in component 5 in the chart below can be resolved pursuant to section 502(e)(1)(B) of the Bankruptcy Code or section 113(f)(2) of CERCLA.

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

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

Environmental Claims (in $ Millions)		
Component	**Amount Proposed/ Estimated**	**Creditor Claim[23]**
Proposed Global Settlement - Main Components		
1. Environmental Custodial Trusts	$266.5	$369.1
2. Residual Environmental Sites (Coeur d'Alene, Omaha, and Tacoma)	$750.0	$3,083.4
3. Miscellaneous Federal and State Environmental Sites	$94.5	$220.4
Main Component Subtotal	**$1,111.0**	**$3,672.9**
Other Components Not Addressed Above		
4. Previously Settled Environmental Sites	$513.6[24]	$3,050.2 - $3,132.4
5. PRP Costs (resolved)	$47.4	$268.6
6. PRP Costs (unresolved)	$0.5	$2.655
7. Other Miscellaneous Claims[25]	$8.3	$13.3
8. Administrative Costs of Environmental Custodial Trusts	$27.5	n/a
9. Late-Filed Claims	n/a[26]	$4 - $14.5[27]

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

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

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

[26] These Claims shall also be classified as Class 6 Late-Filed Claims under Harbinger's Plan but shall receive interests in the Liquidation Trust and SCC Litigation Trusts subject to the Trust Interest Priorities (as such terms are defined in **Exhibit A-3** hereto). These Claims shall also be classified as Class 6 Late-Filed Claims under Harbinger's Plan but shall receive interests in the Liquidation Trust and SCC Litigation Trusts subject to the Trust Interest Priorities (as such terms are defined in **Exhibit A-3** hereto).

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

Environmental Claims (in $ Millions)		
Component	**Amount Proposed/ Estimated**	**Creditor Claim[23]**
10. Subordinated Claim	n/a[28]	$11.4 - $27.3[29]
Other Component Subtotal	**$597.3**	**$3,350.155 – 3,458.755**
Combined Total	**$1,708.3**	**$7,023.055 – 7,131.655**

ASARCO believes that the amounts listed above represent a reasonable compromise of what in most cases are varying estimates of the funds necessary to address reasonable cleanup contingencies and provide reasonable compensation for natural resource damages. It is possible, perhaps even likely, that at any given site actual cleanup expenditures may be higher than anticipated. It is also possible, perhaps even likely, that the United States or one or more states may uncover additional sites not previously associated with ASARCO. Although such Claims might under some legal theories be considered non-dischargeable, under the Debtors' Plan, the United States and states effectively have no further recourse against ASARCO. However, the United States shall continue to have access to the Prepetition ASARCO Environmental Trust to the extent that AMC continues to fund it. AMC has not defaulted on any payments owed to the Prepetition ASARCO Environmental Trust thus far. A promissory note with $12.5 million in principal remaining due in May 2010 is held by the Prepetition ASARCO Environmental Trust. Funds that are paid into the Prepetition ASARCO Environmental Trust are not property of the Estate, and the United States has broad discretion in determining how those monies are spent.

(f) Environmental 9019 Motion.

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

On April 6, 2009, the Parent filed a motion for withdrawal of the reference of the Environmental 9019 Motion on both mandatory and permissive grounds. The Debtors and the United States objected to this request, and a number of states joined in the Unites States' objection. The Bankruptcy Court held a hearing on April 22, 2009 on the Parent's motion. On April 24, 2009, the Bankruptcy Court issued a report and recommendation on the motion recommending that the District Court deny the Parent's motion to withdraw the reference. After conducting a telephonic hearing thereon on April 30, 2009, the District Court denied the motion in Civil Action No. CC-09-91. On May 1, 2009, the District Court entered an Order Denying Motion to Withdraw the Reference, and also entered an order on May 12, 2009 explaining the May 1 decision. On May 11, 2009, the Parent filed a motion in the District Court for certification of that order for immediate interlocutory appeal to the United States Court of Appeals for the Fifth Circuit, together with a request for a stay of the proceedings pending resolution of the question of whether withdrawal of the reference of the Environmental 9019 Motion is mandatory. Objections to the Parent's motion for certification of interlocutory appeal and

[28] Under Harbinger's Plan, this Claim shall also be classified as a Class 7 Subordinated Claim and shall receive interests in the Liquidation Trust and SCC Litigation Trusts subject to the Trust Interest Priorities (as such terms are defined in **Exhibit A-3** hereto). Under Harbinger's Plan, this Claim also be classified as a Class 7 Subordinated Claim and shall receive interests in the Liquidation Trust and SCC Litigation Trusts subject to the Trust Interest Priorities (as such terms are defined in **Exhibit A-3** hereto).

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

stay were filed by ASARCO and by the United States on behalf of the EPA, the Interior, the USDA, and the International Boundary and Water Commission. On May 15, 2009, the District Court entered an Order Denying the Parent's Motion for Certification of Interlocutory Appeal and Stay.

On May 20, 2009, the Bankruptcy Court entered a stipulation and order resolving Mitsui's objection to the Environmental 9019 Motion. Pursuant thereto, Mitsui's asserted Lien in silver inventory and work in process which may be located at or embedded in the El Paso smelter and the East Helena facility, which is referred to as the embedded silver, is transferred and reattached to all of the Cash in Mitsui's cash collateral account (including any Cash in the account that is not attributable to the proceeds of the sale of silver subject to Mitsui's alleged security interest, as well as accrued interest on the funds in the account). Mitsui's alleged Lien against the embedded silver is extinguished.

On June 5, 2009, after several days of hearings and consideration of approximately 1,200 exhibits and the testimony of 47 witnesses, the Bankruptcy Court issued its findings of fact and conclusions of law approving each of the five settlements, and entered orders approving each of the five settlements. Among other things, the Bankruptcy Court found that the settlements satisfied the requirements of *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414 (1968), which established the standards for approval of settlements in bankruptcy cases. The Bankruptcy Court also found that the settlement satisfied the requirements of CERCLA, as set forth in cases such as *United States v. Cannons Eng'g Corp.*, 899 F.2d 79 (1st Cir. 1990).

On June 15, 2009, the Parent filed a notice of appeal from the order approving the Environmental 9019 Motion. This appeal is pending before United States District Judge Hayden Head as Civil Action No. 09-138.

(g) Parent's Position Regarding the Proposed Resolution of Environmental Issues.

The following discussion in Section 2.20(g) was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

Prior to the scheduled environmental estimation hearings, settlements were reached with respect to 19 environmental sites, resolving $3 billion in environmental Claims for approximately $532.1 million in allowed unsecured Claims or Cash. By mid-October of 2007, estimation proceedings with respect to Claims relating to the Residual Environmental Sites and asserted in an original amount of approximately $3 billion were completed, and decisions were pending.

Thereafter, the DOJ attended the mediation before Judge Magner and the Debtors and the DOJ requested that the Bankruptcy Court defer ruling on the Residual Environmental Claims. After the Debtors decided not to proceed to a ruling on the Residual Environmental Claims, only minimal, if any, further action was taken to estimate the other Environmental Unsecured Claims. The Debtors, the federal government, and various state governments ultimately entered into several additional global environmental settlements.

On March 12, 2009, the Debtors filed the Environmental 9019 Motion, requesting the Bankruptcy Court to approve the terms of five consent decrees settling nearly all major outstanding environmental Claims (including the settlement of the Residual Environmental Claims). The consent decrees presented to the Bankruptcy Court propose to pay approximately $1.1 billion to settle the Debtors' liabilities in connection with: (1) the Miscellaneous Federal and State Environmental Settlement, (2) the Multi-State Custodial Trust Settlement, (3) the Montana Custodial Trust Settlement, (4) the Texas Custodial Trust Settlement, and (5) the Residual Environmental Settlement.

The Parent opposes what it asserts are grossly inflated settlements of the unresolved environmental Claims set forth in the Environmental 9019 Motion and filed an objection on April 6, 2009 urging the Bankruptcy Court to deny the Environmental 9019 Motion. Specifically, the Parent believes that the settlement of the federal government's Claims with respect to the Omaha Lead Site ("OLS") should have been rejected due to the EPA's failure to account for the central role of lead-based paint, as opposed to aerial emissions from the former ASARCO refinery, in causing lead contamination at that site. The Parent also believes that the EPA's response costs at the OLS are not recoverable because the EPA is implementing a largely ineffective soil replacement remedy which violates applicable federal regulations and is inconsistent with CERCLA. The settlement of the federal government's claims with respect to the Coeur d'Alene Site is, according to the Parent's analysis, grossly inflated because it allocates $67.5 million for restoration of natural resources, which is based largely on an invalid baseline analysis for aquatic damages that does not comply with applicable federal regulations. Finally, the Parent objects to the Environmental Custodial Trust Settlements because (1) the Debtors propose

to settle their liabilities at the Custodial Trust Settlement Sites for tens of millions more than their own expert's "Reasonable Worst Case" cost estimate; (2) the settlements fail to account for the contribution to environmental harm at these sites of non-settling PRPs, attributing 100 percent of clean-up costs to the Debtors, (3) the settlements to do not reflect any underlying resale value that may be realized from future sale or lease of the properties, and (4) the Debtors propose to pay for the demolition of buildings on seven Environmental Custodial Trust Sites despite clear evidence that costs associated with demolition are not recoverable under CERCLA.

Hearings on the Environmental 9019 Motion were held on May 18-19, 2009 and concluded on May 29, 2009. The Parent argued that the Court cannot approve the proposed OLS settlement because it does not satisfy the standard of review applicable to CERCLA settlements. In particular, the EPA's misconduct (in the Parent's view) leading up to the settlement, such as withholding of critical information and delaying or omitting important site studies, resulted in a procedurally unfair settlement. In addition, the Parent asserts that the EPA's response actions at the Omaha Site have been and continue to be unreasonable and inconsistent with the requirements of CERCLA and its implementing regulations in the National Contingency Plan ("NCP") because the EPA exceeded its statutory authority and selected a remedy that deviates substantially from the NCP. Consequently, the EPA is barred from recovering any portion of its response costs associated with the flawed remedy. With respect to the Coeur d'Alene Basin settlement, the Parent argued that because the United States Trustee disregarded applicable regulations in assessing natural resource damages ("NRD") at the Site, the NRD portion of the settlement fails under the "consistency with CERCLA" prong of the CERCLA standard. The Parent also urged the Court to reject the Custodial Trust Sites settlements because the Parent asserts that these agreements improperly apportion 100% of liability to ASARCO, include tens of millions of dollars in non-recoverable demolition costs, and do not account for the substantial resale value of the owned properties following remediation. As such, the Custodial Trust Sites settlements cannot be approved under "substantive fairness" prong of the applicable CERCLA standard which requires settlement terms to be correlated with comparative fault of the settling PRP. Finally, the Parent raised the issue that because the Custodial Trust Sites settlements are made contingent on the approval of a Chapter 11 plan of reorganization, they would be binding on any plan sponsor and would effectively dictate plan terms with regard to the Debtors' owned sites. Thus, if the Debtors wish to go forward with these settlements, the Parent asserts that they should be incorporated as a component of the Debtors' plan of reorganization, which would allow creditors to vote on the proposed custodial trust treatment of the owned sites.

The Parent asserts that the Debtors essentially ignored the governing CERCLA standard of review in their presentation at the Environmental 9019 Motion hearing, and focused instead on litigation risks and the uncertainty inherent in assessing the Debtors' exposure to liability for contamination at the various sites included in the Environmental 9019 Motion. The EPA conceded that the CERCLA standard applied to all the environmental settlements at issue, but tried to persuade the Court – without (in the Parent's view) any legal authority to support this proposition – that the standard was primarily intended to ensure that settling PRPs pay enough to cover the government's clean-up costs. With regard to the Omaha Site, the EPA repeatedly asked the Court for deference notwithstanding (in the Parent's view) the EPA's misguided approach to investigation and remediation of the Site. The EPA also argued that it is entitled to recover most of its response costs even if the selected remedy was inconsistent with the NCP. The Parent asserts that this stance is sharply at odds with the Fifth Circuit's precedent on cost recovery under CERCLA.

The United States contends that: (1) at both the OLS estimation hearing and the hearing on the Environmental 9019 Motion, the federal and state governments presented extensive expert testimony that ASARCO contributed a significant amount of lead throughout the OLS; (2) EPA's selected remedy at the OLS is a comprehensive plan that is reasonable, effective, and consistent with the NCP; (3) EPA did not engage in any misconduct; (4) the baseline used to calculate damages for the contaminated surface waters throughout the Coeur d'Alene River was valid and in fact conservative; (5) the Environmental Custodial Trust Settlements properly reflect a compromise between the Debtors' cost estimates and those of the governments with respect to each site; (6) the Environmental Custodial Trust Settlements properly accounts for other PRPs, especially because the Debtor is the sole responsible party at the majority of these sites and because, in many cases, the Debtor is subject to pre-bankruptcy consent decree obligations to perform and/or fund the cleanup work; (7) any market value of most sites is highly doubtful, and in any event, whatever value they may eventually have properly compensates the governments for the risks they have assumed that costs may significantly exceed available funding due to unknown or unexpected conditions at many of these sites; and (8) to the extent the government's cost estimates, as opposed to those of the Debtor, include demolition costs, such costs are often required under CERCLA or RCRA, are often a cost-effective means of accomplishing required decontamination, and may be required because the trusts will be charged with maintaining these properties and associated structures in a safe and reasonable manner even under non-environmental law.

The Parent strongly disagrees with the contentions made by the United States for the following reasons: (1) the United States has not offered the Court "extensive" evidentiary support that emissions from ASARCO's smelter significantly contributed to lead contamination at the OLS – in fact, several important studies conducted by the EPA indicated that lead-based paint is the primary source of soil contamination at the OLS; (2) the EPA's selected remedy at OLS is ineffective because it does not permanently address lead-based paint hazards and will inevitably fail as lead-based paint deteriorates and recontaminates clean soil in OLS yards; such a remedy is, by definition, inconsistent with the NCP; (3) contrary to applicable regulations, the baseline used for assessing aquatic resource damages at the Coeur d'Alene Site did not consider a number of factors other than mining that adversely impacted fish populations in the Coeur d'Alene River; (4) the Environmental Custodial Trust Settlements represent an unfair compromise because the total amount of these settlements exceeds by tens of millions the (in the Parent's view) 95%-confidence-level ("worst case scenario") estimate of remedial costs at the Custodial Trust Sites; (5) the Environmental Custodial Trust Settlements are premised on the incorrect assumption that ASARCO is the sole responsible party at every Custodial Trust Site, when viable PRPs exist at many of these Sites; (6) the Debtors' own documents show that the Custodial Trust Sites have considerable market value which would undoubtedly increase after the Sites are remediated. Failure to account for this resale value in the Environmental Custodial Trust Settlements will result in a windfall for the United States, given the excessively generous funding for clean-up of the Custodial Trust Sites embodied in the settlements; and (7) the United States may not recover for demolition costs under either CERCLA of RCRA because building demolition at the Custodial Trust Sites is not a necessary component of environmental remediation, but is undertaken for maintenance and marketability purposes.

The United States and the Debtors strongly disagree with the Parent's contentions and characterizations in this Section 2.20(g).

On June 5, 2009, the Bankruptcy Court approved the Environmental 9019 Motion and issued 97 pages of Findings of Fact and Conclusions of Law in support thereof which disagreed with the Parent's contentions.

Based on (in the Parent's view) significant errors in the Court's legal conclusions, the Parent has decided to appeal the Bankruptcy Court's decision on the Environmental 9019 Motion. The Parent believes the Bankruptcy Court erred as a matter of law in approving the OLS Settlement because (1) the Court overstated the Debtors' litigation risk, while disregarding obvious weaknesses in the United States' case; (2) the Court misconstrued the applicable CERCLA standard of review; (3) the Court did not adequately consider compelling evidence of the EPA's misconduct and errors of procedure, which created an unfair bargaining environmental during OLS settlement negotiations, (4) the Court failed to determine whether the OLS remedy contemplated by the settlement will be effective in cleansing the environment; and (5) the Court failed to assess whether the OLS Settlement fairly apportions liability based on ASARCO's comparative fault. Further, the Parent believes the Bankruptcy Court erred as a matter of law in approving the Custodial Trust Settlements which dictate the treatment of the Debtors' non-operating properties for all plan sponsors and, therefore, should have been presented to the Court as part of the Debtors' plan of reorganization.

Notwithstanding the foregoing, if the class of General Unsecured Claims including the Environmental Unsecured Claims votes to accept the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), the Parent will, on the Effective Date, withdraw its objections and any then pending appeals from the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund, and the Custodial Trust Settlement Agreements, and cause the Plan Administrator to (1) implement the Environmental Custodial Trust Agreements in the form and manner, and with the funding upon effectiveness of the Parent's Plan, as previously negotiated by the Debtors and the holders of Environmental Trust Claims and as set forth in the Environmental 9019 Motion, and (2) treat the Environmental Unsecured Claims as Allowed in the amounts set forth in the Environmental 9019 Motion and pay the holders of such Claims their Pro Rata share of the Available Parent's Plan Proceeds and Distributed Litigation Trust Interests. With respect to estimations that have been concluded and environmental settlements that have been approved by final order with respect to Environmental Unsecured Claims as of the Effective Date, the Parent proposes to pay the holders of such claims their Pro Rata share of the Available Parent's Plan Proceeds and Distributed Litigation Trust Interests on the Effective Date.

If the class of General Unsecured Claims votes to reject the Parent's Plan or expresses a preference for either the Debtors' Plan or Harbinger's Plan and the Parent's Plan is confirmed, however, the Parent will treat unresolved Environmental Unsecured Claims as Disputed Claims pending the entry of a final order either Allowing the Claims as set forth in the Environmental 9019 Motion (in which case the Parent's Plan will pay such Claims their Pro Rata share of the Available Parent's Plan Proceeds and Distributed Litigation Trust Interests, and establish and fund the Environmental Custodial Trusts from the Disputed Claims Reserve as described in the Parent's Plan) or overturning the order approving the Environmental 9019 Motion (in which case the Parent's Plan Administrator will seek to conclude the Debtor's

estimation of unresolved Environmental Unsecured Claims and will pay the holders of unresolved Environmental Unsecured Claims and Environmental Trust Claims from the Disputed Claims Reserve once the Allowed amounts of such Claims have been determined by the final order of a court of competent jurisdiction).

The Debtors contend that the Environmental 9019 Motion sets forth proposed settlements that (1) each of which must by its terms be approved in its entirety; (2) resolve environmental Claims completely; and (3) allocate to the governmental authorities the burden if the remediation costs are higher than projected while allocating to the same authorities the benefit if the remediation costs are lower than projected. The Debtors further contend that the Parent's Plan inappropriately seeks to take the benefits of the settlements described in the Environmental 9019 Motion without also taking the burden of such settlements because the Parent retains through its control of Reorganized ASARCO the exclusive right to object to Claims. The Parent believes that the Debtors' contentions mischaracterize the Parent's Plan because the Parent only retains the benefit of lower remediation costs if the class of General Unsecured Claims elects not to accept the Parent's Plan or expresses a preference for either the Debtors' Plan or Harbinger's Plan and the remediation allocations contained in the Environmental 9019 Motion prove to be inflated. Furthermore, in the event the remediation costs prove to be lower than the projected (as the Parent believes they ultimately would), the Parent believes that the governmental authorities have no basis for asserting a right to benefit from the inflated remediation allocations contained in the Environmental 9019 Motion. These issues, however, are fully resolved if the class of General Unsecured Claims votes to accept the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans).

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

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

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

On October 23 and 24, 2007, the Debtors and counsel for several of the toxic tort Claimants conducted a mediation, and hundreds of personal injury Claims and some property damage Claims were resolved pursuant to five separate memoranda of understanding. The parties thereafter negotiated five separate settlement agreements and, by motion filed on January 23, 2008, the Debtors sought approval of these settlements. Pursuant to the settlements, (a) the Claims resulting from the Debtors' operations of a site in Tar Creek, Oklahoma shall be satisfied with Allowed Unsecured Claims in the aggregate amount of $20,782,500; (b) the Claims resulting from the Debtors' operations of the Ray mine and the Hayden smelter shall be satisfied with Allowed Unsecured Claims in the aggregate amount of $4,800,000; and (c) the Claims resulting from the El Paso Smelter shall be satisfied with Allowed Unsecured Claims in the aggregate amount of $2,387,500. On February 20, 2008, the Bankruptcy Court entered an order approving the settlements, and on March 3, 2008, entered an order approving the settlements for Claimants who are minors.

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

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

2.22 Litigation and Settlement of Mission Mine Leases.

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

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

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

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

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

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

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

- ASARCO is permitted to continue mining on the land.

- ASARCO shall assume the Mission Mine Unexpired Agreements.

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

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

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

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

Prior to the Petition Date, SPT, as surety, issued certain surety bonds on behalf of ASARCO, as principal, including, without limitation, the bonds referred to in the SPT Settlement Agreement as the Mission Bonds in favor of the United States or the Interior. The Mission Bonds bonded certain of ASARCO's obligations relating to its mining operations at the Mission Mine. The aggregate penal sum[30] of the Mission Bonds is $11,654,896.

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

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

2.24 Preferences and Fraudulent Conveyance Actions.

(a) Preferences.

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

- to or for the benefit of a creditor;
- on account of an existing debt;
- while the debtor was insolvent;
- within 90 days (or one year, if to an "insider") before the debtor's bankruptcy petition was filed; and
- so as to enable the creditor to receive more than it would have received if the transfer had not been made, the debtor was liquidated under chapter 7 of the Bankruptcy Code, and the creditor received the distributions it would have received in a chapter 7 case.

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

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

As a result of this analysis, the Debtors have filed adversary proceedings in the Bankruptcy Court seeking to recover preferential transfers from approximately 165 defendants who received more than $50,000 each from a

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

Debtor during the preference period. As discussed below in Section 2.24(l)(3), ASARCO has obtained an extension of the time for serving the summonses and complaints in these adversary proceedings.

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

(b) Fraudulent Transfers.

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

- with an actual intent to hinder, delay, or defraud its existing or future creditors (a case of "actual fraud"); or
- in exchange other than for a "reasonably equivalent" value or a "fair consideration," when the debtor:
  - was insolvent or rendered insolvent by reason of the transfer or incurrence;
  - was engaged or about to engage in a business or transaction for which its remaining assets would constitute unreasonably small capital; or
  - intended to incur, or believed that it would incur, debts beyond its ability to pay as they mature

  (each a case of "constructive fraud").

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

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

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

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

(c) Avoidance Action Against AMC.

(1) The Debtors' Description.

On February 2, 2007, ASARCO filed an action against AMC to avoid the transfer of ASARCO's 54.2 percent controlling ownership interest in SCC to AMC on March 31, 2003. As a result of stock splits and subsequent transactions involving SCC, ASARCO believes that the stock at issue constitutes about 30.6 percent of currently outstanding stock in SCC, whereas the Parent believes the stock constitutes approximately 29.5 percent of the currently outstanding stock in SCC. ASARCO sought the return of its interest in SCC and recovery of the SCC dividends it would otherwise have received since the transfer in 2003.

In the SCC Litigation, ASARCO and SPHC asserted the following causes of action against AMC: (A) actual fraudulent transfer; (B) constructive fraudulent transfer; (C) civil conspiracy; (D) breach of fiduciary duty; (E) aiding and abetting a breach of fiduciary duty; and (F) punitive damages.

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

On August 30, 2008, Judge Hanen entered a Memorandum Opinion and Order concerning AMC's liability with respect to the transfer in March 2003. The opinion is published at *ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278 (S.D. Tex. 2008), and also may be found at the Debtors' restructuring website at www.asarcoreorg.com. Judge Hanen held that AMC was liable for actual fraudulent transfer under Delaware law because it entered into the transaction with full knowledge that ASARCO's creditors would be hindered or delayed as a result. Judge Hanen further held that AMC aided and abetted and conspired with the directors of ASARCO to accomplish the transaction in breach of the ASARCO directors' fiduciary duties owed to ASARCO for the benefit of ASARCO's creditors. In so doing, Judge Hanen found that AMC had not paid a fair price for the stock. ASARCO agrees with the District Court's determinations on these issues and believes these findings will be upheld on any appeal. The Parent disagrees with the District Court's determinations that the transfer constituted an actual fraudulent transfer and that AMC aided and abetted ASARCO's directors' breach of their fiduciary duties to ASARCO's creditors and engaged in a conspiracy with ASARCO's directors; the Parent is confident that it has strong arguments to challenge the District Court's findings on appeal.

Judge Hanen also found that (A) AMC paid reasonably equivalent value in the 2003 transfer of the transferred shares of stock; (B) the sale of the transferred shares was a legitimate means by which to restructure ASARCO; (C) neither AMC nor Grupo México owed a fiduciary duty to ASARCO or its creditors such that AMC was not liable for a breach of such duty nor aiding and abetting a breach of a fiduciary duty owed by Grupo México; (D) AMC was not liable for a conspiracy with Grupo México; and (E) the plaintiffs failed to establish that AMC engaged in conduct sufficient to warrant punitive damages. The Parent agrees with these portions of the District Court's opinion, and believes that the District Court's rulings on these issues are proper.

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

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

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

On April 1, 2009, Judge Hanen issued a Memorandum Opinion and Order regarding ASARCO's damages. The opinion is published at *ASARCO LLC v. Americas Mining Corp.*, No. 1:07-CV-00018, 2009 WL 890551 (S.D. Tex. April 1, 2009), and also may be found at the Debtors' restructuring website at www.asarcoreorg.com. Judge Hanen awarded ASARCO all of the SCC Stock. In addition, Judge Hanen ordered AMC to pay ASARCO money

damages and prejudgment interest of $1,382,307,216.75, comprised of dividends AMC received on the SCC Stock of $1,967,548,106.58 and prejudgment interest on those dividends of $326,465,851.95, less $747,392,857.00 that AMC paid for the SCC Stock, together with prejudgment interest on that payment of $164,313,884.78. Judge Hanen also denied AMC's motion seeking a post-trial amendment of ASARCO's pleadings to conform to the evidence presented at trial.

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

On April 14, 2009, Judge Hanen entered an Amended Memorandum Opinion and Order, which corrected a clerical error in the April 1, 2009 Memorandum Opinion and Order. The opinion is published at *ASARCO LLC v. Americas Mining Corp.*, 404 B.R. 150 (S.D. Tex. 2009).

Judge Hanen entered the SCC Final Judgment on April 15, 2009. The SCC Final Judgment, the form of which was agreed upon by the parties, awarded ASARCO damages against AMC valued at about $6.87 billion as of the date of the judgment, if collected in full as of that date. Among other things, AMC was ordered to convey to ASARCO 260,093,694 shares of SCC common stock. Using SCC's closing stock price on June 2, 2009, ASARCO estimates those shares to be worth approximately $6.1 billion. AMC also was ordered to pay ASARCO $1,382,307,216.75 in money damages and prejudgment interest. Thus, the SCC Final Judgment, if collected in full as of June 2, 2009, would have had a value of approximately $7.48 billion. The District Court found that ASARCO was not entitled to damages representing a control premium, because the District Court found that control of SCC was not an asset that would have been available to ASARCO's creditors, since the stock was completely encumbered and a sale of the stock and the consequent loss of control were inevitable.

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

On April 24, 2009, AMC filed a notice of appeal from the SCC Final Judgment and all adverse orders, rulings, decrees, opinions, and judgments leading up to and included within the SCC Final Judgment. The Parent believes that Judge Hanen's findings are erroneous and contradictory and remains confident that it has strong arguments on appeal and for a new trial. ASARCO believes that Judge Hanen's findings will be upheld on appeal.

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

Also on April 29, 2009, AMC filed a motion for stay of execution of the SCC Final Judgment pending appeal of that judgment. AMC argued that the District Court should stay execution of the SCC Final Judgment pending appeal, without any supersedeas bond, so long as AMC agrees (A) not to sell, transfer, or encumber the SCC Stock during the pendency of the appeal and (B) to extend the voting restrictions set forth in the District Court's April 15, 2009 order.

ASARCO and SPHC filed responses in opposition to AMC's motions on May 18, 2009. AMC filed replies thereto on May 22, 2009. A hearing on the motion for stay of execution was held on May 27, 2009, at which time Judge Hanen took both motions under advisement.

On June 2, 2009, the District Court entered its Memorandum Opinion and Order partially granting and partially denying AMC's motion for stay. The District Court set forth the following requirements for AMC to secure the SCC Final Judgment:

- AMC shall place 260,093,694 shares of common stock of SCC (i.e., the Nonmonetary Award) in an escrow account with a neutral third party agreed to by ASARCO and SPHC and AMC (or if no agreement can be reached, in the registry of the District Court) subject to the terms of a mutually agreed upon escrow agreement;

- In addition to the Nonmonetary Award, AMC shall place additional SCC shares in an amount equaling twice the value of $1,382,307,216.75 (the Monetary Award) in the same escrow account, again subject to the terms of a mutually agreed upon escrow agreement. In the event the monetary value of these shares, as determined by a 20-day trailing-average share price, falls below an amount equaling 1.75 times $1,382,307,216.75, AMC shall add more SCC stock to the escrow account in the amount of such shares necessary to return the total value to double the value of $1,382,307,216.75;

- Absent a further order of the District Court, none of the SCC Stock placed into escrow to secure the SCC Final Judgment may be pledged as security, or in any other way encumbered, for any purpose other than to secure the District Court's judgment in the manner described in the Memorandum Opinion and Order;

- With respect to any dividends generated by the Nonmonetary Award, or by the shares previously escrowed thereunder, between April 15, 2009, and the conclusion of AMC's appeal, AMC shall, at its discretion, either deposit such dividends into the escrow account as cash or cash equivalents or, alternatively, place an amount of unencumbered shares of common stock of SCC equaling twice the monetary value of such dividends into the escrow account, under the same terms and conditions described above. AMC shall give ASARCO 10-days' notice of any impending dividend payment. On June 26, 2009, the District Court orally revised its order, with ASARCO's consent, to specify that AMC does not need to escrow dividends on the shares covering the Monetary Award;

- AMC shall immediately take all necessary steps to achieve the registration of the SCC shares;

- The voting and non-transferability restrictions contained in the District Court's April 15, 2009 agreed order shall apply to all of the SCC Stock placed into escrow to secure the SCC Judgment. Either party may petition the District Court at any time regarding the issue of voting or not being able to vote the shares of stock subject to the Memorandum Opinion and Order;

- Any further terms and conditions regarding the bonding arrangements described in the Memorandum Opinion and Order shall be negotiated by the parties to the SCC Litigation, with the District Court available to resolve any disputes;

- At the earlier of November 5, 2009, or 60 days after the date any plan, other than the Parent's Plan, is confirmed by the Bankruptcy Court, AMC shall replace the security for the monetary portion of the judgment described in paragraph 2 of these bullet points with a supersedeas bond of $1,382,307,216.75, and the security for any dividends generated by the Nonmonetary Award shall be replaced with a supersedeas bond equal to the amount of the dividends. Once

replaced with a bond, the amount of stock deposited by AMC pursuant to paragraphs 2 and 4 of these bullet points shall be returned to AMC;

- If the Bankruptcy Court is unable to confirm a plan by November 5, 2009, or for other good cause, the District Court will consider an appropriate motion for an extension of the deadline described in the immediately preceding paragraph, although the movant will bear the burden to show cause;

- The District Court retained jurisdiction over the Memorandum Opinion and Order and the bonding requirements involved in the SCC Litigation unless superseded by an order of the United States Court of Appeals for the Fifth Circuit;

- The District Court's April 15, 2009 order shall remain in effect beyond June 5, 2009, and shall remain in effect unless and until superseded by a specific provision of the Memorandum Opinion and Order, or by another order of the District Court or the United States Court of Appeals for the Fifth Circuit (The District Court noted that it contemplated entering such a superseding order by early July 2009, once it becomes clear that the above security arrangement has been instituted or, alternatively, it becomes clear that, for whatever reason, the parties have not accomplished the security arrangements contemplated by the Memorandum Opinion and Order);

- Once the stock, cash, or cash equivalent described in the Memorandum Opinion and Order is deposited into escrow, neither party shall remove such stock, cash, or cash equivalent absent an order from the District Court or the United States Court of Appeals for the Fifth Circuit;

- All other relief sought by either party and not contained in the Memorandum Opinion and Order was denied.

Under the Debtors' Plan and Harbinger's Plan, on the Effective Date, this action, including the SCC Final Judgment, shall be transferred to the SCC Litigation Trust. If the SCC Stock is returned to the Estate in accordance with the SCC Final Judgment, the SCC Stock shall go to the SCC Litigation Trust.

Under the Parent's Plan, the SCC Litigation shall be released and dismissed with prejudice.

(2) The Parent's Description.

The following discussion was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

On February 2, 2007, ASARCO filed an action against AMC (the "SCC Litigation"), seeking to avoid the Transaction as an actual and/or constructively fraudulent transfer, and seeking the return of its interest in SCC. As a result of stock splits and similar subsequent transactions involving SCC, the stock at issue constitutes 260,093,694 shares, which is approximately 30.6 percent of the currently outstanding stock in SCC (the "Transferred Shares"). ASARCO also seeks to recover any dividends it would have received on account of its ownership of the Transferred Shares since the transfer in 2003. In the lawsuit, ASARCO and SPHC asserted the following additional causes of action against AMC: (A) civil conspiracy; (B) breach of fiduciary duty; and (C) aiding and abetting a breach of fiduciary duty. ASARCO and SPHC also sought punitive damages in connection with the aiding and abetting causes of action.

On August 30, 2008, the United States District Court for the Southern District of Texas, Brownsville Division, issued an opinion holding that (A) AMC paid reasonably equivalent value in the 2003 transfer of the Transferred Shares, and thus was not liable on ASARCO's constructive fraudulent transfer claim, (B) the sale of the Transferred Shares was a legitimate means by which to restructure ASARCO, (C) neither AMC nor Grupo Mexico owed a fiduciary duty to ASARCO or its creditors such that AMC was not liable for a breach of such duty nor aiding and abetting Grupo Mexico's alleged breach, (D) AMC was not liable for a conspiracy with Grupo Mexico, and (E) the plaintiffs failed to establish that AMC engaged in conduct sufficient to warrant punitive damages. The Parent believes that the court's rulings on these issues are proper.

The court also found, however, that the transfer was accomplished in part to hinder or delay creditors, thus constituting an actual fraudulent transfer, and that AMC aided and abetted ASARCO's directors' breach of their fiduciary duties to ASARCO's creditors and engaged in a conspiracy with ASARCO's directors. The Parent disagrees with these adverse findings by the court.

On April 1, 2009, the court issued a Memorandum Order and Opinion regarding the damages to be awarded to the plaintiffs (the court issued an Amended Memorandum Opinion and Order to correct a clerical error in the April 1 order and opinion, and on April 15, 2009, the Court issued the SCC Final Judgment). The court awarded to ASARCO (A) the return of the Transferred Shares, and (B) the dividends paid on the Transferred Shares between March 31, 2003 and the time of the SCC Final Judgment plus prejudgment interest, minus certain consideration paid by AMC for the Transferred Shares and prejudgment interest on such consideration, resulting in a net monetary award to ASARCO of $1,382,307,216.75. The court found that ASARCO was not entitled to damages representing a control premium, because ASARCO would never have retained control over SCC.

On April 15, 2009, the court entered an Agreed Order which (A) stays execution or enforcement of the SCC Final Judgment through June 5, 2009 (the "Agreement Period"), (B) bars AMC from transferring, selling, exchanging, disposing of or encumbering any interest AMC has in 54.2 percent of the SCC outstanding shares during the Agreement Period, (C) bars AMC from removing any interest AMC has in 54.2 percent of the SCC outstanding shares from the United States during the Agreement Period, and (D) bars AMC from voting any SCC shares in such a way that would hinder, delay, or negate ASARCO's recovery of the Transferred Shares, dilute the Transferred Shares, or otherwise diminish the value of the Transferred Shares during the Agreement Period.

AMC intends to appeal all adverse findings to the United States Court of Appeals for the Fifth Circuit and on April 24, 2009, AMC filed its Notice of Appeal. In addition, on April 29, 2009, AMC filed two motions in the District Court: (A) a Motion to Alter or Amend the Judgment or for New Trial ("New Trial Motion"), and (B) a Motion for Stay of Execution of Judgment Pending Appeal (the "Stay Motion"). ASARCO filed oppositions to both of these motions. On May 27, 2009, the court held a hearing on the Stay Motion, at which it heard oral arguments and evidence. The parties elected to stand on the briefs with respect to the New Trial Motion. The New Trial Motion remains pending. On June 2, 2009, the Court granted in part and denied in part the Stay Motion.

The Debtors contend that the SCC Final Judgment, if upheld on appeal and collected would be more than sufficient to pay creditors' claims in full, plus all postpetition interest and attorneys' fees. The Parent, however, believes that the SCC Final Judgment is unlikely to be upheld on appeal for the following reasons:

Actual Fraudulent Transfer Claim. The Parent believes that the Fifth Circuit is likely to reverse the district court's liability finding on ASARCO's fraudulent transfer claim on several grounds. First, ASARCO failed to prove that SPHC – which the court found was properly formed in 1999 to own the SCC Shares – was ASARCO's alter ego under Delaware law. (The district court agreed that ASARCO failed to make this showing under a clear and convincing evidence standard, the standard it should have applied). The Parent believes that the district court erred in finding misuse of SPHC's corporate form. Second, and more directly, the Parent believes that the district court improperly predicated its actual fraudulent transfer analysis on the finding that ASARCO (at AMC's direction) required that the transaction proceeds be used to favor certain creditors over others, rather than a conclusion that the estate had been diminished by the Transaction. It is undisputed that the proceeds of the Transaction were used to pay legitimate and liquidated ASARCO debts that were overdue or about to become due. In addition, the court found that AMC paid reasonably equivalent value for the SPCC shares. The Parent believes that these facts do not, and cannot, support an actual fraudulent transfer claim finding; at most, they may have supported a preference claim which would result in a claim back by AMC against ASARCO in the amount of the dollars transferred. Finally, the district court's acknowledgement of a legitimate business purpose behind the Transaction should have precluded its finding of actual intent to defraud ASARCO's creditors.

Aiding and Abetting Claim. The Parent believes that the Fifth Circuit is likely to reverse the district court's liability finding on ASARCO's aiding and abetting claim, or, at a minimum, reverse the remedy awarded under this cause of action. The Parent believes that the district court erred in concluding that the business judgment rule was rebutted and improperly shifted the burden of proof to AMC to prove the entire fairness of the transaction. Even if the court had applied the burden of proof correctly, the Parent believes that the district court erred in concluding that AMC did not pay a fair price for the SCC Shares when it found specifically that reasonably equivalent value was paid, and did not engage in fair dealing when the transaction was effectuated after extensive public negotiations between the parties and the

United States government (ASARCO's largest creditor), analysis by independent third party advisors, and approval by a federal district court in Arizona in a formal consent decree.

Conspiracy Claim. The Parent believes the Fifth Circuit is likely to reverse the district court's finding that AMC conspired with ASARCO's directors to commit a fraudulent transfer and breach their fiduciary duties. First, the Parent believes that Arizona law does not permit a derivative fraudulent transfer claim, such as conspiracy, against a direct transferee of the allegedly fraudulently transferred property, particularly where there are no allegations that the UFTA remedies are inadequate. Second, the Parent believes that ASARCO cannot bring a conspiracy to breach fiduciary duty claim against AMC when, as the court confirmed, AMC owed no fiduciary duties to ASARCO. Third, the Parent believes that as a matter of law, ASARCO cannot conspire with the directors of its own wholly-owned subsidiary, because it would be tantamount to conspiring with itself.

Remedies. Finally, the Parent believes that the remedy the district court awarded for these claims is vulnerable on appeal because it is wholly disconnected from the three specific harms it found, namely: (A) ASARCO's payment of the due and owing Yankee Bonds at par value plus interest, when there were bids by bondholders on the open market to sell individual bonds at a reduced price, in effect deprived ASARCO of funds for operations or to pay other creditors; (B) ASARCO's receipt of a portion of the consideration in the form of forgiveness of an inter-company loan (with a principal amount of $41.75 million) deprived ASARCO of cash that could have been used to continue its operations and pay other overdue obligations; and (C) the discrepancy between the value of the SCC Shares and the value of the consideration ASARCO received for the shares (even though the district court made a factual finding that the two values were reasonably equivalent). The Parent believes that these identified harms should have been addressed through compensatory, rather than rescissory damages, and the Fifth Circuit is likely to agree.

The Debtors and Harbinger disagree with the Parent's analysis.

(d) Avoidance Action Against Grupo México.

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

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

Under the Debtors' Plan, on the Effective Date, the Burns Litigation and the Grupo Litigation shall be transferred to the SCC Litigation Trust.

Under Harbinger's Plan, the Burns Litigation shall be transferred to the Liquidation Trust and the SCC Litigation shall be transferred to the SCC Litigation Trust.

Under the Parent's Plan, these actions shall be released and dismissed with prejudice.

(e) Avoidance Action Against MRI.

On April 9, 2007, ASARCO and ASARCO Master filed a complaint against MRI, a subsidiary of the Washington Companies, thereby initiating Adversary Proceeding No. 07-02024. ASARCO seeks to avoid the fraudulent transfer of ASARCO's interest in MR Partnership, a Montana-based mining-operations partnership, to its partner MRI. ASARCO's partnership interest, 49.9 percent of one of the most valuable mining operations in the United States, was transferred to MRI after ASARCO failed to meet partnership cash calls prior to its bankruptcy filing. At the time of the

cash calls, ASARCO was deeply insolvent and severely undercapitalized. ASARCO's interest in the partnership was transferred for $5 million, a mere fraction of its reasonably equivalent value. ASARCO also objected to MRI's Proofs of Claim which assert Claims in excess of $100 million for reimbursement of contingent environmental liabilities incurred by the MR Partnership pursuant to the indemnification and reimbursement provisions of the partnership agreement.

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

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

On May 22, 2007, MRI asked that the reference of this adversary proceeding be withdrawn. ASARCO objected to this request. The Bankruptcy Court held a hearing on the motion on June 15, 2007, and issued its report and recommendation on July 6, 2007. The court recommended that the District Court allow the lawsuit to remain in the Bankruptcy Court for pretrial matters. By order entered on December 18, 2007 in Civil Action No. 07-299, the District Court agreed with the Bankruptcy Court's recommendation and denied the motion to withdraw the reference. If MRI can establish a right to a jury trial at the time the lawsuit is ready for trial, then the merits of withdrawing the reference to the District Court will likely be re-examined.

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

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

On December 2, 2008, the Bankruptcy Court entered a Third Agreed Revised Comprehensive Discovery, Mediation and Scheduling Order which established a pre-trial schedule and set a final pretrial conference to be held on September 15, 2009.

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

Under the Debtors' Plan and Harbinger's Plan, on the Effective Date, this adversary proceeding shall be transferred to the Liquidation Trust. If ASARCO and ASARCO Master prevail on their constructive fraudulent transfer claims against MRI and MRI asserts a Claim back against the Debtors under section 502(h) of the Bankruptcy Code, the Allowed Amount of this Claim will be determined by the Bankruptcy Court in the adversary proceeding as part of the determination of ASARCO's pending objection to MRI's unresolved Proof of Claim. If MRI is allowed a Claim under section 502(h), such Claim will be treated as a Class 3 General Unsecured Claim under the Debtors' Plan and Harbinger's

Plan. MRI asserts that in the event the MRI Litigation is transferred to the Liquidation Trust, the trust prevails in that action, and MRI is then ordered to turn over the property that is the subject of that action, or its value, to the trust, then MRI shall have a Class 3 General Unsecured Claim against the Estate for the full amount of the property or amount ordered to be turned over. ASARCO disagrees and contends that the amount of any section 502(h) Claim should not exceed $5 million, the amount of the benefit received by ASARCO in exchange for the transfer of ASARCO's interest in the MR partnership. MRI disagrees and also denies that any Claim of MRI could or should be addressed by the Liquidation Trust.

The Debtors and Harbinger believe that their respective Plans' proposed treatment is appropriate and should be approved.

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

Under the Parent's Plan, the claims and causes of action asserted in this adversary proceeding shall vest in Reorganized ASARCO on the Effective Date.

(f) Rosemont Mining Property Avoidance Action.

On August 7, 2007, ASARCO filed a complaint against the Augusta Defendants and the Rosemont Ranch Defendants, thereby initiating Adversary Proceeding No. 07-02056. ASARCO sought to avoid the June 2004 fraudulent transfer of certain of its property located in Pima County, Arizona to Rosemont Ranch, LLC. The specific allegations can be obtained by reviewing the complaint in this lawsuit, but generally speaking, ASARCO sold the property for $4 million to the Rosemont Ranch Defendants while insolvent, and they then sold the property less than one year later to the Augusta Defendants for approximately $20 million. The parties were able to reach a settlement, which was approved by the Bankruptcy Court by order entered on February 13, 2009. The settlement consists of payments of $1.25 million Cash payable to ASARCO at closing ($1 million from the Rosemont Ranch Defendants and $250,000 from the Augusta Defendants), plus $9 million over eight years from the Augusta Defendants, payable from profits, if any, of production at the Rosemont property and subject to an option, which if exercised, would require the Augusta Defendants to pay ASARCO the net present value of such payments in Cash calculated using an 18 percent discount rate. For 2009, the parties agreed that the option exercise price would be $2.6 million. The parties exchanged full mutual and customary releases at the closing of the settlement and, on March 26, 2009, the Bankruptcy Court dismissed all claims pending in the adversary proceeding with prejudice.

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

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

(g) Sacaton Avoidance Action.

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

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

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

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

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

Under the Debtors' Plan and Harbinger's Plan, on the Effective Date, this lawsuit shall be transferred to the Liquidation Trust.

Under the Parent's Plan, the claims and causes of action asserted in this lawsuit shall vest in Reorganized ASARCO on the Effective Date.

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

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

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

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

Under the Debtors' Plan and Harbinger's Plan, on the Effective Date, this action shall be transferred to the SCC Litigation Trust.

Under the Parent's Plan, this action shall be released and dismissed with prejudice.

(i) Avoidance Action Against Insurance Companies.

On April 10, 2007, the Asbestos Subsidiary Debtors filed in the Bankruptcy Court a Complaint to Recover Constructive Fraudulent Transfers against certain insurance companies, thereby initiating Adversary Proceeding No. 07-02025. The Asbestos Subsidiary Debtors had a legal or equitable interest in insurance policies sold by the defendant insurers. Prior to the filing of the Reorganization Cases, the insurers entered into settlement agreements with

the Asbestos Subsidiary Debtors or ASARCO that required them to deliver releases in exchange for the consideration paid by the insurers thereunder. The complaint alleges that the Asbestos Subsidiary Debtors received less than reasonably equivalent value in exchange for the releases and were either insolvent at the time of the transfer of the release or became insolvent as a result of such transfer. The Asbestos Subsidiary Debtors believe that the transfers constitute constructively fraudulent transfers under the fraudulent transfer provisions of the Bankruptcy Code and Arizona or New York law. They seek to avoid the transfers and recover the value of the releases from the defendants.

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

Under the Debtors' Plan, on the Effective Date, this action shall be transferred to the Asbestos Trust.

Under Harbinger's Plan, on the Effective Date, this action shall vest in Reorganized ASARCO.

Under the Parent's Plan, this action shall vest in the Section 524(g) Trust.

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

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

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

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

Under the Debtors' Plan, on the Effective Date, this action shall be transferred to the Asbestos Trust.

Under Harbinger's Plan, on the Effective Date, these actions shall vest in Reorganized ASARCO.

Under the Parent's Plan, these actions shall vest in the Section 524(g) Trust.

As described in Section 2.24(i) and this Section 2.24(j) hereof, the Asbestos Subsidiary Debtors and ASARCO have filed constructively fraudulent transfer suits against certain insurers, including Everest Reinsurance Company, Mt. McKinley Insurance Company, Century Indemnity Company, and American Home Assurance Company, seeking to avoid transfers of assets pursuant to settlements with the defendants. While Everest Reinsurance Company, Mt. McKinley Insurance Company, Century Indemnity Company, and American Home Assurance Company dispute that they have any liability in the avoidance actions, those insurers assert that if such liability is established and coverage is resurrected, they have policy rights to control or consent to the settlement of claims by insureds. Accordingly, Everest Reinsurance Company, Mt. McKinley Insurance Company, Century Indemnity Company, and American Home Assurance Company contend that, if insurance coverage is reinstated, it may be vitiated by the Asbestos Subsidiary Debtors' and ASARCO's failure to comply with policy terms. The Debtors and the Asbestos Subsidiary Debtors dispute this contention.

(k) Avoidance Action Against Mineral Park, Inc.

On September 21, 2006, ASARCO filed a Complaint to Avoid and Recover Fraudulent Transfer and Application for Temporary Restraining Order and Preliminary Injunction against Mineral Park Inc., thereby initiating Adversary Proceeding No. 06-02069 in the Bankruptcy Court. This complaint sought to avoid ASARCO's prepetition sale of its South Mill facility (one of its copper mills) to Mineral Park. Because of the immediate threat of irreparable harm to ASARCO's Estate if the mill was dismantled and moved across the state, the Debtors' management and counsel

were forced to commit significant time and resources to this action, which included the involvement of all of ASARCO's high-level executives. ASARCO obtained a preliminary injunction preserving the South Mill pending an expedited trial in February 2007. Lehman Brothers provided expert testimony and negotiated directly with Mineral Park's chief executive officer after settlement negotiations among counsel had been unsuccessful. Through the efforts of Lehman Brothers, a favorable settlement was reached before trial, under which ASARCO repurchased the South Mill – an asset expected to generate over $100 million of cash flow through the life of the Mission Mine – for $9 million. The Bankruptcy Court approved the settlement on February 28, 2007. ASARCO restarted the South Mill in November 2007, and believes it will significantly contribute to the value of the Estate.

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

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

Bankruptcy Code § 546(a)'s two-year statute of limitations for filing Avoidance Actions and other actions under chapter 5 of the Bankruptcy Code expired as to the Asbestos Subsidiary Debtors on April 11, 2007. ASARCO and the Asbestos Subsidiary Committee entered into an agreement tolling and extending the deadline for the Asbestos Subsidiary Debtors to bring causes of action under chapter 5 of the Bankruptcy Code against ASARCO until October 1, 2007, unless ASARCO, the Asbestos Subsidiary Debtors, and the Asbestos Subsidiary Committee agreed otherwise in writing. The agreement did not apply to any limitations period that expired prior to April 10, 2007. The Bankruptcy Court approved the agreement by order entered on May 11, 2007. The parties have thereafter entered into several stipulations further tolling and extending the limitations period. Most recently, the parties agreed to toll and extend the limitations periods until 90 days after the effective date of a confirmed plan of reorganization, pursuant to a motion filed on June 18, 2009.

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

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

ASARCO has other potential Avoidance Actions against other potential defendants, which might also be barred if litigation were not commenced by August 9, 2007. While ASARCO filed hundreds of Avoidance Actions before the deadline, it did not believe that litigation should be commenced against certain potential defendants with whom it was in negotiations or as to which investigations are still pending. ASARCO therefore believed that entering into tolling agreements similar to the one entered into with Mitsui would be beneficial to its Estate, by allowing the parties to preserve their legal rights, while giving them additional time to attempt to resolve claims without need of expensive litigation.

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

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

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

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

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

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

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

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

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

preference action against a preference defendant is not free from doubt. Recoveries in actual preference litigation, therefore, could be materially higher or lower than the Debtors' estimates.

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

In addition, part of the consideration paid by Sterlite is a nine-year promissory note worth not less than $770 million. The Plan Sponsor Promissory Note (which will be among the assets of the Liquidation Trust) is payable from the cash flows of the business acquired by Sterlite under the Debtors' Plan. The Debtors believe that Sterlite's reorganized business will derive more value in the form of, among other things, go-forward credit support from trade vendors and service providers, than it would if the Debtors retained and prosecuted the Trade Creditor Preference Claims. This go-forward value inures to the benefit of all creditors and stakeholders under the Debtors' Plan insofar as solid trade credit support will assist in improving cash flow and cementing business relationships, which enhance the value of the reorganized enterprise as a whole and increases the likelihood that Sterlite will timely perform its payment obligations under the Plan Sponsor Promissory Note.

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

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

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

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

Under the Debtors' Plan and Harbinger's Plan, on the Effective Date, these actions shall be transferred to the Liquidation Trust.

Under the Parent's Plan, these actions shall be released and dismissed with prejudice.

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

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

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

settlement, and all Claims asserted by TMD or Nord against ASARCO were dismissed with prejudice by order entered on January 19, 2007.

(b) Adversary Proceeding Against the State of Montana.

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

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

(c) Adversary Proceeding Against Gerald Metals, Inc.

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

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

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

Miguel Hernandez filed a Proof of Claim for $1,000,000 and Adversary Proceeding No. 08-2010 against ASARCO claiming unlawful discrimination in employment based on religion. ASARCO objected to the Claim. A parallel action in federal district court was filed prepetition. Mr. Hernandez and ASARCO agreed to a settlement of this

dispute whereby Mr. Hernandez would withdraw his Claim, dismiss the two lawsuits, and give ASARCO a full release, in exchange for ASARCO giving him a general release. On January 23, 2009, ASARCO filed a motion to approve the proposed settlement, which was granted by order entered on February 17, 2009.

(e) The Deens' Claim for Adverse Possession.

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

2.26 Litigation Outside of the Bankruptcy Court.

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

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

(b) Water Rights Issues.

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

(c) Coeur d'Alene Litigation.

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

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

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

On September 13, 2005, the United States filed a Motion and Memorandum of Law for Declaration of Inapplicability of Automatic Stay, wherein it asked the Bankruptcy Court to issue a declaration that continuation of the Coeur d'Alene litigation through entry of a judgment is not subject to the automatic stay of section 362 of the Bankruptcy Code because it constitutes an exercise of the police and regulatory power, exempted from the automatic stay pursuant to section 362(b)(4) of the Bankruptcy Code. ASARCO and the ASARCO Committee filed responses in opposition to this

motion. The Bankruptcy Court held a hearing on the motion on December 6, 2005, at which time the court took the matter under advisement. No ruling has been issued on the motion to date.

The Claims asserted in this lawsuit by the United States against ASARCO have been settled, as discussed in Section 2.20(b) above.

(d) Other Litigation Relating to Environmental Liabilities.

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

(e) Canadian Litigation.

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

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

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

Under the Debtors' Plan, on the Effective Date, the actions filed by Lac d'Amiante du Québec Ltée shall be transferred to the Asbestos Trust.

Under Harbinger's Plan, on the Effective Date, the actions filed by Lac d'Amiante du Québec Ltée shall vest in Reorganized Covington.

2.27 Asset Valuation and Plan Exit Process.

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

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

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

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

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

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

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

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

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

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

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

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

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

On July 2, 2008, the Parent and AMC filed a notice of appeal from the Bid Protections Order, thereby initiating Civil Action No. 08-214 in the District Court. By order entered on September 26, 2008, the District Court dismissed this appeal on the ground that the Bankruptcy Court order was not a final order. The Parent and AMC filed a notice of appeal to the United States Court of Appeals for the Fifth Circuit, but thereafter filed an unopposed motion for

dismissal of the appeal without prejudice to reinstatement. By order entered on October 20, 2008, the court of appeals dismissed the appeal without prejudice to the parties' rights to reinstate the appeal by letter to the clerk of the court within 180 days from the date of the order.

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

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

The Original Plan Sponsor PSA contained the following deadlines:

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

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

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

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

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

On October 24, 2008, ASARCO's request to draw on the letter of credit on the grounds that the Plan Sponsor had breached the Original Plan Sponsor PSA was presented to ABN AMRO Bank N.V., the issuer of the letter of credit. On October 27, 2008, ASARCO entered into a letter agreement and related agreements with the Plan Sponsor and

ABN AMRO Bank, under which ASARCO revoked its drawdown request on the letter of credit, and the Plan Sponsor agreed either to amend the letter of credit or to cause a replacement letter of credit to be issued by 5:00 p.m. on October 30, 2008. The Plan Sponsor amended the letter of credit to allow ASARCO to draw on it at any time prior to the expiration of the letter of credit (which is July 29, 2009). By order entered on October 28, 2008, the Bankruptcy Court authorized ASARCO, solely for purposes of section 363(b) of the Bankruptcy Code, to take any and all steps necessary to terminate the Original Plan Sponsor PSA, effective as of October 21, 2008. The court also ruled that no further court order would be required, solely for purposes of section 363(b) of the Bankruptcy Code, for ASARCO to draw on the letter of credit or any replacement letter of credit.

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

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

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

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

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

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

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

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

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

Instead of the $2.6 billion in Cash that was to be paid pursuant to the Original Plan Sponsor PSA, ASARCO is to receive $1.1 billion in Cash plus assumption of the liabilities that were to be assumed under the Original Plan Sponsor PSA. In addition, Sterlite was to provide a non-interest-bearing, secured $600 million note, payable over nine years. The $600 million face amount of the Plan Sponsor Promissory Note was subject to a post-closing working capital adjustment based on the difference between the levels of accounts receivable, accounts payable, and market value of inventory at the Closing Date and $253 million. The terms of the Plan Sponsor Promissory Note were subsequently improved substantially by the Asbestos Settlement, which improvements are described in Section 2.28(d)(12) below. The principal amount of the note, as originally adjusted up or down by such working capital items, is referred to in the Plan Sponsor Promissory Note as the Maximum Principal Amount. The note is secured by certain assets being purchased by the Plan Sponsor, excluding, for avoidance of doubt, the inventory and accounts receivable of ASARCO and its Specified Subsidiaries (as such term is defined in the note) and all proceeds of inventory and accounts receivable. The Plan Sponsor Promissory Note provides that, if in any year during the term of the note the Average Copper Daily Price (as such term is defined in the note) exceeds $6,000 per metric tonne, the Plan Sponsor will make a payment pursuant to a formula set forth in the note (which is referred to in the note as the Annual Note Payment); provided that each Annual Note Payment will not exceed one-ninth of the Maximum Principal Amount (even if application of the formula would result in a greater amount) and that, starting with the year ending on the second anniversary of the Closing Date, each Annual Note Payment will be at least $20 million (even if application of the formula would result in a lesser amount). Sterlite also has agreed to post a deposit in the form of three letters of credit to be issued in favor of ASARCO for the total amount of $125 million. Letters of credit in the amount of $125 million have been delivered. As of April 6, 2009, the Debtors placed a net present value on this note (which at that time had a face value of $600 million) of $203 million,[31] which represents the present value of the future stream of payments under the Plan Sponsor Promissory Note, assuming copper prices stay below $2.72 per pound and using a conservative 15 percent discount rate. *See* Proffer of George M. Mack in Support of Sterlite 9019 Motion, p. 12 [Docket No. 10801].

The Debtors understand that Sterlite has no intention of entering into any purchase and sale transaction that does not include a release of the Sellers' claims for breach of the Original Plan Sponsor PSA. After substantial negotiations, the Sellers ultimately agreed to a release as part of a global compromise, but only upon the occurrence of specified conditions set forth in the New Plan Sponsor PSA. If the Debtors' Plan is rejected or none of the other conditions occurs, or if Sterlite materially breaches or repudiates the New Plan Sponsor PSA, Sterlite will not receive the release and the Sellers may pursue all of their claims against Sterlite and the Guarantor under the Original Plan Sponsor PSA. If Claimants vote to reject the Debtors' Plan and the Debtors' Plan is not confirmed, the release will not be approved and any proceeds of the claims that the Parent has estimated to be as large as $3 billion (and which value the Debtors have disputed) against Sterlite and the Guarantor could be available for distribution to creditors.

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

- a limited non-solicitation covenant coupled with (x) a fiduciary out that gives ASARCO termination rights to pursue a superior proposal or a more favorable stand-alone plan that is supported by ASARCO and (y) in the case of a superior proposal, a requirement that to be considered "superior" a proposal must provide at least $51 million (which is equal to $25 million plus a $26 million break-up fee) more value than the New Plan Sponsor PSA, which is

[31] The Debtors currently estimate the net present value of the Plan Sponsor Promissory Note to be $308.7 million, based on a $770 million face value and using a 12 percent discount rate). The present value of the Plan Sponsor Promissory Note may be higher than this amount, depending upon copper prices and the timing of payments made on the note.

similar to the no-shop covenant approved by the Bankruptcy Court in connection with the Original Plan Sponsor PSA, except that it is not effective until entry of the Sterlite Agreed Order,[32] and prior to such entry, Sterlite has agreed to a "go-shop covenant" whereby ASARCO and its advisors may use the New Plan Sponsor PSA to solicit an alternate transaction for the Sold Assets without any restrictions;

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

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

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

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

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

Objections to the Sterlite 9019 Motion were filed by the Asbestos Claimants' Committee, the FCR, the Parent and AMC, MRI, Ron and Linda Deen, and Glencore. The objections asserted, among other things, that: (1) the proposed release failed to meet applicable legal standards for approval of releases of such claims; (2) the Debtors' motion for approval of the release failed to distinguish between the consideration to be provided by Sterlite for purchase of the Debtors' business operations and assets and the consideration being provided for the Estates' release of litigation claims that certain objecting parties assert could be as high as $3 billion less mitigation; (3) the other bidders are forced to bid against the consideration offered by Sterlite for both the assets and the release, thus chilling potentially superior bids for the assets and effectively making the other bidders pay a patently unreasonable and legally unsupportable "topping fee" for Sterlite's release that could constitute hundreds of millions of dollars (and for which Sterlite already is promised a $26 million break-up fee, plus expense reimbursements, as reward for its repudiation of the Original Plan Sponsor PSA); (4) the possibility that, if an alternative proposal or stand-alone plan is consummated, the proposed release will be "earned" by Sterlite (as often repeated by counsel for the Debtors at the April 13 and 14, 2009 hearing) in exchange for $0 in consideration; (5) no market valuations for the Debtors' claim against Sterlite were provided, nor was there any evidence that the Debtors attempted to market such claim; (6) the proposed settlement and release is premature and should not be approved outside of the plan solicitation and confirmation process; (7) the release is improper and should not be granted unless and until the Debtors' Plan and New Plan Sponsor PSA and settlement is consummated; (8) in the event Sterlite were to breach the New Plan Sponsor PSA and settlement, as they did with respect to the Original Plan Sponsor PSA, the release granted in the New Plan Sponsor PSA and settlement and the amendments to the original $50 million letter of credit that supports the Original Plan Sponsor PSA would make it more difficult for the Debtors to assert, and may even eviscerate, a cause of action based on such breach or to draw on the applicable letters of credit; and (9) the release and

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

proposed bid protections, if approved outside a plan confirmation process, constitute an impermissible *sub rosa* plan. The Debtors disagree with these objections and believe that approval of the Sterlite 9019 Motion is in the best interests of the Estate.

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

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

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

On May 4, 2009, AMC and the Parent filed a notice of appeal from the Sterlite 9019 Order and all adverse orders, rulings, decrees, opinions, and judgments leading up to, merged into, or included within the Sterlite 9019

Order. This appeal is pending before United States District Judge Hayden Head as Civil Action No. 09-100.[33] On June 16, 2009, the District Court granted the motion of AMC and the Parent to stay their appeal pending the Bankruptcy Court's confirmation of a plan of reorganization. Should the Parent and AMC ultimately proceed with this appeal, the Debtors believe that it will be unsuccessful. However, in the event it is successful, the appeal could result in a modification, vacation, or reversal of such order.

(1) Settlement and Release.

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

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

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

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

provided, however, that with respect to the foregoing clauses (B), (C), (D), and (E), in no event shall a Release Condition be deemed to have occurred if any Purchaser Bad Faith Event (as such term is defined in section 13.2(c) of the New Plan

[33] On May 14, 2009, the Asbestos Claimants' Committee filed a notice of appeal from the Sterlite 9019 Order, which was dismissed on the committee's motion on June 18, 2009.

Sponsor PSA) has occurred. For purposes of Article II and section 13.2(b)(v) of the New Plan Sponsor PSA, the board of directors of ASARCO shall make its determination of whether or not an Acquisition Proposal is a Superior Proposal at the time the Definitive Agreement for such Acquisition Proposal is executed by all parties thereto.

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

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

(2) Purchase Price for the Sold Assets.

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

(3) The Deposit.

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

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

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

- As promptly as practicable following (but not later than 5:00 p.m. Dallas, Texas time, on the third Business Day following) the Disclosure Statement Approval Date, the Plan Sponsor shall post the Third L/C issued in favor of ASARCO by a Qualified Bank in the amount of $25 million. The Plan Sponsor posted the Third L/C on May 15, 2009, after the Bankruptcy Court approved the Fifth Amended Disclosure Statement.

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

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

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

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

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

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

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

(4) The Purchase Price Adjustment.

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

On the date that a binding determination of the Closing Accounts Amount has been made in accordance with section 4.4 of the New Plan Sponsor PSA, the aggregate principal amount of the Plan Sponsor Promissory note was originally to be automatically increased by the Adjustment Amount if the Closing Accounts Amount is greater than the Agreed Working Capital. The New Plan Sponsor PSA originally defined "Adjustment Amount" to mean, as of the date that a binding determination of the Closing Accounts Amount has been made in accordance with section 4.4 of the New Plan Sponsor PSA, the product of (x) 1.6 multiplied by (y) Agreed Working Capital minus Closing Accounts Amount. In

all cases, the Adjustment Amount shall be expressed as a positive number. The terms of the Plan Sponsor Promissory Note relating to the Purchase Price adjustment were subsequently improved substantially by the Asbestos Settlement and pursuant to amendment no. 3 to the New Plan Sponsor PSA (effective as of June 12, 2009), as described in Section 2.28(d)(12) below.[34]

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

(5) Solicitation Provisions.

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

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

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

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

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

- Any action taken by any Seller or any Representative of any Seller in accordance with the provisions of section 8.10(a) of the New Plan Sponsor PSA are expressly acknowledged and

[34] Originally, the New Plan Sponsor PSA also provided for a downward adjustment of the Plan Sponsor Promissory Note if the Closing Accounts Amount was less than the Agreed Working Capital. However, following the Asbestos Settlement, the Debtors and Plan Sponsor amended the New Plan Sponsor PSA to allow only for an upward adjustment of the Plan Sponsor Promissory Note.

agreed to be not in breach or violation of any covenant contained therein or that could be implied therein (including a covenant of good faith or fair dealing).

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

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

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

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

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

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

(6) Matching/Topping Right.

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

(7) Break-Up Fee and Expense Reimbursement.

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

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

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

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

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

(8) Back-Up Bid Option.

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

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

- such other non-substantive changes as may be reasonably required under the circumstances and as may be agreed in writing among the Plan Sponsor, the Guarantor, and the Sellers, each acting reasonably, prior to expiration of the Back-Up Bid Option.

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

(9) Guarantor's Guaranty and Indemnity.

Pursuant to section 14.1(a) of the New Plan Sponsor PSA, the Guarantor irrevocably, unconditionally, and absolutely guarantees, as a primary obligor and not as a surety, to the Sellers the full and timely payment and due and punctual performance and discharge of all of the Plan Sponsor's obligations under the New Plan Sponsor PSA and the Ancillary Agreements existing on the date of the New Plan Sponsor PSA or thereafter of any kind or nature whatsoever, including, without limitation, the due and punctual payment of the Purchase Price and any other amount that the Plan Sponsor is or may become obligated to pay pursuant to the New Plan Sponsor PSA or the Ancillary Agreements (which are referred to in the New Plan Sponsor PSA as the Obligations). This guarantee is an unconditional, irrevocable, and absolute guaranty of timely payment and performance of the Obligations and not merely of collection. If for any reason whatsoever the Obligations shall not be fully and timely paid or performed, the Guarantor shall promptly honor and perform its obligations to the Sellers thereunder upon demand. Pursuant to section 15.7(a) of the New Plan Sponsor PSA, the Plan Sponsor and the Guarantor consent to and submit to the jurisdiction and venue of the Bankruptcy Court for, among other things, enforcement of the New Plan Sponsor PSA. As provided in section 14.2 of the New Plan Sponsor PSA, notwithstanding anything to the contrary contained therein, the Guarantor is not a guarantor or surety of, and does not guarantee, any obligations of the Plan Sponsor under the Plan Sponsor Promissory Note.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) Termination of the New Plan Sponsor PSA.

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

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

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

- By the Sellers if the Closing has not occurred on or before November 30, 2009 (or such later date, which in no event shall be later than December 31, 2009, if requested by the Sellers and consented to by the Plan Sponsor, which consent may not be unreasonably delayed or denied; provided that, if the Plan Confirmation Order has been entered by the Bankruptcy Court (rather than the United States District Court having jurisdiction over the Bankruptcy Cases), such date shall automatically be extended to December 31, 2009 (referred to in the New Plan Sponsor PSA as the Termination Date)); *provided, however*, that the Sellers shall not be permitted to terminate the New Plan Sponsor PSA under this subsection thereof if (A) the failure by the Sellers to fulfill any obligation under such agreement has been the primary cause of the failure of such consummation to occur on or before the Termination Date or (B) the failure of the Closing to occur is caused primarily by a breach by the Sellers of any covenant or obligation in the New Plan Sponsor PSA required to be performed by the Sellers or the inaccuracy of any representation or warranty of the Sellers made therein;

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

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

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

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

- By the Plan Sponsor (provided that neither the Plan Sponsor nor the Guarantor is in material breach of any representation, warranty, or covenant or other agreement contained in the New Plan Sponsor PSA) if: (A) the Bankruptcy Court shall not have entered the Sterlite Agreed

Order on or prior to April 15, 2009[35] or (B) the Bankruptcy Court shall not have entered an order approving the Disclosure Statement on or prior to May 31, 2009 (or such later date, which in no event shall be later than July 1, 2009, if requested by the Sellers and consented to by the Plan Sponsor, which consent may not be unreasonably delayed or denied);

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

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

- By the Sellers, if there shall be a breach by the Plan Sponsor or the Guarantor of any representation, warranty, or covenant contained in the New Plan Sponsor PSA which would result in a failure of a condition to the Sellers' obligation to close set forth in section 11.3(a) or (b) thereof to be satisfied, which breach has not been cured by the earlier of (A) 60 days after the giving of written notice by the Sellers to the Plan Sponsor of such breach and (B) the Termination Date;

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

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

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

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

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

- Except as otherwise provided in sections 4.2 and 13.2(b)(v) of the New Plan Sponsor PSA, such termination shall be the sole and exclusive remedy of the Plan Sponsor and the Guarantor with respect to breaches by any Seller of any covenant, representation, or warranty contained in such agreement[36] and none of the Sellers nor any of their respective past, present,

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

[36] It should be noted that section 15.2 of the New Plan Sponsor PSA provides that prior to any termination thereof pursuant to section 13.1 of the New Plan Sponsor PSA or otherwise, in addition to any other right or remedy to which each party may be entitled, at law or in equity, each party shall be entitled to enforce any provision of the New Plan Sponsor PSA by a decree of specific performance and to temporary, preliminary, and permanent injunctive relief to prevent

or future trustees, directors, officers, employees, members, shareholders, incorporators, partners, or Affiliates, as the case may be, shall have any liability or further obligation to the Plan Sponsor or Guarantor or any of their respective past, present, or future trustees, directors, officers, employees, members, shareholders, incorporators, partners, or Affiliates, as the case may be, and each Seller (and their respective past, present, or future trustees, directors, officers, employees, members, shareholders, incorporators, partners, or Affiliates, as the case may be) shall be fully released and discharged from any liability or obligation under or resulting from the New Plan Sponsor PSA and neither the Plan Sponsor nor the Guarantor shall have any other remedy, right, claim, or cause of action under or relating to the New Plan Sponsor PSA or any Applicable Law, including for reimbursement of expenses;

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

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

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

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

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

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

(12) Improvements to the Plan Sponsor Promissory Note under the Asbestos Settlement.

Under the Asbestos Settlement and pursuant to amendment no. 3 to the New Plan Sponsor PSA (effective as of June 12, 2009), the Plan Sponsor agreed to significantly enhance the Plan Sponsor Promissory Note to the benefit of all Class 3 and Class 4 Claimants under the Debtors' Plan as follows:

- Notwithstanding any other provisions of the New Plan Sponsor PSA, the Plan Sponsor has agreed that the Plan Sponsor Promissory Note shall be in the face amount of at least $770 million; and

- The Agreed Working Capital under the New Plan Sponsor PSA is now set at $328 million and the parties have now agreed that any working capital adjustment under the Plan Sponsor Promissory Note will NOT result in a decrease to the face amount of the Plan Sponsor Promissory Note.

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breaches or threatened breaches of any provision of the New Plan Sponsor PSA, without posting any bond or other undertaking.

The New Plan Sponsor PSA has been amended to reflect these changes and such amendments are included in **Exhibit M** to this Disclosure Statement.

(d) The Parent's Position Regarding the Sterlite Purchase and Sale Agreements.

The following discussion in Section 2.28(d) was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

In May 2008, Sterlite and ASARCO entered into a purchase and sale agreement (the "Original Sterlite PSA") under which Sterlite agreed to purchase substantially all of ASARCO's assets for $2.6 billion, as well as to assume certain liabilities worth approximately $400 million. On October 13, 2008, Sterlite informed ASARCO that, as a result of the decline in copper prices and general economic downturn, it would not close under the Original Sterlite PSA without a material price reduction.

The Original Sterlite PSA did not contain any copper price or financing contingencies excusing Sterlite's performance (as acknowledged by Mr. C.V. Krishnan, President of Sterlite USA and Managing Director of Sterlite India, in his testimony on April 14, 2009). Mr. Krishnan also testified that at the time Sterlite asked for a renegotiation of the Original Sterlite PSA in October 2008, Sterlite had cash and facilities to close under the original terms and original purchase price. *See* Testimony of C.V. Krishnan at the April 14, 2009 Hearing on the Sterlite 9019 Motion [Docket No. 10937].

The Parent asserts that ASARCO's claims against Sterlite USA, Sterlite India, Vedanta, and other associated entities and individuals arising from Sterlite's refusal to close the Original Sterlite PSA may include, among others, breach of contract, breach of fiduciary duty, aiding and abetting, tortious interference, promissory estoppel, and third party beneficiary claims. The Parent argued at the hearing on the Sterlite 9019 Motion that the Debtors agreed to release these and any other claims that could be asserted in connection with Sterlite's failure to close under the Original Sterlite PSA without any analysis and determination of the value and collectability of these claims. This conduct is inconsistent with their intentions with other substantial litigation claims of the estates (*see* discussion of SCC Litigation in section 2.32(d)). Further, the Parent asserts that the Debtors have not conducted the most simplistic fair market valuation of their claim against Sterlite, nor made an attempt to auction or otherwise dispose of the claim against Sterlite to test whether its value to the estate exceeds the amount allocated from Sterlite's purchase price for the Debtors' assets attributable to the release by the Debtors. The Debtors believe the testimony at the Sterlite 9019 Motion hearing demonstrated the anticipated difficulty and delay in realizing value associated with the claims against Sterlite. The Bankruptcy Court approved the Sterlite 9019, in part, because of such evidence.

The Parent believes that the claims being released could be worth as much as $3 billion taking into account the purchase price under the Original Sterlite PSA and the value of the liabilities assumed under that agreement. The Debtors assert that there was no such evidence at the hearing on the Sterlite 9019 Motion and that the Parent's assessment of the values of these claims is vastly overstated. Instead, the Debtors assert that the value Sterlite is paying for the release of such claims could be approximately $400 million arriving at this valuation by subtracting the estimated enterprise value for ASARCO as of March 2009 ($900 million) from the estimated present value of the aggregate consideration provided under the New Sterlite PSA (including the Plan Sponsor Promissory Note) ($1.3 billion). *See* Proffer of George M. Mack in Support of Sterlite 9019 Motion, p. 12 [Docket No. 10801]; *see also* Proffer of Jay L. Westbrook in Support of the Sterlite 9019 Motion, pp. 2-3 [Docket No. 10806].

The Debtors have alleged that, because Sterlite has no known assets in the United States, there can be no assurance that ASARCO will be able to collect all or any portion of any judgment it could obtain. The Debtors have asserted that, as a result of this perceived difficulty of collecting, the value realized on account of the claims against Sterlite in a liquidation scenario would be highly speculative and would most likely be substantially lower than the amounts attributable to the release of these claims under the New Sterlite PSA. The Parent disagrees.

The Parent believes that the Debtors have not adequately assessed or described the breadth and strength of their potential claims against Sterlite and its affiliates and the potential ease of collecting on a judgment against Sterlite and/or its affiliates. The Parent believes that the Debtors have failed to provide all the necessary facts and explanation for the creditors to make an intelligent, objective, and educated evaluation to determine whether they will vote in favor of the release of Sterlite as required by *Protective Comm. For Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). The Debtors set forth in their Sterlite 9019 Motion the analysis they undertook as to the types of

claims that could be brought, the methodology they would employ and the weaknesses they perceived in a litigation strategy. *See* Sterlite 9019 Motion [Docket No. 10526], ¶¶ 52-62; Section 2.28(d) herein. The Parent argues that there is no indication, however, the Debtors ever considered any claims other than breach of contract claims or any potential defendants other than Sterlite USA and Sterlite India. In fact, the Parent argues that evidence at the hearing on the Sterlite 9019 Motion suggested that the claims contained in a draft complaint were limited to breach of contract claims asserted against Sterlite USA and Sterlite India. *See* Testimony of Malcolm Lovett at the April 13, 2009 Hearing on the Sterlite 9019 Motion [Docket No. 10907].

The Parent believes that the Debtors have not described the ease of obtaining a judgment against Sterlite and its affiliates, the impact such judgment might have on Sterlite's ability to do business anywhere in the world, and the negative economic result of the compromise with Sterlite on the creditors. For instance, the Parent asserts that the evidence at the hearing on the Sterlite 9019 Motion showed that a substantial final U.S. civil money judgment against Sterlite or related entities could have a significant adverse impact upon their ability to be an international-class multinational enterprise with operations and customer bases on a worldwide scale, thereby increasing Sterlite's incentive to pay the judgment and ASARCO's ability to collect the judgment. The Parent further argues that the Debtors have failed to disclose that the value of the release is negatively impacted as copper prices increase and that no provision in the compromise with Sterlite adjusts the purchase price accordingly. For a more complete discussion of the impact a significant judgment will have, see the Proffer of Joseph J. Norton in Support of Objection [Docket No. 10767].

If the Parent's Plan is confirmed, any proceeds of these claims against Sterlite (which the Parent has estimated to be as large as $3 billion, but which the Debtors believe would be extremely difficult and may require years to collect) would be available to pay the principal amount of Allowed General Unsecured Claims (to a maximum recovery of 100 percent of such Allowed Claims excluding post-petition interest), then Allowed Late-Filed Claims (to a maximum recovery of 100 percent of such Allowed Claims excluding post-petition interest), and finally Allowed Subordinated Claims (to a maximum recovery of 100 percent of such Allowed Claims excluding post-petition interest). Any additional recoveries shall be retained by Reorganized ASARCO to fund reorganized ASARCO's working capital needs and, the Debtors contend, shall inure to the benefit of the Parent. The Parent disagrees with the Debtors' contentions.

2.29 Mitsui Consent and Tag Along Rights.

(a) The Debtors' Description.

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

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

supplementing the Silver Bell LLC Agreement, and any other rights and remedies mentioned in this section of the Disclosure Statement.

(b) The Parent's Description.

The following discussion was prepared by the Parent and AMC and uses defined terms from the Parent's Glossary. Except where otherwise noted, the Debtors and Harbinger take no position with respect to the Parent and AMC's descriptions and statements.

In 1996, ASARCO formed Silver Bell Mining, LLC, a limited liability company owned 75 percent by ASARCO's wholly owned subsidiary ARSB and 25 percent by wholly-owned subsidiaries of Mitsui & Co. (U.S.A.), Inc. and Mitsui & Co., Ltd. The Parent's Plan does not contemplate any changes in the holdings or membership interest of Silver Bell Mining LLC.

Without waiving any rights of the Parent with respect to Mitsui's Tag-Along Rights as set forth in the February 5, 1996 Membership Agreement and the February 5, 1996 letter agreement further referencing such Tag-Along Rights, the Parent's Plan does not contemplate a change in the membership interests of Silver Bell Mining LLC which would trigger such Tag-Along Rights.

The Parent will use best efforts to notify Mitsui as reasonably soon thereafter as a decision is made whether to assume or reject any executory contracts with Mitsui pertaining to Silver Bell Mining LLC, but certainly no later than the Effective Date.

2.30 Filing of Disclosure Statements and Plans.

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

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

On September 25, 2008, the Bankruptcy Court approved the disclosure statements for the plan proposed by the Debtors and for the plan proposed by the Parent and AMC, as well as the procedures for the solicitation and voting on both plans. On September 29 and 30, 2008, the Debtors, through the Balloting Agent, mailed both plans and ballots to all holders of Claims and Interests entitled to vote on either plan; however, prior to the October 27, 2008 voting deadline, Sterlite notified ASARCO that, because of a material reduction in world commodity prices and a downtown in financial markets, it would not proceed with the Original Plan Sponsor PSA without a material price reduction (as discussed above in Section 2.28). As a result, ASARCO obtained an order from the Bankruptcy Court suspending solicitation of the votes on the Debtors' plan and the competing plan proposed by the Parent and AMC.

After thoroughly considering various alternatives, attending six days of court-ordered mediation, re-marketing the assets to strategic and financial potential plan sponsors, formulating a stand-alone plan, and continuing negotiations with Sterlite on an amended agreement, the board ultimately determined, in consultation with ASARCO's advisors and some of the creditor constituents, that it was in the best interests of the Debtors, their Estates, and their creditors to proceed with a plan of reorganization incorporating the New Plan Sponsor PSA. Consequently, a plan and disclosure statement were prepared, in consultation with some of the creditor constituents, and filed on March 16, 2009, and were subsequently amended on April 27, 2009. The Debtors' Fifth Amended Plan and Fifth Amended Disclosure Statement were filed on May 11, 2009. The Bankruptcy Court approved the adequacy of the Fifth Amended Disclosure Statement by order entered on May 12, 2009.

On May 15, 2009, the Parent and AMC filed their third amended plan of reorganization for the Debtors and a disclosure statement in support thereof. On June 1, 2009, the Parent and AMC filed their fourth amended plan of reorganization. On June 23, 2009, the Parent and AMC filed their fifth amended plan of reorganization. On July 2, 2009, the Parent and AMC filed the Parent's Plan.

On May 27, 2009, Harbinger filed a plan of reorganization for the Debtors and a disclosure statement in support thereof. On June 29, 2009, Harbinger filed its first amended plan of reorganization. On July 2, 2009, Harbinger filed Harbinger's Plan.

On June 15, 2009, the Debtors filed their sixth amended plan of reorganization. On July 6, 2009, the Debtors filed the Debtors' Plan.

On July 6, 2009, the Debtors, the Parent and AMC, and Harbinger filed this Disclosure Statement.

2.31 Additional Information.

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

2.32 The Amended Asbestos/AMC/Parent Agreement in Principle.

On April 12, 2009, the Asbestos Claimants' Committee, the FCR, AMC, and the Parent executed the Asbestos/AMC/Parent Agreement in Principle, providing that:

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

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

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

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

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

- The Parent's Plan will allow contingent asbestos claims in the aggregate amount of $1.0 billion; and

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

On June 12, 2009, the Asbestos Claimants' Committee and the FCR informed the Parent that they were exercising their fiduciary out under the Asbestos/AMC/Parent Agreement in Principle as a consequence of entering into the Asbestos Settlement with the Debtors and Sterlite.

The Parent, Asbestos Claimants' Committee, and the FCR have subsequently entered into the Amended Asbestos/AMC/Parent Agreement in Principle which provides, among other things, that the asbestos representatives shall exercise the Fiduciary Out as that term is defined in the Sterlite Plan Agreement in Principle Term Sheet and shall (a) recommend that holders of asbestos Claims vote to accept both the Parent's Plan and the Debtors' Plan; (b) not recommend that holders of asbestos Claims indicate a preference for any plan; (c) inform that Court that the asbestos representatives are neutral or have no preference between confirmation of the Parent's Plan or the Debtors' Plan; and (d) recommend that holders of asbestos Claims vote to reject all plans other than the Parent's Plan and the Debtors' Plan, and inform the Court that the asbestos representative prefer confirmation of the Parent's Plan and the Debtors' Plan over

all plans other than the Parent's Plan and the Debtors' Plan; *provided, however*, that if the Bankruptcy Court determines that a plan of reorganization filed after the date of the Amended Asbestos/AMC/Parent Agreement in Principle provides materially superior treatment to asbestos Claims and Demands such that the asbestos representatives would have a fiduciary obligation to support that plan of reorganization, the asbestos representatives shall not be required to recommend its rejection or to recommend that the Parent's Plan or the Debtor's Plan be preferred over such plan. The asbestos representatives agreed that, even if the Debtors' Plan or any other plan of reorganization is proposed that increases the aggregate consideration payable to holders of asbestos Claims and/or to holders of Unsecured Claims over the amounts set forth in the Parent's Plan or the Debtors' Plan, the asbestos representatives shall continue to recommend that holders of asbestos Claims vote in favor of the Parent's Plan and support the section 524(g) channeling injunction set forth in the Parent's Plan.

In addition, pursuant to the Amended Asbestos/AMC/Parent Agreement in Principle, the asbestos trust shall receive the same consideration set forth under the original Asbestos/AMC/Parent Agreement in Principle, except that the one-year, six percent promissory note issued to the trust shall be increased from $250 million to $280 million and shall be guaranteed by AMC and secured by a first lien on all of reorganized ASARCO's assets and a pledge from the Parent of 51 percent of the equity in Reorganized ASARCO.

2.33 The April 21, 2009 Glencore Proposal.

On April 21, 2009, ASARCO received a revised Non-Binding Indicative Offer Termsheet for ASARCO's Operating Assets from Glencore. Glencore's offer contained the following material terms:

(a) Glencore Acquisition Co., a newly created acquisition entity, would acquire ASARCO's operating assets and related facilities as well as all claims against MRI, including the MRI Litigation. Glencore Acquisition Co. would not acquire, and ASARCO would retain, the estimated $1.4 billion in Cash on ASARCO's balance sheet, the litigation against Sterlite, and the SCC Litigation.

(b) Consideration for the acquisition would consist of the following:

(1) $375 million in Cash payable at closing;

(2) Secured notes issued by Glencore Acquisition Co. with face value of $375 million payable in annual installments from up to 75 percent of the annual excess cash flow generated by the operations of Glencore Acquisition Co. The notes would bear interest at the U.S. Fed-funds rate which would be payable annually in Cash or kind. The notes would be subordinated only by capital expenditure facilities or hedging facilities to be put in place by Glencore Acquisition Co.;

(3) 35 percent of the non-voting equity in Glencore Acquisition Co. to be distributed to ASARCO's creditors, subject to a shareholders' agreement, which Glencore's offer valued at $450 million;

(4) Assumption by Glencore Acquisition Co of $400 million of ASARCO's retiree obligations;

(5) Assumption by Glencore Acquisition Co. of $50 million in known environmental obligations regarding the operating assets; and

(6) Commitment to require Glencore Acquisition Co. to make minimum capital expenditures of an aggregate of $150 million over next five years.

(c) A security deposit in the amount of $100 million to be paid upon signing of a definitive agreement.

(d) A break up fee of $50 million and a topping limit of at least $100 million.

The Debtors' advisors, Barclays Capital, have indicated that the consideration provided under this proposal does not exceed that received under the New Plan Sponsor PSA.

SECTION 3
SUMMARY OF THE DEBTORS' PROPOSED PLAN

The text of Sections 3 through 5 of the Disclosure Statement has been prepared by the Debtors with reference to the Debtors' Plan and using defined terms from the Debtors' Glossary. All statements and representations in Sections 3 through 5 are the sole responsibility of the Debtors. The Parent and AMC and Harbinger do not necessarily agree or disagree with any of the statements or representations in Sections 3 through 5, and each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

3.1 General.

The following is a summary of certain key provisions of the Debtors' Plan. Before voting, holders of Claims that are entitled to vote on the Debtors' Plan are referred to, and encouraged to review, the relevant provisions of the Debtors' Plan, the Debtors' Plan Documents, and the Bankruptcy Code carefully since their rights could be affected. They also are encouraged to review the Debtors' Plan and this Disclosure Statement with their counsel or other advisors. Note that other provisions of the Debtors' Plan not summarized in this Section 3 may be summarized elsewhere in this Disclosure Statement.

3.2 Classification of Claims and Interests Under the Debtors' Plan.

(a) Generally.

In accordance with section 1122 of the Bankruptcy Code, Claims and Interests, other than Administrative Claims and Priority Tax Claims, shall be divided in Classes and receive such treatment as described below. Administrative Claims and Priority Tax Claims shall be treated as set forth in Article II of the Debtors' Plan.

(b) Classes Under the Debtors' Plan.

Claims against, and Interests in, the Debtors are grouped in the following Classes for purposes of the Debtors' Plan in accordance with section 1122(a) of the Bankruptcy Code:

(1) Class 1 – Priority Claims. Class 1 consists of all Priority Claims against the Debtors. This Class is unimpaired.

(2) Class 2 – Secured Claims. Class 2 consists of all Secured Claims against the Debtors. This Class is unimpaired if Reinstated and impaired if paid the Allowed Amount of their Claims and any applicable post-petition interest.

(3) Class 3 – General Unsecured Claims. Class 3 consists of all General Unsecured Claims against the Debtors. This Class is impaired.

(4) Class 4 – Unsecured Asbestos Personal Injury Claims. Class 4 consists of all Unsecured Asbestos Personal Injury Claims against the Debtors. This Class is impaired.

(5) Class 5 – Convenience Claims. Class 5 consists of all Convenience Claims against the Debtors. This Class is unimpaired.

(6) Class 6 – Late-Filed Claims. Class 6 consists of all Late-Filed Claims against the Debtors. This Class is impaired.

(7) Class 7 – Subordinated Claims. Class 7 consists of all Subordinated Claims against the Debtors. This Class is impaired.

(8) Class 8 – Interests in ASARCO. Class 8 consists of all Interests in ASARCO. This Class is impaired.

(9) Class 9 – Interests in the Asbestos Subsidiary Debtors. Class 9 consists of all Interests in the Asbestos Subsidiary Debtors. This Class is impaired.

(10) Class 10 – Interests in the Other Subsidiary Debtors. Class 10 consists of all Interests in the Other Subsidiary Debtors. This Class is impaired.

3.3 Treatment of Administrative Claims, Priority Tax Claims and Demands Under the Debtors' Plan.

(a) Administrative Claims.

Claims that are entitled to administrative priority under section 503 of the Bankruptcy Code are treated under Article 2.1 of the Debtors' Plan. Under that provision, each holder of an Allowed Administrative Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder's Administrative Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date; *provided, however*, that (1) Allowed Administrative Claims representing (A) post-petition liabilities incurred in the ordinary course of business by a Debtor or (B) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, shall be paid in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto, and (2) the Allowed Administrative Claims of Professional Persons shall be paid pursuant to order of the Bankruptcy Court; and *further provided* that all Assumed Liabilities shall be paid by the Plan Sponsor.

Chase shall receive the Allowed Amount of any Administrative Claim under the Credit Facility discussed in Section 2.15(b) above, in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

The Administrative Claim of ASARCO against the Asbestos Subsidiary Debtors under the Secured Intercompany DIP Credit Facility shall be credited against the Cash component of the Plan Consideration to be contributed by the Debtors to the Asbestos Trust on the Initial Distribution Date.

Any Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts.

The Settling Asbestos Insurance Companies shall each have an Allowed Administrative Claim for the Pre-524(g) Indemnity (as such term is defined in the applicable Asbestos Insurance Settlement Agreement), in accordance with the terms and conditions of such Asbestos Insurance Settlement Agreement. The Asbestos Insurance Settlement Agreements typically provide that until a Confirmation Order providing for an Asbestos Insurance Company Injunction has become a Final Order, ASARCO shall indemnify and hold harmless the Settling Asbestos Insurance Company in respect of any and all Claims arising under or relating in any way to the Subject Insurance Policies (as such term is defined in the Asbestos Insurance Settlement Agreement) or other Insurance Rights (as such term is defined in the Asbestos Insurance Settlement Agreement), including, without limitation, all Claims, whether by way of direct action or otherwise, made by third parties to the Asbestos Insurance Settlement Agreement, including, without limitation:

- other insurers of ASARCO (*provided, however*, that if Winterthur Swiss makes a claim for contribution against the Settling Asbestos Insurance Companies, then ASARCO shall be obligated to indemnify the Settling Asbestos Insurance Companies only for any amounts in excess of Winterthur Swiss's policy limits);
- any Person claiming to be insured under the Subject Insurance Policies;
- any Person who has made, shall make, or can make a Claim;
- any Person who has acquired or been assigned the right to make a Claim under the Subject Insurance Policies or other Insurance Rights;

- any Person asserting direct action rights under the Subject Insurance Policies or other Insurance Rights, including, without limitation, Persons with asbestos- or silica-related Claims against ASARCO; or

- any federal, state, or local government or any political subdivision, agency, department, board, or instrumentality thereof, including, without limitation, the State of Minnesota pursuant to the Minnesota Landfill Cleanup Act, Minn. Stat. § 115B.39 *et seq*. or the Minnesota Insurance Recovery Act of 1996, Minn. Stat. § 115B.441 *et seq*.

Because the Debtors' Plan provides for the Asbestos Insurance Company Injunction, the Debtors do not believe that any payments shall be required on the Pre-524(g) Indemnity and are therefore not reserving any funds in connection with any such Claims.

(b) Priority Tax Claims.

Article 2.2 of the Debtors' Plan provides for treatment of Allowed Priority Tax Claims. Under Article 2.2, each holder of an Allowed Priority Tax Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the Effective Date.

(c) Demands.

Article 2.3 of the Debtors' Plan provides treatment for Demands. Under Article 2.3, Demands shall be included in the treatment accorded Class 4 Unsecured Asbestos Personal Injury Claims, as set forth in Articles 4.1 and 4.2(d) of the Debtors' Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement.

3.4 Treatment of Claims and Interests Under the Debtors' Plan.

Article IV of the Debtors' Plan sets forth the treatment to be provided each of the Classes of Claims and Interests under the Debtors' Plan. The Debtors' previous versions of their plan of reorganization filed in 2008 had provided for separate Classes for Trade and General Unsecured Claims, Bondholders' Claims, Toxic Tort Claims, Previously Settled Environmental Claims, Miscellaneous Federal and State Environmental Claims, and Residual Environmental Claims. Under the Debtors' Plan, these Claims are combined into a single Class of General Unsecured Claims. The environmental Claims were divided into three Classes corresponding to the environmental settlement agreements that were incorporated into the earlier versions of the plan filed in 2008, but which are now the subject of a motion for approval filed outside the context of the Debtors' Plan. Moreover, the Bondholders' Claims had been in a separate Class because the July 31, 2008 plan gave the Debtors the option of reinstating the Bondholders' Claims. Because the reasons for having separate Classes are no longer present, and because administration would be more efficient and cost-effective with a single combined Class, the Debtors consolidated those separate Classes into the Class of General Unsecured Claims.

The following is a summary of the treatment being provided under the Debtors' Plan to each Class.

(a) Class 1 – Priority Claims.

(1) Voting Rights Under the Debtors' Plan.

Class 1 is unimpaired by the Debtors' Plan. Class 1, and holders of Priority Claims in Class 1, are conclusively presumed to have accepted the Debtors' Plan under section 1126(f) of the Bankruptcy Code and are not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 1 Priority Claims are treated in Article 4.2(a) of the Debtors' Plan. On the Effective Date or, if later, the date or dates that such Priority Claim becomes due in the ordinary course, each holder of an Allowed Priority

Claim (except any holder that agrees to other, lesser treatment) shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

(b) Class 2 – Secured Claims.

(1) Voting Rights Under the Debtors' Plan.

The voting rights of each holder of a Class 2 Secured Claim depend upon the Debtors' election. The Debtors shall make their election prior to the Confirmation Hearing. The Debtors shall solicit the votes of each sub-Class of Secured Claims. If the Debtors elect to Reinstate a particular Secured Claim, that sub-Class shall be unimpaired, and the sub-Class's vote shall not be counted. If the Debtors elect the Cash payment option as to a particular Secured Claim, that sub-Class shall be impaired, and that sub-Class's vote shall be counted.

(2) Treatment Under the Debtors' Plan.

Class 2 Secured Claims are treated in Article 4.2(b) of the Debtors' Plan. Each holder of an Allowed Secured Claim shall, at the election of the Debtors, either (A) receive the Allowed Amount of such holder's Claim, together with post-petition interest to the extent and at the rate provided in section 506(b) of the Bankruptcy Code, in Cash, on the later of the Effective Date or the date or dates that such Secured Claim becomes due in the ordinary course, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim and any related Lien, or (B) be Reinstated, on the Effective Date; *provided, however*, that any Allowed Secured Claim that is secured by a Lien on any Sold Asset shall receive the Allowed Amount of such holder's Claim with applicable post-petition interest on the applicable date(s) and shall not be Reinstated.

The Secured Claims of the United States relating to the East Helena, Montana facility and the Globe, Colorado facility, and any Secured Claims relating to the Prepetition ASARCO Environmental Trust shall be satisfied by having the holders of such Claims retain the Liens securing such Claims, unless a holder agrees to different treatment. In addition, upon the Effective Date, the causes of action asserted by the Debtors against the United States of America on behalf of the EPA, the USDA, the Interior, and the International Boundary and Water Commission in Adversary Proceeding No. 07-02076 (and only those causes of action) shall be dismissed without prejudice.

Except as otherwise provided herein, any Asbestos Personal Injury Claimant with a Lien against any property of the Debtors other than proceeds of an Asbestos Insurance Policy shall retain the Lien securing such Claim, subject to the Debtors' election in Article 4.2(b) of the Debtors' Plan. Secured Asbestos Personal Injury Claims, which are secured by Liens against proceeds of an Asbestos Insurance Policy, shall be included in the treatment accorded Class 4 Unsecured Asbestos Personal Injury Claims, as set forth in Article 4.2(d) of the Debtors' Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement; *provided, however*, that the Asbestos Trust may assert any rights (including avoidance rights), defenses (including affirmative defenses), and objections that the Debtors have against such Claims, which rights, defenses, and objections are transferred to the Asbestos Trust pursuant to the Debtors' Plan.

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes under the Debtors' Plan. **Exhibit 16** to the Debtors' Plan lists the Class 2 Secured Claims (as such list may be amended, supplemented, or modified up to and including the Confirmation Date).

(c) Class 3 – General Unsecured Claims.

(1) Voting Rights Under the Debtors' Plan.

Class 3 is impaired by the Debtors' Plan. Holders of General Unsecured Claims in Class 3 are being asked to vote to accept or reject the Debtors' Plan under section 1126 of the Bankruptcy Code.

(2) Treatment Under the Debtors' Plan.

Class 3 General Unsecured Claims are treated in Article 4.2(c) of the Debtors' Plan. Subject to the provisions of Article 4.3 of the Debtors' Plan, each holder of an Allowed General Unsecured Claim (except any holder that agrees to other, lesser treatment) shall receive such holder's Class 3 Claimant's Ratable Portion of the Plan

Consideration on or after the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim.

Notwithstanding the foregoing, all distributions to holders of Allowed Bondholders' Claims shall be subject to, and the allocations made herein shall be reduced on a pro rata basis by, the Charging Lien to the extent of any unpaid Indenture Trustee Fee Claims that are not paid pursuant to Article 15.14 of the Debtors' Plan.

At the request of the Indenture Trustees, the Debtors' Plan provides for the payment of valid Indenture Trustee Fee Claims (*see* Article 15.14 of the Debtors' Plan) and cancellation of instruments (*see* Article 13.10 thereof), and includes instructions for distributions on account of Bondholders' Claims (*see* Article 13.2(c) thereof) and mechanics for surrender of Certificates and lost Certificates (*see* Article 13.9 thereof).

With respect to (A) the Allowed General Unsecured Claims of Governmental Units covered by (i) the Miscellaneous Federal and State Environmental Settlement Agreement, (ii) the Residual Environmental Settlement Agreement, (iii) the Arizona NRD Settlement Agreement, (iv) the Hayden Past Cost Settlement Agreement, and (v) the Mission Mine Settlement Agreement; and (B) all Previously Settled Environmental Claims, the satisfaction, settlement, release, extinguishment, and discharge of such Claims is as provided in such agreements.

(d) Class 4 – Unsecured Asbestos Personal Injury Claims.

(1) Voting Rights Under the Debtors' Plan.

Class 4 is impaired by the Debtors' Plan. The holders of Unsecured Asbestos Personal Injury Claims in Class 4 are being asked to vote to accept or reject the Debtors' Plan under sections 524(g) and 1126 of the Bankruptcy Code.

(2) Treatment Under the Debtors' Plan.

Class 4 Unsecured Asbestos Personal Injury Claims are treated in Article 4.2(d) of the Debtors' Plan. On the Effective Date, liability of all of the Debtors for all Unsecured Asbestos Personal Injury Claims and Demands shall be assumed by, and channeled to, the Asbestos Trust without further act or deed and satisfied as set forth therein.

All Unsecured Asbestos Personal Injury Claims and Demands shall be processed, liquidated, and paid, pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement. The Asbestos Trust is described in Section 5 below. The sole recourse of the holder of an Unsecured Asbestos Personal Injury Claim or Demand shall be the Asbestos Trust as operated by the Asbestos Trustees and the Asbestos TDP, and such holder shall have no rights whatsoever at any time to assert such holder's Claim or Demand against any Debtor, Reorganized Debtor, or ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons shall be permanently and forever stayed, restrained, and enjoined from taking any enjoined actions against any ASARCO Protected Party (or the property or interest in property of any ASARCO Protected Party) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on, or with respect to, any Unsecured Asbestos Personal Injury Claim or Demand.

The Asbestos Trust shall be funded, on the Effective Date, with (A) directly or indirectly, the Asbestos Insurance Recoveries; (B) 100 percent of the interests in Reorganized Covington; (C) the Asbestos Ratable Portion of the Plan Consideration; and (D) $27.5 million in Cash for purposes of Asbestos Trust Expenses. Class 4 Claims and Demands shall be processed, liquidated, and paid pursuant to the terms and provisions of the Asbestos TDP and the Asbestos Trust Agreement.

See Section 5 of this Disclosure Statement for more information about the Asbestos Trust to be created under the Debtors' Plan, including additional information regarding the Asbestos TDP.

In connection with funding of the Asbestos Trust, Article 11.3 of the Debtors' Plan provides for issuance of Injunctions that shall permanently enjoin further pursuit of Unsecured Asbestos Personal Injury Claims and Demands from whatever source against an ASARCO Protected Party. These Injunctions are discussed in greater detail in Section 3.10 of this Disclosure Statement.

(e) Class 5 – Convenience Claims.

(1) Voting Rights Under the Debtors' Plan.

Class 5 is unimpaired by the Debtors' Plan. Class 5, and holders of Convenience Claims in Class 5, are conclusively presumed to have accepted the Debtors' Plan under section 1126(f) of the Bankruptcy Code and are not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 5 Convenience Claims are treated in Article 4.2(e) of the Debtors' Plan. On the Effective Date, each holder of a Convenience Claim shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. Election by the holder of an Allowed General Unsecured Claim otherwise treated under Class 3 of the Debtors' Plan to reduce the Claim of such holder to $1,000 and to receive distribution as a Class 5 Convenience Claim shall constitute acceptance of the Debtors' Plan and a waiver of the right to recover any amount in excess of $1,000 from any of the Debtors.

(f) Class 6 – Late-Filed Claims.

(1) Voting Rights Under the Debtors' Plan.

Class 6 is impaired. Class 6 is deemed to have rejected the Debtors' Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 6 Late-Filed Claims are treated in Article 4.2(f) of the Debtors' Plan. Except as provided in Article 4.3 of the Debtors' Plan, the holders of Late-Filed Claims shall not receive or retain any property under the Debtors' Plan on account of such Claims.

(g) Class 7 – Subordinated Claims.

(1) Voting Rights Under the Debtors' Plan.

Class 7 is impaired. Class 7 is deemed to have rejected the Debtors' Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 7 Subordinated Claims are treated in Article 4.2(g) of the Debtors' Plan. Except as provided in Article 4.3 of the Debtors' Plan, the holders of Subordinated Claims shall not receive or retain any property under the Debtors' Plan on account of such Claims.

(h) Class 8 – Interests in ASARCO.

(1) Voting Rights Under the Debtors' Plan.

Class 8 is impaired. Class 8 is deemed to have rejected the Debtors' Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 8 Interests in ASARCO are treated in Article 4.2(h) of the Debtors' Plan. Except as provided in Article 4.3 of the Debtors' Plan, the holders of Interests in ASARCO shall not receive or retain any property under the Debtors' Plan on account of such Interests.

(i) Class 9 – Interests in Asbestos Subsidiary Debtors.

(1) Voting Rights Under the Debtors' Plan.

Class 9 is impaired. Class 9 is deemed to have rejected the Debtors' Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 9 Interests in Asbestos Subsidiary Debtors are treated in Article 4.2(i) of the Debtors' Plan. The holders of Interests in the Asbestos Subsidiary Debtors shall not receive or retain any property under the Debtors' Plan on account of such Interests.

(j) Class 10 – Interests in the Other Subsidiary Debtors.

(1) Voting Rights Under the Debtors' Plan.

Class 10 is impaired. Class 10 is deemed to have rejected the Debtors' Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject the Debtors' Plan.

(2) Treatment Under the Debtors' Plan.

Class 10 Interests in the Other Subsidiary Debtors are treated in Article 4.2(j) of the Debtors' Plan. The holders of Interests in the Other Subsidiary Debtors shall not receive or retain any property under the Debtors' Plan on account of such Interests.

3.5 Allocation of Interests in the Liquidation Trust and in the SCC Litigation Trust; Possible Allocation of a Percentage of Interests in the SCC Litigation Trust to Other Classes.

The Parent believes that the Debtors' Plan is patently unconfirmable because it violates the absolute priority rule. According to the Parent, under the Debtors' Plan, Class 3 and Class 4 Claimants would be entitled to the Liquidation Trust Interests and the SCC Litigation Trust Interests and could receive more than 100 percent of their Allowed Claims while holders of Claims and Interests in Classes 6 through 10 receive no distributions. The Debtors believe that the provisions of the Debtors' Plan described below provide all holders of Claims and Interests the protections afforded by the absolute priority rule.

At the Confirmation Hearing, the Debtors will request that the Bankruptcy Court determine the value, as of the Confirmation Date, of the Plan Consideration, including the value of (a) the aggregate interests in the Liquidation Trust and (b) the aggregate interests in the SCC Litigation Trust. In addition, the Debtors will request that the Bankruptcy Court determine that the value, as of the Confirmation Date, of the Plan Consideration that is to be distributed on account of Class 3 Claims and Class 4 Claims under the Debtors' Plan (without regard to Article 4.3(b) thereof) does not exceed the amount necessary for Claims in Class 3 and Class 4 to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash). If the Bankruptcy Court determines that the distribution of the Plan Consideration on account of Class 3 and Class 4 Claims will not result in such Claims being paid more than an amount necessary for such Claims to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash), then 100 percent of the interests in the Liquidation Trust and 100 percent of the interests in the SCC Litigation Trust (excluding any interests in the SCC Litigation Trust that are successfully sold pursuant to an auction occurring on or before the Effective Date of the Plan) shall be distributed to Class 3 Claimants and for the benefit of Class 4 Claimants in accordance with Article 4.2 and Article VI of the Debtors' Plan.

If the Bankruptcy Court determines that the value of the Plan Consideration, as of the Confirmation Date, exceeds amount necessary for Claims in Class 3 and Class 4 to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash), then the Bankruptcy Court shall determine the percentage of interests in the SCC Litigation Trust necessary to be distributed on the Effective Date (after taking into account the distribution of the Plan Consideration other than the SCC Litigation Trust Interests) for the aggregate value of the Plan Consideration to be in an amount necessary for Claims in Class 3 and Class 4 to be Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were

converted to Cash), but no more. That percentage of interests in the SCC Litigation Trust shall be issued and distributed to Class 3 and for the benefit of Class 4 in accordance with Article 4.2 of the Debtors' Plan. By way of illustration, if the value of the SCC Litigation Trust were determined to be $1 billion on the Effective Date and the amount necessary for the Claims in Class 3 and Class 4 to be Paid in Full (after the credit for the Plan Consideration distributed on account of such Claims on the Effective Date) were to total $800 million, 80 percent of the interests in the SCC Litigation Trust would be distributed to Class 3 and Class 4 in accordance with Article 4.2 of the Debtors' Plan. After the distribution to Class 3 and Class 4, the remaining interests in the SCC Litigation Trust (in the foregoing illustration, the remaining 20 percent of such interests) shall be distributed until the value of such interests, based on the Bankruptcy Court's valuation, is fully exhausted, in the following order:

First, on account of the Allowed Amounts of any Class 6 Claims, on a Pro Rata basis, until such Claims are Paid in Full (assuming the value attributable to the SCC Litigation Trust Interests and the Liquidation Trust Interests were converted to Cash); *provided, however*, the SCC Litigation Trust Interests, if any, distributed to the Class 6 Claimants shall at all times be a subordinated interest that is not entitled to receive distributions from the SCC Litigation Trust unless and until Claimants in Class 3 and Class 4 (or their assignees or other successors in interest, which shall be deemed to include the counterparties to the Put Option if the Put Option is exercised) are Paid in Full on account of the Allowed Claims of Claimants in Class 3 and Class 4;

Second, on account of Class 7 Claims, on a Pro Rata basis, until such Claims are Paid in Full; *provided, however*, the SCC Litigation Trust Interests, if any, distributed to the Class 7 Claimants shall at all times be a subordinated interest that is not entitled to receive distributions from the SCC Litigation Trust unless and until Claimants in Class 3, Class 4, and Class 6 (or their assignees or other successors in interest, which shall be deemed to include the counterparties to the Put Option if the Put Option is exercised) are Paid in Full on account of the Allowed Claims of Claimants in Class 3, Class 4, and Class 6; and

Third, on account of Class 8 Interests, on a Pro Rata basis; *provided, however*, the SCC Litigation Trust Interests, if any, distributed to the holders of Class 8 Interests shall at all times be a subordinated interest that is not entitled to receive distributions from the SCC Litigation Trust unless and until the aggregate distributions from the SCC Litigation Trust to Claims in Classes 3, 4, 6, and 7 (or their assignees or other successors in interest, which shall be deemed to include the counterparties to the Put Option if the Put Option is exercised) are Paid in Full based on the amount at which those Claims are Allowed by the Plan Administrator or as determined by the Bankruptcy Court.

In any event, the Plan Consideration (including the interests in the Liquidation Trust and in the SCC Litigation Trust) shall pass without limitation or restriction to the recipients under the Debtors' Plan (as well as to any successful bidder at an auction of the interests in the SCC Litigation Trust, upon satisfaction of the terms of such auction) and such recipients shall be entitled to retain all Cash or other property ultimately realized from the Plan Consideration (or from the auctioned SCC Litigation Interests) even if the amount ultimately realized in the future exceeds the amount necessary for, such Claimants to have been Paid in full under the Debtors' Plan (or the amounts paid in connection with any auction of interests in the SCC Litigation Trust). For avoidance of doubt, the Bankruptcy Court's determination under this provision shall constitute a finding that the damages recoverable by the SCC Litigation Trust on account of the SCC Final Judgment shall not be subject to any limitation, reduction or cap attributable to the aggregate claims owed by the Debtors or that are to be paid or otherwise satisfied under the Debtors' Plan.

As set forth in the Introduction above, the Debtors have estimated the amount of distributions to General Unsecured Creditors in Class 3 and Unsecured Asbestos Personal Injury Claims in Class 4 under the Debtors' Plan. However, in light of ASARCO's multi-billion dollar judgment against AMC in the SCC Litigation, there is a reasonable possibility that Claimants in Classes 3 and 4 will be paid more than 75 percent of their Allowed Claims under the Debtors' Plan and potentially may be paid in full with post-petition interest.

If sufficient Plan Consideration is available to permit payment in full with post-petition interest, the Debtors propose that post-petition interest should be paid at the federal judgment rate of 3.84 percent. The federal judgment rate is calculated in accordance with 28 U.S.C. § 1961, which provides for "a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of the judgment." The weekly average 1-year constant maturity Treasury yield for the week preceding ASARCO's Petition Date is available at *www.federalreserve.gov/releases/h15/20050808*.

Pursuant to section 1961(b) of title 28, interest shall be compounded annually. Pursuant to the Debtors' Plan, a Claimant is entitled to post-petition interest on an Allowed Claim or any unpaid portion thereof, from August 10,

2005 to and including five Business Days immediately prior to the date a distribution is made, until such amounts are fully satisfied. After the Effective Date, interest shall accrue on any unpaid portion of an Allowed Claim and on any unpaid post-petition interest at the same rate and to the same extent.

Mitsui asserts that it is entitled to a 7.5 percent contractual rate of interest on its asserted Secured Claim. The Debtors and Mitsui specifically reserve all rights and remedies that any of them may have concerning the appropriate rate of interest on Mitsui's asserted Claim.

Additionally, various unsecured creditors contend that they are entitled to post-petition interest at the rates provided in their contract or Indenture, as opposed to the federal judgment rate, and that they are entitled to compound interest under the explicit terms of their contracts or Indentures. Various unsecured creditors have different interest rates under their contracts or Indentures and applicable non-bankruptcy law. Although there are authorities that support the positions of the various unsecured creditors on the appropriate rate of post-petition interest, the Debtors believe that the weight of authorities and the better reasoned decisions support the selection of the federal judgment rate as the appropriate rate of post-petition interest, in the event that funds are available for the payment of post-petition interest.

Pursuant to Article 4.5 of the Debtors' Plan, any Claimant seeking (a) payment of post-petition interest on such holder's Claim at a rate other than the Plan Rate or (b) reimbursement of attorneys' fees and other costs and expenses associated with such holder's Claim (or both) shall file a motion seeking such relief within 30 days after the Effective Date. Any such motion must include all of the documentation upon which the Claimant relies to establish the Claimant's entitlement to (a) post-petition interest at a rate other than the Plan Rate and (b) attorneys' fees and other costs and expenses. **THE INCLUSION OF THE ENTITLEMENT TO THESE TYPES OF CLAIMS IN PROOFS OF CLAIM SHALL NOT BE SUFFICIENT TO ESTABLISH SUCH CLAIMS WITHOUT A SUPPLEMENTAL FILING BY A CLAIMANT WITHIN THE SPECIFIED TIME PERIOD**. The Plan Administrator shall have 60 days after the Effective Date to resolve any such objection without need of Bankruptcy Court approval in which case the Plan Administrator shall file with the Bankruptcy Court a notice that the matter has been resolved; *provided, however*, that the Bankruptcy Court retains jurisdiction to resolve such matters in the event the Plan Administrator and the Claimant cannot reach an agreement.

3.6 Intercompany Claims Under the Debtors' Plan.

Pursuant to Article 4.4 of the Debtors' Plan, Intercompany Claims shall be treated as follows:

(a) any and all Claims of the Asbestos Subsidiary Debtors against ASARCO, including any and all Derivative Asbestos Claims, shall be resolved pursuant to the Asbestos Settlement and shall be deemed satisfied by the funding of the Asbestos Trust as contemplated under the Debtors' Plan;

(b) ASARCO's Administrative Claims under the Secured Intercompany DIP Credit Facility shall be credited against the Cash component of the Plan Consideration to be contributed by the Debtors to the Asbestos Trust on the Initial Distribution Date; and

(c) all other Intercompany Claims shall be released and extinguished pursuant to the Debtors' Plan, and no distributions shall be made under the Debtors' Plan with respect to such Claims. Holders of such Claims shall not be entitled to vote on the Debtors' Plan.

The Intercompany Claims include any Claims of any of the Debtors against CBRI or Silver Bell, and vice-versa. The Debtors are not aware of any such non-Debtor Claims; however, to the extent any such Intercompany Claims exist, they shall be released and extinguished pursuant to Article 4.4 of the Debtors' Plan.

In its bankruptcy schedules, ASARCO scheduled disputed, contingent, and unliquidated Claims of $64.83 million in favor of LAQ and $2.6 million in favor of CAPCO. Of this amount, ASARCO estimates that approximately $30 million arises from ASARCO's compromise of insurance proceeds recovered prior to the bankruptcy filing for asbestos-related liabilities, principally of the Asbestos Subsidiary Debtors. ASARCO used these proceeds to pay its own operating expenses and other debts rather than to pay asbestos-related settlements or judgments and related defense costs and expenses.

3.7 Conditions to Effectiveness of the Debtors' Plan.

Notwithstanding any other provision of the Debtors' Plan or any order entered in connection with the Reorganization Cases, the Effective Date of the Debtors' Plan shall not occur until and unless each of the following conditions to effectiveness have been satisfied or waived pursuant to Article 9.2 of the Debtors' Plan:

(a) Disclosure Statement.

The Bankruptcy Court has approved the Disclosure Statement.

(b) Confirmation Findings and Conclusions.

The District Court makes or affirms the following findings of fact and conclusions of law:

(1) As of the Petition Date, ASARCO and the Asbestos Subsidiary Debtors have each been named as a defendant in personal injury, wrongful death, or property damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(2) The Debtors' Plan has been approved by creditors in Class 4 under the Debtors' Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code;

(3) On the Effective Date, the Asbestos Trust shall assume the liabilities of the Debtors with respect to the Unsecured Asbestos Personal Injury Claims and Demands and shall receive all transfers and assignments as set forth in the Debtors' Plan;

(4) As of the Effective Date, there were no pending or known property damage actions seeking damages as a result of property damage allegedly caused by or arising out of asbestos or asbestos-containing products;

(5) The Asbestos Trust is to be funded in part by securities of Reorganized Covington and by the obligation of such debtor to make future payments;

(6) The Asbestos Trust, upon the Effective Date, is to own 100 percent of the interests in Reorganized Covington;

(7) The Asbestos Trust shall use its assets and income to pay the Unsecured Asbestos Personal Injury Claims and Demands;

(8) The Debtors are likely to be subject to substantial future Demands for payment arising out of the same or similar conduct or events that gave rise to the Unsecured Asbestos Personal Injury Claims, which are addressed by the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction;

(9) The actual amounts, numbers, and timing of future Demands cannot be determined;

(10) Pursuit of Demands outside the procedures prescribed by the Debtors' Plan is likely to threaten the Debtors' Plan's purpose to deal equitably with Claims and future Demands;

(11) The terms of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including any provisions barring actions against third parties, are set out in the Debtors' Plan and in this Disclosure Statement;

(12) The Asbestos Trust shall operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Unsecured Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Asbestos Trust shall value, and be in a financial

position to pay, all Unsecured Asbestos Personal Injury Claims and Demands in substantially the same manner;

(13) The FCR was appointed by the Bankruptcy Court as part of the proceedings leading to the issuance of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction for the purpose of, among other things, protecting the rights of persons that might subsequently assert Demands of the kind that are addressed in the Permanent Channeling Injunction or the Asbestos Insurance Company Injunction and that are to be assumed and paid by the Asbestos Trust in accordance with the Asbestos Trust Documents;

(14) In light of the respective benefits provided, or to be provided, to the Asbestos Trust by, or on behalf of, each ASARCO Protected Party, the Permanent Channeling Injunction is fair and equitable with respect to the persons that might subsequently assert Demands against any ASARCO Protected Party;

(15) In light of the respective benefits provided, or to be provided, by a Settling Asbestos Insurance Company in order to receive the benefits of the Asbestos Insurance Company Injunction, the Asbestos Insurance Company Injunction is fair and equitable with respect to the persons who might subsequently assert Demands against any Settling Asbestos Insurance Company;

(16) The Settling Asbestos Insurance Companies are alleged to be directly or indirectly liable for the Unsecured Asbestos Personal Injury Claims and Demands for one or more of the reasons set forth in section 524(g)(4)(A)(ii) of the Bankruptcy Code;

(17) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction are integral parts of the Debtors' Plan and may not be vacated, amended, or modified after Confirmation except to the extent expressly provided in Article 11.3(a) and (b) of the Debtors' Plan;

(18) The Debtors' Plan complies with all applicable sections of the Bankruptcy Code, including section 524(g) of the Bankruptcy Code, and the Debtors have complied with all applicable sections of the Bankruptcy Code;

(19) The New Plan Sponsor PSA and all other documents necessary to consummate the sale of the Sold Assets to the Plan Sponsor are approved in all respects, and all parties thereto are authorized and directed to perform all their obligations thereunder;

(20) The sale of the Sold Assets to the Plan Sponsor pursuant to the Debtors' Plan is approved pursuant to sections 363, 1123, and 1129 of the Bankruptcy Code, and the Plan Sponsor has (A) provided reasonably equivalent value and (B) acted in good faith for the purposes of section 363(m) of the Bankruptcy Code; and

(21) Approval of the settlements and compromises set forth in Article 10.3 and 10.26 of the Debtors' Plan is appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises, and shall be ordered as part of the Confirmation Order.

(c) Confirmation Order.

The Confirmation Order entered or affirmed by the District Court (1) is acceptable to the Debtors and (2) to the extent the Confirmation Order relates to the New Plan Sponsor PSA, the Plan Sponsor (and the Guarantor), or the transactions contemplated by the New Plan Sponsor PSA, is reasonably satisfactory to the Plan Sponsor.

(d) No Stay.

The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.

(e) The Debtors' Plan Documents.

The Debtors' Plan Documents necessary or appropriate to implement the Debtors' Plan have been (1) executed (A) in a form acceptable to the Debtors, and (B) with respect to the Disclosure Statement, to the extent it describes the New Plan Sponsor PSA, the Plan Sponsor (and the Guarantor), or the transactions contemplated by the New Plan Sponsor PSA, in a form and substance reasonably satisfactory to the Plan Sponsor; (2) delivered; and (3) where applicable, filed with the appropriate governmental or supervisory authorities.

(f) Funding of the Trusts.

The Trusts have been funded as provided in Articles 10.5 to 10.7 of the Debtors' Plan.

(g) U.S. Trustee's Fees.

Any fees owed to the U.S. Trustee by the Debtors as of the Effective Date have been paid in full.

(h) Closing of the Sale of Sold Assets to Plan Sponsor.

The Confirmation Order approves the sale of the Sold Assets to the Plan Sponsor on the Closing Date.

(i) Approval of Environmental Settlements.

The settlement agreements for the Previously Settled Environmental Claims, the Miscellaneous Federal and State Environmental Claims, the Residual Environmental Claims, and the Environmental Custodial Trusts have been approved by the Bankruptcy Court and, where so required by the terms of the settlement agreement, by the appropriate federal district court.

(j) Assumption and Assignment of the Mission Mine Settlement Agreement.

The Mission Mine Settlement Agreement, all related agreements (including the Mission Mine Unexpired Agreements), and escrowed funds and financial assurances shall be assumed by, and assigned to, the Plan Sponsor pursuant to the New Plan Sponsor PSA.

(k) Approval of the Asbestos Settlement.

The Confirmation Order approves the Asbestos Settlement.

(l) Assumption and Assignment of Hayden Settlement Agreement.

The Hayden Settlement Agreement, all related agreements, and escrowed funds and financial assurances shall be assumed by, and assigned to, the Plan Sponsor.

(m) HSR Act Approval.

Any waiting period (including any extension thereof) applicable to the sale to and purchase by the Plan Sponsor of the Sold Assets under the HSR Act or under the regulations of any other applicable governmental antitrust or competition authority, where failure to comply with such regulations would prohibit the consummation of the transactions contemplated by the New Plan Sponsor PSA, shall have been terminated or expired.

(n) Put Option.

The Put Option has been executed and delivered by Sterlite to the Asbestos Trustees under the Asbestos Trust.

3.8 Waiver of Conditions to Effectiveness of the Debtors' Plan.

The Debtors, in their sole discretion, may waive any condition to effectiveness in Article 9.1 of the Debtors' Plan by filing a notice of such waiver with the clerk of the Bankruptcy Court and by serving a copy of such notice on the Plan Sponsor, the U.S. Trustee, the Committees, the FCR, and the DOJ; *provided, however*, that:

(a) the DOJ and any affected state must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(e)(1), (f), (i), (j), and (l) of the Debtors' Plan;

(b) the Asbestos Claimants' Committee and the FCR must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(e)(1), (f), (k), and (n) of the Debtors' Plan; and

(c) the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.1(c)(2), (e)(1)(B), and (m) of the Debtors' Plan;

and *provided further*, that in each instance, such consent shall not be unreasonably withheld, delayed, or conditioned.

3.9 How the Debtors' Plan Shall Be Implemented.

(a) Sale of Sold Assets to Plan Sponsor Under the Debtors' Plan.

Article 10.1(a) of the Debtors' Plan provides that on the Closing Date, the Sold Assets shall be sold to the Plan Sponsor on the terms and subject to the conditions contained in the New Plan Sponsor PSA and the Ancillary Agreements entered into in connection therewith. Pursuant to section 4.1 of the New Plan Sponsor PSA, the total consideration paid by the Plan Sponsor to the Sellers in consideration of the sale, conveyance, transfer, assignment, and delivery of the Sold Assets is (1) an amount equal to: (A) $1.1 billion, plus (B) the Plan Sponsor Promissory Note, and (2) the assumption by the Plan Sponsor of the Assumed Liabilities. The Plan Sponsor Promissory Note shall be issued to the Liquidation Trust, and payments thereunder shall be received by the Liquidation Trust for distribution in accordance with the terms of the Liquidation Trust Agreement and the Debtors' Plan.

Pursuant to section 3.5(d) of the New Plan Sponsor PSA, the Plan Sponsor is entitled to reimbursement from ASARCO of any Unpaid Cure Claims Amount paid by the Plan Sponsor in accordance with such section 3.5(d). On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall place Cash in the amount of $5 million in the Unpaid Cure Claims Reserve to be used to make payment in respect of any Unpaid Cure Claims Amount for which ASARCO may be required to reimburse the Plan Sponsor pursuant to section 3.5(d) thereof. Such funds shall be held in the Unpaid Cure Claims Reserve until notice is provided by the Plan Sponsor pursuant to section 3.5(d) of the New Plan Sponsor PSA (or the period in which any such notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 3.5(d) thereof, if and as applicable.

On the Initial Distribution Date, Reorganized ASARCO (and thereafter the Plan Administrator) shall distribute the Available Plan Funds in accordance with the Debtors' Plan.

(b) Appointment of Plan Administrator and Plan Administration Committee, and Funding of Miscellaneous Plan Administration Accounts Under the Debtors' Plan.

Not less than 10 days prior to commencement of the Confirmation Hearing, ASARCO shall designate and provide information regarding the Entity that shall initially serve as the Plan Administrator. Upon approval by the Bankruptcy Court in the Confirmation Order, the Plan Administrator shall be appointed. It is anticipated that the Plan Administrator shall serve as the Liquidation Trustee and the SCC Litigation Trustee. The Plan Administrator shall have and perform all of the duties, responsibilities, rights, and obligations set forth in the Plan Administration Agreement, which shall include, without limitation, the obligation to enter into agreements with third party contractors to conduct and complete the following ongoing response actions to the extent funded by the Prepetition ASARCO Environmental Trust or the Prepetition ASARCO Environmental Trust Escrow: the uncompleted portion of residential yard cleanups required under the El Paso Stipulation or included in the "Ongoing Obligation" portion of the East Helena Soils Settlement Agreement; *provided, however*, that any agreement entered into by the Plan Administrator and any third party with respect to such response actions shall not include any indemnification obligation by ASARCO, any other Debtor, Reorganized ASARCO, or the Plan Administrator. In the event that the Plan Administrator is unable to enter into an agreement with a

third party contractor in respect of such response actions without providing indemnification to the third party, the Plan Administrator shall be excused from any and all obligations with respect to the performance of such response actions. The Plan Administrator shall serve without bond, may employ or contract with other Persons to assist in the performance of the Plan Administrator's duties, which shall be set forth in the Plan Administration Agreement, and shall procure appropriate directors-and-officers liability insurance and other insurance coverage appropriate to the business in which Reorganized ASARCO is to be engaged. The Plan Administrator shall receive, without further Bankruptcy Court approval, reasonable compensation for such services and reimbursement of reasonable out-of-pocket expenses incurred in connection with such services.

The initial members of the Plan Administration Committee shall be those Persons designated in the Confirmation Order. They shall consult with and advise the Plan Administrator, as is set forth in greater detail in the Plan Administration Agreement.

On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall (1) fund the Plan Administration Account with Cash to be used to pay the Plan Administrator's estimated compensation and expenses and all other anticipated costs of administration of the Debtors' Plan and initial operations of Reorganized ASARCO (including, without limitation, taxes); and (2) fund the Miscellaneous Plan Administration Accounts. The Plan Administrator may also establish such general accounts, subaccounts, reserves, or escrows as the Plan Administrator deems necessary and appropriate. In accordance with the Plan Administration Agreement, the Plan Administrator shall invest the Cash held in accounts, reserves, and escrows on behalf of Reorganized ASARCO in direct obligations of the United States of America or obligations of any agency or instrumentality thereof which are guaranteed by the full faith and credit of the United States of America, including funds consisting solely or predominately of such securities.

The Plan Administrator shall prosecute, settle, or otherwise resolve the Vested Causes of Action, and shall place the Vested Causes of Action Proceeds (if any) in the Vested Causes of Action Escrow.

The Plan Administrator shall allocate the funds in the Plan Administration Account to subaccounts corresponding to the enumerated functions of the Plan Administrator. Until the Plan Administrator has discharged the Plan Administrator's obligations with respect to the purpose for which a particular subaccount or Miscellaneous Plan Administration Account was established, the funds in those subaccounts and the Miscellaneous Plan Administration Accounts may only be used for the purpose designated for that particular account or subaccount. In addition, any taxes attributable to the earnings of the Plan Administration Account, a subaccount, or a Miscellaneous Plan Administration Account (as well as any taxes directly imposed on such account or subaccount) shall be paid out of the assets of such account or subaccount.

To the extent there are any excess funds in the Plan Administration Account (or any subaccount thereof) or any Miscellaneous Plan Administration Account, the Plan Administrator shall, after consultation with and approval by the Plan Administration Committee, first transfer such excess funds to any underfunded subaccount or Miscellaneous Plan Administration Account (but only to the extent of any underfunding) and then distribute such funds to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

The Plan Administrator shall have the power to seek injunctive or other necessary or appropriate relief from the Bankruptcy Court to ensure that the funds in the Plan Administration Reserve are used only for the purposes specifically directed in the Debtors' Plan and the Plan Administration Agreement.

On and after the Effective Date, the Plan Administrator shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the Vested Causes of Action and the Debtors' Privileges associated therewith. The Plan Administrator shall be granted the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the Vested Causes of Action and distribute the proceeds of such claims, and such other rights and powers as set forth in the Plan Administration Agreement.

(c) Approval of the Asbestos Settlement Under the Debtors' Plan.

The Debtors' Plan implements an agreement in principle regarding asbestos-related liabilities, which is set forth in the Sterlite Plan Agreement in Principle Term Sheet attached to the Debtors' Plan as **Exhibit 9**. Pursuant to Bankruptcy Rule 9019, Confirmation of the Debtors' Plan shall approve the Asbestos Settlement.

(d) Creation and Funding of Liquidation Trust and the SCC Litigation Trust Under the Debtors' Plan.

On the Effective Date, (1) the Liquidation Trust shall be created and the Liquidation Trust Expense Fund shall be established; (2) the Debtors' respective rights, title, and interests in the Liquidation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the Liquidation Trust; and (3) ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit Cash in the amount of $10 million in the Liquidation Trust Reserve. The Plan Administrator shall maintain the Liquidation Trust Reserve and shall from time to time, when requested to do so by the Liquidation Trustee, transfer funds from the Liquidation Trust Reserve to the Liquidation Trustee for the Liquidation Trust Expense Fund as the Liquidation Trustee deems reasonably necessary to the continued operations of the Liquidation Trust, up to an aggregate amount of $10 million. Upon a determination by the Liquidation Trustee that no additional funds will be needed from the Liquidation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the Liquidation Trust Reserve in accordance with the terms and conditions of the Plan Administration Agreement.

On the Effective Date, (1) the SCC Litigation Trust shall be created and the SCC Litigation Trust Expense Fund shall be established; (2) the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith shall be transferred to the SCC Litigation Trust; and (3) ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit Cash in the amount of $15 million in the SCC Litigation Trust Reserve. The Plan Administrator shall maintain the SCC Litigation Trust Reserve and shall from time to time, when requested to do so by the SCC Litigation Trustee, transfer funds from the SCC Litigation Trust Reserve to the SCC Litigation Trustee for the SCC Litigation Trust Expense Fund as the SCC Litigation Trustee deems reasonably necessary to the continued operations of the SCC Litigation Trust, up to an aggregate amount of $15 million. Upon a determination by the SCC Litigation Trustee that no additional funds will be needed from the SCC Litigation Trust Reserve, the Plan Administrator shall allocate the remaining funds in the SCC Litigation Trust Reserve in accordance with the terms and conditions of the Plan Administration Agreement.

See Section 4 of this Disclosure Statement for further information regarding the Liquidation Trust and the SCC Litigation Trust to be created under the Debtors' Plan.

(e) Creation and Funding of Environmental Custodial Trusts Under the Debtors' Plan.

On or before the Effective Date, the Environmental Custodial Trusts shall be created, and the Custodial Trust Administrative Accounts shall be funded pursuant to the applicable Environmental Custodial Trust Agreements, and by the Effective Date, the Debtors' respective rights, title, and interests in the Designated Properties, together with the appropriate Environmental Custodial Trust Funding and Environmental Custodial Trust Administration Funding for such properties, shall be transferred to the applicable Environmental Custodial Trusts, which shall take title pursuant to the applicable Environmental Custodial Trust Agreements.

(f) Creation and Funding of the Asbestos Trust Under the Debtors' Plan.

On or before the Effective Date, the Asbestos Trust shall be created. On the Effective Date, all of the Debtors' respective rights, title, and interests in the Asbestos Trust Assets, including $27.5 million in Cash for purposes of Asbestos Trust Expenses, shall be transferred to the Asbestos Trust.

See Section 5 of this Disclosure Statement for further information regarding the Asbestos Trust to be created under the Debtors' Plan.

(g) Prepetition ASARCO Environmental Trust Under the Debtors' Plan.

The Prepetition ASARCO Environmental Trust was created pursuant to a Consent Decree entered in *United States v. ASARCO Inc., et al.*, Civil Action No. 02-2079, in the United States District Court for the District of Arizona. This trust is primarily funded by a promissory note due May 31, 2010 in the original principal sum of $100,000,000 from AMC and guaranteed by Grupo México. The current balance of the note is $12.5 million.

The Prepetition ASARCO Environmental Trust shall remain in existence, and shall be unaffected by the Reorganization Cases or any related settlements. The Plan Administrator or Reorganized ASARCO shall succeed to ASARCO's administrative role, and shall, as provided in Article 10.2(a) of the Debtors' Plan, act as Performing Entity (as defined in the trust agreement) from time to time, but shall assume no affirmative liabilities or obligations associated with

that role. However, the various environmental settlement agreements were based on the assumption that certain environmental response actions for the settled sites would be reimbursed from the Prepetition ASARCO Environmental Trust.

The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of environmental Claims under the Debtors' Plan.

The Debtors anticipate that some of the environmental Claims shall be paid by the Prepetition ASARCO Environmental Trust. To allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust, Reorganized ASARCO shall hold back from distributions under the Debtors' Plan the amount that the Prepetition ASARCO Environmental Trust would receive if AMC were to have made the required payment (i.e., $12.5 million plus accrued interest in accordance with the note), and place such amount in the Prepetition ASARCO Environmental Trust Escrow. In the event that AMC fails to make the payment remaining due under the note, the Plan Administrator shall pay a corresponding amount to the Prepetition ASARCO Environmental Trust from the Prepetition ASARCO Environmental Trust Escrow, and the Plan Administrator, the trustee of the Prepetition ASARCO Environmental Trust, and the United States shall reasonably cooperate in determining the most efficient mechanism to recover the amount owed by AMC. Upon AMC's payment of the amount due under the note, the Plan Administrator may release a corresponding amount from the Prepetition ASARCO Environmental Trust Escrow and distribute such funds in accordance with the terms and conditions of the Debtors' Plan and the Confirmation Order.

The ASARCO Committee and the Asbestos Claimants' Committee have informed the Debtors that they have material questions regarding the Debtors' obligations to fund, or guarantee funding of, the Prepetition ASARCO Environmental Trust. The Debtors believe that the $12.5 million holdback is necessary to ensure the governmental creditors' support of the Debtors' Plan and is part of their global settlement with the federal and various state governments. This matter has not yet been resolved to the satisfaction of the ASARCO Committee and the Asbestos Claimants' Committee, and if it remains unresolved, may result in one or more objections by the committees to Confirmation of the Debtors' Plan.

(h) Plan Sponsor's Assumption of Certain Environmental Liabilities Under the Debtors' Plan.

Pursuant to Article 10.18 of the Debtors' Plan and section 3.3(e) of the New Plan Sponsor PSA, and, except as provided in section 3.4(f), (g), and (h) of the New Plan Sponsor PSA, from and after the Closing, the Plan Sponsor shall assume, pay, perform, and discharge when due the Assumed Environmental Liabilities (as such term is defined in the New Plan Sponsor PSA).

(i) Plan Distributions Under the Debtors' Plan.

(1) Distributions to Claimants Other than Holders of Unsecured Asbestos Personal Injury Claims and Demands.

- Reorganized ASARCO, on the Initial Distribution Date, and thereafter the Plan Administrator shall be responsible for making all distributions to Claimants other than to the holders of Unsecured Asbestos Personal Injury Claims and Demands.

- Distributions to Professional Persons shall be made by Reorganized ASARCO on the Initial Distribution Date and thereafter by the Plan Administrator pursuant to order of the Bankruptcy Court.

- Except as otherwise expressly provided in the Debtors' Plan, distributions to the holders of Allowed Claims shall be made at the address of the holder of such Claim as indicated in the claims register which shall be maintained by the Claims Agent prior to the Effective Date. After the Effective Date, the Plan Administrator shall be responsible for maintaining the claims register. Claimants must provide the Plan Administrator with written notice of any change of address or any transfer of, or sale of any participation in, any Allowed Claim at least 30 days prior to any distribution by the Plan Administrator in order for the notice to be effective as to that distribution.

- Payments may be made at the election of Reorganized ASARCO or the Plan Administrator by check, wire transfer, or the customary method used for payment by any of the Debtors prior to the Petition Date; *provided, however*, that the United States shall be paid by wire transfer in accordance with wiring instructions provided by the DOJ.

(2) Distributions to Holders of Unsecured Asbestos Personal Injury Claims and Demands.

Distributions to holders of Unsecured Asbestos Personal Injury Claims and Demands shall be made by the Asbestos Trust in accordance with the Asbestos Trust Documents. The Asbestos TDP establishes a priority for distributions to be made by the Asbestos Trust on account of such Claims and Demands.

(3) Distributions on Account of Bondholders' Claims.

All Cash distributions on account of Allowed Bondholders' Claims shall be made to the appropriate Indenture Trustee and further distributions on account of such Claims by the Indenture Trustees to the record holders of the Bondholders' Claims shall be accomplished in accordance with the Indentures and the policies and procedures of DTC. Issuances of Liquidation Trust Interests and SCC litigation Trust Interests shall be made in accordance with the instructions contained in a duly executed letter of transmittal to be delivered to the applicable Trust Registrar in advance of the Effective Date or such other procedure established by the Debtors in consultation with the Indenture Trustee. No distribution of Liquidation Trust Interests or SCC Litigation Trust Interests shall be made without the receipt by the applicable Trust Registrar of a completed letter of transmittal with all required signatures and documents. Pending receipt of such letter of transmittal, any such distributions or issuances shall be held in reserve by the Plan Administrator.

If a distribution is made to the Indenture Trustee, such Indenture Trustee shall administer the distribution in accordance with the Debtors' Plan and the Indenture and, subject to the requirements of Article 15.14 of the Debtors' Plan, shall be compensated for all of its services and disbursements related to distributions pursuant to the Debtors' Plan (and for the related fees and expenses of any counsel or professional engaged by the Indenture Trustee with respect to administering or implementing such distributions), by the Debtors, Reorganized ASARCO, or the Plan Administrator, as appropriate, in the ordinary course upon the presentation of invoices by such Indenture Trustee. Subject to the procedures set forth in Article 15.14 of the Debtors' Plan, the compensation of the Indenture Trustees for services relating to distributions under the Debtors' Plan shall be made without the need for filing any application or request with, or approval by, the Bankruptcy Court.

An Indenture Trustee shall not be required to give any bond, surety, or other security for the performance of its duties with respect to the administration and implementation of distributions.

Any and all distributions on account of Allowed Bondholders' Claims shall be subject to the right of the respective Indenture Trustee to exercise its Charging Lien for any unpaid Indenture Trustee Fee Claim, any fees and expenses of an Indenture Trustee incurred in making distributions pursuant to the Debtors' Plan, and any fees and expenses of an Indenture Trustee incurred in responding to any objection by the Debtors to an Indenture Trustee Fee Claim.

The exercise of an Indenture Trustee's Charging Lien against a distribution to recover payment of any unpaid Indenture Trustee Fee Claim shall not subject the Indenture Trustee to the jurisdiction of the Bankruptcy Court with respect to either the exercise of the Charging Lien or the fees and costs recovered thereby.

Notwithstanding any of the foregoing, nothing herein shall be deemed to impair, waive, or extinguish any rights of the Indenture Trustees under their respective Indentures with respect to the Charging Lien.

(j) Intentionally Omitted.

(k) Procedures for the Treatment of Disputed Claims, Other than Unsecured Asbestos Personal Injury Claims, Under the Debtors' Plan.

(1) Prosecution of Objections to Claims.

Article 14.1 of the Debtors' Plan provides that the Plan Administrator (on behalf of Reorganized ASARCO) shall have the right, after the Effective Date, to file objections to Claims, other than objections to Unsecured Asbestos Personal Injury Claims and Demands and objections to Claims that have been Allowed, and litigate to judgment, settle, or withdraw such objections to Disputed Claims. Without limiting the preceding, the Plan Administrator (on behalf of Reorganized ASARCO) shall have the right to litigate any Disputed Claims either in the Bankruptcy Court or in any court of competent jurisdiction.

Article 14.1 of the Debtors' Plan further provides that, after the Effective Date, only the Asbestos Trust shall have authority to file objections to Unsecured Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections. All such objections shall be resolved through the Asbestos TDP. Unsecured Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with the Debtors' Plan, the Asbestos Trust Agreement, and the Asbestos TDP. For the avoidance of doubt, no objection to Unsecured Asbestos Personal Injury Claims or Demands shall be filed in the Bankruptcy Court.

Except as otherwise provided as to objections to Unsecured Asbestos Personal Injury Claims filed after the Effective Date, nothing in Article 14.1 of the Debtors' Plan shall prejudice any party in interest's right or standing to file objections to Claims.

The Debtors' outstanding objections to the Indenture Trustees' Proofs of Claim (as amended) shall be litigated, if not settled, on a schedule to be agreed upon by the Debtors and the Indenture Trustees, and the Indenture Trustees' rights to seek allowance and payment or the amounts set forth in such Proofs of Claim (as amended) are expressly preserved by the Debtors' Plan.

(2) Objection Deadline.

Within the later of (A) 90 days after the Effective Date or (B) 90 days after a Proof of Claim is filed, objections to Claims (other than Unsecured Asbestos Personal Injury Claims and Demands, which shall be Allowed or disallowed as provided in the Asbestos TDP) shall be filed with the Bankruptcy Court; *provided*, *however*, that Reorganized ASARCO or the Plan Administrator may seek to extend such period (or any extended period) for cause.

(3) Disallowance of Improperly Filed Claims.

Any Administrative Claim or other Claim (except for an Unsecured Asbestos Personal Injury Claim or a Demand) for which the filing of a motion for allowance is required shall be disallowed if such filing is not timely and properly made, subject to the right of the Claimant to seek permission under applicable law to file a late Claim.

(4) No Distributions Pending Allowance.

If a Claim or any portion of a Claim is disputed, no payment or distribution shall be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless and until such Disputed Claim becomes an Allowed Claim.

(5) Disputed Claims Reserve.

The Plan Administrator shall maintain, in accordance with the Plan Administrator's powers and responsibilities under the Debtors' Plan, a Disputed Claims Reserve.

On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit in the Disputed Claims Reserve the Cash, the Liquidation Trust Interests, and the SCC Litigation Trust Interests that would have been distributed to the holders of Disputed Claims (other than Secured Claims to the extent Disputed Secured Claims Reserves are established with respect

to such Claims) if such Disputed Claims had been Allowed Claims as of the Effective Date. The amount to be deposited shall be determined based on the lesser of (A) the asserted amount of the Disputed Claims in the applicable Proofs of Claim; (B) the amount, if any, estimated by the Bankruptcy Court pursuant to (i) section 502(c) of the Bankruptcy Code or (ii) the Debtors' Plan if, after the Effective Date, a motion is filed by the Plan Administrator to estimate such Claim; or (C) the amount otherwise agreed to by the Debtors (or the Plan Administrator, if after the Effective Date) and the holders of such Disputed Claims. The Plan Administrator shall, from time to time, contribute to the Disputed Claims Reserve additional assets received from the Liquidation Trustee or the SCC Litigation Trustee in respect of Disputed Claims.

In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against the ASARCO Residual Assets shall remain in place, pending resolution of the objection to the allegedly Secured Claim. Any Liens asserted by the holder of an allegedly Secured Claim against assets that are sold to the Plan Sponsor or transferred to Reorganized Covington or one of the Trusts shall attach to Cash held by the Plan Administrator in an amount equal to the lesser of (A) the amount of the allegedly Secured Claim; (B) the amount, if any, estimated by the Bankruptcy Court pursuant to section 502(c) of the Bankruptcy Code; (C) the fair market value of such assets, net of any Liens senior to the applicable Liens; or (D) the amount otherwise agreed to by the Debtors and the holders of such allegedly Secured Claims, which Cash shall be held by the Plan Administrator in a Disputed Secured Claims Reserve, pending resolution of the objection to the allegedly Secured Claim.

If a Claim that remains a Disputed Claim as of the Effective Date is thereafter Allowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute from the Disputed Claims Reserve or a Disputed Secured Claims Reserve to the holder of such Claim the Cash that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date to the extent thereafter Allowed.

If a Disputed Claim is disallowed, in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute the Cash reserved in respect of such disallowed Disputed Claim to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement, unless such Cash is required to be returned to the SCC Litigation Trust in accordance with Article 6.2(i) of the Debtors' Plan.

The Debtors' Plan contemplates that the Plan Administrator and Reorganized ASARCO will take the position for tax purposes that the Disputed Claims Reserve and any Disputed Secured Claims Reserves are grantor trusts owned by Reorganized ASARCO. The Plan Administrator and Reorganized ASARCO shall comply with all tax-reporting requirements accordingly, and shall cause taxes attributable to the earnings of the Disputed Claims Reserve or a Disputed Secured Claims Reserve (as well as any taxes directly imposed on the Disputed Claims Reserve or a Disputed Secured Claims Reserve) to be paid out of the assets of the Disputed Claims Reserve or the Disputed Secured Claims Reserve, respectively.

(l) Compliance with Tax Requirements Under the Debtors' Plan.

The Debtors, Reorganized ASARCO, the Plan Administrator, the Indenture Trustees, and the Trusts shall comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions made under the Debtors' Plan or under any Plan Document shall be subject to such withholding and reporting requirements, if any. Any amount so withheld from a distribution or payment to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of the Debtors' Plan and the Plan Documents. Notwithstanding any other provision of the Debtors' Plan, each Person receiving a distribution pursuant to the Debtors' Plan, or any other Plan Document, shall have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Unit, including income and other tax obligations, on account of that distribution.

(m) Unclaimed Property Under the Debtors' Plan.

(1) Distributions by the Asbestos Trust.

Any Cash, assets, or other property to be distributed under the Debtors' Plan by the Asbestos Trust that remain unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise is not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted shall become

vested in, and shall be transferred and delivered to, the Asbestos Trust for use in accordance with the terms of the Asbestos Trust Agreement.

(2) Distributions by the Plan Administrator.

If the distribution to any holder of an Allowed Claim (other than the holder of an Unsecured Asbestos Personal Injury Claim or a Demand) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant), no further distributions shall be made to such holder unless the Plan Administrator is timely notified in writing of such holder's then-current address, at which time all missed distributions shall be made to such holder without interest. Amounts in respect of any undeliverable or unclaimed distributions shall be returned to the Plan Administrator until such distributions are claimed. The Plan Administrator shall segregate and deposit into the Undeliverable and Unclaimed Distribution Reserve all undeliverable or unclaimed distributions for the benefit of all such similarly situated Persons until such time as a distribution becomes deliverable or is claimed or such Claimant's right to the distribution is waived pursuant to Article 13.4(b)(2) of the Debtors' Plan. Nothing contained in the Debtors' Plan shall require Reorganized ASARCO or the Plan Administrator to attempt to locate any holder of an Allowed Claim.

Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant) or otherwise are not deliverable to the Claimant entitled thereto for one year after the initial distribution is made or attempted shall be Forfeited Distributions, and shall become vested in, and shall be transferred and delivered to, the Plan Administrator. In such event, such Claimant shall be deemed to have waived its rights to such payments or distributions under the Debtors' Plan pursuant to section 1143 of the Bankruptcy Code, shall have no further Claim in respect of such distribution, and shall not participate in any further distributions under the Debtors' Plan with respect to such Claim. The Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute the Forfeited Distributions to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

(n) Bar Date for Compensation and Reimbursement Claim Under the Debtors' Plan.

Pursuant to Article 15.12 of the Debtors' Plan, all applications for final allowances of compensation or reimbursement of expenses under section 330 of the Bankruptcy Code or applications for allowance of Administrative Claims arising under subsections (b)(2) through (b)(6) of section 503(b) of the Bankruptcy Code must be filed on or before 90 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court; *except that* any application under section 503(b)(3)(D) of the Bankruptcy Code or any application for a fee enhancement or success fee under the Bankruptcy Code must be filed on or before 60 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Objections to applications of such Professionals Persons or other Entities for compensation or reimbursement of costs and expenses or for substantial contribution Claims must be filed within 20 days after the applicable application for compensation or reimbursement was served.

(o) Subsequent Administrative Claims Bar Date Under the Debtors' Plan.

Pursuant to Article 15.13 of the Debtors' Plan, Claimants, other than Professional Persons, holding Administrative Claims against a Debtor that arise after the Initial Administrative Claims Bar Date and remain unpaid on the Effective Date must file a request for payment of such Subsequent Administrative Claim on or before 45 days after the Effective Date, unless otherwise ordered by the Bankruptcy Court. Any holder of a Subsequent Administrative Claim that is required to file a request for payment of such Claim and that does not file such request prior to the Subsequent Administrative Claims Bar Date shall be forever barred from asserting such Subsequent Administrative Claim against the Debtors, the Reorganized Debtors, and their respective properties, and such Subsequent Administrative Claim shall be deemed discharged as of the Effective Date. Objections to Subsequent Administrative Claims must be filed with the Bankruptcy Court within 20 days after the applicable Subsequent Administrative Claim was served, unless such objection deadline is extended by the Bankruptcy Court. Any Subsequent Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties shall be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding to be paid by ASARCO to the Environmental Custodial Trusts.

(p) Indenture Trustee Fee Claims Under the Debtors' Plan.

If, at least 20 days prior to the commencement of the Confirmation Hearing, the Debtors receive from the Indenture Trustees statement(s) of their respective Indenture Trustee Fee Claims incurred through such date and projected to be incurred after such date, together with such detail as may be reasonably requested by the Debtors, the Debtors or Reorganized ASARCO, as appropriate, shall pay, on the Effective Date, the Indenture Trustee Fee Claims, in full, in Cash. Notwithstanding the foregoing, to the extent that the Debtors dispute any portion of the Indenture Trustee Fee Claims, prior to the Effective Date the Debtors shall file with the Bankruptcy Court and serve on the appropriate Indenture Trustee an objection to such Indenture Trustee Fee Claim stating with specificity the Debtors' objections to such Indenture Trustee Fee Claim. On the Effective Date, the Debtors or Reorganized ASARCO, as appropriate, shall reserve an amount equal to the amount of disputed Indenture Trustee Fee Claims and such dispute shall be consensually resolved by the parties or presented to the Bankruptcy Court for adjudication. The Indenture Trustees reserve the right to assert whatever fees and expenses they believe should be Allowed as Indenture Trustee Fee Claims, and the Debtors and Reorganized ASARCO reserve the right to object to any such amounts on any applicable grounds.

Subject to the payment of the non-disputed portion of the Indenture Trustee Fee Claims and the establishment of the reserve with respect to any disputed portion of the Indenture Trustee Fee Claims, and the payment of all other fees and expenses (including fees and expenses of counsel and other professionals) incurred by the Indenture Trustees, to the extent payment of the foregoing fees and expenses is permitted by the Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in the Debtors' Plan or in connection with any distributions to be made under the Debtors' Plan, if any, the Indenture Trustees, and their successors and assigns, shall be relieved of all obligations as Indenture Trustees effective as of the Effective Date.

3.10 Injunctions, Releases, and Discharge Under the Debtors' Plan.

The Debtors' Plan provides for entry of various releases and permanent injunctions in favor of the ASARCO Protected Parties. These releases and injunctions are an essential part of the Debtors' Plan and, if entered, shall limit the rights of holders of Unsecured Asbestos Personal Injury Claims and Demands and others against any ASARCO Protected Party. If these releases and injunctions are not entered, the Debtors shall have the right not to proceed with the Debtors' Plan.

The Parent believes that the Debtors' Plan is patently unconfirmable because it improperly grants a discharge to many non-Debtor entities in violation of Fifth Circuit law prohibiting the discharge of debts of non-debtors under Bankruptcy Code section 524. The Debtors strenuously disagree with the Parent's contentions.

Additionally, the Parent believes that the Debtors' Plan is patently unconfirmable because it contains improper releases, exonerations, and exculpations in Article 11.3, 11.5, and 11.7 of the Debtors' Plan, all of which are not permitted under section 1129(a)(1) of the Bankruptcy Code. In particular, the Parent asserts that the Debtors' Plan grants a discharge to the Debtors in violation of section 1141(d)(3) of the Bankruptcy Code, which prohibits a discharge of a debtor if (a) such plan provides for the liquidation of all or substantially all of the debtor's assets, (b) the debtor will not engage in business after the consummation of the plan, and (c) the debtor would be denied a discharge under section 727(a) of the Bankruptcy Code. According to the Parent, all of these sections apply to the Debtors. The Debtors disagree with the Parent's contentions.

(a) Discharge and Release Under the Debtors' Plan.

Article 11.1 of the Debtors' Plan provides that, except as otherwise expressly provided in the Debtors' Plan, the rights afforded therein and the treatment of all Claims, Demands, and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims, Demands, and Interests of any nature whatsoever, against the Debtors or their respective Estates, assets, properties, or interests in property. Except as otherwise provided in the Debtors' Plan, on the Effective Date, all Claims and Demands against and Interests in the Debtors shall be satisfied, discharged, and released in full. The PBGC asserts that the Debtors' Plan cannot discharge or release any Claims against any person other than the Debtors with respect to the Hourly and Salaried Plans, including any Claim for breach of fiduciary duty or any Claim asserted by the PBGC. The Debtors have not taken a formal position with respect to the discharge of PBGC-related Claims against non-Debtor parties and they reserve all rights that any of them may have to assert this position. The PBGC also reserves all rights that it may have to object to Articles 8.8 and 11 of the Debtors' Plan on this and any other grounds as may be appropriate.

(b) Discharge Injunction Under the Debtors' Plan.

Article 11.2 of the Debtors' Plan contains an injunction to give force and effect to the discharge granted under the Debtors' Plan. Except as otherwise expressly provided in the Debtors' Plan, the discharge and release set forth in Article 11.1 of the Debtors' Plan shall operate as an injunction permanently prohibiting and enjoining the commencement or continuation of any action or the employment of process with respect to, or any act to collect, recover from, or offset (1) any Claim and Demand discharged and released in Article 11.1 of the Debtors' Plan and (2) any cause of action, whether known or unknown, based on the same subject matter as any Claim or Demand discharged and released in Article 11.1.

(c) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction Under the Debtors' Plan.

To supplement the injunctive effect of the Discharge Injunction, Article 11.3 of the Debtors' Plan provides for the Confirmation Order to contain two additional injunctions to take effect on the Effective Date. These injunctions, which are described and set forth in full below, are:

- the Permanent Channeling Injunction; and
- the Asbestos Insurance Company Injunction.

(1) Permanent Channeling Injunction Under the Debtors' Plan.

The Permanent Channeling Injunction shall protect ASARCO Protected Parties from direct or indirect liability on account of any Unsecured Asbestos Personal Injury Claim or Demand assertable against an ASARCO Protected Party.

The term "ASARCO Protected Party" means each of the following:

- the Debtors and their predecessors;
- the Reorganized Debtors;
- the ASARCO Protected Non-Debtor Affiliates and their predecessors;
- the Plan Sponsor and the Guarantor (and any of their respective Affiliates);
- the Settling Asbestos Insurance Companies;
- the Trusts (except to the extent that the Asbestos Trust Agreement, the Asbestos TDP, or both expressly permit litigation against the Asbestos Trust);
- the Trustees;
- the Asbestos TAC;
- the FCR;
- the Committees, including their members in their member capacities and counsel for such members solely in connection with such representation;
- the Plan Administrator;
- the Examiner;
- employee benefit plan "fiduciaries" (within the meaning of section 3(21) of ERISA) who are directors or employees of a Debtor;
- the Indenture Trustees; and
- the present and former directors, officers, agents, attorneys, accountants, consultants, financial advisors, investment bankers, professionals, experts, and employees of any of the foregoing, in their respective capacities as such, including, without limitation, the Protected Officers and Directors;

provided, however, that the term "ASARCO Protected Party" does not include the non-Debtor named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation, or Grupo México and its Affiliates other than ASARCO and ASARCO's direct or indirect subsidiaries.

The USW has requested that it become an ASARCO Protected Party. The Debtors are considering the request of the USW and, if warranted and to the extent authorized by law, and after consultation with other creditor constituents, may amend the Debtors' Plan and Debtors' Glossary in accordance with such request.

The full text of the Permanent Channeling Injunction is set forth below:

(A) *Terms. In order to induce, preserve, and promote the settlements contemplated by and provided for in the Debtors' Plan, and pursuant to section 524(g) or 105(a) of the Bankruptcy Code (or both), all Unsecured Asbestos Personal Injury Claims and Demands shall be channeled to the Asbestos Trust for a remedy under the Asbestos TDP, and all holders of Unsecured Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Unsecured Asbestos Personal Injury Claim or Demand shall be permanently and forever stayed, restrained, and enjoined from taking any action against any ASARCO Protected Party (or any property or interest in property of an ASARCO Protected Party) with respect to such Unsecured Asbestos Personal Injury Claim or Demand, including, without limitation, for the purpose of directly or indirectly obtaining a judgment, collecting, recovering, or receiving payments, satisfaction, or recovery with respect to such Unsecured Asbestos Personal Injury Claim or Demand, including, without limitation:*

(i) *commencing, conducting, or continuing in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any Unsecured Asbestos Personal Injury Claim or Demand against any ASARCO Protected Party, or against the property or interests in property of any ASARCO Protected Party;*

(ii) *enforcing, levying, attaching (including by prejudgment attachment), collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or other order against any ASARCO Protected Party, or against the property or interests in property of any ASARCO Protected Party, with respect to any Unsecured Asbestos Personal Injury Claim or Demand;*

(iii) *creating, perfecting, or otherwise enforcing in any manner, directly or indirectly, any Lien of any kind against any ASARCO Protected Party, or the property or interests in property of any ASARCO Protected Party, with respect to any Unsecured Asbestos Personal Injury Claim or Demand;*

(iv) *except as otherwise specifically provided in the Debtors' Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind in any manner, directly or indirectly, against any obligation due any ASARCO Protected Party, or against the property or interests in property of any ASARCO Protected Party, with respect to any Unsecured Asbestos Personal Injury Claim or Demand; and*

(v) *proceeding or taking any action, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Debtors' Plan, the Debtors' Plan Documents, or the Asbestos Trust Documents relating to any Unsecured Asbestos Personal Injury Claim or Demand.*

(B) *Reservations. Notwithstanding anything to the contrary above or in the Debtors' Plan, neither the Permanent Channeling Injunction nor the Debtors' Plan shall enjoin, alter, diminish, or impair:*

(i) *the rights of Entities to the treatment accorded them under Articles II and IV of the Debtors' Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims or Demands to assert such Unsecured Asbestos Personal Injury Claims or Demands in accordance with the Asbestos TDP;*

(ii) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Asbestos Trust Expenses against the Asbestos Trust;*

(iii) *the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;*

(iv) *the rights of the Asbestos Trust, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Asbestos Trust being, and deemed to be, for all*

purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims and Demands and other recoveries from an Asbestos Insurance Company, in its capacity as such); or

(v) *the right of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Debtors' Plan.*

(2) Asbestos Insurance Company Injunction Under the Debtors' Plan.

The Asbestos Insurance Company Injunction shall bar the assertion or prosecution of Claims, Demands, or causes of action against Settling Asbestos Insurance Companies by any Entity, to the extent such Claim is connected in any way to:

- any Unsecured Asbestos Personal Injury Claim or Demand against or relating to the Debtors;
- any Unsecured Asbestos Personal Injury Claim or Demand relating to Asbestos In-Place Insurance Coverage; or
- an Asbestos Insurance Policy.

The full text of the Asbestos Insurance Company Injunction is set forth below:

(A) *Terms. In order to preserve and promote the property of the Estate, as well as the settlements contemplated by and provided for in the Debtors' Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in the Debtors' Plan, pursuant to section 105(a) of the Bankruptcy Code, all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert any Claim, Demand, or cause of action (including, without limitation, any Unsecured Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Asbestos Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Unsecured Asbestos Personal Injury Claim or Demand, Asbestos In-Place Insurance Coverage, or an Asbestos Insurance Policy, shall be permanently and forever stayed, restrained, and enjoined from taking any action against such Settling Asbestos Insurance Company for the purpose of directly or indirectly collecting, recovering, or receiving payments, satisfaction, or recovery with respect to any such Claim, Demand, or cause of action, including, without limitation:*

(i) *commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind (including a judicial, arbitration, administrative, or other proceeding) in any forum with respect to any such Claim, Demand, or cause of action against any Settling Asbestos Insurance Company, or against the property or interests in property of any Settling Asbestos Insurance Company;*

(ii) *enforcing, levying, attaching, collecting, or otherwise recovering, by any manner or means, whether directly or indirectly, any judgment, award, decree, or order against any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action;*

(iii) *creating, perfecting, or otherwise enforcing, in any manner, directly or indirectly, any Lien of any kind against any Settling Asbestos Insurance Company, or the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action;*

(iv) *except as otherwise specifically provided in the Debtors' Plan, asserting or accomplishing any setoff, right of subrogation, indemnity, contribution, reimbursement, or recoupment of any kind and in any manner, directly or indirectly, against any obligation due any Settling Asbestos Insurance Company or against the property or interests in property of any Settling Asbestos Insurance Company with respect to any such Claim, Demand, or cause of action; and*

(v) *taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Debtors' Plan Documents relating to such Claim, Demand, or cause of action.*

(B) *Reservations. Notwithstanding anything to the contrary above or in the Debtors' Plan, neither the Asbestos Insurance Company Injunction nor the Debtors' Plan shall enjoin, alter, diminish, or impair:*

(i) *the rights of Entities to the treatment accorded them under Articles II and IV of the Debtors' Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims or Demands to assert Unsecured Asbestos Personal Injury Claims or Demands against the Asbestos Trust in accordance with the Asbestos TDP;*

(ii) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Asbestos Trust Expenses against the Asbestos Trust;*

(iii) *the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;*

(iv) *the rights of the Asbestos Trust, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Asbestos Trust being, and deemed to be, for all purposes of insurance and indemnity, the successor to the Debtors in respect of all Asbestos Personal Injury Claims, Demands, and other recoveries from an Asbestos Insurance Company, in its capacity as such);*

(v) *the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Debtors' Plan; or*

(vi) *the rights of the Asbestos Trust or the Asbestos Trustees to seek relief from the Asbestos Insurance Company Injunction should a Settling Asbestos Insurance Company fail to fulfill all obligations under an Asbestos Insurance Settlement Agreement.*

(3) Permanent Channeling Injunction and the Marshalling of Asbestos Trust Assets Under the Debtors' Plan.

If any court in the future shall modify, vacate, or in any way limit or restrict the effect of the Permanent Channeling Injunction, whether such injunction was issued pursuant to section 524(g) of the Bankruptcy Code or any other applicable provision of the Bankruptcy Code, all holders of Unsecured Asbestos Personal Injury Claims and Demands and all Entities which have held or asserted, which hold or assert, or which may in the future hold or assert, any Unsecured Asbestos Personal Injury Claim or Demand shall, as a matter of equity, first be required to exhaust any and all of the Asbestos Trust Assets before pursuing any action against any of the ASARCO Protected Parties or the Sold Assets.

(d) Limitation of Injunctions Under the Debtors' Plan.

Notwithstanding any other provisions of the Debtors' Plan to the contrary, the releases set forth in Article 11.1 and the Injunctions set forth in Article 11.2 and 11.3 of the Debtors' Plan, respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Asbestos Trust for payment of (1) Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Asbestos TDP or (2) Asbestos Trust Expenses, and such releases and Injunctions shall not enjoin Reorganized ASARCO or the Asbestos Trust from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

(e) Term of Certain Injunctions and Automatic Stay Under the Debtors' Plan.

Article 12.1 of the Debtors' Plan provides that all of the Injunctions and stays provided for, in, or in connection with the Reorganization Cases, whether pursuant to section 105, section 362, section 524, or any other provision of the Bankruptcy Code, other applicable law, or court order, in effect immediately prior to Confirmation shall remain in full force and effect until the Injunctions become effective and thereafter if so provided in the Debtors' Plan, the Confirmation Order or by their own terms. In addition, on and after Confirmation Date, the Debtors may seek further orders as they deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

Each of the Injunctions shall become effective on the Effective Date and shall continue in effect at all times thereafter, and may not be vacated, amended, or modified after the Effective Date, except as otherwise provided in the Debtors' Plan. Notwithstanding anything to the contrary contained in the Debtors' Plan, all actions in the nature of those to be enjoined by the Injunctions shall be enjoined during the period between the Confirmation Date and the Effective Date.

(f) Setoffs and Recoupments Under the Debtors' Plan.

Subject to the limitations provided in section 553 of the Bankruptcy Code, Article 13.6 of the Debtors' Plan provides that Reorganized ASARCO or the Plan Administrator, as the case may be, may, but shall not be required to, offset against or recoup from the holder of any Allowed Claim on which payments or other distributions are to be made pursuant to the Debtors' Plan any Claims of any nature whatsoever the Estates may have against the holder of such Claim but neither the failure to do so, nor the allowance of any Claim under the Debtors' Plan, shall constitute a waiver or release by Reorganized ASARCO or the Plan Administrator, as the case may be, of any such Claim against such holder or right of setoff or recoupment that the Estates may have against the holder of such Allowed Claim.

(g) Exoneration and Reliance Under the Debtors' Plan.

Article 11.5 of the Debtors' Plan sets forth protections for certain participants in the plan process. It provides that, to the fullest extent allowable by law, no ASARCO Protected Party or the USW shall be liable (other than for criminal liability, willful misconduct, gross negligence, bad faith, or *ultra vires* acts) to any holder of a Claim, Demand, or Interest or any other Entity with respect to any action, omission, forbearance from action, decision, or exercise of discretion taken at any time through the Effective Date in connection with:

- the management or operation of any of the Debtors or the discharge of their duties under the Bankruptcy Code;
- the solicitation, negotiation, or implementation of any of the transactions provided for, or contemplated in, the Debtors' Plan or the Debtors' Plan Documents including, without limitation, the marketing of the Sold Assets, the Plan Sponsor selection process, the selection of the Plan Sponsor, and the sale of the Sold Assets to the Plan Sponsor;
- any action taken in connection with either the enforcement of the rights of any Debtor against any Entities or the defense of Claims or Demands asserted against any such Debtor with regard to the Reorganization Cases;
- any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of the Debtors' Plan, the Debtors' Plan Documents, or related agreements, instruments, or other documents;
- the administration of the Debtors' Plan or the assets and property to be distributed pursuant to the Debtors' Plan; or
- the administration of any of the Estates.

Each ASARCO Protected Party and the USW shall be deemed to have participated in each of the Reorganization Cases in good faith and in compliance with all applicable provisions of the Bankruptcy Code.

Nothing in Article 11.5 of the Debtors' Plan shall prevent the enforcement of the terms of the Debtors' Plan.

If any holder of a Claim, Demand, or Interest or if any Entity other than a Governmental Unit brings an action, suit, or proceeding covered by Article 11.5 of the Debtors' Plan or in any other way arising from or related to any of the Reorganization Cases, the Debtors, or the Trusts (other than as expressly provided in the Debtors' Plan or the Asbestos TDP) and does not prevail, such holder or other Entity must pay the reasonable attorneys' fees and costs of the ASARCO Protected Party. Moreover, as a condition to going forward with such action, suit, or proceeding, such holder of a Claim, Demand, or Interest, or other Entity must, at the outset, provide appropriate proof and assurances of his, her, or

its capacity to pay the ASARCO Protected Party's reasonable attorneys' fees and costs in the event the holder or other Entity fails to prevail. In order for a holder of a Claim, Demand, or Interest, or other Entity to be considered a prevailing party, such party must be awarded an enforceable judgment on the merits that constitutes a material alteration of the legal relationship between such party and an ASARCO Protected Party, and does not include a judgment that awards nominal damages. Article 11.6 of the Debtors' Plan does not impose any obligation on any ASARCO Protected Party to pay, or provide appropriate proof and financial assurance of his, her, or its capacity to pay, reasonable attorneys' fees and costs in the event that the holder of a Claim, Demand, or Interest or other Entity prevails in an action, suit, or proceeding that is filed against such ASARCO Protected Party.

(h) Interpretation Regarding Article XI of the Debtors' Plan and the Original Plan Sponsor PSA.

Notwithstanding anything else contained in the Debtors' Plan, for the purpose of construing whether the Plan Sponsor, the Guarantor, or any of their respective Affiliates shall be entitled to any of the protections or other rights and benefits afforded in any release, exoneration, exculpation, injunction, indemnity, fee shifting provision, or any other protection outlined in Article XI of the Debtors' Plan, upon such provisions becoming effective, no action taken by the Plan Sponsor, the Guarantor, or any of their respective Affiliates in connection with the Original Plan Sponsor PSA (including its renegotiation or any alleged breach, termination, or repudiation thereof) shall be interpreted as, constructed as, or deemed to have been, an act taken other than in good faith, or to have been an act constituting willful misconduct.

3.11 Additional Releases Under the Debtors' Plan.

The Parent believes that the Debtors' Plan is patently unconfirmable because it contains exculpation provisions that are inappropriately broad, including exculpation of the ASARCO Protected Parties even for willful misconduct, bad faith, criminal liability, or *ultra vires* acts, and providing that $20 million, that would otherwise be available to creditors, would be withheld to indemnify the ASARCO Protected Parties if a lawsuit is brought within 90 days after the Effective Date. The Debtors disagree with the Parent's contentions.

Article 11.7 of the Debtors' Plan provides that, to the fullest extent allowable by law, on, and as of, the Effective Date, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, each ASARCO Protected Party that is not a Debtor (acting in any capacity whatsoever) shall be forever released and discharged from any and all Claims, Demands, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, or claims in respect of equitable subordination, and liabilities through the Effective Date (including all Claims and Demands based on or arising out of facts or circumstances that existed as of or prior to Confirmation of the Debtors' Plan in any of the Reorganization Cases, including, without limitation, Claims and Demands based on breach of contract, negligence, or strict liability, and further including, without limitation, any derivative claims asserted on behalf of any of the Debtors or claims based on third party beneficiary status, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that any of the Debtors, their respective Estates, or any of the Reorganized Debtors would have been legally entitled to assert in their own right, whether individually or collectively) which any of the Debtors, their respective Estates, or any of the Reorganized Debtors may have against any of them in any way related to any of the Reorganization Cases or any of the Debtors (or their respective predecessors or Affiliates); *provided, however*, that nothing in Article 11.7 of the Debtors' Plan shall impair or otherwise affect the rights of the Asbestos Trust or Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy. No ASARCO Protected Party shall be responsible for any obligations of any of the Debtors except those expressly assumed by those parties in the Debtors' Plan (and only to the extent so assumed). The releases provided for in Article 11.7 of the Debtors' Plan shall not extend to any claims by any Governmental Unit with respect to criminal liability, willful misconduct, gross negligence, or bad faith, or *ultra vires* acts.

3.12 Exculpation Injunction Under the Debtors' Plan.

Article 11.8(a) of the Debtors' Plan provides that all Entities are permanently enjoined from initiating a suit against any ASARCO Protected Party, the USW, their respective successors or assigns, or their respective assets, properties, or interests in property regarding any Claims, Demands, or any other right to legal or equitable relief (regardless of whether such right can be reduced to a right to payment or whether or not the facts or legal bases therefore were known or existed prior to the Effective Date) that are released under Article 11.5, 11.7, or 11.9 of the Debtors' Plan; *provided, however*, that this injunction shall not apply to Claims based solely upon willful misconduct, gross negligence, or bad faith, or any criminal liability, or liability for *ultra vires* acts. Any such action by a non-Governmental Unit shall be

brought in the Bankruptcy Court within 90 days after the Effective Date. Nothing in Article 11.8 of the Debtors' Plan shall prevent the enforcement of the terms of the Debtors' Plan.

3.13 Indemnities Under the Debtors' Plan.

Article 11.8(b) of the Debtors' Plan provides that Reorganized ASARCO shall defend, hold harmless, and indemnify to the fullest extent permitted by applicable law each of the Protected Officers and Directors and other appropriate parties as designated by ASARCO in its sole discretion not less than 10 days prior to the commencement of the Confirmation Hearing with respect to any Claim, Demand, or liability arising from any action, failure or omission to act, or other matter related to any of the Debtors or any of the Reorganization Cases through and including the Effective Date. If and whenever any indemnified party is, or is threatened to be made, a party to any action, suit, arbitration, investigation, or other proceeding that might give rise to a right of indemnification under Article 11.8 of the Debtors' Plan, Reorganized ASARCO shall, to the fullest extent permitted by applicable law, reimburse that indemnified party all expenses (including attorneys' fees) reasonably incurred by or on behalf of that indemnified party in connection therewith within 60 days after Reorganized ASARCO receives a statement or statements from that indemnified party requesting reimbursement from time to time, whether prior to or after final disposition of such action, suit, arbitration, investigation, or other proceeding. In furtherance of these obligations, on the Effective Date, the Plan Administrator shall establish an escrow account to address any of Reorganized ASARCO's indemnification obligations under Article 11.8 of the Debtors' Plan. On the Effective Date (or as soon thereafter as is reasonably practicable), the Indemnification Escrow shall be funded in the amount of $20 million by ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be. Prior to the Effective Date, ASARCO shall purchase an errors-and-omissions insurance policy for the benefit of each of the indemnified parties in an amount equal to the errors-and-omissions coverage currently maintained by the Debtors. The term of the policy shall be six years following the Effective Date. In addition, prior to the Effective Date, ASARCO shall exercise the six-year run-off option available under its existing directors-and-officers liability insurance. Each of the Protected Officers and Directors shall be entitled to retain independent counsel in connection with any Claim or liability asserted against him in connection with his service in the Reorganization Cases and to assist him with any issues arising in connection with the termination of his service as officer or director of any Debtor. The fees and expenses of such counsel shall be paid out of the Indemnification Escrow.

As soon as practicable after the sixth year anniversary of the Effective Date or upon such later date as the Plan Administrator deems it appropriate, the Plan Administrator shall distribute any funds remaining in the Indemnification Escrow to the Liquidation Trust for distribution in accordance with the terms and conditions of the Liquidation Trust Agreement.

3.14 Consensual Releases by Holders of Claims, Demands, and Interests Under the Debtors' Plan.

To the fullest extent allowable by law, on the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, holders of Claims and Interests voting to accept the Debtors' Plan and holders of Demands shall be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each ASARCO Protected Party that is not a Debtor from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever relating to the Debtors, the Debtors' property, events giving rise to the Reorganization Cases, the Reorganization Cases, the Original Plan Sponsor PSA, or the Debtors' Plan, including, without limitation, Claims and Demands based on breach of contract, negligence, or strict liability, and including, without limitation, any derivative claims asserted on behalf of any Debtor, whether known or unknown, foreseen or unforeseen, existing or hereafter arising, in law, equity, or otherwise, that such holder of a Claim, Demand, or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (a) any of the Debtors; (b) any of the Reorganization Cases; (c) the subject matter of, or the transactions or events giving rise to, any Claim, Demand, or Interest; (d) the business or contractual arrangements between any Debtor and any ASARCO Protected Party; (e) the restructuring of Claims, Demands, and Interests prior to or in any of the Reorganization Cases; (f) the negotiation, formulation, or preparation of the Debtors' Plan, the Debtors' Plan Documents or related agreements, instruments, or other documents; or (g) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date; provided that the above described release shall apply to all holders of Claims and Interests irrespective of how such parties vote (or whether such parties vote) in connection with the Debtors' Plan, to the extent that such release relates to any of the above described conduct by any ASARCO Protected Party that has been the subject of a release by the Debtors which has been approved by the Bankruptcy Court. Notwithstanding the foregoing, this release shall not apply to Claims, Demands, or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to act in good faith, or where such action or omission constitutes willful misconduct or gross negligence; provided, however,

that nothing in Article 11.9 of the Debtors' Plan shall impair or otherwise affect the rights of the Asbestos Trust or Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy.

3.15 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies Under the Debtors' Plan.

Pursuant to Article 11.10 of the Debtors' Plan and except as otherwise provided therein, all fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights, or interests released under the Asbestos Insurance Settlement Agreement shall be released, and the Asbestos Trust shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights, and interests released under the Asbestos Insurance Settlement Agreement. Article 11.10 of the Debtors' Plan does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements, as listed in **Exhibit 14-A** to the Debtors' Plan.

3.16 Limitations Regarding Governmental Units and the U.S. Trustee Under the Debtors' Plan.

The releases, discharges, satisfactions, exonerations, exculpations, and injunctions provided under the Debtors' Plan and the Confirmation Order shall not apply to any liability to a Governmental Unit arising after the Effective Date; *provided, however*, that no Governmental Unit shall assert any Claim or other cause of action under Environmental Law against the entities administering the Debtors' Plan for the benefit of the creditors, the assets or funds being held by the entities administering the Debtors' Plan for the benefit of the creditors, or the Reorganized Debtors based on or arising from acts, omissions, or conduct of the Debtors prior to February 1, 2009 (including, without limitation, continuing releases related to acts, omissions, or conduct prior to February 1, 2009); *except provided further, however*, that nothing in the Debtors' Plan or the Confirmation Order (a) precludes the enforcement of the Hayden Settlement Agreement, the Mission Mine Settlement Agreement, or the Arizona NRD Settlement Agreement as provided therein; (b) shall prevent the governments or Environmental Custodial Trusts from recovering under any confirmed plan on any Allowed Claim or payment due with respect to any site listed in **Exhibit 12** to the Debtors' Plan or for any Allowed Claim for a permit fee or similar assessment or charge owed to the governments under Environmental Law; (c) releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law that any Entity is subject to as the current owner or current operator of property after the Effective Date; (d) releases, discharges, precludes, or enjoins any Allowed Claim or liability of a Debtor's Estate as the current owner or current operator of property between February 1, 2009 and the Effective Date; (e) for sites covered by an approved Environmental Custodial Trust Settlement Agreement, permits the governments or Environmental Custodial Trusts to recover more than permitted under the approved Environmental Custodial Trust Settlement Agreement, nor does it affect the covenants not to sue in the Environmental Custodial Trust Settlement Agreements or the reservation of rights; (f) releases, discharges, precludes, or enjoins any on-site liability of a Debtor's Estate as the owner, operator, or lessee of the Ray mine, the Mission Mine, the Amarillo copper smelter, the Tucson office, or the Ventura Warehouse; (g) precludes enforcement by the United States or a state of any requirements under an Environmental Custodial Trust Agreement against an Environmental Custodial Trustee; or (h) releases, discharges, precludes, or enjoins the enforcement of any liability to a Governmental Unit under Environmental Law for criminal liability (except to the extent that such liabilities are dischargeable).

Notwithstanding anything to the contrary, nothing in Article XI of the Debtors' Plan shall apply to the rights of the U.S. Trustee to fulfill his obligations under the Bankruptcy Code and title 28 of the United States Code or the obligations of the Debtors or the Reorganized Debtors to the U.S. Trustee.

3.17 Limitation Regarding Flow Through Bonds Under the Debtors' Plan.

In accordance with the SPT Settlement Agreement, and except as otherwise provided in Article 8.9 of the Debtors' Plan in regards to SPT Bond Nos. 394729 and 403998, ASARCO's obligations under and relating to the Flow Through Bonds and the SPT Indemnity Agreement as it relates to the Flow Through Bonds shall not be discharged by Confirmation of the Debtors' Plan or upon ASARCO's emergence from the Reorganization Cases.

3.18 No Liability for Tax Claims Under the Debtors' Plan.

Pursuant to Article 12.2 of the Debtors' Plan, unless a taxing authority has asserted a Claim against a Debtor prior to the applicable Bar Date, no Claim of such taxing authority shall be Allowed against any of the Debtors or the Reorganized Debtors for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of a Debtor, Reorganized Debtor, or any other Entity to have paid taxes or to have filed any tax return (including, without limitation, any income tax return or franchise tax return) in or for any prior year or arising out of an audit of any return for a period before the Petition Date.

3.19 Certain Matters Incident to Confirmation of the Debtors' Plan.

(a) No Successor Liability Under the Debtors' Plan.

Article 12.3(a) of the Debtors' Plan provides that, except as otherwise expressly provided in the Debtors' Plan, including Article 12.3 thereof, no ASARCO Protected Party shall be deemed a successor or successor in interest to the Debtors or to any Entity for which the Debtors may be held legally responsible, by reason of any theory of law or equity, and no ASARCO Protected Party can be responsible for any successor or transferee liability of any kind or character, except to the extent that the Asbestos Trust, Reorganized ASARCO, or both, or are the successor or successors in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries. Article 12.3(b) of the Debtors' Plan also provides that, except as otherwise expressly provided in the Debtors' Plan, no ASARCO Protected Party shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of any of the Debtors or the Reorganized Debtors whether arising before, on, or after the Confirmation Date.

(b) Revesting of Assets Under the Debtors' Plan.

Revesting of assets in Reorganized ASARCO is addressed in Article 10.19 of the Debtors' Plan, which provides that, on the Effective Date, all of the Debtors' rights, title, and interests in and to the Sold Assets shall vest in the Plan Sponsor, free and clear of any Liens, Claims, interests, and encumbrances, other than Permitted Liens and the Assumed Liabilities pursuant to section 363(f) of the Bankruptcy Code (including, without limitation, any right of setoff, recoupment, netting, or deduction).

Except as otherwise expressly provided in the Debtors' Plan or the Debtors' Plan Documents, on the Effective Date, the ASARCO Residual Assets, including, without limitation, the Plan Sales Proceeds, the Distributable Cash, and the Vested Causes of Action, shall vest in Reorganized ASARCO, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court.

The Covington Residual Assets, including, without limitation, the Madera Property shall vest in Reorganized Covington, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court.

(c) Vesting and Enforcement of Causes of Action Under the Debtors' Plan.

The Vested Causes of Action (as listed in **Exhibit 14-A** to the Debtors' Plan) shall vest in Reorganized ASARCO. The Plan Administrator (after consultation with and approval by the Plan Administration Committee) shall be authorized to prosecute, compromise and settle, abandon, release, or dismiss the Vested Causes of Action, without need for approval by the Bankruptcy Court. After the Effective Date, the Plan Administrator may, in the Plan Administrator's discretion, file a notice of discharge with a copy of the Confirmation Order in any lawsuits in which ASARCO or any other Debtor was named as a defendant prior to the Effective Date.

The Debtors' respective rights, title, and interests in and to the Liquidation Trust Claims (as listed in **Exhibit 14-B** to the Debtors' Plan) shall vest in the Liquidation Trust. The Liquidation Trust may prosecute, compromise and settle, abandon, release, or dismiss the Liquidation Trust Claims, without need for approval by the Bankruptcy Court.

The Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims (as listed in **Exhibit 14-C** to the Debtors' Plan) shall vest in the SCC Litigation Trustee. The SCC Litigation Trust may prosecute,

compromise and settle, abandon, release, or dismiss the SCC Litigation Trust Claims, without need for approval by the Bankruptcy Court.

The Debtors' respective rights, title, and interests in and to the causes of action listed in **Exhibit 14-D** to the Debtors' Plan shall vest in the Asbestos Trust. The Asbestos Trust may prosecute, compromise and settle, abandon, release, or dismiss such causes of action, without need for approval by the Bankruptcy Court.

(d) Dismissal of Certain Litigation Under the Debtors' Plan.

Pursuant to Article 10.21 of the Debtors' Plan, Adversary Proceeding No. 05-02030 filed by the Asbestos Subsidiary Debtors against Anne M. Aaberg, *et al*., and Adversary Proceeding No. 06-02056, filed by ASARCO, *et al*,, against Anne M. Aaberg, *et al*., both pending in the Bankruptcy Court, shall be dismissed on the Effective Date. Each lawsuit sought injunctive relief against Asbestos Personal Injury Claims. The injunctions granted in these adversary proceedings shall be replaced by the Debtors' Plan's Permanent Channeling Injunction and the Asbestos Insurance Company Injunction on the Effective Date.

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

(e) Settlement of Certain Causes of Action Under the Debtors' Plan.

Article 10.3, 10.26, and 10.27 of the Debtors' Plan provide that Confirmation of the Debtors' Plan shall constitute approval pursuant to Bankruptcy Rule 9019 of the Asbestos Settlement and all Asbestos Insurance Settlement Agreements, and shall cause the Mission Mine Settlement Agreement (which has already been approved by the Bankruptcy Court pursuant to a motion under Bankruptcy Rule 9019) to be binding upon all landowners and allottees who own interests in the land affected by the Mission Mine Settlement Agreement.

(f) Asbestos Insurance Actions and Asbestos Insurance Recoveries.

Article 7.8 of the Debtors' Plan provides that the right to control the Asbestos Insurance Actions and all Asbestos Insurance Recoveries, including negotiations relating thereto and settlements thereof, shall vest in the Asbestos Trust on and after the Effective Date. Notwithstanding the foregoing, Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Trustees in pursuing the Asbestos Insurance Actions, and shall provide the representatives of the Asbestos Trust with reasonable access to personnel and books and records of Reorganized ASARCO and the Plan Sponsor relating to the Asbestos Insurance Actions, to enable the Asbestos Trustees to perform the Asbestos Trustees' tasks under the Asbestos Trust Agreement and the Debtors' Plan, as is discussed in Article 7.13 of the Debtors' Plan in regards to Reorganized ASARCO; provided that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

(g) Assumption and Rejection of Unexpired Leases and Executory Contracts Under the Debtors' Plan.

Under Article 8.1 of the Debtors' Plan, on the Effective Date, except as otherwise provided in the Debtors' Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by a Debtor pursuant to an order of the Bankruptcy Court shall be deemed rejected by such Debtor under sections 365(a) and 1123 of the Bankruptcy Code, other than those executory contracts and unexpired leases that are (1) listed in **Exhibit 2** to the Debtors' Plan (as such list may be amended, supplemented, or modified by the Debtors on or before the Confirmation Date) or (2) subject to a motion to assume that is pending on the Effective Date. Entry of the Confirmation Order shall constitute approval of (A) such rejections, and (B)(i) the assumption by ASARCO and assignment to the Plan Sponsor of the executory contracts and unexpired leases listed in **Exhibit 2-A** to the Debtors' Plan; (ii) the assumption by ASARCO and assignment to an Environmental Custodial Trust of the executory contracts and unexpired leases listed in **Exhibit 2-B** to the Debtors' Plan; and (iii) the assumption by the applicable Debtor and vesting in Reorganized ASARCO or Reorganized Covington of the executory contracts and unexpired leases listed in **Exhibit 2-C** to the Debtors' Plan (as each such list may be amended, supplemented, or modified by the Debtors on or before the Confirmation Date), pursuant to

sections 365(a) and 1123 of the Bankruptcy Code. Any motions to assume executory contracts and unexpired leases pending on the Effective Date shall be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order. The executory contracts and unexpired leases assumed pursuant to Article 8.1 of the Debtors' Plan or by any order of the Bankruptcy Court shall be assigned to, and the Debtors' obligations thereunder shall be assumed by, the Plan Sponsor or an Environmental Custodial Trust, or shall vest in Reorganized ASARCO or Reorganized Covington (as specified in **Exhibit 2** to the Debtors' Plan or the applicable order) as of the Effective Date. The Plan Sponsor has reached a collective bargaining agreement with the USW and other Unions that modifies the Debtors' CBA. The CBA, which shall be assumed as modified and extended through 2013, is expected to provide long-term labor peace and stability. Pursuant to this agreement, the CBA as modified will be effective as of the Effective Date.

Article 8.2 of the Debtors' Plan provides that entry of the Confirmation Order shall, subject to and upon the occurrence of the Effective Date, constitute (1) the approval, pursuant to sections 365(a), 365(f), and 1123 of the Bankruptcy Code, of the assumption by one of the Debtors and assignment to the Plan Sponsor or an Environmental Custodial Trust, or vesting in Reorganized ASARCO or Reorganized Covington (as specified in **Exhibit 2** to the Debtors' Plan) of the executory contracts and unexpired leases assumed, or assumed and assigned, pursuant to Article 8.1 of the Debtors' Plan; (2) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors may assume, assume and assign, or reject the unexpired leases specified in Article 8.1 of the Debtors' Plan through the date of entry of an order approving the assumption, assumption and assignment, or rejection of such unexpired leases; and (3) the approval, pursuant to sections 365(a) and 1123 of the Bankruptcy Code, of the rejection of the executory contracts and unexpired leases rejected pursuant to Article 8.1 of the Debtors' Plan.

In accordance with Article 8.3 of the Debtors' Plan, unless otherwise specified in **Exhibit 2** to the Debtors' Plan, each executory contract and unexpired lease listed or to be listed in **Exhibit 2** shall include all modifications, amendments, or supplements thereto, or restatements thereof, without regard to whether such agreement, instrument, or other document is listed in **Exhibit 2**.

Pursuant to Article 8.6 of the Debtors' Plan, to the extent that any Cure Amount Claims constitute monetary defaults, such Claims shall be satisfied, pursuant to section 365(b)(1) of the Bankruptcy Code, by the Debtors: (1) by payment of the Cure Amount Claim on the Effective Date or (2) on such other terms as are agreed to by the Debtors and the non-debtor parties to the executory contract or unexpired lease. In the event of a dispute regarding (A) the amount of any Cure Amount Claim; (B) the ability of the Plan Sponsor or an Environmental Custodial Trust to provide "adequate assurance of future performance" (within the meaning of section 365 of the Bankruptcy Code) under the contract or lease to be assumed and assigned; or (C) any other matter pertaining to assumption or assumption and assignment of such contract or lease, the payment of any Cure Amount Claim required by section 365(b)(1) of the Bankruptcy Code shall be made following the entry of a Final Order resolving the dispute and approving the assumption or assumption and assignment (except as otherwise provided in Article 8.6(b) of the Debtors' Plan).

Article 8.6(b) of the Debtors' Plan provides that, pursuant to section 3.5(d) of the New Plan Sponsor PSA, at the Closing, ASARCO shall deliver to the Plan Sponsor a statement of any Unpaid Cure Claims Amount and the Contract(s) corresponding thereto, including a calculation thereof. The Plan Sponsor shall be permitted (but not required), within 30 days after receipt of such statement, to pay any Unpaid Cure Claims Amount, and within 10 days after any such payment, the Plan Sponsor shall provide a written notice to ASARCO of such payment and the Contract(s) corresponding thereto. To the extent the Plan Sponsor pays any Unpaid Cure Claims Amount pursuant to section 3.5(d) of the New Plan Sponsor PSA, Reorganized ASARCO shall, within 10 days of receipt of notice from the Plan Sponsor delivered in accordance with section 3.5(d) thereof, reimburse the Plan Sponsor in the amount of such payment; provided that the Confirmation Order shall provide that, as between the Sellers and the counterparty of the underlying Contract, (1) neither the payment nor the reimbursement of a disputed Unpaid Cure Claims Amount shall constitute a waiver, admission, or estoppel in respect of any claims or defenses that ASARCO or Reorganized ASARCO may have related to such Unpaid Cure Claims Amount or the underlying Contract and (2) the right of ASARCO or Reorganized ASARCO to object, assert any counterclaim, or exercise any setoff or other rights in connection with such Unpaid Cure Claims Amount or the underlying Contract shall be preserved regardless of any such payment or reimbursement; *provided*, *however*, that failure of the Confirmation Order to so provide shall not relieve the Sellers of their payment obligations as set forth in section 3.5(d) of the New Plan Sponsor PSA.

Article 8.5 of the Debtors' Plan provides that if the rejection by a Debtor, pursuant to Article 8.1 of the Debtors' Plan, of an executory contract or unexpired lease results in a Claim, then such Claim shall be forever barred and discharged and shall not be enforceable against any Debtor, Reorganized Debtor, or their respective properties, unless a Proof of Claim is filed and served upon Reorganized ASARCO and the Plan Administrator within 30 days after the later

of the Effective Date or the date of entry of an order approving such rejection. To the extent any such Claim is Allowed by the Bankruptcy Court by Final Order, such Claim shall be treated for all purposes under the Debtors' Plan as a Class 3 General Unsecured Claim, and the holder thereof shall receive distributions as a holder of an Allowed General Unsecured Claim, pursuant to the Debtors' Plan.

Pursuant to Article 8.4 of the Debtors' Plan, the Bankruptcy Court shall determine the amount, if any, of the Claim of any Entity seeking damages by reason of the rejection of any executory contract or unexpired lease to which it is a counterparty.

(h) Certain Other Agreements Pertaining to Silver Bell.

Mitsui (and related entities and affiliates) and the company formerly known as ASARCO Incorporated (now ASARCO LLC) entered into certain agreements pertaining to Silver Bell that are not listed as assumed contracts in the New Plan Sponsor PSA or otherwise assigned to the Plan Sponsor. Such agreements include, without limitation, (1) an agreement, dated February 5, 1996, entitled "Asarco Incorporated Guaranty" in favor of certain of Mitsui's affiliates; (2) as more fully discussed in Section 2.29 of this Disclosure Statement, a letter agreement, dated February 5, 1996, supplementing the Silver Bell LLC Agreement, the provisions of which Mitsui asserts give certain of Mitsui's affiliates certain tag-along rights in the event of a sale by ASARCO of the capital stock of ARSB; and (3) an agreement, dated December 12, 1997, entitled "Reimbursement Agreement," which is ancillary to the Equipment Lease Agreement with The Copper Equipment Trust and certain related agreements (not all of which are reflected as assumed contracts in the New Plan Sponsor PSA). Whether or not such Mitsui affiliates grant consent to the transfer by ARSB of its membership interests in Silver Bell, Mitsui has requested that these agreements be assumed by and assigned to the Plan Sponsor or the Guarantor. Also, on February 5, 1996, ARSB and Silver Bell entered into a "Management Services Agreement" concerning Silver Bell. Whether or not such Mitsui affiliates grant consent to the transfer by ARSB of its membership interests in Silver Bell, Mitsui has requested that this agreement be assumed by and assigned to the Plan Sponsor. The Debtors have not taken a formal position with respect to the treatment of the agreements discussed in this Section 3.19(h) and specifically reserve all rights and remedies that any of them may have concerning such agreements, including all rights and remedies that any of them may have to object to any request by Mitsui or any of its affiliates (1) to have all or a portion of the Silver Bell membership interests held by such Mitsui affiliates purchased by the Plan Sponsor; (2) to have any agreement with any of the Debtors assumed by and assigned to the Plan Sponsor or the Guarantor; or (3) to have any agreement with any Debtor treated as a non-executory contract. Mitsui and all of its related entities and affiliates specifically reserve all rights and remedies that any of them may have concerning any such agreement discussed in this Section 3.19(h).

(i) Contracts and Leases Previously Assumed or Entered into After the Petition Date Under the Debtors' Plan.

Unless otherwise provided in Article 8.7(b) and (c), 8.8, or 8.9 of the Debtors' Plan, each Contract that is a "Pre-Petition Contract" (as such term is defined in section 3.1(e)(A) of the New Plan Sponsor PSA) or is entered into by ASARCO after the Petition Date, as described in section 3.1(e)(B) of the New Plan Sponsor PSA, shall be assigned to, and such Debtor's obligations thereunder assumed by, the Plan Sponsor in accordance with the New Plan Sponsor PSA; *provided, however*, that any such Contract entered into after the date of the New Plan Sponsor PSA other than in the Ordinary Course of Business shall be assigned to, and such Debtor's obligations thereunder assumed by, the Plan Sponsor only with the Plan Sponsor's written consent.

Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-D** to the Debtors' Plan (as such list may be amended, supplemented, or modified on or before the Confirmation Date) shall be assigned to, and such Debtor's obligations thereunder assumed by, one or more Environmental Custodial Trusts, as specified in **Exhibit 2-D** to the Debtors' Plan.

Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-E** to the Debtors' Plan (as such list may be amended, supplemented, or modified on or before the Confirmation Date) shall vest in, and such Debtor's obligations thereunder be assumed by, Reorganized ASARCO or Reorganized Covington, as specified in **Exhibit 2-E** to the Debtors' Plan.

(j) Employee Benefits Plans, Retiree Benefits, and Other Benefits Under the Debtors' Plan.

Article 8.8(a) of the Debtors' Plan provides that ASARCO shall satisfy its contribution obligations under ERISA to the Hourly and Salaried Plans during the pendency of the Reorganization Cases and through the Closing Date. ASARCO is the sponsor of the Hourly and Salaried Plans, each of which is covered under Title IV of ERISA. Article 8.8(a) of the Debtors' Plan also provides that in the event that either the Hourly Plan or the Salaried Plan or both terminate during the pendency of the Reorganization Cases, or prior to the Closing Date, certain Claims will arise, including joint and several liabilities of the Debtors to the PBGC that may be entitled to priority under various sections of the Bankruptcy Code to the extent provided under applicable law.

Article 8.8(b) of the Debtors' Plan provides that effective as of the Closing Date, the Plan Sponsor shall adopt and become the "contributing sponsor" of the Hourly and Salaried Plans for purposes of ERISA, and the Plan Sponsor, and each and every member of its "controlled group," as defined in section 4001(a)(14) of ERISA, shall be responsible for satisfying the legal obligations to the Hourly and Salaried Plans subsequent to the Closing Date, including the obligation to fund the Hourly and Salaried Plans pursuant to applicable law. It also provides that in the event that either the Hourly Plan or the Salaried Plan or both terminate subsequent to the assumption of the Hourly and Salaried Plans by the Plan Sponsor, the joint and several liability of the Plan Sponsor and of each and every member of its "controlled group" (as defined above) to the PBGC, if any, will not be affected by any provision of the Debtors' Plan or by Confirmation of the Debtors' Plan.

Article 8.8(c) of the Debtors' Plan provides that as of the Closing Date, the Plan Sponsor shall adopt and become the sponsor and employer for purposes of each and every Employee Benefit Plan set forth in section 9.3 of the Disclosure Schedule, including the Hourly and Salaried Plans, and shall be substituted for ASARCO or its Subsidiaries that had theretofore been the sponsor of such Employee Benefit Plan. Effective as of the Closing, the Plan Sponsor shall be responsible for all benefits and liabilities with respect to such Employee Benefit Plans, as such Employee Benefit Plans may be amended or modified from time to time by written agreement between the Plan Sponsor and the Unions after the Closing Date.

Pursuant to Article 8.8(d) of the Debtors' Plan, with respect to each Transferred Employee (as such term is defined in the New Plan Sponsor PSA) (including any beneficiary or the dependent thereof), the Plan Sponsor shall assume all of ASARCO's liabilities and obligations for workers' compensation benefits, even if such liability or obligation relates to Claims incurred (whether or not reported or paid) prior to the Closing Date.

Article 8.8(e) of the Debtors' Plan provides that, effective as of the Closing Date, the Plan Sponsor shall be responsible for providing coverage under COBRA to any Employee (as such term is defined in section 9.1(a) of the New Plan Sponsor PSA), his or her spouse, or dependent person as to whom a "qualifying event" as defined in section 4890B of the Internal Revenue Code has occurred (1) prior to the Closing Date in the case of a "qualifying event" other than a termination of employment and (2) in the case of a termination of employment "qualifying event" on or prior to the Closing Date. The Plan Sponsor shall also be responsible for providing COBRA coverage to any Employee, his or her spouse, or dependent person as to whom a "qualifying event" occurs on or after the Closing Date, including for a "qualifying event" that is a termination of employment on the Closing Date.

Article 8.8(f) of the Debtors' Plan provides that the Plan Sponsor shall assume and be responsible for all of ASARCO's obligations under the Coal Act, including the obligations (1) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to section 9711 of the Coal Act, 26 U.S.C. § 9711; (2) to pay the annual prefunding premium and the monthly per beneficiary premium required pursuant to section 9712(d)(1)(A) and (B) of the Coal Act, 26 U.S.C. § 9712(d)(1)(A) and (B); and (3) to provide security to the UMWA 1992 Benefit Plan pursuant to section 9712(d)(1)(C) of the Coal Act, 26 U.S.C. § 9712(d)(1)(C); *provided, however*, that the Plan Sponsor shall not be responsible for the Debtors' prepetition premium obligations arising under the Coal Act nor for a Claim for withdrawal liability arising under the United Mineworkers 1974 Pension Plan, which obligations shall be classified and treated as Class 3 General Unsecured Claims.

Article 8.8(g) of the Debtors' Plan provides that the Plan Sponsor shall assume and be responsible for all of ASARCO's obligations under the CBA as amended by that certain letter agreement entered into between the USW and the Plan Sponsor and dated June 23, 2008, which shall become effective on the Closing Date, and the retiree class action settlement agreement approved by the Bankruptcy Court by order dated March 15, 2007 (Docket No. 4178), which settled the cause of action captioned *Asarco Incorporated et al. v. United Steelworkers of America, AFL-CIO/CLC, et al*., No. CV-03-1297.

As a result of these provisions, virtually all pension and benefit liabilities of the Debtors will be assumed by the Plan Sponsor, except for the following pension and benefits-related Claims and obligations, which are not being assumed by the Plan Sponsor and shall be classified and treated as Class 3 General Unsecured Claims: (1) the prepetition obligations under the Coal Act and the United Mineworkers 1974 Pension Plan mentioned earlier; (2) the Claim for withdrawal liability arising under the United Mineworkers 1974 Pension Plan mentioned earlier; (3) deferred compensation obligations under ASARCO's deferred income benefit system plan, which covers several retired or separated former executives of the Debtors; (4) the individual pension supplement of certain separated former executives that transferred employment to ASARCO Incorporated (as predecessor to ASARCO) from Servicios de Apoyo Administrativo, S.A. de C.V. and dated July 1, 2002; and (5) the Canadian Pension Plan obligations discussed in section 2.16(i) of this Disclosure Statement.

(k) Bonds and Assurances Under the Debtors' Plan.

Article 8.9 of the Debtors' Plan provides that, pursuant to section 8.9 of the New Plan Sponsor PSA, prior to Closing, the Plan Sponsor shall (1) cause ASARCO to be fully, unconditionally, and irrevocably released and discharged from the Bonds and Assurances (as such term is defined in the New Plan Sponsor PSA) including, without limitation, SPT Bond Nos. 394729 and 403998 and (2) replace the Bonds and Assurances or act as a substituted obligor, guarantor, or other counterparty to the Bonds and Assurances as required for the continued operation of the Business. The surety, performance, payment, and other bonds listed in section 3.2(j) of the Disclosure Schedule shall be retained by ASARCO and shall revest in Reorganized ASARCO on the Effective Date.

(l) Post-Effective Date Status of the Committees and the FCR Under the Debtors' Plan.

Article 15.5 of the Debtors' Plan provides that the Committees and the position of FCR shall continue in existence until the Effective Date, with the Debtors to pay the reasonable fees and expenses of the Committees and the FCR and their counsel and advisors through that date in accordance with the fee and expense procedures promulgated during the Reorganization Cases.

Notwithstanding the foregoing, the Committees and the FCR shall continue in existence after the Effective Date for the duration of any appeal of the Confirmation Order or any other order in which the Committees and the FCR have an interest and, *provided further*, the Committees and the FCR shall have standing to participate in proceedings brought by their respective professionals or, if applicable, members for allowance of fees and reimbursement of expenses for services rendered during the pendency of the Reorganization Cases and for services rendered to the Committees or the FCR during the pendency of any appeal of the Confirmation Order or any other order in which the Committees and the FCR have an interest.

On and after the Effective Date, the position of FCR shall continue pursuant to orders issued by the Bankruptcy Court during the Reorganization Cases, provided that the FCR thereafter shall have and exercise the rights, duties, and responsibilities set forth in the Asbestos Trust Documents.

Except as provided above, the Committees shall be dissolved on the Effective Date, and the members, attorneys, accountants, and other professionals thereof shall be released and discharged of and from all further authority, duties, responsibilities, liabilities, and obligations related to, or arising from, the Reorganization Cases.

(m) Effectuating Documents and Further Transactions Under the Debtors' Plan.

Under Article 10.23 of the Debtors' Plan, the chief executive officer, president, chief financial officer, general counsel, secretary, treasurer, any vice president, or managing member (if applicable) of each Debtor or Reorganized Debtor shall be authorized, to the extent consistent with the respective Debtor's constituent documents, to execute, deliver, file, or record such contracts, instruments, settlement agreements, releases, indentures, and other agreements or documents and to take or direct such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Debtors' Plan. The secretary or any assistant secretary of each Debtor or Reorganized Debtor shall be authorized to certify or attest to any of the foregoing actions.

(n) Corporate Action Under the Debtors' Plan.

All matters provided for under the Debtors' Plan involving the corporate structure of a Debtor or a Reorganized Debtor, or any corporate action to be taken by, or required of, such Debtor or Reorganized Debtor, shall be

deemed to have occurred and be effective as provided in the Debtors' Plan, and shall be authorized and approved in all respects without any requirement for further action by the holders of interests in, or directors of, any of such entities.

(o) Debtors' Right to Modify the Debtors' Plan.

As provided in Article 15.6 of the Debtors' Plan, the Debtors may alter, amend, or modify the Debtors' Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date and expressly reserve their rights to amend the Debtors' Plan and any Debtors' Plan Documents as necessary in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code; *provided, however*, that ASARCO shall not, without the prior written consent of the Plan Sponsor so long as the New Plan Sponsor PSA shall not have been terminated, seek to amend or modify any provision of the Bid Protections Order, the Disclosure Statement, the Debtors' Plan, or the Confirmation Order to effect a change in the terms and conditions of the transactions or release contemplated by the New Plan Sponsor PSA which would reasonably be expected to have a material adverse effect on the Plan Sponsor (or the Guarantor) or on the ability of the Debtors and the Plan Sponsor (and Guarantor) to consummate the transactions contemplated by the New Plan Sponsor PSA on or before the Termination Date (as such term is defined in the New Plan Sponsor PSA); *except that* ASARCO may seek to amend or modify any provision in the Disclosure Statement, the Debtors' Plan, or the Plan Confirmation Order in connection with an Acquisition Proposal or Stand-Alone Plan in accordance with section 8.10 of the New Plan Sponsor PSA. After the Confirmation Date, the Debtors may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court approval to remedy any defects or omissions or reconcile any inconsistencies in the Debtors' Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of the Debtors' Plan, so long as the proposed alteration, amendment, or modification does not adversely affect the treatment of Claims or Interests under the Debtors' Plan and would not reasonably be expected to have a material adverse effect on the Plan Sponsor, the Guarantor, or the ability to consummate the transactions contemplated by the New Plan Sponsor PSA.

(p) Debtors' Right to Revoke or Withdraw the Debtors' Plan.

As provided in Article 15.7 of the Debtors' Plan, the Debtors reserve the right to revoke or withdraw the Debtors' Plan prior to the Confirmation Hearing and to file subsequent plans of reorganization. If the Debtors revoke or withdraw the Debtors' Plan, or if Confirmation or Consummation does not occur, then (1) the Debtors' Plan shall be null and void in all respects; (2) any settlement or compromise embodied in the Debtors' Plan, assumption or rejection of executory contracts or unexpired leases under the Debtors' Plan, and any document or agreement executed pursuant to the Debtors' Plan, shall be deemed null and void; and (3) nothing contained in the Debtors' Plan shall (A) constitute a waiver or release of any Claims by or against, or Interests in, such Debtors or any other Person, (B) prejudice in any manner the rights of such Debtors or any other Person, or (C) constitute an admission of any sort by the Debtors or any other Person.

(q) Rules Governing Conflicts Between Documents Under the Debtors' Plan.

In the event of a conflict between the terms or provisions of the Debtors' Plan and the Debtors' Plan Documents, the terms of the Debtors' Plan shall control over the Debtors' Plan Documents. In the event of a conflict between the terms of the Debtors' Plan or the Debtors' Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order shall control. In the event of a conflict between the information contained in this Disclosure Statement and the Debtors' Plan or any other Debtors' Plan Document, the Debtors' Plan or other Debtors' Plan Document (as the case may be) shall control.

(r) Governing Law Under the Debtors' Plan.

Article 15.15 of the Debtors' Plan provides that, except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Debtors' Plan provides otherwise, the rights and obligations arising under the Debtors' Plan shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas without giving effect to its conflicts of law principles.

(s) Retention and Disposal of Retained Books and Records (Other than Asbestos Books) Under the Debtors' Plan.

Article 15.22 of the Debtors' Plan provides that the Reorganized Debtors shall make all reasonable efforts to preserve the Retained Books and Records in the same order, format, and condition in which they exist on the Effective Date for 180 days after the Effective Date. After this 180-day period, the Plan Administrator, in consultation

with the Trustees may (in the Plan Administrator's discretion, and without liability or recourse) dispose of any Retained Books and Records which the Plan Administrator determines are appropriate for disposal. The Plan Administrator shall provide the Trustees with a reasonable opportunity to segregate and remove, at the expense of the applicable trust, such Retained Books and Records as they may select. Any requests by parties in interest for copies or originals of any of the Retained Books and Records must be made in writing to the Reorganized Debtors on or before 60 days after the Effective Date. All such parties in interest shall reasonably cooperate with the Reorganized Debtors in regards to such requests for copying or permanent retention of any Retained Books and Records. Procedures for retention and disposal of Asbestos Books are set forth in Article 7.13 of the Debtors' Plan.

3.20 Retention of Jurisdiction Under the Debtors' Plan.

(a) Jurisdiction Under the Debtors' Plan.

Article 15.1 of the Debtors' Plan provides that until the Reorganization Cases are closed, the Bankruptcy Court (and with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, the District Court) shall retain the fullest and most extensive jurisdiction permissible, including, without limitation, the jurisdiction necessary:

- to ensure that the purposes and intent of the Debtors' Plan are carried out;
- to enforce and interpret the terms and conditions of Debtors' Plan Documents; and
- to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of a Debtor, a Reorganized Debtor, a Settling Asbestos Insurance Company, the Plan Sponsor, or any other ASARCO Protected Party.

Except as otherwise provided in the Debtors' Plan, the Bankruptcy Court shall retain jurisdiction to hear and determine all Claims against and Interests in any of the Debtors and to adjudicate and enforce all other causes of action that may exist on behalf of the Debtors. Nothing contained in the Debtors' Plan shall prevent Reorganized ASARCO, the Plan Administrator, the Asbestos Trustees, the Liquidation Trustee, or the SCC Litigation Trustee (as appropriate) from taking such action as may be necessary in the enforcement of any cause of action that such Entity has or may have and that may not have been enforced or prosecuted by any of the Debtors, which cause of action shall survive entry of the Confirmation Order and occurrence of the Effective Date and shall not be affected thereby except as specifically provided in the Debtors' Plan.

Article 15.2 of the Debtors' Plan provides that the Asbestos Trust and the Environmental Custodial Trusts (including each of the Environmental Custodial Trust Accounts) shall be subject to the continuing jurisdiction of the Bankruptcy Court sufficient to satisfy the requirements of Treasury regulation section 1.468B-1.

In addition to the general retention provided for in Article 15.1 and 15.2 of the Debtors' Plan, Article 15.3 of the Debtors' Plan provides for the Bankruptcy Court to retain jurisdiction after Confirmation to:

(1) modify the Debtors' Plan after entry of the Confirmation Order, pursuant to the provisions of the Debtors' Plan, the Bankruptcy Code, and the Bankruptcy Rules;

(2) correct any defect, cure any omission, reconcile any inconsistency, or make any other necessary changes or modifications in or to the Debtors' Plan, the Debtors' Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Debtors' Plan;

(3) hear and determine any cause of action, and enter and implement such orders as may be necessary or appropriate, to execute, interpret, implement, consummate, or enforce the Debtors' Plan, the Debtors' Plan Documents, and the transactions contemplated thereunder;

(4) hear and determine disputes arising in connection with the execution, interpretation, implementation, Consummation, or enforcement of the Debtors' Plan, including, without limitation, the Debtors' Plan Documents, and to enforce, including by specific performance, the provisions of the Debtors' Plan and the Debtors' Plan Documents;

(5) hear and determine disputes arising under settlement agreements previously approved by the Bankruptcy Court, including, without limitation, the Environmental Custodial Trust Settlement Agreements, the Miscellaneous Federal and State Environmental Settlement Agreement, and the Residual Environmental Settlement Agreement;

(6) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the New Plan Sponsor PSA, settlement agreements, asset purchase agreements, or other agreements entered into by the Debtors during the Reorganization Cases or to enforce, including by specific performance, the provisions of such agreements;

(7) enter and implement orders or take such other actions as may be necessary or appropriate to restrain interference by any Entity with the Consummation or implementation of the Debtors' Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Debtors' Plan and the Confirmation Order;

(8) assure the performance by Reorganized ASARCO, the Plan Administrator, and the Trustees of their respective obligations to make distributions under the Debtors' Plan and the Debtors' Plan Documents;

(9) enter such orders or judgments, including, without limitation, injunctions as necessary to enforce the title, rights, and powers of any of the Debtors, the Reorganized Debtors, the Plan Sponsor, the Plan Administrator, or the Trusts;

(10) hear and determine any motions, applications, or adversary proceedings brought by or against the Trusts related to (A) enforcement or interpretation of the Trust Documents and (B) amendment, modification, alteration, or repeal of any provision of the Trust Documents, if such hearing and determination by the Bankruptcy Court is required pursuant to the Debtors' Plan;

(11) hear and determine any adversary proceedings, applications, and contested matters, including any remands after appeal;

(12) ensure that distributions to holders of Allowed Claims and Demands are accomplished as provided in the Debtors' Plan;

(13) hear and determine any timely objections to or motions or applications concerning Claims or the allowance, classification, priority, compromise, setoff, estimation, or payment of any Claim, including, without limitation, any request to subordinate any Claim or Administrative Claim, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;

(14) enter and implement such orders as may be appropriate in the event the Confirmation Order is for any reason stayed, revoked, modified, reversed, or vacated;

(15) hear and determine any motions, contested matters, or adversary proceedings involving taxes, tax refunds, tax attributes, tax benefits, and similar or related matters with respect to any of the Debtors, the Reorganized Debtors, the Plan Administrator, or the Trusts arising on or prior to the Effective Date, arising on account of transactions contemplated by the Debtors' Plan Documents, or relating to the period of administration of the Reorganization Cases;

(16) hear and determine all applications for compensation of Professional Persons and reimbursement of expenses under sections 330, 331, or 503(b) of the Bankruptcy Code;

(17) hear and determine any causes of action relating to any of the Debtors, the Reorganized Debtors, or the Trusts to the fullest extent permitted by section 157 of title 28 of the United States Code;

(18) hear and determine any cause of action in any way related to the Debtors' Plan Documents or the transactions contemplated thereby, against any ASARCO Protected Party;

(19) recover all assets of each of the Debtors and property of their respective Estates, wherever located, including actions under chapter 5 of the Bankruptcy Code;

(20) hear and determine any motions pending as of the Confirmation Date for the rejection, assumption, or assignment of executory contracts or unexpired leases and the allowance of any Claim resulting therefrom;

(21) hear and determine such other matters and for such other purposes as may be provided in the Debtors' Plan or the Confirmation Order;

(22) consider and act on the compromise and settlement of any Claim against, or Interest in, any of the Debtors or their respective Estates including, without limitation, any disputes relating to any Administrative Claims, any Bar Date, or Bar Date Order;

(23) hear and determine any questions and disputes regarding title to the assets of any of the Debtors, their respective Estates, or the Trusts;

(24) hear and determine any other matters related to the Debtors' Plan, including the implementation and enforcement of all orders entered by the Bankruptcy Court in these Reorganization Cases;

(25) hear and determine any applications brought by the Asbestos Trustees to amend, modify, alter, or repeal any provision of the Asbestos Trust Agreement or the Asbestos TDP pursuant to the Asbestos Trust Agreement and to declare or resolve all issues or disputes contemplated by the Asbestos Trust Agreement;

(26) enter such orders as are necessary to implement and enforce the Injunctions; and

(27) hear and determine any other matter not inconsistent with the Bankruptcy Code and title 28 of the United States Code that may arise in connection with or related to the Debtors' Plan.

(b) Exclusive Jurisdiction of District Court Over Certain Matters Under the Debtors' Plan.

Under Article 15.4(a) of the Debtors' Plan, the District Court shall, without regard to the amount in controversy, retain exclusive jurisdiction after Confirmation over matters relating to section 524(g) of the Bankruptcy Code and the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, including, without limitation, the validity, application, or construction of the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction, or of section 524(g) of the Bankruptcy Code with respect to the Permanent Channeling Injunction and the Asbestos Insurance Company Injunction; *provided, however*, that from and after the Effective Date the jurisdiction of the District Court shall be non-exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery. Nothing contained in the Debtors' Plan shall be deemed a finding or conclusion that: (1) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (2) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; or (3) abstention or dismissal or reference of actions effecting the transfer of jurisdiction of any Asbestos Insurance Action or Asbestos Insurance Recovery pending in the Bankruptcy Court or District Court to another court is precluded, inadvisable, or unwarranted. Any court other than the Bankruptcy Court or the District Court that has or is capable of having jurisdiction over any Asbestos Insurance Action or Asbestos Insurance Recovery shall have the right to exercise such jurisdiction.

Notwithstanding entry of the Confirmation Order or the occurrence of the Effective Date, the reference to the Bankruptcy Court pursuant to the Reference Order shall continue, subject to Article 15.4 of the Debtors' Plan and any other modifications or withdrawals of the reference specified in the Confirmation Order, the Reference Order, any case management order, or other order of the District Court.

SECTION 4

THE LIQUIDATION TRUST AND THE SCC LITIGATION TRUST UNDER THE DEBTORS' PLAN

4.1 The Liquidation Trust Under the Debtors' Plan.

(a) Creation of the Liquidation Trust Under the Debtors' Plan.

On the Effective Date, the Liquidation Trust shall be created, as provided in the Liquidation Trust Agreement. The Liquidation Trust shall be a Delaware trust organized under the Delaware Statutory Trust Act. Prior to the Effective Date, the Liquidation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code.

(b) Appointment of Trustees Under the Debtors' Plan.

The Plan Administrator shall serve as the Liquidation Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the Liquidation Trustee shall be appointed. The Liquidation Trustee shall report to the Liquidation Trust Board.

The Liquidation Trustee shall have and perform all of the rights, powers, and duties set forth in the Liquidation Trust Agreement.

The Liquidation Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate the Person who shall initially serve as Delaware Trustee of the Liquidation Trust.

The duties, responsibilities, rights, and obligations of the Liquidation Trustee and the Delaware Trustee for the Liquidation Trust shall terminate in accordance with the terms of the Liquidation Trust Agreement.

(c) Liquidation Trust Board Under the Debtors' Plan.

The Liquidation Trust Board shall consist of three members initially selected as follows: (1) one selected by the ASARCO Committee; (2) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); and (3) one selected by the Asbestos Claimants' Committee and the FCR.

Successors to the members of the Liquidation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, by the then-current holders of a majority of the Class A Liquidation Trust Interests; (2) in the case of the member originally selected by the DOJ, by the then-current holders of a majority of the Class B Liquidation Trust Interests; and (3) in the case of the member originally selected by the Asbestos Claimants' Committee and the FCR, by the then-current holders of a majority of the Class C Liquidation Trust Interests; *provided, however*, that any holder of Class A Liquidation Trust Interests, Class B Liquidation Trust Interests, or Class C Liquidation Trust Interests who is a party adverse to ASARCO in any Liquidation Trust Claims, or is an Affiliate of any party adverse to ASARCO in any Liquidation Trust Claims, shall not be entitled to the foregoing selection rights. If no holder of Liquidation Trust Interests in a particular class is eligible to select a member of the Liquidation Trust Board, the board shall proceed without a member selected by that class.

(d) Purpose of the Liquidation Trust Under the Debtors' Plan.

The Liquidation Trust shall be established as a statutory trust for the purpose of holding the assets of the Liquidation Trust and disposing of the same in accordance with the Debtors' Plan and the Liquidation Trust Agreement and liquidating all assets of the Liquidation Trust for the benefit of the Liquidation Trust Beneficiaries (including through the pursuit of the Liquidation Trust Claims). The primary purpose of the Liquidation Trust is to liquidate its assets, and the Liquidation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidation Trust.

(e) Transfer of the Liquidation Trust Claims and the Plan Sponsor Promissory Note to the Liquidation Trustee Under the Debtors' Plan.

On the Effective Date (or, with respect to clause (5), from time to time thereafter), the Debtors shall transfer, assign, and deliver to the Liquidation Trustee for the benefit of the Liquidation Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in and to the Liquidation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any other Person or entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the Liquidation Trust Claims; (3) all of Reorganized ASARCO's rights, title, and interest in and to the Plan Sponsor Promissory Note and the Security Documents; (4) the Liquidation Trust Expense Fund; and (5) such other assets deemed appropriate by Reorganized ASARCO in accordance with the Debtors' Plan. In addition, as of the Effective Date, the Liquidation Trustee, in its capacity as the Liquidation Trustee on behalf of the Liquidation Trust Beneficiaries, shall assume and agree to pay, perform, and discharge the obligations of Reorganized ASARCO under the Plan Sponsor Promissory Note and Security Documents. As soon as practicable after the Effective Date, the Reorganized Debtors shall transfer to the Liquidation Trustee for the benefit of the Liquidation Trust Beneficiaries all documents in the Debtors' possession, custody, or control in connection with the assets transferred to the Liquidation Trust. On and after the Effective Date, the Liquidation Trustee shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the assets transferred to the Liquidation Trust, including the Liquidation Trust Claims and the Debtors' Privileges associated therewith. The Liquidation Trustee shall be granted the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the Liquidation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the Liquidation Trust Agreement.

(f) The Liquidation Trust Under the Debtors' Plan.

The Liquidation Trust Agreement, substantially in the form of **Exhibit 4** to the Debtors' Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the Liquidation Trustee, the Liquidation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in and to the assets described in Section 4.1(e) above to be transferred to the Liquidation Trust.

The Liquidation Trustee shall have full authority (subject, in certain instances, to approval of the Liquidation Trust Board) to take any steps necessary to administer both the Liquidation Trust Claims and the Plan Sponsor Promissory Note, including, without limitation, the duty and obligation to liquidate the Liquidation Trust Claims. Both Reorganized ASARCO and the Liquidation Trustee have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the Liquidation Trust Claims, including, without limitation, any objections to Claims under sections 502 and 510 of the Bankruptcy Code.

All costs and expenses associated with the administration of the Liquidation Trust shall be the responsibility of and paid by the Liquidation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Liquidation Trustee in pursuing the Liquidation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the Liquidation Trust Claims to representatives of the Liquidation Trust for the purpose of enabling the Liquidation Trustee to perform the Liquidation Trustee's tasks under the Liquidation Trust Agreement and the Debtors' Plan; *provided, however,* that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

The Liquidation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the Liquidation Trustee and the Liquidation Trust Board may deem necessary or appropriate, and at the sole expense of the Liquidation Trust, to aid in the performance of the Liquidation Trustee's responsibilities pursuant to the terms of the Debtors' Plan including, without limitation, the liquidation and distribution of the assets of the Liquidation Trust.

In the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the Liquidation Trust on the Effective Date, the proceeds of the settlement shall be distributed to the Liquidation Trust Beneficiaries in the same

manner as the Liquidation Trust Interests. In the event of such a settlement, the Debtors that are parties to the settlement shall hold the proceeds in escrow for distribution on the Effective Date.

Except as otherwise provided in the Debtors' Plan, the Liquidation Trust shall be deemed a "successor to the debtor" for purposes of sections 1123(b)(3) and 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters Under the Debtors' Plan.

Solely for tax purposes, the Liquidation Trust Tax Owners shall be treated as grantors and owners of the Liquidation Trust pursuant to section 671 *et seq.* of the Internal Revenue Code and the Treasury Regulations promulgated thereunder and any similar provision of state or local law. For federal income tax purposes, the Debtors intend that all parties (including, without limitation, the Liquidation Trustee, the Liquidation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the Liquidation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Liquidation Trust is a deemed transfer to the Liquidation Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such Liquidation Trust Tax Owners to the Liquidation Trust, and all income and gain of the Liquidation Trust which is earned after such deemed transfer shall be taxed to the Liquidation Trust Tax Owners on a current basis. In addition, the investment powers of the Liquidation Trustee shall be strictly limited, as provided in the Liquidation Trust Agreement.

The fair market value of the portion of the Liquidation Trust assets that is treated for federal income tax purposes as having been transferred to each Liquidation Trust Tax Owner as described in the preceding paragraph, and the fair market value of the portion of the Liquidation Trust assets that is treated for federal income tax purposes as having been transferred to any Liquidation Trust Tax Owner as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the Liquidation Trustee, and all parties (including, without limitation, the Liquidation Trustee, the Liquidation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the Liquidation Trust) shall utilize such fair market value determined by the Liquidation Trustee for all federal income tax purposes.

The Liquidation Trustee shall be responsible for filing all federal, state, and local tax returns for the Liquidation Trust and paying any taxes imposed on the Liquidation Trust. The Liquidation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Liquidation Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a Liquidation Trust Beneficiary (or its designee) shall be treated as having been paid to, and received by, such Liquidation Trust Beneficiary for purposes of the Debtors' Plan and the Debtors' Plan Documents.

Any items of income, deduction, credit, or loss of the Liquidation Trust shall be allocated by the Liquidation Trustee for federal income tax purposes among current or former Liquidation Trust Tax Owners, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former Liquidation Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

See Section 21 hereof, "Certain Federal Income Tax Consequences of the Debtors' Plan," for further information.

(h) Liquidation Trust Interests Under the Debtors' Plan.

(1) Issuance of Liquidation Trust Interests.

On the Initial Distribution Date, Liquidation Trust Interests shall be issued to the Other Unsecured Claimants, the Governmental Environmental Claimants, and the Asbestos Trust based on (A) the Class 3 Claimant's Ratable Portion and (B) the Asbestos Ratable Portion. The Liquidation Trust Interests that would have been issued to the holders of Class 3 Disputed Claims if such Disputed Claims had been Allowed Claims as of the Effective Date shall be issued to, and held by, the Plan Administrator pending resolution of such Disputed Claims. The amount of Litigation Trust Interests to be issued to the Plan Administrator on account of Class 3 Disputed Claims shall be determined based on the lesser of (A) the asserted amount of the Disputed Claims in the applicable Proofs of Claim; (B) the amount, if any, estimated by the Bankruptcy Court pursuant to (i) section 502(c) of the Bankruptcy Code or (ii) the Debtors' Plan if, after

the Effective Date, a motion is filed by the Plan Administrator to estimate such Claim; or (C) the amount otherwise agreed to by the Debtors (or the Plan Administrator, if after the Effective Date) and the holders of such Disputed Claims. If a Class 3 Claim that remains a Disputed Claim as of the Effective Date is thereafter Allowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute to the holder of such Claim the Liquidation Trust Interests that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date to the extent thereafter Allowed. If a Class 3 Disputed Claim is disallowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) transfer the Litigation Trust Interests held in respect of such Disallowed Claim to the Liquidation Trustee for cancellation and any distributions received from the Liquidation Trust on account of such Disallowed Claim shall be returned to the Liquidation Trustee for distribution to the other Liquidation Trust Beneficiaries.

Liquidation Trust Interests will be divided into three classes: Class A Liquidation Trust Interests, Class B Liquidation Trust Interests, and Class C Liquidation Trust Interests. All Liquidation Trust Interests issued to Other Unsecured Claimants shall be designated "Class A Liquidation Trust Interests," all Liquidation Trust Interests issued to Governmental Environmental Claimants shall be designated "Class B Liquidation Trust Interests," and all Liquidation Trust Interests issued to the Asbestos Trust shall be designated "Class C Liquidation Trust Interests." The designation of Liquidation Trust Interests as Class A, Class B, or Class C is solely for purposes of appointing members of the Liquidation Trust Board as described above. Distributions of Liquidation Trust Proceeds or other property of the Liquidation Trust shall be made to holders of Liquidation Trust Interests on a pro rata basis, as more fully described below.

The Liquidation Trust Beneficiaries may convey, assign, sell, or otherwise transfer a Liquidation Trust Interest subject to the limitations contained in the Liquidation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the Liquidation Trustee after consultation with the Liquidation Trust Board (after the Effective Date) may at any time cause the Liquidation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws or to the extent the Debtors (prior to the Effective Date) or the Liquidation Trustee after consultation with the Liquidation Trust Board (after the Effective Date) determines such restraint on transferability to be in the best interests of the Liquidation Trust.

(2) Interests Beneficial Only.

The ownership of a Liquidation Trust Interest shall not entitle any Liquidation Trust Beneficiary to (A) any title in or to the assets of the Liquidation Trust (which title shall be vested in the Liquidation Trustee) or to any right to call for a partition or division of the assets of the Liquidation Trust or to require an accounting; or (B) any voting rights with respect to the administration of the Liquidation Trust (other than the right to appoint members of the Liquidation Trust Board) or the actions of the Liquidation Trustee in connection therewith.

(3) Maintenance of Liquidation Trust Register.

The Liquidation Trustee shall appoint a Liquidation Trust Registrar, which may be the Liquidation Trustee, for the purpose of recording ownership of the Liquidation Trust Interests. The Liquidation Trust Register shall contain the names, addresses for payment and notice, and class and number of Liquidation Trust Interests of each of the Liquidation Trust Beneficiaries. The Liquidation Trust Registrar, if other than the Liquidation Trustee, may be such other institution acceptable to the Liquidation Trustee and shall be entitled to receive reasonable compensation from the Liquidation Trust as an expense of the Liquidation Trust.

(4) Evidence of Liquidation Trust Interests.

The Liquidation Trustee shall have full power, authority, and discretion to determine whether ownership of any Liquidation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the Liquidation Trust Interests shall be recorded and set forth in the Liquidation Trust Register.

(5) Securities Laws Matters.

To the extent the Liquidation Trust Interests are deemed to be "securities," the issuance of Liquidation Trust Interests under the Debtors' Plan are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the Liquidation Trustee determines, with the advice of counsel, that the Liquidation Trust is required to comply with

registration and reporting requirements of the Exchange Act, then the Liquidation Trustee shall take any and all actions deemed necessary or appropriate by the Liquidation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the SEC. Notwithstanding the foregoing procedure, nothing in the Debtors' Plan shall be deemed to preclude the Liquidation Trustee from amending the Liquidation Trust Agreement to make such changes as deemed necessary or appropriate by the Liquidation Trustee, with the advice of counsel and after consultation with the Liquidation Trust Board, to ensure that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act.

The Debtors anticipate that the Liquidation Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to file with the SEC and send to the Liquidation Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. The cost of the preparation, filing, and delivery of any such reports would be an expense of the Liquidation Trust.

Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the Liquidation Trust pursuant to the Exchange Act, if it is determined that compliance with such requirements would be burdensome on the Liquidation Trust. The Debtors have not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.

The Liquidation Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the Liquidation Trust Agreement, unless the holder is an "underwriter" with respect to such Liquidation Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines "underwriter" for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim; (B) offers to sell securities issued under a plan for the holders of such securities; (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities; or (D) is a controlling person of the issuer of the securities. Entities who believe they may be "underwriters" under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.

(i) Distributions of Proceeds and Other Property Under the Debtors' Plan.

The Liquidation Trustee shall apply all Liquidation Trust Proceeds, any proceeds therefrom, and any other Cash of the Liquidation Trust (other than the Liquidation Trust Expense Fund) in the following order:

first, to pay all costs and expenses of the Liquidation Trust to the extent not paid by or from the Liquidation Trust Expense Fund, including, without limitation, compensation payable to the Liquidation Trustee, to satisfy other liabilities incurred or assumed by the Liquidation Trust (or to which the assets are otherwise subject) in accordance with the Debtors' Plan or the Liquidation Trust Agreement, to hold such amounts in reserve as the Liquidation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the assets of the Liquidation Trust during liquidation (including the Liquidation Trust Expense Fund), and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the Liquidation Trust as a result of the allocation of tax items by the Liquidation Trustee or the allowance or disallowance of Disputed Claims; and

second, to pay any remaining amounts to the Liquidation Trust Beneficiaries (including to the Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be a Liquidation Trust Beneficiary absent such objection) pro rata based on their Liquidation Trust Interests. If the Plan Administrator holds proceeds of the Liquidation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Plan Administrator shall return to the Liquidation Trust the disallowed portion that the Plan Administrator received from the Liquidation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

If, upon termination of the Liquidation Trust, the Litigation Trust Expense Fund has funds remaining after the payment of all of the Liquidation Trust's expenses, such remaining funds shall be paid to the Liquidation Trust Beneficiaries pro rata based on their Liquidation Trust Interests.

(j) Termination of the Liquidation Trust Under the Debtors' Plan.

The Liquidation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the Liquidation Trust in accordance with the terms of the Liquidation Trust Agreement and the Debtors' Plan; or (2) the tenth anniversary of the Effective Date; *provided, however*, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Liquidation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the Liquidation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Liquidation Trust; provided that (1) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term; and (2) the Liquidation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the Liquidation Trust as a grantor trust for federal income tax purposes.

The Liquidation Trustee shall not unduly prolong the duration of the Liquidation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the Liquidation Trust Claims and to effect the distribution of the assets of the Liquidation Trust, including the Plan Sponsor Promissory Note, to the holders of the Liquidation Trust Interests in accordance with the terms of the Debtors' Plan as soon as practicable.

4.2 The SCC Litigation Trust Under the Debtors' Plan.

(a) Creation of the SCC Litigation Trust Under the Debtors' Plan.

On the Effective Date, the SCC Litigation Trust shall be created, as provided in the SCC Litigation Trust Agreement. The SCC Litigation Trust shall be a Delaware trust organized under the Delaware Statutory Trust Act. Prior to the Effective Date, the SCC Litigation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code.

Notwithstanding the foregoing, the Debtors reserve the right to seek to auction interests in the SCC Litigation Trust Claims in anticipation of Confirmation. If the Debtors determine that pursuit of such an auction is in the best interest of their Estates, they will file an appropriate motion with the Bankruptcy Court to approve the auction procedures. If, as a result of any such auction, the Debtors' interests in the SCC Litigation Trust Claims are to be transferred in their entirety, the auction proceeds shall be distributed as Plan Consideration and the SCC Litigation Trust will not be created (and no SCC Litigation Trust Interests will be distributed under the Debtors' Plan). If the Debtors decide, as a result of the auction, to transfer only a portion of their interests in the SCC Litigation Trust Claims, the SCC Litigation Trust will be created and the remaining SCC Litigation Trust Interests shall be issued in accordance with Article 6.2 of the Debtors' Plan.

In the event of a transfer of a portion of the SCC Litigation Trust Claims to the SCC Litigation Trust pursuant to the auction, the proposed terms of the SCC Litigation Trust and the SCC Litigation Trust Interests set forth in the SCC Litigation Trust Agreement will be subject to change based on negotiation with the SCC Purchasers and consultation with the ASARCO Committee, the DOJ, the Asbestos Claimants' Committee, and the FCR.

(b) Appointment of Trustees Under the Debtors' Plan.

The Plan Administrator shall serve as the SCC Litigation Trustee. Upon approval by the Bankruptcy Court in the Confirmation Order, the SCC Litigation Trustee shall be appointed. The SCC Litigation Trustee shall report to the SCC Litigation Trust Board.

The SCC Litigation Trustee shall have and perform all of the rights, powers, and duties set forth in the SCC Litigation Trust Agreement.

The SCC Litigation Trust Agreement provides for the appointment of a Delaware Trustee and has other appropriate provisions relating to a Delaware Trustee. ASARCO shall designate the Person who will initially serve as Delaware Trustee of the SCC Litigation Trust.

The duties, responsibilities, rights, and obligations of the SCC Litigation Trustee and the Delaware Trustee for the SCC Litigation Trust shall terminate in accordance with the terms of the SCC Litigation Trust Agreement.

(c) SCC Litigation Trust Board Under the Debtors' Plan.

The SCC Litigation Trust Board shall consist of three members initially selected as follows: (1) one selected by the ASARCO Committee; (2) one selected by the DOJ (in consultation with the states that have Allowed environmental Claims); and (3) one selected by the Asbestos Claimants' Committee and the FCR.

Successors to the members of the SCC Litigation Trust Board shall be selected as follows: (1) in the case of the member originally selected by the ASARCO Committee, by the then-current holders of a majority of the Class A SCC Litigation Trust Interests; (2) in the case of the member originally selected by the DOJ, by the then-current holders of a majority of the Class B SCC Litigation Trust Interests; and (3) in the case of the member originally selected by the Asbestos Claimants' Committee and the FCR, by the then-current holders of a majority of the Class C SCC Litigation Trust Interests; *provided, however*, that any holder of Class A SCC Litigation Trust Interests, Class B SCC Litigation Trust Interests, or Class C SCC Litigation Trust Interests who is a party adverse to ASARCO in any SCC Litigation Trust Claims, or is an Affiliate of any party adverse to ASARCO in any SCC Litigation Trust Claims, shall not be entitled to the foregoing selection rights. If no holder of SCC Litigation Trust Interests in a particular class is eligible to select a member of the SCC Litigation Trust Board, the board shall proceed without a member selected by that class.

Notwithstanding this section (c), the Debtors may, prior to the Effective Date, amend the SCC Litigation Trust Agreement in consultation with the Committees, the FCR, and the DOJ, to do any of the following: increase or decrease the number of members of the SCC Litigation Trust Board (including, without limitation, to provide for a member selected by the SCC Purchasers), change the method by which such members are designated, or change the number of such members whose approval should be required for actions or omissions to be taken by the SCC Litigation Trustee in respect of the SCC Litigation Trust Claims.

(d) Purpose of the SCC Litigation Trust Under the Debtors' Plan.

The SCC Litigation Trust shall be established as a statutory trust for the purpose of pursuing the SCC Litigation Trust Claims, liquidating all assets of the SCC Litigation Trust for the benefit of the SCC Litigation Trust Beneficiaries, receiving all SCC Litigation Trust Claim recoveries, and distributing the resulting SCC Litigation Trust Proceeds and other Cash of the SCC Litigation Trust to the SCC Litigation Trust Beneficiaries after payment of all expenses of the SCC Litigation Trust. The primary purpose of the SCC Litigation Trust is to liquidate its assets, and the SCC Litigation Trust shall have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the SCC Litigation Trust.

(e) Transfer of SCC Litigation Trust Claims to the SCC Litigation Trustee Under the Debtors' Plan.

On the Effective Date, the Debtors shall transfer, assign, and deliver to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries (1) all of the Debtors' respective rights, title, and interests in the SCC Litigation Trust Claims free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity, other than Liens or encumbrances arising under the Bankruptcy Code or other applicable law; (2) all of the Debtors' respective rights, title, and interest in the Debtors' Privileges associated with the SCC Litigation Trust Claims; and (3) the SCC Litigation Trust Expense Fund. As soon as practicable after the Effective Date, the Debtors shall transfer to the SCC Litigation Trustee for the benefit of the SCC Litigation Trust Beneficiaries all documents (or copies thereof) in the Debtors' possession, custody, or control in connection with the SCC Litigation Trust Claims. On and after the Effective Date, the SCC Litigation Trustee shall be a representative of the Estates under section 1123(b)(3) of the Bankruptcy Code with respect to the SCC Litigation Trust Claims and the Debtors' Privileges associated therewith. The SCC Litigation Trustee shall be granted the rights and powers of a debtor in possession under section 1107 of the Bankruptcy Code, including, without limitation, the duty to prosecute the SCC Litigation Trust Claims and distribute the proceeds of such claims, and such other rights and powers as set forth in the SCC Litigation Trust Agreement.

(f) The SCC Litigation Trust Under the Debtors' Plan.

The SCC Litigation Trust Agreement, substantially in the form of **Exhibit 5** to the Debtors' Plan, contains provisions customary to trust agreements utilized in comparable circumstances. The Debtors, the SCC Litigation Trustee, the SCC Litigation Trust Beneficiaries, and the Delaware Trustee shall execute any document or other instrument as necessary to cause all of the Debtors' respective rights, title, and interests in and to the SCC Litigation Trust Claims to be transferred to the SCC Litigation Trust.

The SCC Litigation Trustee shall have full authority (subject, in certain instances, to approval by the SCC Litigation Trust Board) to take any steps necessary to administer the SCC Litigation Trust Claims, including, without limitation, the duty and obligation to liquidate the SCC Litigation Trust Claims.

All costs and expenses associated with the administration of the SCC Litigation Trust shall be the responsibility of and paid by the SCC Litigation Trust. Notwithstanding the foregoing, each of Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the SCC Litigation Trustee in pursuing the SCC Litigation Trust Claims and shall provide reasonable access to their respective personnel and books and records relating to the SCC Litigation Trust Claims to representatives of the SCC Litigation Trust for the purpose of enabling the SCC Litigation Trustee to perform the SCC Litigation Trustee's tasks under the SCC Litigation Trust Agreement and the Debtors' Plan; *provided*, *however*, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests to obtain access to the Plan Sponsor's personnel or books and records shall be made through Reorganized ASARCO or its representatives.

The SCC Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as the SCC Litigation Trustee and the SCC Litigation Trust Board may deem necessary or appropriate, and at the sole expense of the SCC Litigation Trust, to aid in the performance of the SCC Litigation Trustee's responsibilities pursuant to the terms of the Debtors' Plan including, without limitation, the liquidation and distribution of SCC Litigation Trust Claims.

In the event that ASARCO obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement of any of the SCC Litigation Trust Claims prior to the Effective Date, the proceeds of the settlement shall be distributed to the SCC Litigation Trust Beneficiaries in the same manner as the SCC Litigation Trust Interests. In the event of such a settlement ASARCO shall hold the proceeds in escrow for distribution on the Effective Date.

Except as otherwise provided herein, the SCC Litigation Trust shall be deemed a "successor to the debtor" for purposes of sections 1123(b)(3) and 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters Under the Debtors' Plan.

Solely for tax purposes, the SCC Litigation Trust Tax Owners shall be treated as grantors and owners of the SCC Litigation Trust pursuant to section 671 *et seq*. of the Internal Revenue Code and the Treasury Regulations promulgated thereunder and any similar provision of state or local law. For federal income tax purposes, the Debtors intend that all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the SCC Litigation Trust is a deemed transfer to the SCC Litigation Trust Tax Owners (as of the Initial Distribution Date), followed by a deemed transfer by such SCC Litigation Trust Tax Owners to the SCC Litigation Trust, and all income and gain of the SCC Litigation Trust which is earned after such deemed transfer shall be taxed to the SCC Litigation Trust Tax Owners on a current basis. In addition, the investment powers of the SCC Litigation Trustee shall be strictly limited, as provided in the SCC Litigation Trust Agreement.

The fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to each SCC Litigation Trust Tax Owner, as described in the preceding paragraph, and the fair market value of the portion of the SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any SCC Litigation Trust Tax Owner as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the SCC Litigation Trustee, and all parties (including, without limitation, the SCC Litigation Trustee, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the SCC Litigation Trust) shall utilize such fair market value determined by the SCC Litigation Trustee for all federal income tax purposes.

The SCC Litigation Trustee shall be responsible for filing all federal, state, and local tax returns for the SCC Litigation Trust and paying any taxes imposed on the SCC Litigation Trust. The SCC Litigation Trustee shall comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the SCC Litigation Trustee shall be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to an SCC Litigation Trust Beneficiary (or its designee) shall

be treated as having been paid to, and received by, such SCC Litigation Trust Beneficiary for purposes of the Debtors' Plan and the Debtors' Plan Documents.

Any items of income, deduction, credit, or loss of the SCC Litigation Trust shall be allocated by the SCC Litigation Trustee for federal income tax purposes among current or former SCC Litigation Trust Tax Owners, such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former SCC Litigation Trust Tax Owners shall be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

See Section 21 hereof, "Certain Federal Income Tax Consequences of the Debtors' Plan," for further information.

(h) SCC Litigation Trust Interests Under the Debtors' Plan.

(1) Issuance of SCC Litigation Trust Interests.

On the Initial Distribution Date, SCC Litigation Trust Interests shall be issued to the SCC Purchasers (if any), the Other Unsecured Claimants, the Governmental Environmental Claimants, and the Asbestos Trust as follows:

An amount of SCC Litigation Trust Interests equal to the SCC Purchaser Percentage shall be issued to the SCC Purchasers pro rata based on their respective SCC Litigation Purchase Price paid for such interests. All SCC Litigation Trust Interests issued to SCC Purchasers shall be designated "Class D SCC Litigation Trust Interests."

All remaining SCC Litigation Trust Interests shall be issued to the Other Unsecured Claimants, Governmental Environmental Claimants, and the Asbestos Trust based on (A) the Class 3 Claimant's Ratable Portion and (B) the Asbestos Ratable Portion. All SCC Litigation Trust Interests issued to the Other Unsecured Claimants shall be designated "Class A SCC Litigation Trust Interests," all SCC Litigation Trust Interests issued to the Governmental Environmental Claimants shall be designated "Class B SCC Litigation Trust Interests," and all SCC Litigation Trust Interests issued to the Asbestos Trust shall be designated "Class C SCC Litigation Trust Interests."

The SCC Litigation Trust Interests that would have been issued to the holders of Class 3 Disputed Claims if such Disputed Claims had been Allowed Claims as of the Effective Date shall be issued to, and held by, the Plan Administrator pending resolution of such Disputed Claims. The amount of SCC Litigation Trust Interests to be issued to the Plan Administrator on account of Class 3 Disputed Claims shall be determined based on the lesser of (A) the asserted amount of the Disputed Claims in the applicable Proofs of Claim; (B) the amount, if any, estimated by the Bankruptcy Court pursuant to (i) section 502(c) of the Bankruptcy Code or (ii) the Debtors' Plan if, after the Effective Date, a motion is filed by the Plan Administrator to estimate such Claim; or (C) the amount otherwise agreed to by the Debtors (or the Plan Administrator, if after the Effective Date) and the holders of such Disputed Claims. If a Class 3 Claim that remains a Disputed Claim as of the Effective Date is thereafter Allowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) distribute to the holder of such Claim the SCC Litigation Trust Interests that such holder would have received on account of such Claim if such Claim had been an Allowed Claim on the Effective Date to the extent thereafter Allowed. If a Class 3 Disputed Claim is disallowed in whole or in part, the Plan Administrator shall (at such time as determined to be practicable by the Plan Administrator) transfer the SCC Litigation Trust Interests held in respect of such Disallowed Claim to the SCC Litigation Trustee for cancellation and any distributions received from the SCC Litigation Trust on account of such Disallowed Claim shall be returned to the SCC Litigation Trustee for distribution to the other SCC Litigation Trust Beneficiaries.

The SCC Litigation Trust Beneficiaries may convey, assign, sell, or otherwise transfer an SCC Litigation Trust Interest subject to the limitations contained in the SCC Litigation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the SCC Litigation Trustee after consultation with the SCC Litigation Trust Board (after the Effective Date) may at any time cause the SCC Litigation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws or to the extent the Debtors (prior to the Effective Date) or the SCC Litigation Trustee after consultation with the SCC Litigation Trust Board (after the Effective Date) determines such restraint on transferability to be in the best interests of the SCC Litigation Trust.

(2) Interests Beneficial Only.

The ownership of an SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to (A) any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting; or (B) any voting rights with respect to the administration of the SCC Litigation Trust (other than the right to appoint members of the SCC Litigation Trust Board) or the actions of the SCC Litigation Trustee in connection therewith.

(3) Maintenance of SCC Litigation Trust Register.

The SCC Litigation Trustee shall appoint an SCC Litigation Trust Registrar, which may be the SCC Litigation Trustee, for the purpose of recording ownership of the SCC Litigation Trust Interests. The SCC Litigation Trust Register shall contain the names, addresses for payment and notice, and class and number of SCC Litigation Trust Interests of each of the SCC Litigation Trust Beneficiaries. The SCC Litigation Trust Registrar, if other than the SCC Litigation Trustee, may be such other institution acceptable to the SCC Litigation Trustee and shall be entitled to receive reasonable compensation from the SCC Litigation Trust as an expense of the SCC Litigation Trust.

(4) Evidence of SCC Litigation Trust Interests.

The SCC Litigation Trustee shall have full power, authority, and discretion to determine whether ownership of any SCC Litigation Trust Interest shall be represented by physical certificates, by book entries in lieu of physical certificates, or in any other form or manner. Regardless of such determination, the record holders of the SCC Litigation Trust Interests shall be recorded and set forth in the SCC Litigation Trust Register.

(5) Securities Laws Matters.

To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under the Debtors' Plan are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the SCC Litigation Trustee determines, with the advice of counsel and after consultation with the SCC Litigation Trust Board, that the SCC Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the SCC Litigation Trustee shall take any and all actions deemed necessary or appropriate by the SCC Litigation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the SEC. Notwithstanding the foregoing procedure, nothing in the Debtors' Plan shall be deemed to preclude the SCC Litigation Trustee from amending the SCC Litigation Trust Agreement to make such changes as deemed necessary or appropriate by the SCC Litigation Trustee, with the advice of counsel, to ensure that the SCC Litigation Trust is not subject to registration or reporting requirements of the Exchange Act.

The Debtors anticipate that the SCC Litigation Trust may, under certain circumstances, be required to register under the Exchange Act, and accordingly be required to file with the SEC and send to the SCC Litigation Trust Beneficiaries certain periodic reports and other information pursuant to the Exchange Act, including Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, and Current Reports on Form 8-K. The cost of the preparation, filing, and delivery of any such reports would be an expense of the SCC Litigation Trust.

Exemptions may be sought from the SEC from all or some of the reporting requirements that may be applicable to the SCC Litigation Trust pursuant to the Exchange Act if it is determined that compliance with such requirements would be burdensome on the SCC Litigation Trust. The Debtors have not yet made any determinations regarding whether any such exemptions will be sought, and the SEC has not yet made any determinations regarding such matters. There is no assurance that any such exemptions, if deemed necessary and applied for, will be granted.

The SCC Litigation Trust Interests may be freely transferred by most recipients following initial issuance, subject to certain limitations set forth in the SCC Litigation Trust Agreement, unless the holder is an "underwriter" with respect to such SCC Litigation Trust Interests, as that term is defined in section 1145(b) of the Bankruptcy Code. Section 1145(b) of the Bankruptcy Code defines "underwriter" for purposes of the Securities Act as one who (A) purchases a claim or interest with a view to distribution of any security to be received in exchange for the claim; (B) offers to sell securities issued under a plan for the holders of such securities; (C) offers to buy securities issued under a plan from persons receiving such securities, if the offer to buy is made with a view to distribution of such securities; or (D)

is a controlling person of the issuer of the securities. Entities who believe they may be "underwriters" under the definition contained in section 1145 of the Bankruptcy Code summarized above are advised to consult their own counsel with respect to the availability of the resale exemption provided by section 1145.

(i) Distributions of SCC Litigation Proceeds and Other Property Under the Debtors' Plan.

The SCC Litigation Trustee shall apply all SCC Litigation Proceeds, any proceeds therefrom, and any other Cash of the SCC Litigation Trust (other than the SCC Litigation Trust Expense Fund) in the following order:

(1) first, to pay all costs and expenses of the SCC Litigation Trust to the extent not paid by or from the SCC Litigation Trust Expense Fund, including, without limitation, compensation payable to the SCC Litigation Trustee, to satisfy other liabilities incurred or assumed by the SCC Litigation Trust (or to which the assets are otherwise subject) in accordance with the Debtors' Plan or the SCC Litigation Trust Agreement, to hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the SCC Litigation Trust Assets (including the SCC Litigation Trust Expense Fund), and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims; and

(2) second, to pay any remaining amounts to the SCC Litigation Trust Beneficiaries (including to the Plan Administrator for deposit into the Disputed Claims Reserve on account of the Claims of any Claimant that would be an SCC Litigation Trust Beneficiary absent such objection) pro rata based on their SCC Litigation Trust Interests. If the Plan Administrator holds proceeds of the SCC Litigation Trust in the Disputed Claims Reserve on account of a Disputed Claim that is finally determined adversely to such Claimant, in whole or in part, the Plan Administrator shall return to the SCC Litigation Trust the disallowed portion that the Plan Administrator received from the SCC Litigation Trust on account of such Claim and shall pay any Allowed portion to such Claimant.

If, upon termination of the SCC Litigation Trust, the SCC Litigation Trust Expense Fund has funds remaining after the payment of all of the SCC Litigation Trust's expenses, such remaining funds shall be paid to the SCC Litigation Trust Beneficiaries holding Cass A, Class B, and Class C SCC Litigation Trust Interests (including the Plan Administrator on behalf of the Disputed Claims Reserve) pro rata based on their SCC Litigation Trust Interests.

(j) Termination of the SCC Litigation Trust Under the Debtors' Plan.

The SCC Litigation Trust shall terminate on the earlier of: (1) 30 days after the distribution of all of the assets of the SCC Litigation Trust in accordance with the terms of the SCC Litigation Trust Agreement and the Debtors' Plan; or (2) the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the SCC Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the SCC Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the SCC Litigation Trust; provided that (1) any such extension is so approved on or prior to a date less than six months (but not less than three months) prior to termination of the immediately preceding extended term; and (2) the SCC Litigation Trustee receives an opinion of counsel or a favorable ruling from the IRS that any further extension would not adversely affect the status of the SCC Litigation Trust as a grantor trust for federal income tax purposes.

The SCC Litigation Trustee shall not unduly prolong the duration of the SCC Litigation Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all of the SCC Litigation Trust Claims and to effect the distribution of the assets of the SCC Litigation Trust to the holders of the SCC Litigation Trust Interests in accordance with the terms of the Debtors' Plan as soon as practicable.

SECTION 5
THE ASBESTOS TRUST UNDER THE DEBTORS' PLAN

5.1 Creation of the Asbestos Trust Under the Debtors' Plan.

On the Effective Date or such earlier date as the Debtors deem appropriate, the Asbestos Trust shall be created, as provided in the Asbestos Trust Agreement. The Asbestos Trust shall be a Delaware Trust organized under the Delaware Statutory Trust Act.

5.2 Appointment of Asbestos Trustees Under the Debtors' Plan.

Not less than 10 days prior to the commencement of the Confirmation Hearing, ASARCO shall designate and provide biographical information regarding the Persons who shall initially serve as the Asbestos Trustees. Upon approval by the Bankruptcy Court in the Confirmation Order, the Asbestos Trustees shall be appointed.

ASARCO (if prior to the Effective Date) or the Asbestos Trustees (if after the Effective Date) shall designate the Person who shall initially serve as the Delaware Trustee for the Asbestos Trust.

The Asbestos Trustees and the Delaware Trustee shall each have and perform all of the rights, powers, and duties set forth in the Asbestos Trust Agreement.

5.3 Purpose of the Asbestos Trust Under the Debtors' Plan.

The purposes of the Asbestos Trust shall be, among other things, to (a) liquidate, resolve, pay, and satisfy all Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Debtors' Plan, the Asbestos Trust Agreement, the Asbestos TDP, and the Confirmation Order; (b) receive, preserve, hold, manage, and maximize the Asbestos Trust Assets for use in paying and satisfying Allowed Unsecured Asbestos Personal Injury Claims and Demands in accordance with the terms of the Asbestos Trust Agreement; and (c) take other actions deemed by the Asbestos Trustees to be in the best interest of the holders of the Unsecured Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Asbestos Trust.

Among other things, the Asbestos Trust shall assume the liabilities and responsibility for Unsecured Asbestos Personal Injury Claims and Demands. To do this, the Asbestos Trust shall use the Asbestos Trust Assets and income to pay all Unsecured Asbestos Personal Injury Claims and Demands in accordance with the Asbestos Trust Agreement and the Asbestos TDP in such a way that all holders of Unsecured Asbestos Personal Injury Claims and Demands are treated fairly, equitably, and reasonably in light of the finite assets available to satisfy such Claims, and to otherwise comply in all respects with the requirements of a trust set forth in section 524(g)(2)(B) of the Bankruptcy Code.

A copy of the Asbestos Trust Agreement, in substantially the form that shall be executed, is attached as ***Exhibit 6*** *to the Debtors' Plan.*

5.4 The FCR Under the Debtors' Plan.

On and after the Effective Date, Judge Robert C. Pate shall serve as the FCR and shall have and exercise the functions, rights, duties, powers, and privileges provided in the Asbestos Trust Documents.

5.5 Asbestos TAC Under the Debtors' Plan.

The initial members of the Asbestos TAC shall be those Persons named in the Confirmation Order. They shall serve in a fiduciary capacity representing all holders of Unsecured Asbestos Personal Injury Claims, in accordance with the provisions of the Asbestos Trust Documents. They shall consult with and advise the Asbestos Trustees regarding the administration of the Asbestos Trust and the liquidation and resolution of Unsecured Asbestos Personal Injury Claims in accordance with the provisions of the Debtors' Plan and the Asbestos Trust Documents.

The initial members of the Asbestos TAC shall be selected from among the lawyers representing the members of the Asbestos Claimants' Committee and other law firms representing holders of Unsecured Asbestos Personal Injury Claims and Demands. The Debtors shall file with the Bankruptcy Court no later than 10 days prior to the

commencement of the Confirmation Hearing the names and biographical information of the nominated candidates, and such nominations shall be subject to the approval of the Bankruptcy Court at the Confirmation Hearing. In the event that any of the initial members resigns, all successor members shall be appointed in accordance with the Asbestos Trust Agreement.

5.6 Transfers, Assignments, and Payments to the Asbestos Trustees Under the Debtors' Plan.

As described in Article 7.6 of the Debtors' Plan, on the Effective Date, the Debtors shall transfer, assign, and pay, without limitation, to the Asbestos Trust for the benefit of the Asbestos Trust Beneficiaries all of the Debtors' rights, title, and interest in: (a) the Asbestos Trust Assets, as provided in Article 10.6 of the Debtors' Plan; (b) the Asbestos Personal Injury Claims and Demands and other recoveries, including, without limitation, any extracontractual claims for bad faith, late payments, reimbursement of Asbestos Trust Expenses, or otherwise; (c) the Debtors' Privileges associated with the Asbestos Personal Injury Claims and Demands and other recoveries; (d) pursuing and receiving any and all insurance proceeds for Asbestos Personal Injury Claims and Demands from the Asbestos Insurance Policies; and (e) the Asbestos Insurance Recoveries, together with and subject to any Claim of an Asbestos Insurance Company (1) relating to an Asbestos Insurance Policy or the proceeds of such policy or (2) resulting from the resolution of an Avoidance Action against any Asbestos Insurance Company. Notwithstanding the foregoing, ASARCO reserves the right to retain the Asbestos Insurance Recoveries and pay the net proceeds of such recoveries (after the deduction of the reasonable and necessary unreimbursed costs and expenses associated with obtaining such proceeds) to the Asbestos Trust if, after consultation with the Asbestos Trust, it is determined that such retention better preserves these assets. In addition, Sterlite has agreed to execute and deliver the Put Option to the Asbestos Trustees.

5.7 Asbestos Trust Agreement Under the Debtors' Plan.

The Asbestos Trust Agreement, substantially in the form of **Exhibit 6** to the Debtors' Plan, contains provisions customary to documents utilized in comparable circumstances. ASARCO, Covington, the Asbestos Subsidiary Debtors, the Asbestos Subsidiary Committee, the Asbestos Claimants' Committee, the Asbestos Trustees, the Delaware Trustee, the members of the Asbestos TAC, and the FCR shall execute the Asbestos Trust Agreement.

5.8 Asbestos Books Under the Debtors' Plan.

(a) Transfer or Inspection and Copying of Asbestos Books.

Subject to the conditions set forth herein, the Asbestos Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO: (1) to have Reorganized ASARCO transfer into the Asbestos Trust's possession all or part of the Asbestos Books in their current condition upon request of the Asbestos Trust and on the condition that the Asbestos Trust shall pay all costs and expenses of the transfer or (2) to inspect and, at the sole expense of the Asbestos Trust, make copies of the Asbestos Books during business hours on any Business Day and as often as may reasonably be desired; provided that, if so requested, the Asbestos Trust shall enter into a confidentiality agreement satisfactory in form and substance to Reorganized ASARCO.

(b) Costs and Expenses.

All costs and expenses associated with the storage of and access to the Asbestos Books shall be the responsibility of, and paid by, (1) the Plan Administrator for any Asbestos Books that remain in Reorganized ASARCO's possession or that are transferred to the Plan Sponsor and (2) the Asbestos Trust for any Asbestos Books that are transferred into the Asbestos Trust's possession. All costs and expenses of access to any Asbestos Books that are transferred to the Plan Sponsor shall be paid by the Plan Administrator.

(c) Access to Asbestos Books and Personnel.

Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Trust in transferring or providing access to the Asbestos Books in their current condition and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein; provided that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor regarding the transfer or access to the Asbestos Books or access to the Plan Sponsor's personnel shall be made through Reorganized ASARCO or its representatives. Subject to the conditions set forth herein, the Asbestos Trust, through its duly authorized representatives,

shall also have the right, upon reasonable prior written notice, to conduct reasonable interviews of employees and other representatives of Reorganized ASARCO concerning matters reasonably related to the Asbestos Books.

(d) Disposition of Asbestos Books.

Reorganized ASARCO shall provide the Asbestos Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity for the Asbestos Trust to segregate and remove, at the expense of the Asbestos Trust, such Asbestos Books as the Asbestos Trust may select.

(e) Privileged Documents or Communications.

If the Asbestos Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether electronic, written, or oral) to which any Privilege attaches, the Asbestos Trust shall be deemed the Privilege holder for purposes of fulfilling the Asbestos Trust obligations and preserving the Privilege, shall be required to take all reasonable steps to maintain any such Privilege and may not waive any such Privilege without the consent of Reorganized ASARCO, which consent shall not be unreasonably withheld. Any disputes between the Asbestos Trust and Reorganized ASARCO or the Plan Administrator regarding the production of any documents or communications or the waiver of any Privileges shall be decided by the Bankruptcy Court. Production of materials to the Asbestos Trust does not constitute a waiver or an impairment of any Privilege held by Reorganized ASARCO, Reorganized Covington, or any of the Debtors. In the event that any third party challenges any such Privilege, Reorganized ASARCO or the Asbestos Trustees may seek protection from a court of competent jurisdiction. References in this Section 5.8 to Reorganized ASARCO shall also include its successors in interest.

5.9 Assumption of Liabilities by the Asbestos Trust Under the Debtors' Plan.

Pursuant to Article 7.9 of the Debtors' Plan, upon the occurrence of the Effective Date, in exchange for the funding in accordance with Article 10.6 of the Debtors' Plan, the Asbestos Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Unsecured Asbestos Personal Injury Claims and Demands and the Asbestos Trustees shall be responsible for ensuring that the Asbestos Trust is administered in accordance with the Asbestos Trust Agreement, including that Unsecured Asbestos Personal Injury Claims and Demands are paid in accordance with the Asbestos TDP.

5.10 Cooperation with Respect to Insurance Matters Under the Debtors' Plan.

Reorganized ASARCO and the Plan Sponsor shall cooperate with the Asbestos Trust and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things necessary or appropriate to effectuate all transfers and assignments identified herein to the Asbestos Trust; *provided, however*, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the New Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor under Article 7.14 of the Debtors' Plan shall be made through Reorganized ASARCO or its representatives. Reorganized ASARCO shall, without limitation, (a) provide the Asbestos Trust with copies of insurance policies and settlement agreements included within or relating to the Unsecured Asbestos Personal Injury Claims and Demands; (b) provide the Asbestos Trust with information necessary or helpful to the Asbestos Trust in connection with its efforts to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries from an Asbestos Insurance Company, in its capacity as such, including, without limitation, recoveries of extracontractual damages; (c) execute assignments or allow the Asbestos Trust to pursue claims in its own name (subject to appropriate disclosure of the fact that the Asbestos Trust is doing so and the reasons why it is doing so), including by means of arbitration, alternative dispute resolution proceedings, or litigation, to the extent necessary or helpful to the efforts of the Asbestos Trust to obtain insurance coverage for the Unsecured Asbestos Personal Injury Claims and Demands as well as other recoveries from an Asbestos Insurance Company, in its capacity as such, including, without limitation, recoveries of extracontractual damages; and (d) pursue and recover insurance coverage for the Unsecured Asbestos Personal Injury Claims and Demands as well as other recoveries from an Asbestos Insurance Company, in its capacity as such, including, without limitation, recoveries of extracontractual damages, in its own name or right to the extent that any or all of the transfers, assumptions, and assignments identified herein are not able to be fully effectuated, with any and all recoveries therefrom to be turned over to the Asbestos Trust. The Asbestos Trust shall be obligated to compensate Reorganized ASARCO for all costs and expenses reasonably incurred in connection with providing assistance to the Asbestos Trust under Article 7.14 of the Debtors' Plan, including, without limitation, out-of-pocket costs and expenses, consultant fees, and attorneys' fees.

5.11 How Unsecured Asbestos Personal Injury Claims and Demands Shall Be Liquidated and Paid Under the Asbestos TDP to be Enacted Under the Debtors' Plan.

The Asbestos TDP shall control liquidation and payment of all Unsecured Asbestos Personal Injury Claims treated in Class 4 and Demands. The initial Asbestos TDP to be put into effect by the Asbestos Trust on the Effective Date of the Debtors' Plan is Exhibit 1 to the Asbestos Trust Agreement.

(a) Liquidation of Unsecured Asbestos Personal Injury Claims and Demands by the Asbestos Trust Under the Debtors' Plan.

Unsecured Asbestos Personal Injury Claims and Demands must be liquidated in accordance with the Asbestos TDP before any payment can be made on such Claims and Demands. With respect to Harbinger's Plan, the Asbestos Claimants' Committee asserts that the Asbestos Personal Injury Claimants are entitled to have their Asbestos Personal Injury Claims liquidated by jury trial.

(b) Payment of Liquidated Claims by the Asbestos Trust Under the Debtors' Plan.

The Asbestos TDP provides procedures for payment of Unsecured Asbestos Personal Injury Claims and Demands.

5.12 Excess Asbestos Trust Assets Under the Debtors' Plan.

If there are any Asbestos Trust Assets remaining after the wind-up of the Asbestos Trust's affairs by the Asbestos Trustees and payment of all of the Asbestos Trust's liabilities has been provided for as required by applicable law including section 3808 of the chapter 38 of title 12 of the Delaware Code, all monies remaining in the Asbestos Trust estate shall be given to organization(s) exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code, which tax-exempt organization(s) shall be selected by the Asbestos Trustees using their reasonable discretion; *provided, however*, that (a) if practicable, the activities of the selected tax-exempt organization(s) shall be related to the treatment of, research on, or the relief of suffering of individuals suffering from asbestos-related lung disease or disorders and (b) the tax-exempt organization(s) shall not bear any relationship to the Reorganized Debtors, AMC, ASARCO USA Incorporated, their successors, or their Affiliates within the meaning of section 468B(d)(3) of the Internal Revenue Code.

The purpose of the foregoing provisions is to prevent the Reorganized Debtors from having a retained interest in the Asbestos Trust Assets so as to ensure that the Asbestos Trust qualifies as a settlement fund under section 468B of the Internal Revenue Code and the treasury regulations thereunder. The likelihood that there will be any material amount of remaining Asbestos Trust Assets that are disposed of under these provisions is expected to be remote.

5.13 Asbestos Trust Expenses Under the Debtors' Plan.

The Asbestos Trust shall pay all Asbestos Trust Expenses (including applicable taxes) from the assets of the Asbestos Trust. Except for the $27.5 million payment on the Effective Date for purposes of Asbestos Trust Expenses, neither the Debtors nor the Reorganized Debtors shall have any obligation to pay or reimburse any Asbestos Trust Expenses. However, nothing shall preclude the Asbestos Trust from seeking reimbursement of such expenses from any Asbestos Insurance Carrier.

5.14 Indemnification and Reimbursement by the Asbestos Trust Under the Debtors' Plan.

(a) The Asbestos Trust shall indemnify, defend (and, where applicable, pay the defense costs for), and hold harmless each ASARCO Protected Party from any and all liabilities associated with an Asbestos Personal Injury Claim or Demand that a third party seeks to impose upon any ASARCO Protected Party, or that are imposed upon any ASARCO Protected Party.

(b) In the event that the Asbestos Trust makes a payment to any ASARCO Protected Party hereunder, and such ASARCO Protected Party subsequently diminishes the liability on account of which such payment was made, either directly or through a third-party recovery, the applicable ASARCO Protected Party shall promptly repay the Asbestos Trust the amount by which the payment made by the Asbestos Trust exceeds the actual cost of the associated indemnified liability.

(c) In the event the Plan Administrator makes a distribution on account of an Allowed Claim of an Asbestos Insurance Company (1) relating to an Asbestos Insurance Policy or the proceeds of such policy or (2) resulting from the resolution of an Avoidance Action against any Asbestos Insurance Company, the Asbestos Trust shall reimburse the Plan Administrator for the amount of any such distribution within 60 days of receipt of a written request for such reimbursement; *provided*, *however*, that the Plan Administrator shall consult with the Asbestos Trustees prior to making any such distribution. In the event of a dispute concerning the reimbursement of any distribution made pursuant to Article 7.10(c) of the Debtors' Plan, the Bankruptcy Court shall retain jurisdiction to determine such matter.

5.15 Tax Treatment of the Asbestos Trust Under the Debtors' Plan.

The Debtors' Plan contemplates that the Asbestos Trust shall be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, and the Asbestos Trustees shall be the "administrator" of the Asbestos Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). No election shall be made to treat the Asbestos Trust as a grantor trust for U.S. federal income tax purposes. Accordingly, the Asbestos Trust shall be treated as a taxable entity for federal income tax purposes. The Asbestos Trustees shall cause all taxes imposed on the Asbestos Trust to be paid using assets of the Asbestos Trust and shall comply with all tax reporting and withholding requirements imposed under applicable tax laws. Any amount so withheld from a distribution or payment by the Asbestos Trust to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of the Debtors' Plan and the Debtors' Plan Documents.

5.16 Termination of the Asbestos Trust Under the Debtors' Plan.

The Asbestos Trust shall automatically dissolve on the date 90 days after the first to occur of the following events:

(a) the date on which the Asbestos Trustees decide to dissolve the Asbestos Trust because (1) they deem it unlikely that new asbestos Claims will be filed against the Asbestos Trust; (2) all Unsecured Asbestos Personal Injury Claims duly filed with the Asbestos Trust have been liquidated and paid to the extent provided in the Asbestos Trust Agreement and the Asbestos TDP or have been disallowed by a Final Order, to the extent possible based upon the funds available through the Debtors' Plan; and (3) 12 consecutive months have elapsed during which no new asbestos Claim has been filed with the Asbestos Trust;

(b) if the Asbestos Trustees have procured and have in place irrevocable insurance policies and have established Claims handling agreements and other necessary arrangements with suitable third parties adequate to discharge all expected remaining obligations and expenses of the Asbestos Trust in a manner consistent with the Asbestos Trust Agreement and the Asbestos TDP, the date on which the Bankruptcy Court enters an order approving the insurance and other arrangements and the order of the Bankruptcy Court becomes a Final Order; or

(c) to the extent that any rule against perpetuities shall be deemed applicable to the Asbestos Trust, the date on which 21 years less 91 days pass after the death of the last survivor of all of the descendants of the late Joseph P. Kennedy, Sr., father of the late President John F. Kennedy, living on the date hereof.

5.17 Termination of the Asbestos Trustee and the Delaware Trustee Under the Debtors' Plan.

The duties, responsibilities, rights, and obligations of the Asbestos Trustees and the Delaware Trustee for the Asbestos Trust shall terminate in accordance with the terms of the Asbestos Trust Agreement.

SECTION 6
SUMMARY OF THE PARENT'S PROPOSED PLAN

The text of Sections 6 through 9 of the Disclosure Statement has been prepared by the Parent and AMC with reference to the Parent's Plan and uses defined terms from the Parent's Glossary. All statements and representations in Sections 6 through 9 are the sole responsibility of the Parent and AMC. The Debtors and Harbinger do not necessarily agree or disagree with any of the statements or representations in Sections 6 through 9, and each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

6.1 General.

The following is a summary of certain key provisions of the Parent's Plan. Before completing the Ballot, holders of Claims and Interests are referred to, and encouraged to review, the relevant provisions of the Parent's Plan, the Parent's Plan Documents, and the Bankruptcy Code carefully since their rights could be affected. They also are encouraged to review the Parent's Plan and this Disclosure Statement with their counsel or other advisors. Note that other provisions of the Parent's Plan not summarized in this Section 6 may be summarized elsewhere in this Disclosure Statement.

6.2 Classification Under the Parent's Plan.

(a) Generally.

Pursuant to section 1122 of the Bankruptcy Code, Claims and Interests, other than Administrative Claims and Priority Tax Claims, will be divided into the Classes set forth in Article 3.2 of the Parent's Plan. A Claim or Interest is classified in a particular Class only to the extent that the Claim or Interest falls within the description of that Class and is classified in a different Class to the extent that the Claim or Interest is within the description of that different Class.

(b) Classes Under the Parent's Plan.

The following constitute the Classes of Claims and Interests addressed by the Parent's Plan. All Classes of Claims will be deemed divided into Subclasses (and sub-Subclasses, as applicable) of Claims against each of the Debtors.

(1) Class 1 – Priority Claims. Class 1 consists of all Priority Claims against each of the Debtors.

(2) Class 2 – Secured Claims. Class 2 consists of all Secured Claims against each of the Debtors.

(3) Class 3 – General Unsecured Claims. Class 3 consists of all General Unsecured Claims, including Bondholder Claims and Environmental Unsecured Claims, against each of the Debtors.

(4) Class 4 – Asbestos Personal Injury Claims. Class 4 consists of all Asbestos Personal Injury Claims against each of the Debtors.

(5) Class 5 – Convenience Claims. Class 5 consists of all Convenience Claims against each of the Debtors.

(6) Class 6 – Late-Filed Claims. Class 6 consists of all Late-Filed Claims against each of the Debtors.

(7) Class 7 – Subordinated Claims. Class 7 consists of all Subordinated Claims against each of the Debtors.

(8) Class 8 – Environmental Reinstated Claims. Class 8 consists of all Environmental Reinstated Claims against each of the Debtors.

(9) Class 9 – Interests in ASARCO. Class 9 consists of all Interests in ASARCO.

6.3 Treatment of Unclassified Claims and Demands Under the Parent's Plan.

(a) Administrative Claims.

Article 2.1 of the Parent's Plan provides that each holder of an Allowed Administrative Claim (except any holder that agrees to lesser or otherwise different treatment) will be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date on which such Administrative Claim becomes an Allowed Claim; *provided*, *however*, that (1) Allowed Administrative Claims representing (A) post-petition liabilities incurred in the ordinary course of business by any Debtor or (B) post-petition contractual liabilities arising under loans or advances to any Debtor, whether or not incurred in the ordinary course of business, will be paid by Reorganized ASARCO in accordance with the terms and conditions of the particular transactions relating to such liabilities and any agreements relating thereto; and (2) the Allowed Administrative Claims of Professional Persons will be paid pursuant to a Final Order of the Bankruptcy Court. Chase will receive the Allowed Amount of any Administrative Claim under the Credit Facility in Cash, on the Effective Date, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. The Settled Asbestos Insurance Companies will each have an Allowed Administrative Claim for the Pre-524(g) Indemnity, in accordance with the terms and conditions of the Asbestos Insurance Settlement Agreement.

If Class 3 (General Unsecured Claims) accepts the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), then, on the Effective Date, (1) the Parent will cause the Plan Administrator to implement the Environmental Custodial Trust Agreements substantially in the form and manner as previously negotiated by the Debtors and the holders of Environmental Trust Claims and as set forth in the Environmental 9019 Motion; (2) title to the Designated Properties will be conveyed and transferred into the Environmental Custodial Trusts for the sole benefit of the beneficiaries thereof; (3) the Environmental Custodial Trust Claims will be treated as Administrative Claims and the Environmental Custodial Trusts will be funded in cash in the full amount set forth in the Debtors' Plan; and (4) the Parent will withdraw its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund and the Custodial Trust Settlement Agreements. The final form of the Environmental Custodial Trust Agreements will be agreed upon by the Parent and the Environmental Trust Claim holders and will contain non-substantive modifications to reflect the Parent's Plan. The Administrative Claims of the United States or any individual state under civil Environmental Laws relating to the Designated Properties will, as contemplated by and to the same extent set forth in the Environmental 9019 Motion, be addressed through the Environmental Custodial Trust Settlement Agreements, the Environmental Custodial Trust Funding, and the Environmental Custodial Trust Administration Funding, which funding will be paid by the Parent's Plan Administrator to the Environmental Custodial Trusts. If Class 3 rejects the Parent's Plan and/or expresses a preference for either the Debtors' Plan or Harbinger's Plan, however, the Parent will continue to pursue its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund and the Custodial Trust Settlement Agreements, and will treat all Claims with respect to Designated Sites as Disputed Claims pending a final order resolving the Disputed Claims. The DOJ has requested that, in the event Class 3 rejects the Parent's Plan and/or expresses a preference for either the Debtors' Plan or Harbinger's Plan, the Custodial Trusts be created as provided in Environmental Custodial Trust Settlement Agreements and hold title to Designated Properties pending resolution of amount of funding per any appeals of Custodial Trust Settlements, interim compliance obligations under consent decrees, orders, and applicable law be funded from the Disputed Claims Reserve, and the Bankruptcy Court retain jurisdiction over any disputes about interim compliance; the request is under consideration by the Parent.

The Indenture Trustees contend that under the indentures, applicable law, and the Bankruptcy Code, the Indenture Trustees are entitled to reimbursement for certain Indenture Trustee Fee Claims.

(b) Priority Tax Claims.

Article 2.2 of the Parent's Plan provides that each holder of an Allowed Priority Tax Claim (except any holder that agrees to lesser or otherwise different treatment), at the election of the Parent, will (1) be Paid in Full, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date upon which such Priority Tax Claim becomes an Allowed Claim or (2) receive treatment in any other manner such that its Allowed Priority Tax Claim will not be impaired pursuant to section 1124 of the Bankruptcy Code, including, but not limited to, payment in accordance with the provisions of section 1129(a)(9)(C) of the Bankruptcy Code.

(c) Demands.

Article 2.3 of the Parent's Plan provides that Demands will be accorded the Section 524(g) Treatment provided to Class 4 Asbestos Personal Injury Claims, and will be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement.

Under the Parent's Plan, the FCR is entitled to make an election regarding whether to accept or reject the Section 524(g) Treatment; *provided, however*, that, under the Amended Agreement in Principle, the FCR and the Asbestos Claimants' Committee have agreed to support the Parent's Plan including the Section 524(g) Treatment. The asbestos representatives have also agreed to support the Debtors' Plan.

The Parent believes that, under section 524(g)(4)(B) of the Bankruptcy Code, the FCR, as the legal representative appointed by the Bankruptcy Court for the purpose of protecting the rights of holders of Demands against the Debtors, has the right to express his acceptance or rejection of any plan of reorganization for the Debtors that contains a section 524(g) channeling injunction with respect to such Demands.

6.4 Treatment of Claims and Interests Under the Parent's Plan.

Article IV of the Parent's Plan sets forth the treatment to be provided each of the Classes of Claims and Interests under the Parent's Plan. The following is a summary of the treatment being provided under the Parent's Plan to each Class:

(a) Class 1 – Priority Claims.

(1) Voting Rights Under the Parent's Plan.

This Class is unimpaired. Class 1, and holders of Priority Claims in Class 1, are conclusively presumed to have accepted the Parent's Plan and, accordingly, are not entitled to vote on the Parent's Plan.

(2) Treatment Under the Parent's Plan.

Each holder of an Allowed Priority Claim (except any holder that agrees to lesser or otherwise different treatment) will, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, be Paid in Full, in Cash, on the later of the Effective Date or the date on which such Priority Claim becomes an Allowed Claim.

(b) Class 2 – Secured Claims.

(1) Voting Rights Under the Parent's Plan.

Each Secured Claim will be deemed to be in a separate sub-Class of Class 2 for all purposes under the Parent's Plan, and treated as a separate sub-Class for voting and solicitation purposes. **Parent's Plan Exhibit 7** lists the Class 2 Secured Claims (as such list may be amended, supplemented, or modified up to and including the Confirmation Date).

The Parent will make its election prior to the Confirmation Hearing. The Parent will solicit the votes of each sub-Class of Secured Claims. If the Parent elects to Reinstate a particular Secured Claim, that sub-Class will be unimpaired, and that sub-Class's vote will not be counted. If the Parent elects the Cash payment option as to a particular Secured Claim, that sub-Class will be deemed impaired, and that sub-Class's vote will be counted.

Mitsui contends that, if a sub-Class of Class 2 is the only accepting, non-insider impaired Class for purposes of satisfying the requirements of section 1129(a)(10) with respect to the Parent's Plan, the Parent must explain the alleged impairment of such sub-Class. In the event a sub-Class of Class 2 is the only accepting, non-insider impaired class with respect to the Parent's Plan, the Parent will demonstrate the impairment of such sub-Class at the Confirmation Hearing.

(2) Treatment Under the Parent's Plan.

Each holder of an Allowed Secured Claim, at the election of the Parent, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, will (A) be paid, in Cash, the full value of the Collateral securing such Allowed Secured Claim on the later of the Effective Date or the date on which such Secured Claim becomes due in the ordinary course; (B) be Reinstated; (C) receive from Reorganized ASARCO all Collateral securing such Allowed Secured Claim; or (D) receive such other treatment as may be agreed upon between the Parent and the holder of such Allowed Secured Claim.

Except as otherwise provided in the Parent's Plan, any Asbestos Personal Injury Claimant with a Lien against any property of the Debtors, other than proceeds of an Asbestos Insurance Policy, will retain the Lien securing such Claim, subject to the Parent's election in Article 4.2(b) of the Parent's Plan. Secured Asbestos Personal Injury Claims which are secured by Liens against proceeds of an Asbestos Insurance Policy will be included in the treatment accorded Class 4 Asbestos Personal Injury Claims, as set forth in Article 4.2(d) of the Parent's Plan, and will be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos TDP and the Asbestos Trust Agreement; *provided, however*, that the Asbestos Trust may assert any rights (including, but not limited to, avoidance rights and rights of setoff and recoupment), defenses (including, but not limited to, affirmative defenses), and objections that the Debtors have against or with respect to such Claims, which rights, defenses, and objections are transferred to the Asbestos Trust pursuant to the Parent's Plan.

(c) Class 3 – General Unsecured Claims.

(1) Voting Rights Under the Parent's Plan.

This Class is impaired. Holders of Allowed General Unsecured Claims in Class 3 are entitled to vote to accept or reject the Parent's Plan.

(2) Treatment Under the Parent's Plan.

Each holder of an Allowed General Unsecured Claim (except any holder that agrees to lesser or otherwise different treatment) will, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim, on the later of the Effective Date or the date on which such General Unsecured Claim becomes an Allowed Claim, receive (A) a Pro Rata share of the Available Parent's Plan Funds and (B) a Pro Rata share of the Distributed Litigation Trust Interests. In no event will Class 3 Claims holders receive more than 100 percent of the Allowed amount of such Class 3 Claims.

If Class 3 votes to accept the Parent's Plan and expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), the Parent will withdraw its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund and the Custodial Trust Settlement Agreements. If Class 3 rejects the Parent's Plan and/or expresses a preference for either the Debtors' Plan or Harbinger's Plan, however, the Parent will continue to pursue its objections to, and/or any then pending appeals of, the Debtors' Environmental 9019 Motion and the District Court Order denying withdrawal of the reference to the Bankruptcy Court as to the Residual Superfund and the Custodial Trust Settlement Agreements.

(d) Class 4 – Asbestos Personal Injury Claims.

(1) Voting Rights Under the Parent's Plan.

This Class is impaired. Holders of Allowed Asbestos Personal Injury Claims in Class 4 are entitled to vote to accept or reject the Parent's Plan.

(2) Treatment Under the Parent's Plan.

Asbestos Personal Injury Claims and Demands against any of the Debtors will together be allowed in the aggregate amount of $1.0 billion. On the Effective Date, the Section 524(g) Trust will be established and funded with the Section 524(g) Trust Assets, and liability of the Debtors for all Asbestos Personal Injury Claims and Demands will be assumed by, and channeled to, the Section 524(g) Trust without further act or deed, and satisfied as set forth in the