

Parent's Plan. The Section 524(g) Trust is described in Article VI of the Parent's Plan. All Asbestos Personal Injury Claims and Demands will be processed, liquidated, and paid pursuant to the terms and provisions of the Section 524(g) Trust Distribution Procedures and the Section 524(g) Trust Agreement. The sole recourse of the holder of an Asbestos Personal Injury Claim or Demand will be to the Section 524(g) Trust and the Section 524(g) Trust Distribution Procedures, and such holder will have no rights whatsoever at any time to assert such holder's Claim or Demand against any Debtor, Reorganized ASARCO, or any ASARCO Protected Party. Without limiting the foregoing, on the Effective Date, all Persons will be permanently and forever stayed, restrained, and enjoined from taking any enjoined actions against any ASARCO Protected Party (or against the property or interest in property of the Debtors and their Estates or of any ASARCO Protected Party, or against any Designated Property) for the purpose of, directly or indirectly, collecting, recovering, or receiving payment of, on or with respect to any Asbestos Personal Injury Claim or Demand.

(e) Class 5 – Convenience Claims.

(1) Voting Rights Under the Parent's Plan.

This Class is unimpaired. Class 5, and holders of Convenience Claims in Class 5, 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.

On the Effective Date, each holder of a Convenience Claim will 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 Parent's Plan to reduce the Claim of such holder to \$1,000 and to receive distribution as a Class 5 Convenience Claim will constitute acceptance of the Parent's 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 Parent's Plan.

This Class is impaired. Class 6 is deemed to have rejected the Parent's Plan and, accordingly, is not entitled to vote on the Parent's Plan.

(2) Treatment Under the Parent's Plan.

The holders of Late-Filed Claims will not receive or retain any property under the Parent's Plan on account of such Claims except to the extent that Distributed Litigation Trust Interests are distributed to such holders pursuant to Article 5.6(a) of the Parent's Plan and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) of the Parent's Plan. In no event will Class 6 Claims holders receive more than 100 percent of the Allowed amount of such Class 6 Claims.

(g) Class 7 – Subordinated Claims.

(1) Voting Rights Under the Parent's Plan.

This Class is impaired. Class 7 is deemed to have rejected the Parent's Plan and, accordingly, is not entitled to vote on the Parent's Plan.

(2) Treatment Under the Parent's Plan.

The holders of Subordinated Claims will not receive or retain any property under the Parent's Plan on account of such Claims except to the extent that Distributed Litigation Trust Interests are distributed to such holders pursuant to Article 5.6(a) of the Parent's Plan and/or funds from the Disputed Claims Reserve are distributed to such holders pursuant to Article 13.8(f) of the Parent's Plan. In no event will Class 7 Claims holders receive more than 100 percent of the Allowed amount of such Class 7 Claims.

(h) Class 8 - Environmental Reinstated Claims.

(1) Voting Rights Under the Parent's Plan.

This Class is unimpaired. Class 8, and holders of Environmental Reinstated Claims in Class 8, 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.

On the Effective Date, Environmental Reinstated Claims will be Reinstated and, from and after the Effective Date, Reorganized ASARCO will assume, pay, perform, and discharge when due all of its Assumed Environmental Liabilities.

(i) Class 9 – Interests in ASARCO.

(1) Voting Rights Under the Parent's Plan.

This Class is impaired. Class 9 is deemed to have rejected the Parent's Plan and, accordingly, is not entitled to vote on the Parent's Plan.

(2) Treatment Under the Parent's Plan.

The Interests in ASARCO will be deemed cancelled, and the holder of such Interests will not receive or retain any property under the Parent's Plan on account of such Interests.

In exchange for the Parent Contribution, ASARCO USA Incorporated or its designee will receive the New Equity Interests on the Effective Date.

6.5 Intentionally Omitted.

6.6 Cramdown Under the Parent's Plan.

Article 4.3 of the Parent's Plan provides that, if all applicable requirements for Confirmation of the Parent's Plan are met as set forth in section 1129(a)(1) through (13) of the Bankruptcy Code except subsection (8) thereof, the Parent's Plan will be treated as a request by the Parent for Confirmation of the Parent's Plan in accordance with the "cramdown" provisions of section 1129(b) of the Bankruptcy Code, notwithstanding the failure to satisfy the requirements of section 1129(a)(8), on the basis that the Parent's Plan is fair and equitable and does not discriminate unfairly with respect to each Class of Claims and Interests that is impaired under, and has not accepted, the Parent's Plan. In addition, in the event Class 3 votes to reject the Parent's Plan, the Parent reserves the right to modify the Parent's Plan to the extent necessary to render the Parent's Plan confirmable.

6.7 Conditions to Effectiveness of the Parent's Plan.

Article 9.1 of the Parent's Plan provides that, notwithstanding any other provision of the Parent's Plan or any order entered in connection with the Reorganization Cases, the Effective Date of the Parent's Plan will not occur until and unless each of the following conditions to effectiveness has been satisfied or waived pursuant to Article 9.2 of the Parent's 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, one or more of the Debtors has 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 Section 524(g) Treatment has been approved by creditors in Class 4 under the Parent's Plan in the requisite numbers and amounts required by sections 524(g), 1126, and 1129 of the Bankruptcy Code and by the FCR;
- (3) On the Effective Date, the Section 524(g) Trust will assume the liabilities of the Debtors with respect to the Asbestos Personal Injury Claims and Demands and will receive all transfers and assignments set forth in the Parent's 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 Section 524(g) Trust is to be funded in part by securities of Reorganized ASARCO and by the obligation of Reorganized ASARCO to make future payments;
- (6) The Section 524(g) Trust will be entitled to own, if specified contingencies occur, a majority of the voting shares of Reorganized ASARCO;
- (7) The Section 524(g) Trust will use its assets and income to pay the 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 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 Parent's Plan is likely to threaten the Parent's 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 Parent's Plan and in the Disclosure Statement;
- (12) The Section 524(g) Trust will 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 Asbestos Personal Injury Claims and Demands, or other comparable mechanisms, that provide reasonable assurance that the Section 524(g) Trust will value, and be in a financial position to pay, all 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 and/or the Asbestos Insurance Company Injunction and that are to be assumed and paid by the Section 524(g) Trust in accordance with the Section 524(g) Trust Documents;
- (14) In light of the respective benefits provided, or to be provided, to the Section 524(g) 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, to the Section 524(g) Trust 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 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 Parent's Plan and may not be vacated, amended or modified after Confirmation except to the extent expressly provided in Article 11.3(a)(2) and 11.3(b)(2) of the Parent's Plan;

(18) The Parent's Plan complies with all applicable sections of the Bankruptcy Code, including, to the extent the Section 524(g) Treatment goes into effect, section 524(g) of the Bankruptcy Code;

(19) The Parent's Plan Documents which relate to the Section 524(g) Treatment are approved in all respects, and all parties thereto are authorized and directed to perform all their obligations thereunder; and

(20) Approval of all settlements and compromises embodied in the Section 524(g) Treatment is appropriate under Bankruptcy Rule 9019 and applicable law governing approval of such settlements and compromises and will be ordered as part of the Confirmation Order.

The District Court's findings of fact and conclusions of law listed immediately above are requirements of Section 524(g) of the Bankruptcy Code for an order of the District Court issuing or affirming an order confirming a plan of reorganization that contains a channeling injunction with respect to Asbestos Personal Injury Claims and Demands. If the District Court fails, with respect to the Parent's Plan, to make one or more of such finding of fact and conclusions of law, the Parent will evaluate, at such time, whether to waive such finding of fact and conclusions of law as conditions to effectiveness of the Parent's Plan.

(c) Confirmation Order.

(1) The Confirmation Date shall have occurred no later than August 31, 2009, except as may be otherwise agreed by the Parent and the Asbestos Representatives.

(2) The Effective Date of the Parent's Plan is anticipated to be on or before September 30, 2009, or such later date as may be required by reason of the Court's calendar.

(3) The Confirmation Order entered or affirmed by the District Court is acceptable to the Parent.

(4) The Confirmation Order shall have become a Final Order.

(d) No Stay.

The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.

(e) Parent's Plan Documents.

(1) The Parent's Plan Documents necessary or appropriate to implement the Parent's Plan, other than those which relate to the Section 524(g) Treatment, have been executed, in a form acceptable to the Parent, delivered and, where applicable, filed with the appropriate governmental or supervisory authorities.

(2) The Bankruptcy Court has approved the Parent's Plan Documents, other than those which relate to the Section 524(g) Treatment, in all respects and authorized and directed all parties thereto to perform all their obligations thereunder.

(f) Funding and New Equity Interests.

The Parent has delivered the Parent Contribution to the Parent's Plan Administrator except as may be otherwise agreed by the Parent and the Asbestos Representatives, ASARCO has transferred the Distributable Cash to the Parent's Plan Administrator, all interests in the Debtors have been cancelled and the New Equity Interests have been delivered to ASARCO USA Incorporated or its designee; it being understood that the failure of the Parent to provide the Parent Contribution will not relieve the Parent of its funding obligations under the Parent's 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) Approval of Parent's Plan Settlements.

The Bankruptcy Court has approved all settlements and compromises embodied in the Parent's Plan, and has found that such settlements and compromises are appropriate under Bankruptcy Rule 9019 and applicable law governing such approval and such settlements and compromises will be approved as part of the Confirmation Order.

(i) Collective Bargaining Agreement Not a Condition.

For the avoidance of doubt, it is not a condition to Confirmation of the Parent's Plan nor to Consummation of the Parent's Plan that the Parent and Reorganized ASARCO have entered into a CBA for the period following the Effective Date. The USW takes the position that whether or not there is such a condition, the Parent's Plan cannot be confirmed because of the failure of the Parent and Reorganized ASARCO to meet the requirements of the special successorship clause. The Parent disagrees with the USW's position and asserts that, although it prefers to reach an agreement with the USW and will continue to negotiate with the USW in good faith, if no agreement is ultimately reached the Bankruptcy Court may override the special successorship clause under certain circumstances, including those enumerated in the New CBA itself. The USW disagrees with the Parent, and takes the position that the Parent has not specified which "certain circumstances" would be applicable here.

6.8 Waiver of Conditions to Effectiveness of the Parent's Plan.

Article 9.2 of the Parent's Plan provides that the Parent, in its sole discretion, may waive any condition to effectiveness in Article 9.1 of the Parent's 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 U.S. Trustee, the Debtors, the Committees, the FCR, and the DOJ; provided that the Parent may not waive any condition to effectiveness in Articles 9.1(c)(1), 9.1(c)(3), or 9.1(f) of the Parent's Plan without the consent of the Asbestos Representatives.

6.9 Notice of Effective Date of the Parent's Plan.

Article 9.3 of the Parent's Plan provides that Reorganized ASARCO will give notice of the Effective Date within five (5) Business Days after its occurrence.

6.10 Non-Occurrence of Effective Date of the Parent's Plan.

Article 9.4 of the Parent's Plan provides that, in the event that the Effective Date does not occur, all parties will be returned to the position they would have held had the Confirmation Order not been entered, and nothing in the Parent's Plan, Disclosure Statement, or any Parent's Plan Document, or any pleading or statement in court will be deemed to constitute an admission or waiver of any sort or in any way to limit, impair, or alter the rights of any Entity.

6.11 How the Parent's Plan Will Be Implemented.(a) Sources of Cash and Other Consideration for Distributions Under the Parent's Plan.

Article 10.1 of the Parent's Plan provides that, on the Effective Date, (1) the Parent Contribution will be delivered to the Parent's Plan Administrator; (2) Reorganized ASARCO will transfer the Distributable Cash to the Parent's Plan Administrator; (3) the Tax Refund will be delivered to the Parent's Plan Administrator in accordance with

Article 10.7; (4) Reorganized ASARCO will deliver the ASARCO Note, the ASARCO Security Agreement, and the ASARCO Deed of Trust to the Section 524(g) Trust; and (5) ASARCO USA Incorporated or its designee that holds the equity interests in Reorganized ASARCO will deliver the Parent Pledge Agreement to the Section 524(g) Trust.

The Parent intends to fund the Parent's Plan with cash and not with marketable securities or the SCC Stock. On May 26, 2009, the Parent established an escrow account with the Bank of New York, in form and substance satisfactory to the Asbestos Representatives, into which the Parent deposited cash equivalents worth more than \$1.3 billion. To demonstrate and support its intention and ability to fully and timely consummate the Parent's Plan, the Parent replaced the escrow account with a second escrow account on June 29, 2009; a copy of the June 29 escrow agreement is attached hereto as Exhibit S. As additional assurance that the Parent will timely consummate the Parent's Plan, the Parent is in the process of amending the Escrow Account to provide for a \$125 million good faith deposit mirroring the Deposit described in Article 10.2 of the Parent's Plan. The Parent expects to enter into the Amended and Restated Escrow Agreement, the form of which is also attached as Exhibit S, by July 7, 2009. The Parent is currently working with a variety of lenders to obtain the cash necessary to fund the Parent Contribution, in cash, on the Effective Date and expects to have a commitment in place prior to the confirmation hearing. The Parent will demonstrate its ability to consummate the Parent's Plan at the Confirmation Hearing. If the Parent is unable to secure such financing, however, there is no assurance that the Parent's Plan can or will be consummated.

The ASARCO Note will be secured by a first lien on the Assets of Reorganized ASARCO and a pledge by the Parent of 51 percent of the equity in Reorganized ASARCO. In the event Reorganized ASARCO fails to have sufficient cash on hand to satisfy the ASARCO Note when it matures, the Parent expects to make a capital contribution to Reorganized ASARCO sufficient for Reorganized ASARCO to make such payment. Such capital contribution will be made from the Parent's cash on hand or from a contribution by its own corporate parent.

On the Effective Date, as further consideration for the New Equity Interests, the Parent and the Parent's Affiliates will waive all Administrative and General Unsecured Claims held by the Parent or the Parent's Affiliates against the Debtors through the Effective Date, including, for the avoidance of doubt, Claims for reimbursement pursuant to the Tax Sharing Agreement for any period prior to the Effective Date. The Debtors do not believe that the proposed waiver by the Parent of these Claims under the Parent's Plan provides the Debtors' Estates with meaningful consideration for several reasons. First, the Debtors believe that the Parent's Claim amount is greatly exaggerated. The Debtors contend that the Parent has no Claim for taxes related to tax years 2007 or 2008 because on January 1, 2007, the Parent terminated the Tax Sharing Agreement, the pre-bankruptcy agreement under which the Parent asserts its right to payment. Further, the Debtors believe that the Parent has not paid – and likely never will pay – \$161 million in taxes on account of assets or operations of ASARCO. The Debtors contend that the Parent's corporate representative admitted in sworn deposition testimony on June 5, 2009 that the Parent expects to receive the benefit of over \$1 billion of deductible losses from ASARCO's assets and operations under the Parent's Plan and that the Parent is expecting a tax refund of at least \$80 million. Second, the Debtors believe that the Claim is not entitled to administrative priority. The Debtors contend that, as a disregarded limited liability company, ASARCO does not owe any taxes. Rather, the Parent is the taxpayer and, thus, the Parent, not ASARCO, owes taxes to the state and federal taxing authorities. The Debtors contend that the Parent created this corporate structure for its own benefit, has received the benefits of its tax planning decisions, and now must bear any burdens that such tax planning may cause the Parent. Under such circumstances, the Debtors contend that Parent cannot carry its burden of establishing administrative priority for its Claim because the debt at issue is owed by the Parent, not ASARCO, and there is no authority for granting administrative priority for a debt that is owed by a third party, not the debtor. The Debtors further contend that, even if the Tax Sharing Agreement was not terminated in 2007, the Parent's Claim is at best a General Unsecured Claim because it arose under a pre-bankruptcy, rather than post-bankruptcy, agreement and the Parent has conferred no benefit on the Estate by paying a portion of its own legal obligation. Finally, Debtors believe that the Parent's Claim should be equitably subordinated in payment behind all Allowed Claims because the Debtors believe that Judge Hanen's findings regarding AMC in the SCC Litigation constitute sufficient grounds to equitably subordinate the Parent's Claim under controlling authority in the United States Court of Appeals of the Fifth Circuit. The Parent disagrees with the Debtors' contentions and beliefs.

On the Effective Date, the Parent and Reorganized ASARCO will enter into the Working Capital Facility. The Parent will make such funds available from cash on hand or from a contribution by its corporate parent. Proceeds drawn from the Working Capital Facility, the Tax Refund, as discussed in Article 10.8 of the Parent's Plan, and proceeds of the Retained Litigation Trust Interests, if any, will be used to fund Reorganized ASARCO's working capital needs. Reorganized ASARCO will repay borrowings under the Working Capital Facility with cash from operations.

The Debtors contend that proceeds of the Working Capital Facility, the Tax Refund, and the Retained Litigation Trust Interests may not be sufficient to fund Reorganized ASARCO's working capital needs. The Parent believes that such sources of working capital will be more than sufficient to fund the Reorganized ASARCO's working capital needs, and will demonstrate feasibility of the Parent's Plan and the availability of cash to meet the Parent's obligations under the Parent's Plan at the Confirmation Hearing.

Claims that will be Reinstated under the Parent's Plan will be paid out of Reorganized ASARCO's operating cash flows unless otherwise provided in the Parent's Plan. The Parent will demonstrate at the Confirmation Hearing that the significant deleveraging of Reorganized ASARCO will allow Claims that are Reinstated to be paid or addressed in the ordinary course with significantly less risk than existed prior to the Chapter 11 filings.

For the avoidance of doubt, it is not a condition to the confirmation or effectiveness of the Parent's Plan that any particular Claim or Class has been Allowed by Final Order.

(b) Deposit Under the Parent's Plan.

Article 10.2 of the Parent's Plan provides that the Parent shall forfeit the Deposit to the Debtors' Estate if one of the following conditions apply: (i) prior to the date upon which any plan of reorganization for the Debtors is Confirmed, the Parent withdraws the Parent's Plan without the written consent of the ASARCO Committee; (ii) from and after the Confirmation Date, the Parent withdraws the Parent's Plan without the written consent of the ASARCO Committee; or (iii) the Parent's Plan is not Consummated by the date that is thirty days after the Confirmation Order becomes a Final Order, unless the failure to Consummate the Parent's Plan by that date is not primarily due to the failure by the Parent to fulfill any obligation under the Parent's Plan (it being understood that the failure of the Parent to reach agreement with the USW on a consensual CBA shall not constitute cause for the Parent to fail to Consummate the Parent's Plan); *provided, however*, that the Deposit shall be released to the Parent and shall not be forfeited if the Parent terminates and withdraws the Parent's Plan (a) with the consent of the ASARCO Committee; (b) after the Bankruptcy Court enters an order Confirming a plan of reorganization other than the Parent's Plan; or (c) the Effective Date does not occur by November 30, 2009. Upon the Effective Date, at the election of the Parent, the Deposit will either be turned over to the Parent's Plan Administrator as part of the Parent Contribution or returned to the Parent upon deposit with the Plan Administrator of the Parent Contribution from other sources.

(c) Appointment of Parent's Plan Administrator and Funding of Miscellaneous Parent's Plan Administration Accounts Under the Parent's Plan.

(1) Article 10.3(a) of the Parent's Plan provides that, not less than ten days prior to commencement of the Confirmation Hearing, the Parent will designate the Entity that will initially serve as the Parent's Plan Administrator. Upon approval by the Bankruptcy Court in the Confirmation Order, the Parent's Plan Administrator will be appointed. The Parent's Plan Administrator will have and perform all of the duties, responsibilities, rights, and obligations set forth in the Parent's Plan Administration Agreement. The Parent's Plan Administrator will serve without bond and may employ or contract with other Persons to assist in the performance of the Parent's Plan Administrator's duties, which will be set forth in the Parent's Plan Administration Agreement. The Parent's Plan Administrator will 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.

(2) Article 10.3(b) of the Parent's Plan provides that, on the Effective Date (or as soon thereafter as is reasonably practicable), the Parent's Plan Administrator will establish and fund the Parent's Plan Administration Account with sufficient Cash to pay the Parent's Plan Administrator's estimated compensation and expenses and all other anticipated costs of administration of the Parent's Plan. The Parent's Plan Administrator will also establish and fund Miscellaneous Parent's Plan Administration Accounts, including the Disputed Claims Reserve and the Undeliverable and Unclaimed Distribution Reserve, and may also establish such general accounts as the Parent's Plan Administrator deems necessary and appropriate.

(3) Article 10.3(c) of the Parent's Plan provides that, on the Effective Date (or as soon thereafter as is reasonably practicable), the Parent's Plan Administrator will (A) fund the Section 524(g) Trust with the Section 524(g) Trust Assets; (B) fund the Environmental Custodial Trusts with the Environmental Custodial Trust Assets (or, if the Parent's Plan is not accepted by Class 6, maintain the Environmental Custodial Trust Assets in the Disputed Claims Reserve until the Environmental Trust Claims become Allowed Claims); (C) fund the Disputed Claims Reserve as provided for in Article 13.8 of the Parent's Plan; and (D) fund the Litigation Trust with the Litigation Trust Assets.

(4) Article 10.3(d) of the Parent's Plan provides that the Parent's Plan Administrator will allocate the funds in the Parent's Plan Administration Account to subaccounts corresponding to the enumerated functions of the Parent's Plan Administrator. Until the Parent's Plan Administrator has discharged its obligations, the funds in those subaccounts and the Miscellaneous Parent's Plan Administration Accounts may only be used for the purpose designated for that particular account or subaccount.

(5) Article 10.3(e) of the Parent's Plan provides that, to the extent there are any excess funds in the Parent's Plan Administration Account (or any subaccount thereof) or any Miscellaneous Parent's Plan Administration Account, the Parent's Plan Administrator shall distribute such funds, Pro Rata, *first* to holders of Claims in Class 3 until such Claims are paid in full, *second* to holders of Claims in Class 6 until such Claims are Paid in Full, *third* to holders of Claim in Class 7 until such Claims are paid in full, and *fourth* to Reorganized ASARCO to fund its working capital needs.

(d) Distribution of Available Parent's Plan Funds.

Article 10.4 of the Parent's Plan provides that, on the Effective Date, the Parent's Plan Administrator will pay the Allowed Claims that are to be paid on the Effective Date.

(e) Release of Litigation Under the Parent's Plan.

Article 10.5 of the Parent's Plan provides that on the Effective Date, all causes of action identified in **Parent's Plan Exhibit 2** will be deemed, without any notice, the entry of any other order, or any other action by any party to have been released and dismissed or withdrawn with prejudice. All other causes of action or counts thereof of the Debtors and their estates, including, without limitation, those under chapter 5 of the Bankruptcy Code (or similar state or federal law), and the Asbestos Insurance Actions, will continue and be pursued as provided in Article 10.13 of the Parent's Plan but subject to Article 6.4, as applicable.

For the avoidance of doubt, the Parent's Plan does not relieve any non-Debtor entities of their obligations under the Arizona Consent Decree.

The Parent's Plan includes a full release of the SCC Final Judgment against the Parent. The Parent asserts that, based on the Debtors' enterprise value and the uncertainties and expenses of defending the SCC Final Judgment on appeal, the consideration provided by the Parent under the Parent's Plan in exchange for release of the SCC Final Judgment greatly exceeds the present value of such SCC Final Judgment. The Debtors' financial advisor recently proffered that the Debtors' enterprise value is between \$700 and \$900 million. *See* Proffer of George M. Mack, filed April 13, 2009 [Docket No. 10801]. The Parent asserts that the total consideration provided by the Parent under the Parent's Plan, including the Parent Contribution (\$1.4625 billion), the pledge of equity in Reorganized ASARCO to backstop the Section 524(g) Note (\$280 million), and the release of claims against the Debtors and the claim to the Tax Refund (which the Parent asserts is at least \$221.7 million, but which the Debtors assert would be substantially less, if such claims are allowed at all) are substantially in excess of the enterprise value calculated by the Debtors. In light of the likelihood of reversal of the SCC Final Judgment on appeal as discussed in Section 2.34 of the Disclosure Statement and the costs and delays associated with defending 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 dispute that the SCC Final Judgment is likely to be reversed on appeal and do not believe that the Parent is paying sufficient consideration in exchange for the release of the SCC Final Judgment.

The Debtors disagree that the Parent's proposed release of the SCC Final Judgment under its Plan is in the best interest of the creditors. While the Parent touts the release of the SCC Final Judgment as a benefit to creditors because such release would avoid the expense of an appeal of such claims, the reality is that creditors stand to be Paid in Full, including over \$500 million in post-petition interest, if the appeal is successful. The Debtors have invested millions of dollars in obtaining the SCC Final Judgment and it makes little sense to the Debtors to abandon these claims for which a federal district court has already awarded a multi-billion dollar judgment in favor of preserving and pursuing claims against Sterlite, the collection of which is quite speculative.

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 that the present value of the SCC Final Judgment could appropriately reflect some discount from the approximately \$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 concurrent reinstatement of Bondholder Claims and release of such litigation rights is an alteration of the Bondholders' rights and impairs the Bondholders. The Parent disagrees.

(f) Prepetition ASARCO Environmental Trust Under the Parent's Plan.

(1) Article 10.6(a) of the Parent's Plan provides that the Prepetition ASARCO Environmental Trust will remain in existence, and will be unaffected by the Reorganization Cases or any related settlements. The Parent's Plan Administrator will succeed to ASARCO's administrative role, and will, in its sole discretion, act as Performing Entity (as defined in the Prepetition ASARCO Environmental Trust) from time to time, but will assume no affirmative liabilities or obligations associated with that role. In accordance with the documents governing it, the funds in the Prepetition ASARCO Environmental Trust will continue to be available for, among other things, (A) identified work sites; (B) interim costs prior to the effectiveness of the Parent's Plan; and (C) any shortfalls or unanticipated costs or any other use permitted by the terms of the Prepetition ASARCO Environmental Trust (it being understood that the terms of certain environmental settlements were based on the assumption that certain previously identified, additional environmental response actions to be performed by ASARCO, the Parent's Plan Administrator or the United States would be reimbursed from the Prepetition ASARCO Environmental Trust). The Parent will make any remaining required contributions to the Prepetition ASARCO Environmental Trust in the ordinary course.

(2) Article 10.6(b) of the Parent's Plan provides that the funds remaining in the Prepetition ASARCO Environmental Trust will be separate from and without prejudice to the distributions to be made to holders of Claims, as described in Article IV of the Parent's Plan.

(g) Operations and Settlements Between the Confirmation Date and the Effective Date Under the Parent's Plan.

Article 10.7 of the Parent's Plan provides that, except as set forth in the Parent's Plan with respect to the appointment of the Parent's Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors will continue to operate as debtors-in-possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect. During the period from the Confirmation Date through and until the Effective Date, the Debtors will not enter into or seek approval of any settlement(s) of any Claim(s) where the amount of such settlement, or the Allowed amount of such Claims, individually or in the aggregate, would be in excess of \$10 million, without prior written approval of 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."

(h) Tax Refund Under the Parent's Plan.

Article 10.8 of the Parent's Plan provides that, unless the Tax Refund Adversary Proceeding has been determined by Final Order prior to the Effective Date, then on the Effective Date or as soon thereafter as reasonably practicable, the Tax Refund will be transferred to the Plan Administrator for further distribution to holders of Allowed Claims. For the avoidance of doubt, the Parent will, on the Effective Date, waive its claim to collect the Tax Refund for its own account and will cooperate with Reorganized ASARCO to cause the Internal Revenue Service to pay the Tax Refund to the Plan Administrator for distribution to holders of Allowed Claims. To the extent that, on the Effective Date, the DOJ or any agency represented by the DOJ maintains a claim that it is entitled to setoff environmental claims held by such agency against the Tax Refund, then the Plan Administrator will include the Tax Refund in the Environmental Custodial Trust Assets, releasing an equivalent amount of Cash to fund other distributions required under the Parent's

Plan. The Debtors do not believe that the proposed waiver by the Parent of the claim to the Tax Refund under the Parent's Plan provides the Debtors' estates with meaningful consideration. The Tax Refund is the property of ASARCO's Estate. The Tax Refund relates to over-payment of tax by ASARCO NJ prior to Grupo México's acquisition of ASARCO NJ in 1999. When ASARCO NJ merged into ASARCO in February 2005, all assets and liabilities of ASARCO NJ transferred to ASARCO, the legal successor to ASARCO NJ. The Debtors contend that under applicable state law and the merger agreement between the parties the Tax Refund is one of the assets that transferred to ASARCO.

(i) Limited Liability Company Agreement.

Article 10.9 of the Parent's Plan provides that, on or as soon as reasonably practicable after the Effective Date, Reorganized ASARCO will file an amended LLC Agreement (the "Amended LLC Agreement") with the Secretary of State of the State of Delaware. The Amended LLC Agreement will, in compliance with section 1123 of the Bankruptcy Code, prohibit the issuance of nonvoting equity securities and provide for an appropriate distribution of voting powers among classes of securities.

(j) Management of Reorganized ASARCO Under the Parent's Plan.

Article 10.10 of the Parent's Plan provides that, pursuant to section 1129(a)(5) of the Bankruptcy Code, the Parent will disclose, by filing, on or prior to the Confirmation Date, a document disclosing the identity and affiliations of any person proposed to serve on the initial board of directors of Reorganized ASARCO or as an officer of Reorganized ASARCO. To the extent any such person is an insider, the nature of any compensation payable to such person will be disclosed at such time. Reorganized ASARCO will have a five-person board of directors, each of them nominated by the Parent. Each director and officer will serve from and after the Effective Date pursuant to the terms of the amended Limited Liability Company Agreement, and applicable law. Certain parties in interest assert that the Parent should disclose the identity and affiliations of directors, management, and any proposed trustees, immediately. The Parent disagrees.

(k) Issuance of New Equity Interests in Reorganized ASARCO Under the Parent's Plan.

Article 10.11 of the Parent's Plan provides that, on the Effective Date, in exchange for the Parent Contribution, the New Equity Interests will be issued and delivered to ASARCO USA Incorporated or its designee. Except as otherwise provided in Article X of the Parent's Plan, Reorganized ASARCO will continue its existence after the Effective Date.

(l) Revesting Under the Parent's Plan.

Article 10.12 of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan, on the Effective Date, all of ASARCO's and its Estate's property and assets will vest in Reorganized ASARCO, free and clear of all Liens, Claims, charges, and other encumbrances.

(m) Vesting and Enforcement of Causes of Action Under the Parent's Plan.

Article 10.13 of the Parent's Plan provides that any and all claims and causes of action that were owned by ASARCO or its Estate as of the Effective Date, other than the Asbestos Insurance Actions and Litigation Trust Claims, will vest in Reorganized ASARCO on the Effective Date, and Reorganized ASARCO will be the only Entity entitled to pursue such claims or causes of action. The Asbestos Insurance Actions will vest in the Section 524(g) Trustees and may be pursued or compromised as deemed fit by the Section 524(g) Trustees, in their sole discretion, without need for approval of the Bankruptcy Court. The Litigation Trust Claims, including, without limitation, all rights and interests in actions and/or claims against third parties ("potentially responsible parties" or "PRP"), will vest in the Litigation Trust and may be pursued or compromised as deemed fit by the Litigation Trustee, in its sole discretion, without need for approval of the Bankruptcy Court.

The Parent's Plan expressly reserves for Reorganized ASARCO, its successors, heirs, and assigns, to be transferred to the Litigation Trust on the Effective Date, all rights and interests in actions and/or claims against potentially responsible parties, for indemnity and contribution for environmental damages, harm or injury, which PRP claims have not been discharged or settled as of the Effective Date. Notwithstanding anything to the contrary herein, any PRP claim that has been subject to a release or covenant not to sue by ASARCO may not be pursued by Reorganized ASARCO unless the settlement containing such release or covenant not to sue is reversed on appeal by Final Order.

(n) Further Authorizations Under the Parent's Plan.

Article 10.14 of the Parent's Plan provides that Reorganized ASARCO, the Parent's Plan Administrator, or the Parent may seek such orders, judgments, injunctions, and rulings as any one or more of them deem necessary to further carry out the intentions and purposes of, and give full effect to the provisions of, the Parent's Plan.

(o) Effectuating Documents and Further Transactions Under the Parent's Plan.

Article 10.15 of the Parent's Plan provides that the chief executive officer, president, chief financial officer, general counsel, secretary, treasurer, any vice president, or managing member (if applicable) of Reorganized ASARCO will be authorized, to the extent consistent with Reorganized ASARCO'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 Parent's Plan. The secretary or any assistant secretary of each Debtor and Reorganized ASARCO will be authorized to certify or attest to any of the foregoing actions.

(p) Corporate Action Under the Parent's Plan.

Article 10.16 of the Parent's Plan provides that all matters provided for under the Parent's Plan involving the corporate structure of the Debtors or Reorganized ASARCO, or any corporate action to be taken by, or required of the Debtors or Reorganized ASARCO, will be deemed to have occurred and be effective as provided in the Parent's Plan, and will 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.

(q) Execution of Parent's Plan Documents.

Article 10.17 of the Parent's Plan provides that, on the Effective Date, Reorganized ASARCO and other parties thereto will execute and deliver the Parent's Plan Documents, as applicable.

(r) Approval of Section 524(g) Trust Documents Under the Parent's Plan.

Article 10.18 of the Parent's Plan provides that confirmation of the Parent's Plan will constitute approval pursuant to Bankruptcy Rule 9019 of the Section 524(g) Trust Documents, as evidenced by entry of the Confirmation Order.

(s) Option to Create Work Trusts Under the Parent's Plan.

Article 10.19 of the Parent's Plan provides that the DOJ may at its option elect to establish work trusts for the purpose of receiving distributions made with respect to Allowed Claims that relate to specified environmental sites.

(t) Approval of Mission Mine Settlement Agreement Under the Parent's Plan.

Article 10.20 of the Parent's Plan provides that the Confirmation of the Parent's Plan will cause the Mission Mine Settlement Agreement to be binding upon all landowners and allottees who own interests in the lands affected by the Mission Mine Settlement Agreement.

For the avoidance of doubt: (1) 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 Reorganized ASARCO; (2) the Hayden Settlement Agreement, all related agreements, escrowed funds, and financial assurances shall be assumed by and assigned to Reorganized ASARCO; and (3) paragraphs 4 and 5 of the Arizona NRD Settlement Agreement shall be assumed by and assigned to Reorganized ASARCO.

(u) Deemed Consolidation of Debtors for Plan Purposes Only Under the Parent's Plan.

Article 10.21 of the Parent's Plan provides that, subject to the occurrence of the Effective Date, the Debtors will be deemed consolidated under the Parent's Plan, solely for the limited purposes of voting and distribution under the Parent's Plan. Each and every Claim filed or to be filed against any of the Debtors will be deemed filed against

the deemed consolidated Debtors and will be deemed one Claim against all Debtors and (1) any obligation of any Debtor and all guarantees thereof executed by one or more of the Debtors will be deemed to be one obligation of all of the consolidated Debtors; (2) any Claims filed or to be filed in connection with any such obligation and such guarantees will be deemed one Claim against the consolidated Debtors; (3) all duplicative Claims (identical in amount and subject matter) filed against one or more of the Debtors will be automatically expunged so that only one Claim survives against the consolidated Debtors; and (4) the consolidated Debtors will be deemed, for purposes of determining the availability of the right of setoff under section 553 of the Bankruptcy Code, to be one entity, so that, subject to other provisions of section 553 of the Bankruptcy Code, the debts due to a particular Debtor may be offset against the Claims against such Debtor or Debtors. Such deemed consolidation, however, will not (other than for purposes related to funding distributions under the Parent's Plan and as set forth above in this section) affect: (1) any guarantees, liens, and security interests that are required to be maintained under the Parent's Plan or (2) distributions out of any insurance policies or proceeds of such policies.

The ASARCO Committee contends that the deemed consolidation provided for by the Parent's Plan is a violation of the *Owens Corning* line of case law. The issue will be addressed more completely in confirmation briefing.

(v) Wind Down of Subsidiary Debtors Under the Parent's Plan.

Article 10.22 of the Parent's Plan provides that, on the Effective Date (or as soon thereafter as is reasonably practicable) and concurrently with payment of all Allowed Claims that are to be paid on the Effective Date and funding of the Disputed Claims Reserve, (1) the Subsidiary Debtor Assets will be transferred to Reorganized ASARCO free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity except as provided in the Parent's Plan; (2) all assets of the Subsidiary Debtors other than the Subsidiary Debtor Assets will be transferred to the Plan Administrator for the benefit of Reorganized ASARCO, free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such property of any Person or Entity except as provided in the Parent's Plan; and (3) all Interests in the Subsidiary Debtors will be cancelled. As soon as practicable after the Effective Date, the Plan Administrator will liquidate all assets of the Subsidiary Debtors other than the Subsidiary Debtor Assets and will transfer the proceeds of such liquidation to Reorganized ASARCO free and clear of any and all Liens, Claims, encumbrances, or interests of any kind in such proceeds of any Person or Entity except as provided in the Parent's Plan. For avoidance of doubt, the wind down of the Subsidiary Debtors will not affect the treatment of Claims against the Subsidiary Debtors provided by the Parent's Plan

6.12 Distributions Under the Parent's Plan.

(a) Plan Distributions Under the Parent's Plan.

Article 13.1 of the Parent's Plan provides that all distributions or payments required or permitted to be made on the Effective Date under the Parent's Plan, other than to holders of Asbestos Personal Injury Claims and Demands and/or Professional Persons, will be made by the Parent's Plan Administrator on the Effective Date and thereafter by the Parent's Plan Administrator at the time or times and in the manner provided herein, unless otherwise ordered by the Bankruptcy Court. Distributions to holders of Asbestos Personal Injury Claims and Demands will be made by the Section 524(g) Trust in accordance with the Section 524(g) Trust Documents. Distributions to Professional Persons will be made by the Parent's Plan Administrator on the Effective Date and thereafter by the Parent's Plan Administrator pursuant to order of the Bankruptcy Court. Distributions to be made on the Effective Date will be deemed actually made on the Effective Date if made either (1) on the Effective Date or (2) as soon as reasonably practicable thereafter.

(b) Delivery of Distributions Under the Parent's Plan.

Article 13.2 of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan, distributions to holders of Allowed Claims will be made at the address of the holder of such Claim as indicated in the claims register maintained by the Claims Agent. Nonetheless, if such holder holds such Claims through a Nominee, distributions with respect to such Claims will be made to such Nominee, and such Nominee will, in turn, make appropriate distributions and book entries to reflect such distributions to such holders.

All Cash distributions on account of Allowed Bondholder Claims shall be made to the appropriate Indenture Trustee and further distributions on account of such Claims by the Indenture Trustee to the record holder of Bondholder Claims shall be accomplished in accordance with the Indentures and the policies and procedures of the Depository Trust Company.

(c) Distribution Record Date Under the Parent's Plan.

Article 13.3 of the Parent's Plan provides that Reorganized ASARCO and the Parent's Plan Administrator will have no obligation to recognize the transfer of, or the sale of any participation in, any Allowed Claim that occurs after the Distribution Record Date and will be entitled for all purposes in the Parent's Plan to recognize and make distributions only to those holders of Allowed Claims that are holders of such Claims or participants in the Parent's Plan, as of the Distribution Record Date. As of the close of business on the Distribution Record Date, each transfer register for the Bonds, as maintained by the applicable Indenture Trustee, will be closed. Reorganized ASARCO and the Parent's Plan Administrator will have no obligation, and are not permitted, to recognize the transfer or sale of any Bondholder Claim that occurs after the close of business on the Distribution Record Date and will be entitled for all purposes in the Parent's Plan to recognize and make distributions only to those holders who are holders of such Claims as of the close of business on the Distribution Record Date; *provided, however*, that with respect to Bondholder Claims, further distributions on account of such Claims by the Indenture Trustees to the record holders of the Bondholder Claims will not be made as of the Distribution Record Date but rather will be accomplished in accordance with the respective Indentures and the policies and procedures of DTC.

(d) Unclaimed Property Under the Parent's Plan.

Article 13.4 of the Parent's Plan provides that:

(1) Distributions by the Section 524(g) Trust.

Any Cash, assets, or other property to be distributed under the Parent's Plan by the Section 524(g) Trust that remains 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 will become vested in, and will be transferred and delivered to, the Section 524(g) Trust for use in accordance with the terms of the Section 524(g) Trust Documents.

(2) Distributions by the Parent's Plan Administrator.

(A) If the distribution to any holder of an Allowed Claim is returned to Reorganized ASARCO or the Parent's 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 will be made to such holder unless the Parent's Plan Administrator is timely notified in writing of the holder's then current address, at which time, all missed distributions will be made to such holder without interest. The amounts in respect of such undeliverable and/or unclaimed distributions will be returned to the Parent's Plan Administrator until such distributions are claimed. The Parent's Plan Administrator will segregate and deposit into an escrow account (the "Undeliverable and Unclaimed Distribution Reserve") all undeliverable and/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 Parent's Plan. Nothing contained in the Parent's Plan will require Reorganized ASARCO or the Parent's Plan Administrator to attempt to locate any holder of an Allowed Claim.

(B) Any funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed (including by a Claimant's failure to negotiate a check issued to such Claimant) or otherwise are not deliverable to the Claimant entitled thereto one year after the initial distribution is made or attempted (the "Forfeited Distributions") will become vested in, and will be transferred and delivered to, the Parent's Plan Administrator. In such event, such Claimant will be deemed to have waived its rights to such payments or distributions under the Parent's Plan pursuant to section 1143 of the Bankruptcy Code, will have no further Claim in respect of such distribution, and will not participate in any further distributions under the Parent's Plan with respect to such Claim. The Parent's Plan Administrator will distribute the Forfeited Distributions to Reorganized ASARCO as a Subsequent Distribution.

(e) Compliance with Tax Requirements Under the Parent's Plan.

Article 13.5 of the Parent's Plan provides that Reorganized ASARCO, the Parent's Plan Administrator, and the Section 524(g) Trust will comply with all applicable withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authorities, and all distributions under the Parent's Plan or under any Parent's Plan Document will be subject to such withholding and reporting requirements, if any. Notwithstanding any other provision of the Parent's Plan, each Person receiving a distribution pursuant to the Parent's Plan, or any other Parent's Plan Document,

will have sole and exclusive responsibility for the satisfaction and payment of any tax obligations imposed by any Governmental Authority, including income and other tax obligations, on account of that distribution.

(f) Setoffs and Recoupments.

Article 13.6 of the Parent's Plan provides that, subject to the limitations provided in section 553 of the Bankruptcy Code, Reorganized ASARCO, or the Parent's Plan Administrator, as the case may be, may, but will 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 Parent's Plan any Claims of any nature whatsoever the Estate of any Debtor may have against the holder of such Claim, but neither the failure to do so nor the allowance of any Claim under the Parent's Plan will constitute a waiver or release by Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, of any such Claim against such holder or right of setoff or recoupment that the applicable Estate may have against the holder of such Allowed Claim.

(g) No Distribution Pending Allowance.

Article 13.7 of the Parent's Plan provides that, if a Claim or any portion of a Claim is disputed, no payment or distribution will be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless such Disputed Claim becomes an Allowed Claim. The Parent's Plan does not contemplate that any estate funds would be expended by the Parent's Plan Administrator to support or defend settlements achieved by the Debtors prior to the Effective Date where the order approving such settlement has not become a final order.

(h) Disputed Claims Reserve.

(1) Article 13.8(a) of the Parent's Plan provides that the Parent's Plan Administrator will maintain, in accordance with its powers and responsibilities under the Parent's Plan, a Disputed Claims Reserve.

(2) Article 13.8(b) of the Parent's Plan provides that, on the Effective Date (or as soon thereafter as is reasonably practicable), Reorganized ASARCO or the Parent's Plan Administrator, as the case may be, will deposit Cash and/or other forms of consideration in the Disputed Claim Reserve that would have been distributed to the holders of Disputed Claims if such Disputed Claims had been Allowed Claims on the Effective Date. This amount will 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 for purposes of distribution pursuant to section 502(c) of the Bankruptcy Code; or (C) the amount otherwise agreed to by the applicable Debtor and the holders of such Disputed Claims. While an appeal is pending with respect to any of the Challenged Environmental Settlements, the distributions reserved with respect to such settlement shall be based on the amounts provided for under such settlement and the Disputed Claim Reserve shall hold such reserves unless and until approval of such settlement is reversed on appeal by Final Order or the appeal with respect to such settlement is otherwise resolved by agreement among the parties.

(3) Article 13.8(c) of the Parent's Plan provides that the Parent, Reorganized ASARCO, and/or the Parent's Plan Administrator may seek Bankruptcy Court approval to reduce the size of the Disputed Claims Reserve based upon the amount of the remaining Disputed Claims or other changed circumstances. Nothing in Article 13.8 prohibits any other party in interest from petitioning the Bankruptcy Court to alter the Disputed Claims Reserve.

(4) Article 13.8(d) of the Parent's Plan provides that in the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against assets that revert in or is transferred to Reorganized ASARCO will remain in place, pending resolution of the objection to the allegedly Secured Claim.

(5) Article 13.8(e) of the Parent's Plan provides that the Parent's Plan Administrator (at such time as determined to be practicable by the Parent's Plan Administrator) will distribute from the Disputed Claims Reserve to the holder of any Disputed Claim that has become an Allowed Claim, not later than the tenth Business Day after the end of the calendar month in which such Disputed Claims becomes an Allowed Claim, an amount equal to such Claim as if such Claim had been an Allowed Claim on the Effective Date.

(6) Article 13.8(f) of the Parent's Plan provides that if a Disputed Claim is disallowed, in whole or in part, the Parent's Plan Administrator shall (at such time as determined to be practicable by the Parent's Plan Administrator) distribute the Cash reserved in respect of such disallowed Disputed Claim, Pro Rata: *first*, to holders of Claims in Class 3 (and, pending resolution of Disputed Claims in Class 3, the Disputed Claims Reserve); *second*, upon

Payment in Full of Claims in Class 3, to holders of Claims in Class 6 (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve); *third*, upon Payment in Full of Claims in Class 6, to holders of Claims in Class 7 (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve); and *fourth*, upon payment in Full of Claims in Class 7, to Reorganized ASARCO; provided that, in no event shall any holder of an Allowed Claim in Class 3, 6, or 7 receive distributions which exceed the Allowed amount of such Claim. To the extent there are any excess funds in the Disputed Claims Reserve after all distributions required by the Parent's Plan have been made, the Parent's Plan Administrator shall make a Subsequent Distribution of such funds to Reorganized ASARCO. The Debtors and Harbinger believe that this distribution to Reorganized ASARCO (and therefore, indirectly to the Parent) could be in excess of the Parent Contribution if the Parent is correct in their assessment of the claims against Sterlite.

(7) Article 13.8(g) of the Parent's Plan provides that the Disputed Claims Reserve is intended to be treated as a "disputed ownership fund" within the meaning of Treasury Regulation section 1.468B-9(b)(1), and hence as a taxable entity for federal income tax purposes, and the Parent's Plan Administrator will be the "administrator" of the Disputed Claims Reserve pursuant to Treasury Regulation section 1.468B-9(b)(2). In general, the Disputed Claims Reserve will be treated in the same manner as a "qualified settlement fund" for federal income tax purposes. The Parent's Plan Administrator will cause all taxes imposed on the Disputed Claims Reserve to be paid using assets of the Disputed Claims Reserve and will comply with all tax reporting and withholding requirements imposed on the Disputed Claims Reserve under applicable tax laws, and in particular the rules applicable to a disputed ownership fund.

(i) Surrender of Bondholder Certificates; Lost Certificates.

Article 13.9 of the Parent's Plan provides that, with respect to each Allowed Bondholder Claim, each holder of an instrument evidencing such Allowed Bondholder Claim (a "Certificate") will surrender such Certificate to the Indenture Trustee or the Parent's Plan Administrator, as the case may be, and such Certificate will be cancelled solely with respect to the Debtors and such cancellation will not alter the obligations or rights of any non-Debtor parties as between or among such persons pursuant to such instruments. No distribution of property under the Parent's Plan will be made to such holder unless and until such Certificate is received by the Indenture Trustee or the Parent's Plan Administrator, as the case may be, or the unavailability of such Certificate is established to the reasonable satisfaction of such Indenture Trustee or the Parent's Plan Administrator. Any holder who fails to surrender or cause the surrender of such Certificate, or fails to execute and deliver an affidavit of loss and indemnity reasonably satisfactory to the Indenture Trustee or the Parent's Plan Administrator, as the case may be, prior to the second anniversary of the Effective Date, will be deemed to have forfeited all rights and Claims in respect of such Certificate and will not participate in any distribution under the Parent's Plan, and all property in respect of such forfeited distribution will be subject to distribution to all other holders of Claims under such Indenture who have duly surrendered or caused the surrender of their Certificates or reasonably established the unavailability thereof.

Any holder of an Allowed Bondholder Claim with respect to which the underlying Certificate has been lost, stolen, mutilated, or destroyed must, in lieu of surrendering such Certificate, deliver to the Indenture Trustee or the Parent's Plan Administrator, as the case may be: (1) evidence satisfactory to the Indenture Trustee or the Parent's Plan Administrator, as the case may be, of the loss, theft, mutilation, or destruction and (2) such security or indemnity as may be required by the Indenture Trustee or the Parent's Plan Administrator, as the case may be, to hold it and the Debtors harmless from any damages, liabilities, or costs incurred in treating such individual as a holder of such Certificate. Upon compliance with this Article by a holder of an Allowed Bondholder Claim, such holder will, for all purposes under the Parent's Plan, be deemed to have surrendered the applicable Certificate.

Any holder of a Certificate that fails to surrender or is deemed not to have surrendered the applicable Certificate within the time prescribed in the second subparagraph of this Section will be deemed to have had its right to distributions pursuant to the Parent's Plan on account thereof discharged, and will be forever barred from asserting any such Claim against any of the Parent, the Debtors, Reorganized ASARCO, the Parent's Plan Administrator, the Indenture Trustees, or any of the foregoing's respective property.

Notwithstanding the foregoing, if the record holder of a Bondholder Claim is the Depository Trust Company or its nominee or such other securities depository or custodian thereof, or if a Bondholder Claim is held in book-entry or electronic form pursuant to a global security held by the Depository Trust Company, then the beneficial holder of such an Allowed Bondholder Claim will be deemed to have surrendered such holder's security, note, debenture, or other evidence of indebtedness upon surrender of such global security by the Depository Trust Company or such other securities depository or custodian thereof.

(j) Cancellation of Instruments.

Article 13.10 of the Parent's Plan provides that when all Allowed Bondholder Claims with respect to any Bond Issuance are satisfied by the payment under the Parent's Plan, then, on the Effective Date, all promissory notes, instruments, indentures, bonds, agreements, or other documents evidencing, giving rise to, or governing any Claim against any Debtor (including the applicable Indenture and the Bonds) with respect to such Bond Issuance will be deemed cancelled and will represent only the right to participate in the distributions under the Parent's Plan. Notwithstanding the foregoing and anything else contained in the Parent's Plan, the Indentures for each Bond Issuance will continue in effect solely for the purposes of (1) allowing distributions to be made under the Parent's Plan pursuant to the Indentures and the Indenture Trustees to perform such other necessary functions with respect thereto and to have the benefit of all the protections and other provisions of the applicable Indentures in doing so; (2) permitting an Indenture Trustee to maintain or assert any right or Charging Lien it may have with respect to distributions pursuant to the terms of the Parent's Plan for Indenture Trustee Fee Claims; (3) permitting the Indenture Trustees to assert, in accordance with the terms of the Parent's Plan and Confirmation Order, any right to indemnification, contribution, or other Claim any one of them may have under the applicable Indentures, subject to any and all defenses the Debtors may have under the Parent's Plan and applicable law to any such asserted right or Claims; and (4) permitting each Indenture Trustee to exercise, in accordance with the terms of the Parent's Plan and Confirmation Order, its rights and obligations relating to the interests of the holders of Bondholder Claims and its relationship with the holders of Bondholder Claims pursuant to the applicable Indenture, including its right to appear and be heard in these chapter 11 cases and any appeals.

6.13 Procedures For Treating Disputed Claims Under the Parent's Plan.(a) Objections to Claims.

Article 14.1 of the Parent's Plan provides that, after the Effective Date, Reorganized ASARCO and the Parent's Plan Administrator will have the exclusive right to file objections to Claims (other than objections to Asbestos Personal Injury Claims and Demands, and objections to Claims that have been Allowed by Final Order) and litigate to judgment, settle, or withdraw such objections to Disputed Claims (including any Claims subject to a pending estimation motion). Without limiting the preceding, Reorganized ASARCO and the Parent's Plan Administrator will have the right to litigate any Disputed Claim either in the Bankruptcy Court or in any court of competent jurisdiction. After the Effective Date, only the Section 524(g) Trust will have the authority to file objections to Asbestos Personal Injury Claims and Demands and litigate to judgment, settle, or withdraw such objections, and Asbestos Personal Injury Claims and Demands, whether or not a Proof of Claim is filed, will be satisfied exclusively in accordance with the Parent's Plan, the Section 524(g) Trust Agreement, and the Section 524(g) Trust Distribution Procedures. For the avoidance of doubt, no objection to Asbestos Personal Injury Claims or Demands will be filed in the Bankruptcy Court. With respect to any claim resolved by the Challenged Environmental Settlements, no objection or motion to estimate may be filed unless the Environmental Settlement resolving such claim is disapproved by Final Order.

(b) Objection Deadline.

Article 14.2 of the Parent's Plan provides that, within the later of (1) 90 days after the Confirmation Date or (2) 90 days after a Proof of Claim is filed, objections to Claims (other than Asbestos Personal Injury Claims and Demands, which will be Allowed or disallowed as provided in the Section 524(g) Trust Distribution Procedures) will be filed with the Bankruptcy Court; *provided, however*, that Reorganized ASARCO and/or the Parent's Plan Administrator may seek to extend such period (or any extended period) for cause.

(c) Disallowance of Improperly Filed Claims.

Article 14.3 of the Parent's Plan provides that any Administrative Claim or other Claim (except for an Asbestos Personal Injury Claim or a Demand) for which the filing of a motion for allowance is required will 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. Any Administrative Claim timely filed on the Proof of Administrative Claim (found in Exhibit B to Docket No. 8549) pursuant to Docket No. 8549 will not require a motion for allowance.

6.14 Injunctions, Releases, and Discharge Under the Parent's Plan.

The Parent's 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 Parent's Plan and, if entered, will limit the rights of holders of Asbestos Personal Injury Claims and Demands and others against these entities.

The Term "ASARCO Protected Parties" refers to:

- the Debtors and their respective predecessors;
- Reorganized ASARCO;
- the ASARCO Protected Non-Debtor Affiliates and their respective predecessors;
- the Parent and its Affiliates and predecessors;
- Grupo México and its Affiliates and predecessors;
- the Trusts;
- the Trustees;
- the Section 524(g) Trust Advisory Committee;
- the FCR;
- the Asbestos Claimants' Committee, including its members in their member capacities;
- the Parent's Plan Administrator;
- the Examiner;
- the ASARCO Committee, including its members in their member capacities;
- the Settling Asbestos Insurance Companies; 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.

(a) Discharge and Release Under the Parent's Plan.

Article 11.1 of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan, the rights afforded in the Parent's Plan and the treatment of all Claims, Demands, and Interests will be in exchange for and in complete satisfaction, discharge, and release of all Claims, Demands, and Interests of any nature whatsoever, against any Debtor or its Estate, assets, properties, or interests in property. Except as otherwise provided in the Parent's Plan, on the Effective Date, all Claims and Demands against and Interests in the Debtors will be satisfied, discharged, and released in full. The ASARCO Protected Parties will not be responsible for any obligations of the Debtors except those expressly assumed by them in the Parent's Plan; *provided, however*, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Articles 11.1 and 11.9 of the Parent's Plan, then the protections in Article 11.1 of the Parent's Plan with respect to ASARCO Protected Parties other than Reorganized ASARCO will not go into effect.

(b) Discharge Injunction Under the Parent's Plan.

Article 11.2 of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan, the discharge and release set forth in Article 11.1 of the Parent's Plan will also 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 or Demand discharged and released in Article 11.1 of the Parent's 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 of the Parent's Plan. Except as otherwise expressly provided in the Parent's Plan, all Persons and Entities will be precluded and forever barred from asserting against the ASARCO Protected Parties, their successors or assigns, or their assets, properties, or interests in property any other or further Claims or Demands, or any other right to legal or equitable relief regardless of whether such right can be reduced to a right to payment, based upon any act or omission, transaction, or other activity of any kind or nature that occurred prior to the Effective Date, whether or not the facts of or legal bases therefor were known or existed prior to the Effective Date; *provided, however*, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Articles 11.2 and 11.9 of the Parent's Plan, then the protections in this Article with respect to ASARCO Protected Parties other than Reorganized ASARCO will not go into effect.

(c) The Permanent Channeling Injunction and the Asbestos Insurance Company Injunction Under the Parent's Plan.

Article 11.3 of the Parent's Plan provides that in order to supplement the injunctive effect of the Discharge Injunction, and pursuant to the exercise of the legal and equitable jurisdiction and power set forth in section 524(g) of the Bankruptcy Code, the Confirmation Order will provide for issuance of the following injunctions to take effect as of the Effective Date:

(1) Permanent Channeling Injunction Under the Parent's Plan.

(A) Terms. *In order to induce, preserve, and promote the settlements contemplated by and provided for in the Parent's Plan, and pursuant to section 524(g) of the Bankruptcy Code, all Asbestos Personal Injury Claims and Demands will be channeled to the Section 524(g) Trust for a remedy under the Section 524(g) Trust Distribution Procedures, and all holders of 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 Asbestos Personal Injury Claim or Demand will 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 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 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 Asbestos Personal Injury Claim or Demand against any of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties;
- (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 of the ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any 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 Parties, or the property or interests in property of any ASARCO Protected Parties, with respect to any Asbestos Personal Injury Claim or Demand;
- (iv) except as otherwise specifically provided in the Parent's 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 ASARCO Protected Parties, or against the property or interests in property of any ASARCO Protected Parties, with respect to any 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 Parent's Plan, the Parent's Plan Documents, or the Section 524(g) Trust Documents relating to any Asbestos Personal Injury Claim or Demand.

(B) Reservations. Notwithstanding anything to the contrary above or in the Parent's Plan, neither the Permanent Channeling Injunction nor the Parent's Plan will enjoin, alter, diminish, or impair:

- (i) the rights of Entities to the treatment accorded them under Articles II and IV of the Parent's Plan, as applicable, including the rights of Entities with Asbestos Personal Injury Claims or Demands to assert such Asbestos Personal Injury Claims or Demands in accordance with the Section 524(g) Trust Distribution Procedures;
- (ii) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Section 524(g) Trust Expenses against the Section 524(g) Trust;

(iii) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;

(iv) the rights of the Section 524(g) Trustees, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Section 524(g) 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 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 Parent's Plan.

(2) Asbestos Insurance Company Injunction Under the Parent's Plan.

(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 Parent's Plan, and to supplement where necessary the injunctive effect of the discharge and releases provided for in the Parent's Plan, pursuant to sections 524(g) and 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 Asbestos Personal Injury Claim or Demand or any Claim for or respecting any Section 524(g) Trust Expense) against a Settling Asbestos Insurance Company based upon, relating to, arising out of, attributable to, or in any way connected with any Asbestos Personal Injury Claim or Demand, Asbestos In-Place Insurance Coverage or an Asbestos Insurance Policy, will 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 Parent's 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;

(v) taking any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Parent's Plan Documents relating to such Claim, Demand, or cause of action.

(B) Reservations. Notwithstanding anything to the contrary above or in the Parent's Plan, neither the Asbestos Insurance Company Injunction nor the Parent's Plan will enjoin, alter, diminish, or impair:

(i) the rights of Entities to the treatment accorded them under Articles II and IV of the Parent's Plan, as applicable, including the rights of Entities with Asbestos Personal Injury Claims or Demands to

assert Asbestos Personal Injury Claims or Demands against the Section 524(g) Trust in accordance with the Section 524(g) Trust Distribution Procedures;

(ii) the rights of Entities to assert any Claim, Demand, debt, obligation, or liability for payment of Section 524(g) Trust Expenses against the Section 524(g) Trust;

(iii) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;

(iv) the rights of the Section 524(g) Trustees, if any, with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company (with the Section 524(g) 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 Parent's Plan; or

(vi) the rights of the Section 524(g) Trust or the Section 524(g) 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.

(d) Limitation of Injunctions Under the Parent's Plan.

Article 11.4 of the Parent's Plan provides that, notwithstanding any other provision of the Parent's Plan to the contrary, the releases set forth in Article 11.1 of the Parent's Plan and the Injunctions set forth in Articles 11.2 and 11.3 of the Parent's Plan, respectively, will not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Section 524(g) Trust for payment of (1) Asbestos Personal Injury Claims and Demands in accordance with the Section 524(g) Trust Distribution Procedures or (2) Section 524(g) Trust Expenses, and such releases and/or Injunctions will not enjoin Reorganized ASARCO or the Section 524(g) Trust from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

(e) Exoneration and Reliance Under the Parent's Plan.

Article 11.5 of the Parent's Plan provides that, to the extent allowable by law, none of the ASARCO Protected Parties will be liable (other than for criminal liability, willful misconduct or 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 (1) the management or operation of any of the Debtors or the discharge of its duties under the Bankruptcy Code; (2) the solicitation, negotiation, or implementation of any of the transactions provided for, or contemplated in, the Parent's Plan or other Parent's Plan Documents; (3) any action taken in connection with either the enforcement of the rights of the Debtors against any Entities or the defense of Claims or Demands asserted against the Debtors with regard to the Reorganization Cases; (4) any action taken in the negotiation, formulation, preparation, development, proposal, solicitation, disclosure, Confirmation, or implementation of the Parent's Plan, other Parent's Plan Documents, or related agreements, instruments, or other documents; (5) the administration of the Parent's Plan or the assets and property to be distributed pursuant to the Parent's Plan; or (6) the administration of any of the Debtors' Estates. The ASARCO Protected Parties will 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 this Article will prevent the enforcement of the terms of the Parent's Plan.

(f) Post-524(g) Indemnity Under the Parent's Plan.

Article 11.6 of the Parent's Plan provides that the Post-524(g) Indemnity (as such term is defined in the Asbestos Insurance Settlement Agreement) will go into effect on the Effective Date. Reorganized ASARCO will indemnify and hold harmless, but not defend, the Settled Asbestos Insurance Companies, as provided in paragraph III.C of the Asbestos Insurance Settlement Agreement.

(g) Additional Releases Under the Parent's Plan.

Article 11.7 of the Parent's Plan provides that, to the 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, the ASARCO Protected Parties (acting in any capacity whatsoever) will 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 the Parent's Plan in any of the Reorganization Cases, including Claims and Demands based on negligence or strict liability, and further including any derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that any of the Debtors, their respective Estates, or Reorganized ASARCO would have been legally entitled to assert in its own right, whether individually or collectively) which any of the Debtors, their respective Estates, Reorganized ASARCO, Claimants, holders of Demands or other Persons receiving or who are entitled to receive distributions under the Parent's Plan may have against any of them in any way related to the Reorganization Cases or any of the Debtors (or their respective predecessors or Affiliates); *provided, however*, the releases provided for in this paragraph will not extend to any claims by any governmental agency with respect to criminal liability, willful misconduct or bad faith, or *ultra vires* acts; and *provided further*, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Articles 11.1, 11.7, and 11.9 of the Parent's Plan, then the protections in this Article with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO will not go into effect.

(h) Exculpation Under the Parent's Plan.

Article 11.8 of the Parent's Plan provides that, to the extent allowable by law, except in the case of a judicial finding by a Final Order of willful misconduct or bad faith, or any criminal liability or liability for *ultra vires* acts asserted by any Governmental Unit, no ASARCO Protected Party (acting in any capacity whatsoever) will be liable to any Person or Entity for any action, failure or omission to act or other matter related to the Debtors or any of the Reorganization Cases, including those activities described in Article 11.5 of the Parent's Plan, through and including the Effective Date. All parties are permanently enjoined from initiating a suit against any ASARCO Protected Party, except in the case of a judicial finding by a Final Order of actions for willful misconduct or bad faith, or any criminal liability or liability for *ultra vires* acts asserted by any Governmental Unit. Any such action by a non-Governmental Unit will be brought in the Bankruptcy Court within 90 days after the Effective Date; *provided, however*, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Article 11.8 of the Parent's Plan, then the protections in Article 11.8 with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO will not go into effect. Nothing in Article 11.8 of the Parent's Plan will prevent the enforcement of the terms of the Parent's Plan.

(i) Releases by Holders of Claims, Demands, and Interests Under the Parent's Plan.

Article 11.9 of the Parent's Plan provides that, to the extent allowable by law, on the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, holders of Claims, Demands, and Interests receiving distributions under the Parent's Plan will be deemed to have conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged each of the Debtors, Reorganized ASARCO, the ASARCO Protected Parties, the Parent, and Grupo México from any and all Claims, Demands, Interests, obligations, rights, suits, damages, causes of action, remedies, and liabilities whatsoever, including Claims and Demands based on negligence or strict liability, and including any derivative claims asserted on behalf of any of the Debtors, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity or otherwise, that such holder of a Claim, Demand, or Interest would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, (1) any of the Debtors; (2) any of the Reorganization Cases; (3) the subject matter of, or the transactions or events giving rise to, any Claim, Demand, or Interest; (4) the business or contractual arrangements between any of the Debtors and any ASARCO Protected Party; (5) the restructuring of Claims, Demands, and Interests prior to or in the Reorganization Cases; (6) the negotiation, formulation, or preparation of the Parent's Plan, the Parent's Plan Documents or related agreements, instruments, or other documents; or (7) any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date, other than Claims, Demands, or liabilities arising out of or relating to any action or omission of an ASARCO Protected Party that constitutes a failure to perform the duty to act in good faith, with the care of an ordinarily prudent person and in a manner the ASARCO Protected Party reasonably believed to be in the best interests of the Debtors (to the extent such duty is imposed

by applicable non-bankruptcy law) where such failure to perform constitutes willful misconduct or gross negligence; *provided, however*, that if the Parent and Grupo México do not receive all protections provided for in the Parent's Plan, including, without limitation, those described in Article 11.9 of the Parent's Plan, then the protections in Articles 11.1 and 11.9, with respect to ASARCO Protected Parties other than the Debtors and Reorganized ASARCO will not go into effect.

(j) Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies Under the Parent's Plan.

Article 11.10 of the Parent's Plan provides that all fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, 549, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights or interests released under the Asbestos Insurance Settlement Agreement will be released, and the Section 524(g) Trust will 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. This Article does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements.

(k) No Release With Respect To Pension Plans Under the Parent's Plan.

Article 11.11 of the Parent's Plan provides that, notwithstanding any provision in Article 11.11 of the Parent's Plan, or otherwise in the Parent's Plan, or in the Confirmation Order, 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 will be released, exculpated, discharged, enjoined, or otherwise affected by the Parent's Plan, nor will 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

6.15 Certain Matters Incident to Parent's Plan Confirmation.

(a) Term of Certain Injunctions and Automatic Stay Under the Parent's Plan.

(1) Article 12.1(a) of the Parent's Plan provides that all of the injunctions and/or stays provided for in or in connection with these 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 will remain in full force and effect until the Injunctions become effective and thereafter if so provided by the Parent's Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, the Parent may seek such further orders as it may deem necessary to preserve the status quo during the time between the Confirmation Date and the Effective Date.

(2) Article 12.1(b) of the Parent's Plan provides that each of the Injunctions will become effective on the Effective Date and will 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 Parent's Plan. Notwithstanding anything to the contrary contained in the Parent's Plan, all actions in the nature of those to be enjoined by the Injunctions will be enjoined during the period between the Confirmation Date and the Effective Date.

(b) No Liability for Tax Claims Under the Parent's Plan.

Article 12.2 of the Parent's Plan provides that, unless a taxing authority has asserted a Claim against any of the Debtors prior to the applicable Bar Date, no Claim of such taxing authority will be Allowed against such Debtor or Reorganized ASARCO for taxes, penalties, interest, additions to tax, or other charges arising out of the failure, if any, of the applicable Debtor or Reorganized ASARCO, 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 taxable period ending before the Petition Date or arising out of an audit of any return for a taxable period ending before the Petition Date.

(c) No Successor Liability Under the Parent's Plan.

(1) Article 12.3(a) of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan, none of the ASARCO Protected Parties will be deemed a successor or successor-in-interest to any of 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 none will be responsible for any successor or transferee liability of any kind or character, except to the extent that the Section 524(g) Trust, Reorganized ASARCO, or both, is or are the successor or successor in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries.

(2) Article 12.3(b) of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan, none of the ASARCO Protected Parties will have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of the Debtors or Reorganized ASARCO, whether arising before, on, or after the Confirmation Date.

(d) Insurance Neutrality Under the Parent's Plan.

(1) Article 12.4(a) of the Parent's Plan provides that confirmation of the Parent's Plan will not be binding upon, and will not have any res judicata or collateral estoppel effect on or against, any Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's May 29, 2008 Order Extending Scope of Insurance Neutrality Addendum Attached to Order Approving Compromise and Settlement Regarding Resolution of Derivative Asbestos Claims (the "Insurance Neutrality Order") regarding its insurance coverage obligations in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of its rights and/or obligations regarding asbestos-related liabilities, if any, and will not have any impact, effect, or consequence in any such other context.

(2) Article 12.4(b) of the Parent's Plan provides that neither the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, nor the Section 524(g) Trust may argue or assert, in any court proceeding, arbitration, ADR-type proceeding, or other dispute involving an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order and concerning issues related to insurance coverage, that any findings or conclusions concerning 11 U.S.C. § 524(g) and/or constituting any estimation of asbestos-related liabilities contained in or referenced in any decision, order, finding, conclusion, or judgment of the Bankruptcy Court relating to Confirmation of the Parent's Plan: (A) constitutes a "judgment," "adjudication," "final order," "settlement," or "finding of liability" related to, based on or relying on the principles enunciated in *UNR Indus., Inc. v. Continental Cas. Co.*, 942 F.2d 1101 (7th Cir. 1991) and/or *Fuller-Austin Insulation Co. v. Fireman's Fund Ins. Co.*, 2002 WL 31005090 (Cal. Super. Ct. Aug. 6, 2002) and (B) is binding upon such an Asbestos Insurance Company for any purpose concerning insurance coverage under any policies issued to any of the Debtors and transferred to the Section 524(g) Trustees in accordance with the provisions of the Parent's Plan. Nothing in the Parent's Plan will limit the ability of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, or the Section 524(g) Trust to offer the Parent's Plan, any of the Parent's Plan Documents, the Confirmation Order, or any part of the confirmation process (including, without limitation, any evidentiary hearings or any findings or conclusions therein) in any court, including any court resolving any insurance coverage litigation, as evidence that the Debtors, Reorganized ASARCO, or the Section 524(g) Trust are so bound.

(3) Article 12.4(c) of the Parent's Plan provides that nothing in the Parent's Plan will operate to expand the rights of the Debtors, any of the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, or the Section 524(g) Trust, or diminish any of their respective duties and obligations as to those rights, duties, and obligations that exist under any policies issued by an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order as of the Petition Date except as set out in Article 12.4(f) of the Parent's Plan. Moreover, nothing in the Confirmation process will in any way operate to, or have the effect of, impairing, prejudicing, or expanding such Asbestos Insurance Company's legal, equitable, or contractual rights in any respect, or of increasing, accelerating, creating, or triggering such Asbestos Insurance Company's insurance coverage obligations, if any, in comparison to what those respective rights or obligations would have been if the Parent's Plan had not been confirmed except as set out in Article 12.4(f) of the Parent's Plan; and all of such Asbestos Insurance Company's rights are expressly reserved and preserved. Such Asbestos Insurance Company's rights will be determined pursuant to its insurance policies with the applicable Debtors, and under applicable law. Such Asbestos Insurance Company's rights to conduct discovery, either written or oral, in any future proceeding in any insurance coverage litigation relating to the Debtors' asbestos-related liabilities or such Asbestos Insurance Company's obligations to indemnify the applicable Debtors on account of any or all of such asbestos-related liabilities, if any, will not be affected, restricted, expanded, altered, or modified by anything in or part of the Parent's Plan or the Confirmation process. An Asbestos Insurance Company will have no such discovery rights in any

of the Reorganization Cases; *provided, however*, that such Asbestos Insurance Company will have rights to conduct discovery in the Reorganization Cases on any issue that does not relate to an Asbestos Insurance Company's alleged obligations, if any, to indemnify the applicable Debtors on account of any asbestos-related liabilities. Without limiting the foregoing, except as set out in Article 12.4(f) of the Parent's Plan, no proceedings undertaken pursuant to or otherwise as part of the Confirmation process (including without limitation, any evidentiary hearings or any findings or conclusions constituting or relating to the determination of any Alter Ego Theories, contained in or referenced in any decision, order, finding, conclusion, or judgment of the Bankruptcy Court) will constitute a trial or hearing on the merits, or an adjudication, Final Order, settlement, or finding of liability binding on such Asbestos Insurance Company for any purpose concerning insurance coverage for asbestos-related liability, or be used as evidence or offered into evidence in any proceeding to prove that such Asbestos Insurance Company participated in and/or consented to the procedures undertaken pursuant to the Parent's Plan. Any ruling by the Bankruptcy Court on any issue upon which such Asbestos Insurance Company does not involve itself and the Confirmation Order will not be binding on such Asbestos Insurance Company in any insurance coverage litigation. While the court and the finder of fact in any insurance coverage litigation may be advised of any of the proceedings and Confirmation Order in the Bankruptcy Court and while the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, or the Section 524(g) Trust may offer the Parent's Plan, any of the Parent's Plan Documents, any of the Confirmation proceedings, or the Confirmation Order as evidence of the reasonableness of a settlement between or among the Debtors, the ASARCO Committee, and the FCR, the court, and the finder of fact in any insurance coverage litigation will be informed or instructed that such proceedings and the Confirmation Order in the Bankruptcy Court are not binding on such Asbestos Insurance Company and that it is up to the court or the finder of fact in any insurance coverage litigation to make its own independent determination as to the reasonableness of that settlement as to such Asbestos Insurance Company.

(4) Article 12.4(d) of the Parent's Plan provides that, with regard to any Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order, nothing in or part of the Parent's Plan and the Confirmation process will be deemed to be an "adversarial process" as that concept was enunciated in *Gandy v. State Farm Fire & Cas. Co.*, 925 S.W.2d 696 (Tex. 1996). To the extent of any insurance coverage obligation under any policies issued by such Asbestos Insurance Company, all such Asbestos Insurance Companies reserve all of their rights, if any, to adjudicate in a fully "adversarial" trial or hearing on the merits any or all of the Debtors' asbestos-related liabilities, including, without limitation, any liability with respect to any individual asbestos claim; and any other party reserves all of its rights, if any, to oppose such Asbestos Insurance Company's assertion of any such right.

(5) Article 12.4(e) of the Parent's Plan provides that an Asbestos Insurance Company that is subject to insurance neutrality under the Bankruptcy Court's Insurance Neutrality Order does not participate in the negotiation, nor the Confirmation, of the Parent's Plan will not be held against or in favor of any person or entity in any pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of such Asbestos Insurance Company's rights and/or obligations regarding asbestos-related liabilities, if any, except to rebut any argument affirmatively raised by such Asbestos Insurance Company that such Asbestos Insurance Company's absence from the reorganization proceedings reflects collusion against and/or a lack of cooperation with such Asbestos Insurance Company. Notwithstanding the foregoing, such Asbestos Insurance Company may assert in any such pending or subsequent insurance coverage litigation, arbitration, ADR-type proceeding, or other dispute concerning the existence and/or scope of such Asbestos Insurance Company's rights and/or obligations regarding asbestos-related liabilities, if any, any coverage defenses based on collusion against and/or lack of cooperation with such Asbestos Insurance Company on any basis other than such Asbestos Insurance Company's absence from the Reorganization Cases.

(6) Article 12.4(f) of the Parent's Plan provides that any of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, or the Section 524(g) Trust may offer in any court, including any court resolving any insurance coverage litigation, any relevant portion of the Parent's Plan and any of the Parent's Plan Documents and/or the Confirmation Order for any purpose, including, without limitation, that the Parent's Plan was a reasonable settlement; *provided, however*, such offer will be subject to the rights, defenses (including affirmative defenses), and objections, if any, of the Debtors, the Asbestos Subsidiary Debtors, the Asbestos Claimants' Committee, the ASARCO Committee, the FCR, an Asbestos Insurance Company, and the Section 524(g) Trust.

6.16 Other Matters.(a) Assumption or Rejection of Unexpired Leases and Executory Contracts Under the Parent's Plan.

Article 8.1 of the Parent's Plan provides that, on the Effective Date, except as otherwise provided in the Parent's Plan, any unexpired lease or executory contract that has not been previously assumed or rejected by any Debtor pursuant to an order of the Bankruptcy Court will be deemed assumed 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 on **Parent's Plan Exhibit 3** (as such list may be amended, supplemented, or modified on or before the Confirmation Date) or (2) subject to a motion to reject that is pending on the Effective Date. Entry of the Confirmation Order will constitute approval of such assumptions, and the rejection of the executory contracts or unexpired leases listed in **Parent's Plan Exhibit 3** (as such list may be amended, supplemented, or modified on or before the Confirmation Date), pursuant to sections 365(a) and 1123 of the Bankruptcy Code. Any motions to reject executory contracts and unexpired leases pending on the Effective Date will be subject to approval by the Bankruptcy Court on or after the Effective Date by a Final Order.

(b) Approval of Assumption or Rejection of Executory Contracts and Unexpired Leases Under the Parent's Plan.

Article 8.2 of the Parent's Plan provides that entry of the Confirmation Order will, 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 of the executory contracts and unexpired leases assumed pursuant to Article 8.1 of the Parent's Plan; (2) the extension of time, pursuant to section 365(d)(4) of the Bankruptcy Code, within which the Debtors or Reorganized ASARCO may assume, assume and assign, or reject the unexpired leases specified in Article 8.1 of the Parent's 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 Parent's Plan.

(c) Inclusiveness.

Article 8.3 of the Parent's Plan provides that, unless otherwise specified on **Parent's Plan Exhibit 3**, each executory contract and unexpired lease listed or to be listed on **Parent's Plan Exhibit 3** will include modifications, amendments, supplements, restatements, or other agreements made directly or indirectly by any agreement, instrument, or other document that in any manner affects such executory contract or unexpired lease, without regard to whether such agreement, instrument, or other document is listed on **Parent's Plan Exhibit 3**.

(d) Rejection Damages Under the Parent's Plan.

Article 8.4 of the Parent's Plan provides that the Bankruptcy Court will 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.

(e) Rejection Damages Bar Date Under the Parent's Plan.

Article 8.5 of the Parent's Plan provides that, the rejection by a Debtor, pursuant to Article 8.1 of the Parent's Plan, of an executory contract or unexpired lease results in a Claim, then such Claim will be forever barred and discharged and will not be enforceable against the Debtors, Reorganized ASARCO, or their respective properties, unless a Proof of Claim is filed and served upon the Parent's 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 will become, and will be treated for all purposes under the Parent's Plan as, a General Unsecured Claim, and the holder thereof will receive distributions as a holder of an Allowed General Unsecured Claim, pursuant to the Parent's Plan.

(f) Payments Related to Assumption of Executory Contracts and Unexpired Leases Under the Parent's Plan.

Article 8.6 of the Parent's Plan provides that, to the extent that Cure Amount Claims constitute monetary defaults, such Cure Amount Claims will be satisfied by Reorganized ASARCO, pursuant to section 365(b)(1) of the Bankruptcy Code: (1) by payment of the Cure Amount Claim on the Effective Date or (2) on such other terms as are

agreed to by the Parent 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 or (B) any other matter pertaining to 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 will be made following the entry of a Final Order resolving the dispute and approving the assumption and assignment.

(g) Employee Benefit Plans and Other Benefits Under the Parent's Plan.

(1) Article 8.7(a) of the Parent's Plan provides that, effective as of the Effective Date, Reorganized ASARCO will be responsible for all benefits and liabilities with respect to the Employee Benefit Plans.

(2) Article 8.7(b) of the Parent's Plan provides that all of the applicable Debtors' liabilities and obligations arising under the Employee Benefit Plans and workers' compensation benefits, even if such liability or obligation relates to Claims incurred (whether or not reported or paid) prior to the Effective Date, will be deemed to be, and will be treated as though they are, executory contracts that are deemed assumed under the Parent's Plan pursuant to sections 365(a), 365(f), and 1123 of the Bankruptcy Code.

(3) Article 8.7(c) of the Parent's Plan provides that Reorganized ASARCO will be responsible for all of each Debtor's obligations under the Coal Act, including the obligations (A) to provide retiree health benefits to eligible beneficiaries and their dependents pursuant to section 9711 of the Coal Act, 26 U.S.C. § 9711; (B) 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 (C) to provide security to the UMW 1992 Benefit Plan pursuant to section 9712(d)(1)(C) of the Coal Act, 26 U.S.C. § 9712(d)(1)(C).

(4) Article 8.7(d) of the Parent's Plan provides that Reorganized ASARCO will assume and be responsible for all of the Debtors' obligations to pay retiree benefits, as defined in section 1114 of the Bankruptcy Code, for the duration of the period the applicable Debtor has obligated itself to provide such benefits. After the Effective Date, Reorganized ASARCO will retain their rights to amend, modify or terminate retiree benefits in accordance with all relevant agreements and applicable law, including any collective bargaining agreement that may be entered into between the USW and Reorganized ASARCO.

(h) Surety Bonds Under the Parent's Plan.

Article 8.8 of the Parent's Plan provides that all Surety Bonds will be retained or deemed Reinstated, as the case may be, on the Effective Date and will revert to the benefit of Reorganized ASARCO.

(i) Defined Benefit Plans Under the Parent's Plan.

As addressed in Article 8.9 of the Parent's Plan, ASARCO sponsors two defined benefit pension plans, the Retirement Income Plan for Hourly-Rated Employees of ASARCO, Inc. and the Retirement Income Plan for Salaried Employees of ASARCO, Inc. (collectively, the "Pension Plans"), which are covered by Title IV of the Employee Retirement Income Security Act of 1974 ("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 Pension Benefit Guaranty Corporation ("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 11 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 (1) 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 (2) 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.

Nothing in the Parent's Plan shall affect ASARCO's or Reorganized ASARCO's rights to amend, modify, or terminate the Pension Plans in accordance with all relevant agreements and applicable law.

6.17 Miscellaneous.

(a) General Retention of Jurisdiction Under the Parent's Plan.

Article 15.1 of the Parent's 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) will retain the fullest and most extensive jurisdiction permissible, including, without limitation, that necessary (1) to ensure that the purposes and intent of the Parent's Plan are carried out; (2) to enforce and interpret the terms and conditions of the Parent's Plan Documents; and (3) to enter such orders or judgments, including, without limitation, injunctions necessary to enforce the rights, title, and powers of the Debtors, Reorganized ASARCO, a Settling Asbestos Insurance Company, the Parent, and/or other ASARCO Protected Party. Except as otherwise provided in the Parent's Plan, the Bankruptcy Court will retain jurisdiction to hear and determine all Claims against and Interests in the Debtors and to adjudicate and enforce all other causes of action that may exist on behalf of the Debtors. Nothing contained in the Parent's Plan will prevent Reorganized ASARCO, the Parent's Plan Administrator, the Parent, the Section 524(g) Trustees, or the Environmental Custodial Trustee 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 the applicable Debtor, which cause of action will survive entry of the Confirmation Order and occurrence of the Effective Date and will not be affected thereby except as specifically provided in the Parent's Plan.

(b) Jurisdiction Over the Section 524(g) Trust Under the Parent's Plan.

Article 15.2 of the Parent's Plan provides that the Section 524(g) Trust will be subject to the continuing jurisdiction of the Bankruptcy Court in accordance with the requirements of section 468B of the Internal Revenue Code and the regulations issued pursuant thereto.

(c) Specific Purposes.

Article 15.3 of the Parent's Plan provides that, without limiting the effect of Articles 15.1 and 15.2 of the Parent's Plan, the Bankruptcy Court will retain jurisdiction after Confirmation to:

- (1) modify the Parent's Plan after entry of the Confirmation Order, pursuant to the provisions of the Parent's 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 Parent's Plan, the Parent's Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of the Parent's Plan;

- (3) hear and determine any cause of action, and to enter and implement such orders as may be necessary or appropriate, to execute, interpret, implement, consummate, or enforce the Parent's Plan, the Parent's 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 Parent's Plan, including, without limitation, the Parent's Plan Documents, and to enforce, including by specific performance, the provisions of the Parent's Plan and the Parent's Plan Documents;
- (5) hear and determine disputes arising in connection with the execution, interpretation, implementation, consummation, or enforcement of the settlement agreements, asset purchase agreements, or other agreements entered into by any of the Debtors during the Reorganization Cases (the "Other Agreements"), or to enforce, including by specific performance, the provisions of the Other Agreements;
- (6) 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 Parent's Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in the Parent's Plan and the Confirmation Order;
- (7) assure the performance by Reorganized ASARCO, the Parent's Plan Administrator, and the Trustees of their respective obligations to make distributions under the Parent's Plan and other Parent's Plan Documents;
- (8) enter such orders or judgments, including injunctions, as necessary to enforce the title, rights, and powers of any of the Debtors, Reorganized ASARCO, the Parent, the Parent's Plan Administrator, or the Trusts;
- (9) hear and determine any and all 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 Parent's Plan;
- (10) hear and determine any and all motions, applications, or adversary proceedings brought by the Reorganized ASARCO against Sterlite and Sterlite's affiliates;
- (11) hear and determine any and all 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 Parent's Plan;
- (13) alter the size of the Disputed Claims Reserve based upon the amount of the remaining Disputed Claims or other changed circumstances;
- (14) 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, to the fullest extent permitted by the provisions of section 157 of title 28 of the United States Code;
- (15) 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;
- (16) 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, Reorganized ASARCO, the Parent's Plan Administrator, and/or the Trusts arising on or prior to the Effective Date, arising on account of transactions contemplated by the Parent's Plan Documents, or relating to the period of administration of the Reorganization Cases;

- (17) 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;
- (18) hear and determine any causes of action relating to any of the Debtors, Reorganized ASARCO, or the Trusts to the fullest extent permitted by section 157 of title 28 of the United States Code;
- (19) hear and determine any cause of action in any way related to the Parent's Plan Documents, or the transactions contemplated thereby, against the ASARCO Protected Parties;
- (20) recover all assets of each of the Debtors and property of their Estates, wherever located, including actions under chapter 5 of the Bankruptcy Code;
- (21) hear and determine any and all 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;
- (22) hear and determine such other matters and for such other purposes as may be provided in the Confirmation Order;
- (23) 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; hear and determine all 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 hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in the Reorganization Cases;
- (25) retain continuing jurisdiction with regard to the Section 524(g) Trust sufficient to satisfy the requirements of Treasury Regulation section 1.468B;
- (26) hear and determine any and all applications brought by the Section 524(g) Trustees to amend, modify, alter, or repeal any provision of the Section 524(g) Trust Agreement or the Section 524(g) Trust Distribution Procedures pursuant to the Section 524(g) Trust Agreement and to declare or resolve all issues or disputes contemplated by the Section 524(g) Trust Agreement;
- (27) enter and implement orders extending the Asbestos Insurance Company Injunction to insurance companies that become Settling Asbestos Insurance Companies after the Effective Date;
- (28) enter such orders as are necessary to implement and enforce the Injunctions; and
- (29) 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 are related to the Parent's Plan.

(d) Exclusive Jurisdiction of District Court for Certain Matters Under the Parent's Plan.

(1) Article 15.4(a) of the Parent's Plan provides that the District Court will, 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 will be non-exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery. Nothing contained in the Parent's Plan will be deemed a finding or conclusion that: (A) the Bankruptcy Court or District Court in fact have jurisdiction with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; (B) any such jurisdiction is exclusive with respect to any Asbestos Insurance Action or Asbestos Insurance Recovery; or (C) 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 will have the right to exercise such jurisdiction.

(2) Article 15.4(b) of the Parent's Plan provides that, notwithstanding entry of the Confirmation Order and/or the occurrence of the Effective Date, the reference to the Bankruptcy Court pursuant to the Reference Order will continue, but subject to Article 15.4 of the Parent's 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.

(e) Post-Effective Date Status of the Committees and the FCR Under the Parent's Plan.

Article 15.5 of the Parent's Plan provides that the Committees and the position of the FCR will continue in existence until the Effective Date, with ASARCO to pay the reasonable fees and expenses of the Committees and the FCR through the Effective Date in accordance with the fee and expense procedures promulgated during the Reorganization Cases. The Committees and the FCR will have standing to participate in proceedings brought by their respective professionals or, if applicable, members, for allowance of fees and/or reimbursement of expenses as permitted by law. Except as provided above, the Committees will be dissolved on the Effective Date, and the members, attorneys, accountants, and other professionals thereof will be released and discharged of and from all further authority, duties, responsibilities, liabilities, and obligations related to, or arising from, the Reorganization Cases.

(f) Modification of Parent's Plan.

Article 15.6 of the Parent's Plan provides that the Parent may alter, amend, or modify the Parent's Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date. After the Confirmation Date, the Parent or Reorganized ASARCO, as the case may be, 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 Parent's Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of the Parent's Plan, so long as the proposed alteration, amendment, or modification does not adversely affect the treatment of Claims or Interests under the Parent's Plan.

(g) Non-Consummation of the Parent's Plan.

Article 15.7 of the Parent's Plan provides that, if the Parent's Plan is not Confirmed by a Final Order, or if the Parent's Plan is Confirmed and does not become effective, the rights of all parties in interest in the Debtors' chapter 11 cases, including the Parent, are and will be reserved in full. Any concessions or settlements reflected in the Parent's Plan (if any) are made for purposes of the Parent's Plan only, and if the Parent's Plan does not become effective, then (1) no party in interest will be bound or deemed prejudiced by any such concession or settlement; (2) the Parent's Plan will be null and void in all respects; (3) any settlement or compromise embodied in the Parent's Plan, assumption or rejection of executory contracts or leases effected by the Parent's Plan, and any document or agreement executed pursuant to the Parent's Plan will be deemed null and void; (4) nothing contained in the Parent's Plan, and no acts taken in preparation for consummation of the Parent's Plan, will prejudice in any manner the rights of the Parent or constitute an admission or waiver of any sort by the Parent; and (5) the structure of the Parent's Plan and the classification of creditors or groups of creditors within one Class contained in the Parent's Plan will have no evidentiary or precedential effect.

(h) Entire Agreement.

Article 15.8 of the Parent's Plan provides that, except as otherwise expressly provided in the Parent's Plan or the Parent's Plan Documents, the Parent's Plan and the Parent's Plan Documents set forth the entire agreement and undertakings relating to the subject matter thereof and supersede all prior discussions and documents.

(i) Rules Governing Conflicts Between Documents Under the Parent's Plan.

Article 15.9 of the Parent's Plan provides that, in the event of a conflict between the terms or provisions of the Parent's Plan and the Parent's Plan Documents, the terms of the Parent's Plan will control over the Parent's Plan Documents. In the event of a conflict between the terms of the Parent's Plan or the Parent's Plan Documents, on the one hand, and the terms of the Confirmation Order, on the other hand, the terms of the Confirmation Order will control.

(j) Severability.

Article 15.10 of the Parent's Plan provides that, in the event any provision in the Parent's Plan should be determined to be unenforceable either on its face or as applied to any Claim, Demand, Interest, or transaction, the Parent may modify the Parent's Plan in accordance with Article 15.6 of the Parent's Plan so that such provision will not be applicable to the holder of any Claim, Demand, Interest, or transaction. Such determination of unenforceability will not (1) limit or affect the enforceability and operative effect of any other provision of the Parent's Plan or (2) require the resolicitation of any acceptance or rejection of the Parent's Plan.

(k) Headings.

Article 15.11 of the Parent's Plan provides that headings are utilized in the Parent's Plan for convenience and reference only and will not constitute a part of the Parent's Plan for any other purpose.

(l) Bar Date for Compensation and Reimbursement Claims Under the Parent's Plan.

Article 15.12 of the Parent's Plan provides that 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; save and 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 filed.

(m) Subsequent Administrative Claims Bar Date Under the Parent's Plan.

Article 15.13 of the Parent's Plan provides that Claimants, other than Professional Persons, holding Administrative Claims against any of the Debtors that arise after the Initial Administrative Claims Bar Date (a "Subsequent Administrative Claim") that remain unpaid on the Effective Date must file a request for payment of 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 will be forever barred from asserting such Subsequent Administrative Claim against any of the Debtors, Reorganized ASARCO, or their respective properties, and such Subsequent Administrative Claim will 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 filed, 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 will be addressed through the Environmental Custodial Trusts.

(n) Indenture Trustee Fee Claims.

Article 15.14(a) of the Parent's Plan provides that if at least 20 days prior to the commencement of the Confirmation Hearing, the Parent receives 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 Parent, the Parent 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 Parent disputes any portion of the Indenture Trustee Fee Claims, prior to the Effective Date the Debtors and/or the Parent 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 Parent's objections to such Indenture Trustee Fee Claim. On the Effective Date, the Parent 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 Parent reserves the right to object to any such amounts on any applicable grounds.

Article 15.14(b) of the Parent's Plan provides that subject to the payment of the non-disputed portion of the Indenture Trustee Fee Claims and the establishment of the reserve with respect to any disputed portion of the Indenture Trustee Fee Claims, and the payment of all other fees and expenses (including fees and expenses of counsel and other

professionals) incurred by the Indenture Trustees in administering distributions to the Bondholders or responding to any objection by the Parent to an Indenture Trustee Fee Claim, to the extent payment of the foregoing fees and expenses is permitted by the Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in the Parent's Plan or in connection with any distributions to be made under the Parent's 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.

(o) Governing Law Under the Parent's Plan.

Article 15.15 of the Parent's Plan provides that, except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or the Parent's Plan provides otherwise, the rights and obligations arising under the Parent's Plan will be governed by, and construed and enforced in accordance with, the laws of the State of New York without giving effect to its conflicts of law principles.

(p) Consent to Jurisdiction Under the Parent's Plan.

Article 15.16 of the Parent's Plan provides that, except for the matters within the exclusive jurisdiction of the District Court as described in Article 15.4 of the Parent's Plan, the Debtors, the Parent, Reorganized ASARCO, the Parent's Plan Administrator, the Trustees, the Trusts, the Section 524(g) Trust Advisory Committee, and the FCR consent to the jurisdiction of the Bankruptcy Court, or any successor thereto, for all proceedings relating to the enforcement of the Parent's Plan and/or the Parent's Plan Documents, the Confirmation Order, and the Asbestos Insurance Company Injunction. As to the matters within the exclusive jurisdiction of the District Court as described in Article 15.4 of the Parent's Plan, the Debtors, Reorganized ASARCO, the Parent's Plan Administrator, the Section 524(g) Trustees, the Section 524(g) Trust, the Section 524(g) Trust Advisory Committee, and the FCR consent to the jurisdiction of the District Court, or any successor thereto, and agree that it will be the preferred forum for all matters within the exclusive jurisdiction of the District Court as described in Article 15.4 of the Parent's Plan.

(q) Transfer Taxes Under the Parent's Plan.

Article 15.17 of the Parent's Plan provides that the issuance, transfer, or exchange of any of the securities issued under, or the transfer of any other assets or property pursuant to, or in connection with, the Parent's Plan or the making or delivery of an instrument of transfer under, or in connection with, the Parent's Plan will not, pursuant to section 1146 of the Bankruptcy Code, be taxed under any law imposing a stamp tax, transfer tax, or other similar tax.

(r) Recordable Order.

Article 15.18 of the Parent's Plan provides that the Confirmation Order will be deemed to be in recordable form, and will be accepted by any recording officer for filing and recording purposes without further or additional orders, certifications, or other supporting documents.

(s) Successors and Assigns Under the Parent's Plan.

Article 15.19 of the Parent's Plan provides that the rights, duties, and obligations of any Entity named or referred to in the Parent's Plan will be binding upon, and will inure to the benefit of, the successors and assigns of such Entity.

(t) Waiver of Rights Under the Parent's Plan.

Article 15.20 of the Parent's Plan provides that holders of Claims, Demands, or Interests will have the right voluntarily to waive any rights, benefits, or protections that are afforded to them under the provisions of the Parent's Plan or any order issued in furtherance of the Parent's Plan, and such waiver will supersede such rights, benefits, or protections. Any such waiver will only be effective if such party expressly and specifically waives in writing one or more of such rights, benefits, or protections.

SECTION 7

LITIGATION TRUST UNDER THE PARENT'S PLAN

Article V of the Parent's Plan, outlined below, will apply if the Litigation Trust goes into effect.

7.1 Creation of the Litigation Trust under the Parent's Plan.

Article 5.1 of the Parent's Plan provides that, on the Effective Date, the Litigation Trust will be created as provided in the Litigation Trust Agreement. Prior to the Effective Date, the 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) thereof.

7.2 Appointment of Litigation Trustee and the Litigation Trust Board under the Parent's Plan.

Article 5.2(a) of the Parent's Plan provides that the Litigation Trustee will be selected by the Parent. Upon approval by the Bankruptcy Court in the Confirmation Order, the Litigation Trustee will be appointed.

Article 5.2(b) of the Parent's Plan provides that the Parent (if prior to the Effective Date) or Reorganized ASARCO (if after the Effective Date) will designate the Person who will initially serve as Delaware Trustee of the Litigation Trust.

Article 5.2(c) of the Parent's Plan provides that the Litigation Trustee will report to and consult with the Litigation Trust Board, which will consist of three members selected by the Parent. Successors to the members of the Litigation Trust Board will be selected by Reorganized ASARCO.

Article 5.2(d) of the Parent's Plan provides that the Litigation Trustee and the Delaware Trustee will each have and perform all of the rights, powers, and duties set forth in the Litigation Trust Agreement.

7.3 Purpose of the Litigation Trust under the Parent's Plan.

Article 5.3 of the Parent's Plan provides that the Litigation Trust will be established as a statutory trust for the purpose of pursuing the Litigation Trust Claims, liquidating all assets of the Litigation Trust for the benefit of the Litigation Trust Beneficiaries, receiving all Litigation Trust Claim recoveries, and distributing the resulting proceeds and other Cash of the Litigation Trust to the Litigation Trust Beneficiaries after payment of all expenses of the Litigation Trust. The primary purpose of the Litigation Trust is to liquidate its assets, and the Litigation Trust will have no objective or authority to continue or engage in the conduct of a trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Litigation Trust. Accordingly, the Litigation Trustee will, in an expeditious but orderly manner, prosecute, settle, or otherwise dispose of Litigation Trust Claims, make timely distributions in accordance with the terms of the Litigation Trust Agreement, and not unduly prolong the Litigation Trust's duration.

7.4 Transfer of Litigation Trust Claims to the Litigation Trust under the Parent's Plan.

Article 5.4 of the Parent's Plan provides that, on the Effective Date, Reorganized ASARCO will transfer to the Litigation Trust, for the benefit of the Litigation Trust Beneficiaries, (a) all of the Debtors' and Reorganized ASARCO's respective rights, title, and interests in the Litigation 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 and (b) all of the Debtors' and Reorganized ASARCO's respective Privileges associated with the Litigation Trust Claims. The Litigation Trust Claims are listed on **Parent's Plan Exhibit 9**; the Parent expressly reserves the right to amend such list from time to time up until the Effective Date of the Parent's Plan. As soon as practicable after the Effective Date, Reorganized ASARCO will transfer or make available to the Litigation Trustee, for the benefit of the Litigation Trust Beneficiaries, all documents in Reorganized ASARCO's possession, custody, or control in connection with the Litigation Trust Claims. For the avoidance of doubt, all of the causes of action arising under chapter 5 of the Bankruptcy Code are included as Litigation Trust Claims, with the exception of those avoidance actions against the Parent and its Affiliates that are specifically identified on **Parent's Plan Exhibit 2**, which are released by Article 10.5 of the Parent's Plan. Such avoidance causes of action will continue to be pursued by the Litigation Trust unless the Litigation Trustee determines that the costs of pursuing a particular avoidance action are not warranted.

To the extent recoveries from Litigation Trust Claims other than avoidance actions are sufficient to ensure payment of 100 percent of Allowed Claims in Classes 3, 6, and 7, the avoidance actions transferred to the Litigation Trust may be subject to dismissal as pursuit would not benefit the estate.

7.5 The Litigation Trust under the Parent's Plan.

Article 5.5(a) of the Parent's Plan provides that the Litigation Trust Agreement, substantially in the form of **Parent's Plan Exhibit 16**, contains provisions customary to trust agreements utilized in comparable circumstances, including, without limitation, provisions to ensure the continued existence of the Litigation Trust as a grantor trust and the Litigation Trust Beneficiaries as grantors and owners thereof for federal income tax purposes. Reorganized ASARCO, the Litigation Trustee, the Litigation Trust Beneficiaries, and the Delaware Trustee will execute any document or other instrument as necessary to cause all of Reorganized ASARCO's respective rights, title, and interests in and to the Litigation Trust Claims to be transferred to the Litigation Trust.

Article 5.5(b) of the Parent's Plan provides that the Litigation Trustee will have full authority to take any steps necessary to administer the Litigation Trust Claims, including, without limitation, the duty and obligation to liquidate the Litigation Trust Claims. Without limitation, the Litigation Trustee may object pursuant to section 502(d) of the Bankruptcy Code to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims. Both Reorganized ASARCO and the Litigation Trustee have the right to prosecute objections to any Proof of Claim filed by a defendant in any of the Litigation Trust Claims.

Article 5.5(c) of the Parent's Plan provides that all costs and expenses associated with the administration of the Litigation Trust will be advanced by Reorganized ASARCO in the ordinary course; *provided, however*, that Reorganized ASARCO will be reimbursed for such funds from the proceeds of the Litigation Trust, if any. Reorganized ASARCO, the Parent's Plan Administrator, and the Parent will cooperate with the Litigation Trustee in pursuing the Litigation Trust Claims and will provide reasonable access to personnel and books and records of Reorganized ASARCO, the Parent's Plan Administrator, and the Parent relating to the Litigation Trust Claims to representatives of the Litigation Trust to enable the Litigation Trustee to perform the Litigation Trustee's tasks under the Litigation Trust Agreement and the Parent's Plan; *provided, however*, that any requests to obtain access to the Parent's personnel or books and records will be made through Reorganized ASARCO or its representatives.

Article 5.5(d) of the Parent's Plan provides that the Litigation Trustee may retain such law firms, accounting firms, experts, advisors, consultants, investigators, appraisers, agents, employees, or other professionals and third parties as he may deem necessary or appropriate, with the prior approval of Reorganized ASARCO, to aid in the performance of the Litigation Trustee's responsibilities pursuant to the terms of the Parent's Plan, including, without limitation, the liquidation and distribution of Litigation Trust Claims.

Article 5.5(e) of the Parent's Plan provides that solely for tax purposes, it is intended that the Litigation Trust be classified as a liquidating trust under section 301.7701-4(d) of the Treasury Regulations, and the Litigation Trust Beneficiaries will be treated as the owners of their proportionate share of the assets of the Litigation Trust. Accordingly, for federal income tax purposes, the Parent intends that all parties (including, without limitation, the Litigation Trustee, the Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) will take the position, subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary, that the transfer of assets to the Litigation Trust is a deemed transfer to the Litigation Trustee for the benefit of the Litigation Trust Beneficiaries (as of the Initial Distribution Date), and all income and gain of the Litigation Trust which is earned after such deemed transfer will be taxed to the Litigation Trust Beneficiaries on a current basis. In addition, the investment powers of the Litigation Trustee will be limited to those powers that are consistent with the treatment of the Litigation Trust as a liquidating trust.

Article 5.5(f) of the Parent's Plan provides that the fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred for the benefit of each Litigation Trust Beneficiary as described in the preceding paragraph, and the fair market value of the portion of the Litigation Trust assets that is treated for federal income tax purposes as having been transferred to the Litigation Trustee for the benefit of any Litigation Trust Beneficiary as a result of a distribution of Litigation Trust Interests from the Disputed Claims Reserve, will be determined by the Litigation Trustee, and all parties (including, without limitation, the Litigation Trustee, the Litigation Trust Beneficiaries, and the transferors, for tax purposes, of any assets transferred to the Litigation Trust) will utilize such fair market value determined by the Litigation Trustee for all federal income tax purposes.

Article 5.5(g) of the Parent's Plan provides that the Litigation Trustee will be responsible for filing all federal, state, and local tax returns for the Litigation Trust and paying any taxes imposed on the Litigation Trust. The Litigation Trustee will comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority, and all distributions made by the Litigation Trustee will be subject to any such withholding and reporting requirements. Any amount so withheld from a distribution to a Claimant or other distributee of the Litigation Trust will be treated as having been paid to, and received by, such distributee for purposes of the Parent's Plan and the Parent's Plan Documents.

Article 5.5(h) of the Parent's Plan provides that any items of income, deduction, credit, or loss of the Litigation Trust will be allocated by the Litigation Trustee for federal income tax purposes among current or former Litigation Trust Beneficiaries, such allocation will be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former Litigation Trust Beneficiaries will be responsible for the payment of any federal, state, local, and foreign income tax due on the income and gain so allocated to them.

Article 5.5(i) of the Parent's Plan provides that, in the event that one or more of the Debtors obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement prior to the Effective Date of a cause of action that would have been transferred to the Litigation Trust on the Effective Date, the proceeds of the settlement will be distributed to the Litigation Trust Beneficiaries in the same manner as the Litigation Trust Interests. In the event of such a settlement, the Debtors that are parties to the settlement will hold the proceeds in escrow for distribution on the Effective Date. If the First L/C is collected, the proceeds of that First L/C will be contributed to the Litigation Trust and available for distribution pursuant to Article 5.7.

Article 5.5(j) of the Parent's Plan provides that the Litigation Trust will be deemed a "successor to the debtor" for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

7.6 Litigation Trust Interests under the Parent's Plan.

(a) Distributions of Litigation Trust Interests.

Article 5.6(a) of the Parent's Plan provides that, on the Effective Date, the Litigation Trustee will distribute 100 percent of the Litigation Trust Interests (the "Distributed Litigation Trust Interests"), Pro Rata, to holders of Claims in Class 3.

Upon Payment in Full of all Allowed Claims in Class 3 (and the resolution of all Disputed Claims in Class 3), the Litigation Trustee shall remove Class 3 Claimants from the Trust Register and shall redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 6 Claims (and, pending resolution of Disputed Claims in Class 6, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 6, the Litigation Trustee shall remove Class 6 Claimants from the Trust Register and redistribute the Distributed Litigation Trust Interests, Pro Rata, to the holders of Allowed Class 7 Claims (and, pending resolution of Disputed Claims in Class 7, the Disputed Claims Reserve). Upon Payment in Full of all Allowed Claims in Class 7, the Litigation Trustee shall remove Class 7 Claimants from the Trust Register and redistribute the Distributed Litigation Trust Interests to Reorganized ASARCO.

(b) Interests Beneficial Only.

Article 5.6(b) of the Parent's Plan provides that the ownership of a Litigation Trust Interest will not entitle any Litigation Trust Beneficiary to (1) any title in or to the assets of the Litigation Trust as such (which title will be vested in the Litigation Trustee) or to any right to call for a partition or division of the assets of the Litigation Trust or to require an accounting; or (2) any voting rights with respect to the administration of the Litigation Trust and the actions of the Litigation Trustee in connection therewith.

(c) Maintenance of Register.

Article 5.6(c) of the Parent's Plan provides that the Litigation Trustee will at all times maintain a Trust Register of the names, addresses, and number of Litigation Trust Interests of the Litigation Trust Beneficiaries.

(d) Evidence of Litigation Trust Interests.

Article 5.6(d) of the Parent's Plan provides that the Litigation Trustee shall have full power, authority, and discretion to determine whether ownership of any 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 Litigation Trust Interests shall be recorded and set forth in the Trust Register.

(e) Inapplicability of the Securities Exchange Act and the Trust Indenture Act.

Article 5.6(e) of the Parent's Plan provides that beneficial interests in the Litigation Trust either (1) are not "securities" within the meaning of the federal and state securities laws or (2) may be issued without securities registration or licensing in reliance upon the exemption afforded by section 1145(a)(1) of the Bankruptcy Code. Without limitation to the foregoing, beneficial interests in any such Litigation Trust do not constitute "a class of equity securities" within the meaning of the Securities Exchange Act of 1934, as amended, and such Litigation Trust Interests will not be subject to registration under such act. Without limitation to the foregoing, beneficial interests in the Litigation Trust are not "evidences of indebtedness" within the meaning of the Trust Indenture Act of 1939, as amended, and may be issued without qualification of an indenture under such act.

7.7 Distributions of Litigation Proceeds and Other Property under the Parent's Plan.

Article 5.7 of the Parent's Plan provides that the Litigation Trustee will apply all proceeds of the litigations transferred to the Litigation Trust, and any other Cash of the Litigation Trust in the following order: *first*, to pay all costs and expenses of the Litigation Trust, including, without limitation, compensation payable to the Litigation Trustee; *second*, to reimburse Reorganized ASARCO for any funds provided to the Litigation Trust or paid on its behalf by Reorganized ASARCO; *third*, to the Litigation Trust Beneficiaries. In no event will any holder of an Allowed Claim in Class 3, 6, or 7 receive distributions from the Litigation Trust which, when combined with Available Parent's Plan Funds or other forms of consideration provided to such holder with respect such Claim, exceed the Allowed amount of such Claim. Upon Payment in Full of all Allowed Claims in Classes 3, 6, or 7, all remaining proceeds or other Cash of the Litigation Trust, if any, will be distributed to Reorganized ASARCO.

7.8 Termination of the Litigation Trust under the Parent's Plan.

Article 5.8(a) of the Parent's Plan provides that the Litigation Trust will terminate on the earlier of: (a) 30 days after the distribution of all of the assets of the Litigation Trust in accordance with the terms of the Litigation Trust Agreement and the Parent's Plan or (b) the fifth anniversary of the Effective Date; *provided, however*, that, on or prior to a date less than six months (but not less than three months) prior to such termination, the Bankruptcy Court, upon motion by a party in interest, may extend the term of the Litigation Trust for a finite period if, based on the facts and circumstances, the Bankruptcy Court finds that such extension is necessary to the liquidating purpose of the Litigation Trust. The Bankruptcy Court may approve multiple extensions of the term of the Litigation Trust, provided that (a) 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 (b) the 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 Litigation Trust as a grantor trust for federal income tax purposes.

Article 5.8(b) of the Parent's Plan provides that the Litigation Trustee will not unduly prolong the duration of the Litigation Trust and will at all times endeavor to resolve, settle, or otherwise dispose of all of the Litigation Trust Claims and to effect the distribution of the assets of the Litigation Trust to the holders of the Litigation Trust Interests in accordance with the terms hereof and terminate the Litigation Trust as soon as practicable.

7.9 Termination of the Litigation Trustee and the Delaware Trustee under the Parent's Plan.

Article 5.9 of the Parent's Plan provides that the duties, responsibilities, rights, and obligations of the Litigation Trustee and the Delaware Trustee for the Litigation Trust will terminate in accordance with the terms of the Litigation Trust Agreement.

7.10 Claims Against Montana Resources Reserved for Reorganized ASARCO.

Article 5.10 of the Parent's Plan provides that the Debtors' claims against MRI, including those asserted in Adv. No. 07-02024, pending in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division, are not Litigation Trust Claims under the Parent's Plan, and will not be transferred to the Litigation Trust. Rather, the Debtors' claims against MRI are expressly reserved for Reorganized ASARCO to pursue in the ordinary course.

If Reorganized ASARCO prevails in its claims against MRI and MRI asserts a Claim back against Reorganized ASARCO under section 502(h) of the Bankruptcy Code, the Allowed Amount of such Claim will be determined by the Bankruptcy Court in the adversary proceeding as part of the determination of the Debtors' pending objection to the unresolved Proof of Claim. If MRI is allowed a Claim under section 502(h), such Claim will be treated as a Class 5 General Unsecured Claim under the Parent's Plan. MRI contends that, in the event MRI is then ordered to turn over the property that is the subject of the constructive fraudulent transfer action, or its value, to Reorganized ASARCO, then MRI shall have a General Unsecured Claim for the full amount of the property or amount ordered to be turned over. The Parent disagrees and, like the Debtors, 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 MRI partnership. MRI disagrees.

SECTION 8

SECTION 524(G) TRUST UNDER THE PARENT'S PLAN

Article VI of the Parent's Plan, outlined below, will apply if the Section 524(g) Treatment goes into effect.

8.1 Establishment and Purpose of the Section 524(g) Trust Under the Parent's Plan.

Article 6.1 of the Parent's Plan provides that, on the Effective Date, the Section 524(g) Trust will be established in accordance with the Parent's Plan Documents. When established, the Section 524(g) Trust will be empowered in accordance with the Parent's Plan and the Parent's Plan Documents. The Section 524(g) Trust will be a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1. The purposes of the Section 524(g) Trust will be to, among other things, (a) liquidate, resolve, pay, and satisfy all Asbestos Personal Injury Claims and Demands in accordance with the Parent's Plan, the Section 524(g) Trust Distribution Procedures, the Section 524(g) Trust Agreement, and the Confirmation Order; (b) receive, preserve, hold, manage, and maximize the Section 524(g) Trust Assets for use in paying and satisfying Allowed Asbestos Personal Injury Claims and Demands in accordance with the terms of the Section 524(g) Trust Agreement; and (c) take other actions deemed by the Section 524(g) Trustees to be in the best interests of the holders of the Asbestos Personal Injury Claims and Demands, who are the sole beneficiaries of the Section 524(g) Trust.

Among other things, the Section 524(g) Trust shall assume the liabilities and responsibility for all Unsecured Asbestos Personal Injury Claims and Demands.

8.2 Section 524(g) Trust Agreement Under the Parent's Plan.

Article 6.2 of the Parent's Plan provides that the Section 524(g) Trust Agreement will be substantially in the form of the "Section 524(g) Trust Agreement" attached as **Parent's Plan Exhibit 11**, which contains provisions customary to documents utilized in comparable circumstances, and will be subject to the reasonable approval of the FCR and the Asbestos Claimants' Committee.

8.3 Transfers and Assignments to the Section 524(g) Trust Under the Parent's Plan.

Article 6.3 of the Parent's Plan provides that, on the Effective Date, the Parent's Plan Administrator will transfer and assign to the Section 524(g) Trust for the benefit of the Section 524(g) Trust Beneficiaries the Section 524(g) Trust Assets.

8.4 Control of the Asbestos Insurance Actions and Asbestos Insurance Recoveries Under the Parent's Plan.

Article 6.4 of the Parent's Plan provides that the right to control the Asbestos Insurance Actions and all Asbestos Insurance Recoveries, including negotiations relating thereto and settlements thereof, will be vested in the Section 524(g) Trust on and after the Effective Date. Notwithstanding the foregoing, Reorganized ASARCO, the Parent's Plan Administrator, and the Parent will cooperate with the Section 524(g) Trustees in pursuing the Asbestos Insurance Actions through such means, and will provide reasonable access to personnel and books and records of Reorganized ASARCO relating to the Asbestos Insurance Actions to representatives of the Section 524(g) Trust, to enable the Section 524(g) Trustees to perform the Section 524(g) Trustees' tasks under the Section 524(g) Trust Agreement and the Parent's Plan, as set forth in the Section 524(g) Trust Cooperation Agreement and as is discussed in Article 6.11 of the Parent's Plan in regards to Reorganized ASARCO.

Notwithstanding the foregoing, Reorganized 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 Section 524(g) Trust if, after consultation with the Section 524(g) Trust, it is determined that such retention better preserves these assets.

Century Indemnity Company and American Home Assurance Company contend that the Section 524(g) Trust must handle Asbestos Premises Liability Claims in accordance with the Asbestos In-Place Insurance Coverage agreements between the Debtors and their insurers. Century Indemnity Company and American Home Assurance Company contend that, to the extent the Section 524(g) Trust Distribution Protocol purports to alter the parties' respective rights and obligations under any Asbestos In-Place Insurance Coverage agreements to which Century Indemnity Company or American Home Assurance Company may be parties or applicable policies issued by Century Indemnity Company or American Home Assurance Company, any coverage otherwise available under any such policies or Asbestos In-Place Insurance Coverage agreements may be vitiated.

The Debtors 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 Parent disputes this contention.

Century Indemnity Company contends that, if the Section 524(g) Trust prevails in proceedings against Settling Asbestos Insurance Companies, the significant consideration paid by such Settling Asbestos Insurance Companies will have to be returned, and such insurers will have claims under 11 U.S.C. § 502(h).

8.5 Assumption of Liabilities by the Section 524(g) Trust Under the Parent's Plan.

Article 6.5 of the Parent's Plan provides that on the Effective Date, in exchange for funding in accordance with Article 6.3 of the Parent's Plan, the Section 524(g) Trust will be deemed, without need for further action, to have assumed responsibility and liability for all Asbestos Personal Injury Claims and Demands.

8.6 Tax Matters Under the Parent's Plan.

Article 6.6 of the Parent's Plan provides that no election will be made to treat the Section 524(g) Trust as a grantor trust for U.S. federal income tax purposes. The Section 524(g) Trust is intended to be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, and hence as a taxable entity for federal income tax purposes, and the Section 524(g) Trustees will be the "administrators" of the Section 524(g) Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). The Section 524(g) Trustees will cause all taxes imposed on the Section 524(g) Trust to be paid using assets of the Section 524(g) Trust and will comply with all tax reporting and withholding requirements imposed on the Section 524(g) Trust under applicable tax laws, and in particular the rules applicable to a qualified settlement fund.

8.7 Section 524(g) Trust Expenses Under the Parent's Plan.

Article 6.7 of the Parent's Plan provides that the Section 524(g) Trust will initially be funded in the amount of \$27.5 million, which amount will be deemed an Administrative Expense, to pay Section 524(g) Trust Expenses (including applicable taxes). Following such initial funding, neither the Debtors, the Parent, the Parent's Plan Administrator, nor Reorganized ASARCO will have any obligation to pay or reimburse any Section 524(g) Trust Expenses. However, nothing will preclude the Section 524(g) Trustees from seeking reimbursement of such expenses from any Asbestos Insurance Company.

8.8 Initial Section 524(g) Trustees Under the Parent's Plan.

Article 6.8 of the Parent's Plan provides that the initial Section 524(g) Trustees will be those Persons nominated by the Asbestos Claimants' Committee and the FCR, if the Asbestos Claimants' Committee and the FCR are willing to make such nominations, or otherwise nominated by the Parent, and designated in the Confirmation Order.

8.9 The FCR Under the Parent's Plan.

Article 6.9 of the Parent's Plan provides that, on and after the Effective Date, Judge Robert C. Pate will serve as the FCR, as such term is defined in the Section 524(g) Trust Agreement, and will have and exercise the functions, rights, duties, powers, and privileges provided in the Section 524(g) Trust Documents, if Judge Robert C. Pate is willing to so serve. If not, the Bankruptcy Court will appoint his replacement.

8.10 Section 524(g) Trust Advisory Committee Under the Parent's Plan.

Article 6.10 of the Parent's Plan provides that the initial members of the Section 524(g) Trust Advisory Committee will be those Persons nominated by the Asbestos Claimants' Committee if the Asbestos Claimants' Committee is willing to make such nominations, or otherwise nominated by the Parent, and designated in the Confirmation Order. They will consult with and advise the Section 524(g) Trustees regarding the administration of the Section 524(g) Trust and the liquidation and resolution of Asbestos Personal Injury Claims and Demands in accordance with the provisions of the Parent's Plan and the Section 524(g) Trust Documents.

8.11 Asbestos Books Under the Parent's Plan.

Article 6.11(a) of the Parent's Plan provides that, subject to the conditions set forth herein and as more fully described in the Section 524(g) Cooperation Agreement, the Section 524(g) Trust, through its duly authorized representatives, will have the right, upon reasonable prior written notice to Reorganized ASARCO, to either, at the election of Reorganized ASARCO in its sole discretion: (a) have Reorganized ASARCO transfer into the Section 524(g) Trust's possession all or part of the Asbestos Books in their current condition upon request of the Section 524(g) Trust and on the condition that the Section 524(g) Trust will incur all costs and expenses of the transfer; or (b) to inspect and, at the sole expense of the Section 524(g) Trust, make copies of the Asbestos Books on any Business Day and as often as may reasonably be desired; provided that, if so requested, the Section 524(g) Trust will have entered into a reasonable confidentiality agreement satisfactory in form and substance to Reorganized ASARCO. All costs and expenses associated with the storage of any Asbestos Books that remain in the possession of Reorganized ASARCO will be the responsibility of, and paid by, Reorganized ASARCO. All costs and expenses associated with the storage of and access to any Asbestos Books that are transferred to the Section 524(g) Trust will be the responsibility of, and paid by, the Section 524(g) Trust. Reorganized ASARCO, the Parent's Plan Administrator, and the Parent will cooperate with the Section 524(g) Trust in transferring or providing access to the Asbestos Books in their current condition, and will also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein and in the Section 524(g) Cooperation Agreement. Subject to the conditions set forth herein and in the Section 524(g) Cooperation Agreement, the Section 524(g) Trust, through its duly authorized representatives, will 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. Reorganized ASARCO will provide the Section 524(g) Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity to segregate and remove such Asbestos Books as the Section 524(g) Trust may select.

Article 6.11(b) of the Parent's Plan provides that if the Section 524(g) Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether written or oral) to which any attorney-client, work-product privilege, or other privilege or immunity attaches, the Section 524(g) Trust will be deemed a privilege

holder for purposes of preserving the privilege, will 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 will not be unreasonably withheld. Production of materials to the Section 524(g) Trust does not constitute a waiver or an impairment of any privilege held by Reorganized ASARCO or ASARCO. Unless otherwise ordered by the Bankruptcy Court, in processing and determination of, objection to, or otherwise in connection with Asbestos Personal Injury Claims or in connection with any Asbestos Insurance Recovery, as determined by the Section 524(g) Trust, the information contained in the Asbestos Books will be treated as confidential. Except as otherwise provided herein, in the event that any third party challenges any such privilege or confidentiality, Reorganized ASARCO may seek protection from a court of competent jurisdiction. References in Article 6.11 of the Parent's Plan to Reorganized ASARCO will also include its successors in interest.

8.12 Cooperation with Respect to Insurance Matters Under the Parent's Plan.

Article 6.12 of the Parent's Plan provides that Reorganized ASARCO and the Parent will cooperate with the Section 524(g) 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, assignments, and assumptions identified in the Parent's Plan to the Section 524(g) Trust. By way of enumeration and not of limitation, Reorganized ASARCO and ASARCO each will be obligated, without limitation, (a) to provide the Section 524(g) Trust with copies of insurance policies and settlement agreements included within or relating to the Asbestos Personal Injury Claims and Demands; (b) to provide the Section 524(g) Trust with information necessary or helpful to the Section 524(g) Trust in connection with its efforts to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages; (c) to execute assignments or allow the Section 524(g) Trust to pursue claims in its own name (subject to appropriate disclosure of the fact that the Section 524(g) 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 Section 524(g) Trust to obtain insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages; and (d) to pursue and recover insurance coverage for the Asbestos Personal Injury Claims and Demands as well as other recoveries, including, without limitation, recoveries of extracontractual damages, in its own name or right to the extent that any or all of the transfers and assignments identified in the Parent's Plan are not able to be fully effectuated, with any and all recoveries therefrom to be turned over to the Section 524(g) Trust. The Section 524(g) Trust will be obligated to compensate Reorganized ASARCO and ASARCO for all costs and expenses reasonably incurred in connection with providing assistance to the Section 524(g) Trust under Article 6.12 of the Parent's Plan, including, without limitation, out-of-pocket costs and expenses, consultant fees, and attorneys' fees.

8.13 Indemnification by the Section 524(g) Trust Under the Parent's Plan.

Article 6.13(a) of the Parent's Plan provides that the Section 524(g) Trust will indemnify, defend (and, where applicable, pay the defense costs for), and hold harmless each of the ASARCO Protected Parties from any and all liabilities associated with an Asbestos Personal Injury Claim or Demand that a third party seeks to impose upon any of the ASARCO Protected Parties, or that are imposed upon any of the ASARCO Protected Parties.

Article 6.13(b) of the Parent's Plan provides that, in the event that the Section 524(g) Trust makes a payment to any of the ASARCO Protected Parties under the Parent's Plan, and the liability on account of which such payment was made is subsequently diminished, either directly or through a third-party recovery, the applicable ASARCO Protected Party will promptly repay the Section 524(g) Trust the amount by which the payment made by the Section 524(g) Trust exceeds the actual cost of such indemnified liability.

SECTION 9 ENVIRONMENTAL CUSTODIAL TRUSTS UNDER THE PARENT'S PLAN

9.1 Environmental Custodial Trust Under the Parent's Plan.

Article 7.1 of the Parent's Plan provides that, if the Parent's Plan is accepted by Class 6 and Class 6 expresses a preference for the Parent's Plan (or is neutral with respect to all three Plans), then, on or before the Effective Date, the Environmental Custodial Trusts will be established. The Environmental Custodial Trusts under the Parent's Plan will be substantially identical to the environmental custodial trusts agreed upon by the Debtors and applicable governmental agencies with respect to the Designated Properties, which environmental custodial trusts the Debtors and the

applicable governmental agencies sought approval of, from the Bankruptcy Court, pursuant to the Environmental 9019 Motion. In particular, the organization, operative documents, and funding amounts of the Environmental Custodial Trusts under the Parent's Plan will be substantially identical to those which the Debtors and the applicable governmental agencies agreed upon and sought approval of. The forms of the Environmental Custodial Trust Agreements as agreed to by the Debtors and the applicable government agencies, including the Montana Custodial Trust Settlement Agreement filed March 13, 2009 (Docket No. 10539-4), the Texas Custodial Trust Agreement filed March 19, 2009 (Docket No. 10567-4), and the Multi-State Custodial Trust Settlement Agreement filed March 13, 2009 (Docket No. 10542-4), will be implemented with only such non-substantive changes as are required to reflect the Parent's Plan and to protect the Parent and Reorganized ASARCO as may be negotiated with the holders of Allowed Environmental Trust Claims regarding the Designated Properties prior to the Effective Date.

9.2 Environmental Custodial Trustees Under the Parent's Plan.

Article 7.2 of the Parent's Plan provides that, not less than 10 days prior to the commencement of the Confirmation Hearing, the DOJ, if it is so willing, and in consultation with the states that have Allowed Environmental Trust Claims with respect to any Designated Elected Properties, will designate the Persons who will initially serve as the Environmental Custodial Trustees. Upon approval by the Bankruptcy Court in the Confirmation Order, the Environmental Custodial Trustees will be appointed.

9.3 Tax Matters.

Article 7.3 of the Parent's Plan provides that the Environmental Custodial Trusts are intended to be treated as qualified settlement funds (for which no grantor trust election has been made) within the meaning of Treasury Regulation section 1.468B-1, and hence as taxable entities for federal income tax purposes, and each respective Custodial Trustee will be the "administrator" of its respective Environmental Custodial Trust pursuant to Treasury Regulation section 1.468B-2(k)(3). Each Custodial Trustee will cause all taxes imposed on the relevant Environmental Custodial Trust to be paid using assets of the Environmental Custodial Trust and will comply with all tax reporting and withholding requirements imposed on the Environmental Custodial Trust under applicable tax laws, and in particular the rules applicable to a qualified settlement fund.

SECTION 10 SUMMARY OF HARBINGER'S PROPOSED PLAN

The text of Sections 10 through 12 of the Disclosure Statement has been prepared by Harbinger with reference to Harbinger's Plan and uses defined terms from Harbinger's Glossary. All statements and representations in Sections 10 through 12 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 Sections 10 through 12, and each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

10.1 General.

The following is a summary of certain key provisions of Harbinger's Plan. Before voting, holders of Claims that are entitled to vote on Harbinger's Plan are referred to, and encouraged to review, the relevant provisions of Harbinger's Plan, Harbinger's Plan Documents, and the Bankruptcy Code carefully since their rights could be affected. They also are encouraged to review Harbinger's Plan and this Disclosure Statement with their counsel or other advisors. Note that other provisions of Harbinger's Plan not summarized in this Section 10 may be summarized elsewhere in this Disclosure Statement.

10.2 Classification of Claims and Interests Under Harbinger's 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, Priority Tax Claims, and Unknown Asbestos Claims shall be treated as set forth in Article II of Harbinger's Plan.

(b) Classes Under Harbinger's Plan.

Claims against, and Interests in, the Debtors are grouped in the following Classes for purposes of Harbinger's 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.

10.3 Treatment of Administrative Claims, Priority Tax Claims, and Demands Under Harbinger's Plan Administrative Claims.

Claims that are entitled to administrative priority under section 503 of the Bankruptcy Code are treated under Article 2.1 of Harbinger's 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 (a) Allowed Administrative Claims representing (1) post-petition liabilities incurred in the ordinary course of business by a 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 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 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 Asbestos Claims Liquidation Trust shall have an Allowed Administrative Claim for its administrative expenses in the amount of \$27.5 million.

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.

(a) Priority Tax Claims.

Article 2.2 of Harbinger's 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.

(b) Unknown Asbestos Claims.

Article 2.3 of Harbinger's Plan provides treatment for Unknown Asbestos Claims. Under Article 2.3, Unknown Asbestos Claims 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 Harbinger's Plan, and shall be determined, processed, liquidated, and paid pursuant to the terms and conditions of the Asbestos Claims Liquidation Trust Agreement.

10.4 Treatment of Claims and Interests Under Harbinger's Plan.

Article IV of Harbinger's Plan sets forth the treatment to be provided each of the Classes of Claims and Interests under the Plan. Harbinger's Plan combines into a single class of General Unsecured Claims all Trade and General Unsecured Claims, Bondholders' Claims, Toxic Tort Claims, Previously Settled Environmental Claims, Miscellaneous Federal and State Environmental Claims, and Residual Environmental Claims.

The following is a summary of the treatment being provided under Harbinger's Plan to each Class.

(a) Class 1 – Priority Claims.

(1) Voting Rights Under Harbinger's Plan.

Class 1 is unimpaired by Harbinger's Plan. Class 1, and holders of Priority Claims in Class 1, are conclusively presumed to have accepted Harbinger's Plan under section 1126(f) of the Bankruptcy Code and are not being asked to vote to accept or reject Harbinger's Plan.

(2) Treatment Under Harbinger's Plan.

Class 1 Priority Claims are treated in Article 4.2(a) of Harbinger's 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 Harbinger's Plan.

The voting rights of each holder of a Class 2 Secured Claim depend upon Harbinger's election. Harbinger shall make its election prior to the Confirmation Hearing. Harbinger shall solicit the votes of each sub-Class of Secured Claims. If Harbinger elects to Reinstate a particular Secured Claim, that sub-Class shall be unimpaired, and the sub-Class's vote shall not be counted. If Harbinger elects 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 Harbinger's Plan.

Class 2 Secured Claims are treated in Article 4.2(b) of Harbinger's Plan. Each holder of an Allowed Secured Claim shall, at the election of Harbinger, either (A) receive the Allowed Amount of such holder's Claim, together

with post-petition interest to the extent and at the rate provided in section 506(b) of the Bankruptcy Code, in Cash, on the later of the Effective Date or the date or dates that such Secured Claim becomes due in the ordinary course, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim and any related Lien, or (B) be Reinstated, on the Effective Date; *provided, however*, that any Allowed Secured Claim that is secured by a Lien on any Sold Asset shall receive the Allowed Amount of such holder's Claim with applicable post-petition interest on the applicable date(s) and shall not be Reinstated.

The Secured Claims of the United States relating to the East Helena, Montana facility and the Globe, Colorado facility, and any Secured Claims relating to the Prepetition ASARCO Environmental Trust shall be satisfied by having the holders of such Claims retain the Liens securing such Claims, unless a holder agrees to different treatment. In addition, upon the Effective Date, the causes of action asserted by the Debtors against the United States of America on behalf of the EPA, the USDA, the Interior, and the International Boundary and Water Commission in Adversary Proceeding No. 07-02076 (and only those causes of action) shall be dismissed without prejudice.

Each Secured Claim shall be deemed to be in a separate sub-Class of Class 2 for all purposes under Harbinger's Plan. **Exhibit 16** to Harbinger's 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 Harbinger's Plan.

Class 3 is impaired by Harbinger's Plan. Holders of General Unsecured Claims in Class 3 are being asked to vote to accept or reject Harbinger's Plan under section 1126 of the Bankruptcy Code.

(2) Treatment Under Harbinger's Plan.

Class 3 General Unsecured Claims are treated in Article 4.2(c) of Harbinger's Plan. On or after the Effective Date, each holder of an Allowed General Unsecured Claim (except any holder that agrees to other, lesser treatment) shall receive such holder's Pro Rata share of the Plan Consideration based on the total aggregate amount of Allowed Claims in Classes 3 and 4, 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 15.13 of Harbinger's Plan.

At the request of the Indenture Trustees, Harbinger's Plan provides for the payment of valid Indenture Trustee Fee Claims (*see* Article 15.13 of Harbinger's 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 Harbinger's Plan.

Class 4 is impaired by Harbinger's Plan. Holders of Unsecured Asbestos Personal Injury Claims in Class 4 are being asked to vote to accept or reject Harbinger's Plan under section 1126 of the Bankruptcy Code.

(2) Treatment Under Harbinger's Plan.

Class 4 Unsecured Asbestos Personal Injury Claims are treated in Article 4.2(d) of Harbinger's Plan. On the Effective Date, liability of all of the Debtors for all Unsecured Asbestos Personal Injury Claims and Unsecured Asbestos Claims shall be assumed by, and as set forth in Article 11.3 of Harbinger's Plan, channeled to, the Asbestos Claims Liquidation Trust without further act or deed for the reasons stated in Harbinger's Plan, and shall be satisfied as set forth therein.

All Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be processed, liquidated, and paid by the Asbestos Claims Liquidation Trust, acting under the control and direction of the Asbestos Claims Liquidation Trustees, pursuant to the terms and provisions of the Asbestos Claims Liquidation Trust Agreement. The Asbestos Claims Liquidation Trust is described in Article VII of Harbinger's Plan. The sole recourse of the holder of an (A) Unsecured Asbestos Personal Injury Claim or (B) in the first instance as set forth below in Article 11.3, Unknown Asbestos Claims, shall be to the Asbestos Claims Liquidation Trust, as operated by the Asbestos Claims Liquidation Trustees (including Reorganized ASARCO), and such holder shall have no rights whatsoever at any time (other than, in certain instances as set forth in Article 11.3, holders of Unknown Asbestos Claims) to assert such holder's Claim 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 and/or Unknown Asbestos Claims.

The Asbestos Claims Liquidation Trust shall be funded with (A) 100 percent of the interests in Reorganized Covington; (B) the Class 4 Pro Rata Share of the Plan Consideration; and (C) the Asbestos Claims Liquidation Trust Administrative Claim.

Harbinger reserves the right prior to the Confirmation Date to add such additional provisions in the Asbestos Claims Liquidation Trust or Harbinger's Plan as may be advisable to preserve the Debtors' claims under any Asbestos Insurance Policy or under the Asbestos In-Place Insurance Coverage.

See Section 12 of this Disclosure Statement for more information about the Asbestos Claims Liquidation Trust to be created under Harbinger's Plan.

In connection with funding of the Asbestos Claims Liquidation Trust, Article 11 of Harbinger's Plan provides for issuance of Injunctions that shall enjoin and limit further pursuit of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims from whatever source against an ASARCO Protected Party. These Injunctions are discussed in greater detail in Section 10.12 of this Disclosure Statement.

(e) Class 5 – Convenience Claims.(1) Voting Rights Under Harbinger's Plan.

Class 5 is unimpaired by Harbinger's Plan. Class 5, and holders of Convenience Claims in Class 5, are conclusively presumed to have accepted Harbinger's Plan under section 1126(f) of the Bankruptcy Code and are not being asked to vote to accept or reject Harbinger's Plan.

(2) Treatment Under Harbinger's Plan.

Class 5 Convenience Claims are treated in Article 4.2(e) of Harbinger's Plan. On the Effective Date, each holder of an Allowed Convenience Claim shall receive the Allowed Amount of such holder's Claim, in Cash, in full satisfaction, settlement, release, extinguishment, and discharge of such Claim. Election by the holder of an Allowed General Unsecured Claim otherwise treated under Class 3 of Harbinger's Plan (other than a Bondholder Claim) to reduce the Claim of such holder to \$1,000 and to receive distribution as a Class 5 Convenience Claim shall constitute acceptance of Harbinger's 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 Harbinger’s Plan.

Class 6 is impaired. Class 6 is deemed to have rejected Harbinger’s Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject Harbinger’s Plan.

(2) Treatment Under Harbinger’s Plan.

Class 6 Late-Filed Claims are treated in Article 4.2(f) of Harbinger’s Plan. The holders of Late-Filed Claims shall receive interests in the Liquidation Trust and SCC Litigation Trust. Distributions on account of such interests shall be made in accordance with the Trust Interest Priorities.

(g) Class 7 – Subordinated Claims.

(1) Voting Rights Under Harbinger’s Plan.

Class 7 is impaired. Class 7 is deemed to have rejected Harbinger’s Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject Harbinger’s Plan.

(2) Treatment Under Harbinger’s Plan.

Class 7 Subordinated Claims are treated in Article 4.2(g) of Harbinger’s Plan. The holders of Subordinated Claims shall receive interests in the Liquidation Trust and SCC Litigation Trust. Distributions on account of such interests shall be made in accordance with the Trust Interest Priorities.

(h) Class 8 – Interests in ASARCO.

(1) Voting Rights Under Harbinger’s Plan.

Class 8 is impaired. Class 8 is deemed to have rejected Harbinger’s Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject Harbinger’s Plan.

(2) Treatment Under Harbinger’s Plan.

Class 8 Interests in ASARCO are treated in Article 4.2(h) of Harbinger’s Plan. The holders of Interests in ASARCO shall receive residual interests in the Asbestos Claims Liquidation Trust. Distributions on account of such interests shall be made in accordance with the Asbestos Claims Liquidation Trust Documents.

(i) Class 9 – Interests in Asbestos Subsidiary Debtors.

(1) Voting Rights Under Harbinger’s Plan.

Class 9 is impaired. Class 9 is deemed to have rejected Harbinger’s Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject Harbinger’s Plan.

(2) Treatment Under Harbinger’s Plan.

Class 9 Interests in Asbestos Subsidiary Debtors are treated in Article 4.2(i) of Harbinger’s Plan. The holders of Interests in the Asbestos Subsidiary Debtors shall not receive or retain any property under Harbinger’s Plan on account of such Interests.

(j) Class 10 – Interests in the Other Subsidiary Debtors.(1) Voting Rights Under Harbinger's Plan.

Class 10 is impaired. Class 10 is deemed to have rejected Harbinger's Plan under section 1126(g) of the Bankruptcy Code and is not being asked to vote to accept or reject Harbinger's Plan.

(2) Treatment Under Harbinger's Plan.

Class 10 Interests in the Other Subsidiary Debtors are treated in Article 4.2(j) of Harbinger's Plan. The holders of Interests in the Other Subsidiary Debtors shall not receive or retain any property under Harbinger's Plan on account of such Interests.

10.5 Subordinated Indemnification of ASARCO Protected Parties Under Harbinger's Plan.

Pursuant to Article 4.3 of Harbinger's Plan, in connection with the purchase by the Plan Sponsor of the Sold Assets, the Asbestos Claims Liquidation Trust shall indemnify and hold the ASARCO Protected Parties and their present, future and former partners, principals, directors, employees, and agents harmless from any liability, damages (including without limitation, direct, incidental, and consequential) fees, expenses, and costs (including defense costs) associated with (a) any claim arising from or relating to the Plan Sponsor's purchase of the Sold Assets pursuant to the Plan Sponsor PSA or (b) any claim related to any Unsecured Asbestos Personal Injury Claim or Unknown Asbestos Claim; *provided, however*, that the obligations of the Asbestos Claims Liquidation Trust with respect to such indemnity shall be subordinate in all respects to the payment in full of all Class 4 Claims.

10.6 Intercompany Claims Under Harbinger's Plan.

Pursuant to Article 4.4 of Harbinger's Plan, Intercompany Claims shall be treated as follows:

- (a) Derivative Asbestos Claims, which, if not settled, are to be estimated by the Bankruptcy Court prior to Confirmation, shall be treated as Class 4 Claims under Harbinger's Plan;
- (b) any Claims or causes of action asserted in any of the Litigation Claims shall be preserved and resolved by Reorganized ASARCO post-Confirmation, and the amount, if any, that the Bankruptcy Court determines constitutes property of the Estates of the Asbestos Subsidiary Debtors shall be turned over to the Asbestos Claims Liquidation Trust, net of any costs of recovery;
- (c) any Allowed Claims asserted by the Asbestos Subsidiary Debtors against ASARCO (excluding Derivative Asbestos Claims and Administrative Expenses) shall be treated as Class 3 Claims under Harbinger's Plan;
- (d) ASARCO's Administrative Claims under the Secured Intercompany DIP Credit Facility shall be treated as a Class 1 Priority Claim in the bankruptcy cases of the Asbestos Subsidiary Debtors. To the extent the distribution on account of such Class 1 Priority Claim fails to satisfy such Claim in full, ASARCO shall be permitted to withhold distributions on account of any Class 3 Claims of the Asbestos Subsidiary Debtors and apply such distributions to the indebtedness until all amounts owed ASARCO under the Secured Intercompany DIP Credit Facility are paid in full. If any amounts are still outstanding after such application, ASARCO shall be permitted to withhold distributions on account of any Class 4 Claims of the Asbestos Subsidiary Debtors and apply such distributions to the indebtedness until all amounts owed to ASARCO under the Secured Intercompany DIP Credit Facility are paid in full; and
- (e) all other Intercompany Claims shall be released and extinguished pursuant to Harbinger's Plan, and no distributions shall be made under Harbinger's Plan with respect to such Claims. Holders of such Claims shall not be entitled to vote on Harbinger's Plan.

The Intercompany Claims include any Claims of any of the Debtors against CBRI or Silver Bell, and vice-versa. Harbinger understands that 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 Harbinger's Plan.

In its bankruptcy schedules, ASARCO scheduled disputed, contingent, and unliquidated claims of \$64.83 million in favor of LAQ and \$2.6 million in favor of CAPCO. Neither LAQ nor CAPCO have filed Proofs of Claim pursuant to a stipulation among the Debtors that extended the bar date for intercompany claims. Of this amount, ASARCO estimates that approximately \$30 million arises from ASARCO's compromise of insurance proceeds recovered prior to the bankruptcy filing for asbestos-related liabilities, principally of the Asbestos Subsidiary Debtors. ASARCO used these proceeds to pay its own operating expenses and other debts rather than to pay asbestos-related settlements or judgments and related defense costs and expenses. If the Asbestos Subsidiary Debtors are determined to have an interest superior to ASARCO's interest in the insurance policies so compromised, the Asbestos Subsidiary Debtors may have a valid General Unsecured Claim against ASARCO's Estate for the amount of insurance proceeds used by ASARCO to fund its own operating expenses and other debts. ASARCO may have setoff rights or other defenses against such General Unsecured Claims. The difference between the \$64.83 million scheduled amount of the Claims and the \$30 million discussed above is under review and may not represent Allowed General Unsecured Claims. The validity and amount of the above-described intercompany claims will be determined as part of the claim allowance process provided under Harbinger's Plan.

10.7 Conditions to Confirmation of Harbinger's Plan.

Notwithstanding any other provision of Harbinger's Plan or any order entered in connection with the Reorganization Cases, Confirmation of Harbinger's 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 Harbinger's Plan:

- (a) The Bankruptcy Court shall have approved the Disclosure Statement.
- (b) As of the Confirmation Date, all the representations and warranties of the Debtors contained in the Sterlite 2009 PSA are true and correct, and that the Sellers shall have performed all obligations required by the Sterlite 2009 PSA; *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, or failure by the Sellers to perform such obligations, would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect as that term is defined in the Sterlite 2009 PSA.
- (c) No Seller Material Adverse Effect shall have occurred since April 30, 2008, and shall be continuing.
- (d) The Debtors' liability on account of the Assumed Environmental Liabilities (as that term is defined in the Plan Sponsor PSA) has not materially increased since April 30, 2008.
- (e) There has been no material deterioration in the physical condition of the Sold Assets since April 30, 2008.
- (f) The Debtors shall have given the Plan Sponsor and its consultants complete and unfettered access to inspect the Sold Assets and the Plan Sponsor has determined, in its sole discretion, that the physical condition of the Sold Assets has not materially deteriorated since April 2008.
- (g) The Plan Sponsor is satisfied in its reasonable judgment that the Confirmation Working Capital is not less than 90 percent of the Agreed Working Capital.

As more fully set forth in the Harbinger Plan Sponsor PSA, a Seller Material Adverse Effect shall mean, *inter alia*, a material adverse effect on the Debtors' business or the condition of the Sold Assets. However, any such material adverse effect shall exclude, *inter alia*, any such effect attributable to or resulting from (a) any changes in general economic conditions (including changes in the securities markets, commodity prices, or foreign exchange rates), political, or regulatory conditions generally and (b) any changes in economic, political, or regulatory conditions in the mining or smelting industries or other industries in which the Sellers operate.

10.8 Waiver of Conditions Precedent to Confirmation of Harbinger's Plan.

The Plan Sponsor may waive any of the conditions to Confirmation set forth in Article 9.1 of Harbinger's Plan at any time, without any notice to parties-in-interest and without any further notice to or action, order, or approval of the Bankruptcy Court and without any formal action other than proceeding to confirm Harbinger's Plan.

10.9 Conditions to Effectiveness of Harbinger's Plan.

Notwithstanding any other provision of Harbinger's Plan or any order entered in connection with the Reorganization Cases, the Effective Date of Harbinger's Plan shall not occur until and unless each of the following conditions to effectiveness have been satisfied or waived pursuant to Article 9.4 of Harbinger's Plan:

(a) Confirmation Findings and Conclusion.

The Bankruptcy Court makes or affirms the following findings of fact and conclusions of law:

- (1) On the Effective Date, the Asbestos Claims Liquidation Trust shall assume the liabilities of the Debtors with respect to the Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and shall receive all transfers and assignments as set forth herein;
- (2) Harbinger's Plan complies with all applicable sections of the Bankruptcy Code, and Harbinger and the Debtors have complied with all applicable sections of the Bankruptcy Code;
- (3) The 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;
- (4) The sale of the Sold Assets to the Plan Sponsor pursuant to Harbinger's 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
- (5) Approval of the settlements and compromises set forth in Article 10.3 and 10.26 of Harbinger's 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.

(b) Confirmation Order.

The Confirmation Order entered by the Bankruptcy Court (1) provides that the Plan Sponsor has no liability on account of any claims against the Debtors, including, without limitation, on account of any theories of successor liability; (2) is acceptable to Harbinger; (3) to the extent the Confirmation Order relates to the Plan Sponsor PSA, the Plan Sponsor (and the Guarantors), or the transactions contemplated by the Plan Sponsor PSA, is reasonably satisfactory to Harbinger; (4) provides for the payment of the reasonable fees and expenses of the Harbinger Master Fund and Citigroup Global Markets, Inc. incurred in the development, preparation, prosecution and confirmation of the Plan; and (5) provides that if, notwithstanding confirmation of the Plan, all conditions precedent to the obligations of all parties in the Plan Sponsor PSA have been satisfied and the Plan Sponsor PSA fails to close the transactions contemplated by the Plan Sponsor PSA after the Confirmation Order has been entered (where the Plan Sponsor's failure to close shall not be the result of any material breach of any covenant or obligation under the Plan Sponsor PSA required to be performed by the Sellers or the inaccuracy of any representation or warranty of the Sellers made under the Plan Sponsor PSA), the Plan Sponsor shall not be liable for any damages in excess of the liquidated damages provided for in the Plan Sponsor PSA and under no circumstances shall the claims of the Bondholders be disallowed or subject to less favorable treatment in Harbinger's Plan or any other or future plan on account of such breach. In addition, the Confirmation Order shall conform with the requirements of such an order in the Plan Sponsor PSA, including, without limitation, the requirements of the Plan Confirmation Order (as defined in the Plan Sponsor PSA).

(c) No Stay.

The Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction.

(d) Plan Documents.

The Plan Documents necessary or appropriate to implement Harbinger's Plan have been (1) executed (A) in a form acceptable to the Plan Sponsor, and (B) with respect to the Disclosure Statement, to the extent it describes the Plan Sponsor PSA, the Plan Sponsor (and the Guarantors), or the transactions contemplated by the Plan Sponsor PSA, in a form and substance reasonably satisfactory to Harbinger; (2) delivered; and (3) where applicable, filed with the appropriate governmental or supervisory authorities.

(e) Funding of the Trusts.

The Trusts have been funded as provided in Articles 10.5 to 10.7 of Harbinger's Plan.

(f) 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.

(g) Closing of the Sale of Sold Assets to Plan Sponsor.

The sale of the Sold Assets to the Plan Sponsor on the Closing Date has been consummated.

(h) 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.

(i) 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 Plan Sponsor PSA.

(j) The Class 4 Claims Estimate.

Neither the Parent nor any Creditor Constituent has requested an estimation of ASARCO's liability on account of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims in accordance with Section 10.3 of Harbinger's Plan or, if such a request has been made, the Bankruptcy Court has entered an order estimating such liability.

(k) 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.

(l) 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 Plan Sponsor PSA, shall have been terminated or expired.

10.10 Waiver of Conditions to Effectiveness of Harbinger's Plan.

Harbinger, in its sole discretion, may waive any condition to effectiveness in Article 9.3 of Harbinger's 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 Debtors, 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 9.3(d), (h), (i), and (k) of Harbinger's 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 9.3(e) of Harbinger's Plan; and
- (c) the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(b), (c), (d), (g), and (l) of Harbinger's Plan;

and, *provided further*, that in each instance, such consent shall not be unreasonably withheld, delayed, or conditioned.

10.11 How Harbinger's Plan Shall be Implemented.

- (a) Sale of Sold Assets to Plan Sponsor Under Harbinger's Plan.

Article 10.1(a) of Harbinger's 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 Plan Sponsor PSA and the Ancillary Agreements entered into in connection therewith. Pursuant to section 4.1 of the 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 an amount equal to: (1) \$500 million and (2) the assumption by the Plan Sponsor of the Assumed Liabilities.

Pursuant to section 3.5(d) of the 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 Plan Sponsor PSA (or the period in which any such notice is required to be provided has expired), whichever occurs later, and shall be applied in accordance with section 3.5(d) thereof, if and as applicable.

On the Initial Distribution Date, Reorganized ASARCO (and thereafter the Plan Administrator) shall distribute the Available Plan Funds in accordance with the Plan.

- (b) Appointment of Plan Administrator and Plan Administration Committee, and Funding of Miscellaneous Plan Administration Accounts Under Harbinger's Plan.

Not less than 10 days prior to commencement of the Confirmation Hearing, the Plan Sponsor 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 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 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) Resolution of Present and Future Asbestos Claims Under Harbinger's Plan.

Harbinger's Plan contemplates that the amount of the liability of ASARCO on account of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be estimated at \$500,000,000.00. However, within two (2) business days after entry of the Confirmation Order, the Asbestos Subsidiary Committee and/or the FCR may request that the Bankruptcy Court conduct an evidentiary hearing to establish an alternative to the \$500,000,000.00 estimate.

(d) Creation and Funding of Liquidation Trust and the SCC Litigation Trust Under Harbinger's 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 11 of this Disclosure Statement for further information regarding the Liquidation Trust and the SCC Litigation Trust to be created under Harbinger's Plan.

(e) Creation and Funding of Environmental Custodial Trusts Under Harbinger's 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 Administration Trust 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 Claims Liquidation Trust Under Harbinger's Plan.

On or before the Effective Date, the Asbestos Claims Liquidation Trust shall be created. On the Effective Date, the Debtors shall transfer to the Asbestos Claims Liquidation Trust (1) all of the interests in Reorganized Covington; (2) the Class 4 Pro Rata Share of the Plan Consideration; and (3) Cash in an amount ordered by the Bankruptcy Court for payment of the Administrative Expenses of the Asbestos Claims Liquidation Trust.

See Section 12 of this Disclosure Statement for further information regarding the Asbestos Claims Liquidation Trust to be created under Harbinger's Plan.

(g) Prepetition ASARCO Environmental Trust Under Harbinger's 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 Harbinger's 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, Harbinger understands that the various environmental settlement agreements were based on the assumption that certain environmental response actions for the settled sites would be reimbursed from the Prepetition ASARCO Environmental Trust.

The funds remaining in the Prepetition ASARCO Environmental Trust are separate from and without prejudice to the distributions to be made to holders of environmental Claims under the Plan.

Harbinger anticipates that some of the environmental Claims shall be paid by the Prepetition ASARCO Environmental Trust. To allow for the possibility that AMC fails to make a required payment due under the note that funds the Prepetition ASARCO Environmental Trust, Reorganized ASARCO shall hold back from distributions under the Plan the amount that the Prepetition ASARCO Environmental Trust would receive if AMC were to have made the required payment (i.e., \$12.5 million plus accrued interest in accordance with the note), 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 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 Harbinger's Plan and the Confirmation Order.

Harbinger understands that 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. 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 Harbinger's Plan.

(h) Plan Sponsor's Assumption of Certain Environmental Liabilities Under Harbinger's Plan.

Pursuant to section 3.3(e) of the Plan Sponsor PSA, and except as provided in section 3.4(f), (g), (h), and (i) thereof, 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 Plan Sponsor PSA).

(i) Plan Distributions Under Harbinger's Plan.

- (1) Distributions to Claimants Other than Holders of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims.
 - 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 Unknown Asbestos Claims.
 - 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 Harbinger's 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. For avoidance of doubt, any and all distributions to holders of Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be made by the Asbestos Claims Liquidation Trust.

- 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 Unknown Asbestos Claims.

Distributions to holders of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims shall be made by the Asbestos Claims Liquidation Trust in accordance with the Asbestos Claims Liquidation Trust Documents.

(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 Trustees. No distributions 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 Harbinger's Plan and the Indenture and subject to the requirements of Article 15.13 of Harbinger's Plan, shall be compensated for all of its services and disbursements related to distributions pursuant to Harbinger's 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 15.13 of Harbinger's Plan, the compensation of the Indenture Trustees for services relating to distributions under Harbinger's 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 Harbinger's 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) Procedures for the Treatment of Disputed Claims, Other than Unsecured Asbestos Personal Injury Claims, Under Harbinger's Plan.

(1) Prosecution of Objections to Claims.

Article 14.1 of Harbinger's 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, Unknown Asbestos Claims 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 Harbinger's Plan further provides that, after the Effective Date, only the Asbestos Claims Liquidation Trust shall have authority to file objections to Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and litigate to judgment, settle, or withdraw such objections. Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims, whether or not a Proof of Claim is filed, shall be satisfied exclusively in accordance with the Plan and the Asbestos Claims Liquidation Trust Agreement. For the avoidance of doubt, no objection to Unsecured Asbestos Personal Injury Claims or Unknown Asbestos Claims shall be filed in the Bankruptcy Court.

Article 14.1 of Harbinger's Plan further provides that 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 of the amounts set forth in such proofs of claim (as amended) are expressly preserved by Harbinger's Plan.

Except as otherwise provided as to objections to Unsecured Asbestos Personal Injury Claims filed after the Effective Date, nothing in Article 14.1 of Harbinger's Plan shall prejudice any party in interest's right or standing to file objections to Claims.

(2) Objection Deadline.

Within the later of (A) 90 days after the Effective Date or (B) 90 days after a Proof of Claim is filed, objections to Claims (other than Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims, which shall be Allowed or disallowed as provided in the Asbestos Claims Liquidation Trust Agreement) 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 Unknown Asbestos Claim) for which the filing of a motion for allowance is required shall be disallowed if such filing is not timely and properly made, subject to the right of the Claimant to seek permission under applicable law to file a late Claim.

(4) No Distributions Pending Allowance.

If a Claim or any portion of a Claim is disputed, no payment or distribution shall be made on account of the disputed portion of such Claim (or the entire Claim, if the entire Claim is disputed), unless and until such Disputed Claim becomes an Allowed Claim.

(5) Disputed Claims Reserve.

The Plan Administrator shall maintain, in accordance with the Plan Administrator's powers and responsibilities under the Plan, a Disputed Claims Reserve.

On the Effective Date (or as soon thereafter as is reasonably practicable), ASARCO, Reorganized ASARCO, or the Plan Administrator, as the case may be, shall deposit in the Disputed Claims Reserve the Cash that would have been distributed to the holders of Disputed Claims (other than Secured Claims to the extent Disputed Secured Claims Reserves are established with respect to such Claims) if such Disputed Claims had been Allowed Claims as of the Effective Date. The amount to be deposited shall be determined based on the lesser of (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 section 502(c) of the Bankruptcy Code; or (C) the amount otherwise agreed to by the Debtors and the holders of such Disputed Claims. The Plan Administrator shall, from time to time, contribute to the Disputed Claims Reserve additional assets received from the Liquidation Trustee or the SCC Litigation Trustee in respect of Disputed Claims.

In the case of objections to allegedly Secured Claims, any Lien asserted by the holder of such a Claim against the ASARCO Residual Assets 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.

Harbinger's 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.

(k) Compliance with Tax Requirements Under Harbinger's 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 Harbinger's Plan or under any Harbinger 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 Harbinger's Plan and the Plan Documents. Notwithstanding any other provision of Harbinger's Plan, each Person receiving a distribution pursuant to Harbinger's 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.

(l) Unclaimed Property Under Harbinger's Plan.

(1) Distributions by the Asbestos Claims Liquidation Trust.

Any Cash, assets, or other property to be distributed under Harbinger's Plan by the Asbestos Claims Liquidation 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 Claims Liquidation Trust for use in accordance with the terms of the Asbestos Claims Liquidation 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 an Unknown Asbestos Claim) is returned to Reorganized ASARCO or the Plan Administrator as undeliverable or is otherwise unclaimed (including by a Claimant's failure to draw upon a check issued to such Claimant), no further distributions shall be made to such holder unless the Plan Administrator is timely notified in writing of such holder's then current address, at which time all missed distributions shall be made to such holder without interest. Amounts in respect of any undeliverable or unclaimed distributions shall be returned to the Plan Administrator until such distributions are claimed. The Plan Administrator shall segregate and deposit into the Undeliverable and Unclaimed Distribution Reserve all undeliverable or unclaimed distributions for the benefit of all such similarly situated Persons until

such time as a distribution becomes deliverable or is claimed or such Claimant's right to the distribution is waived pursuant to Article 13.4(b)(2) of the Plan. Nothing contained in Harbinger's 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 Harbinger's 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 Harbinger's 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.

(m) Bar Date for Compensation and Reimbursement Claim Under Harbinger's Plan.

Pursuant to Article 15.11 of Harbinger's 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 Professional 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.

(n) Subsequent Administrative Claims Bar Date Under Harbinger's Plan.

Pursuant to Article 15.12 of Harbinger's 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.

(o) Indenture Trustee Fee Claims Under Harbinger's 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 in administering distributions to the Bondholders or responding to any objection by the Debtors to an Indenture Trustee Fee Claim, to the extent payment of the foregoing fees and expenses is permitted by the Indentures, all Charging Liens of the Indenture Trustees in any distributions shall be forever released and discharged. Once the Indenture Trustees have completed performance of all of their duties set forth in the 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.

10.12 Injunctions, Releases, and Discharge Under Harbinger's Plan.

Harbinger's 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 Harbinger's Plan and, if entered, shall limit the rights of holders of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and others against any ASARCO Protected Party. If these releases and injunctions are not entered, Harbinger shall have the right not to proceed with Harbinger's Plan.

While the Parent has not made specific objections with respect to the injunctions, releases, and discharges under Harbinger's Plan, the Parent has objected to substantially similar injunctions, releases, and discharges under the Debtors' Plan. Harbinger expects that the Parent will make similar objections to Harbinger's Plan.

(a) Discharge and Release Under Harbinger's Plan.

Article 11.1 of Harbinger's Plan provides that, except as otherwise expressly provided in Harbinger's Plan, the rights afforded therein and the treatment of all Claims and Interests shall be in exchange for and in complete satisfaction, discharge, and release of all Claims and Interests of any nature whatsoever, against the Debtors or their respective Estates, assets, properties, or interests in property. Except as otherwise provided herein, on the Effective Date, all Claims against and Interests in the Debtors shall be satisfied, discharged, and released in full. While the PBGC has not made specific objections with respect to Harbinger's Plan, the PBGC has asserted that the identical discharges and releases contained in the Debtors' Plan are impermissible. Harbinger expects that the PBGC will make similar assertions with respect to the releases, exculpations, discharges, and injunctions contained in Article 11 of Harbinger's Plan.

(b) Discharge Injunction Under Harbinger's Plan.

Article 11.2 of Harbinger's Plan contains an injunction to give force and effect to the discharge granted under the Plan. Except as otherwise expressly provided in Harbinger's Plan, the discharge and release set forth in Article 11.1 of Harbinger's 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 Harbinger's 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 Channeling Order Under Harbinger's Plan.

To supplement the injunctive effect of the Discharge Injunction, Article 11.3 of Harbinger's Plan provides for the Confirmation Order to contain a channeling order to take effect on the Effective Date.

The channeling order shall protect ASARCO Protected Parties from direct or indirect liability on account of any Unknown Asbestos Claims.

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 Harbinger Master Fund (and any of their respective Affiliates);
- Citigroup Global Markets, Inc. (and any of its respective affiliates);
- Settling Asbestos Insurance Companies;

- the Trusts (except to the extent that the Asbestos Claims Liquidation Trust Agreement expressly permits litigation against the Asbestos Claims Liquidation Trust);
- the Trustees;
- the Asbestos Claims Liquidation Trust Board;
- the FCR;
- the Committees, including their members in their member capacities;
- the Plan Administrator;
- the Examiner;
- employee benefit plan “fiduciaries” (within the meaning of section 3(21) of ERISA) who are directors or employees of a Debtor;
- the Indenture Trustees; and
- the present and former directors, officers, agents, attorneys, accountants, consultants, financial advisors, investment bankers, professionals, experts, and employees of any of the foregoing, in their respective capacities as such, including, without limitation, the Protected Officers and Directors;

provided, however, that the term “ASARCO Protected Party” does not include the non-Debtor named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation, or Grupo México and its Affiliates other than ASARCO and ASARCO’s direct or indirect subsidiaries.

Harbinger understands that the USW has requested that it become an ASARCO Protected Party. Harbinger will consider the request of the USW and, if warranted and to the extent authorized by law, and after consultation with other creditor constituents, may amend Harbinger’s Plan and Glossary in accordance with such request.

(d) Reservations.

Harbinger’s Plan further provides that notwithstanding anything to the contrary in the Plan, nothing in the Plan shall enjoin, alter, diminish, or impair:

- (1) the rights of Entities to the treatment accorded them under Articles II and IV of Harbinger’s Plan, as applicable, including the rights of Entities with Unsecured Asbestos Personal Injury Claims to assert Unsecured Asbestos Personal Injury Claims against the Asbestos Claims Liquidation Trust in accordance with the Asbestos TDP;
- (2) the rights of Entities to assert any Claim, debt, obligation, or liability for payment of Asbestos Claims Liquidation Trust Expenses against the Asbestos Claims Liquidation Trust;
- (3) the enforceability of any of the Asbestos Insurance Policies or any Asbestos Insurance Settlement Agreement;
- (4) the right of Reorganized ASARCO with regard to any Asbestos Insurance Company that is not a Settling Asbestos Insurance Company; or
- (5) the rights of Entities to assert any Claim, debt, obligation, or liability for payment against an Asbestos Insurance Company that is not an ASARCO Protected Party unless otherwise enjoined by order of the Bankruptcy Court or the District Court or estopped by a provision of the Plan.

(e) Limitation of Injunctions Under Harbinger’s Plan.

Notwithstanding any other provision of Harbinger’s Plan to the contrary, the releases set forth in Article 11.1 and the Injunctions set forth in Article 11.2 and 11.3 respectively, shall not serve to satisfy, discharge, release, or enjoin Claims by any Entity against the Asbestos Claims Liquidation Trust for payment of (1) Unsecured Asbestos Personal Injury Claims in accordance with the Asbestos Claims Liquidation Trust Agreement or (2) Asbestos Claims Liquidation Trust Expenses, and such releases and Injunctions shall not enjoin Reorganized ASARCO from enforcing any Asbestos Insurance Policy or any Asbestos Insurance Settlement Agreement.

(f) Term of Certain Injunctions and Automatic Stay Under Harbinger's Plan.

Article 12.1 of Harbinger's Plan provides that all of the Injunctions and stays provided for, in, or in connection with these Reorganization Cases, whether pursuant to section 105, section 362, 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 by Harbinger's Plan, the Confirmation Order, or by their own terms. In addition, on and after the Confirmation Date, Harbinger may seek such further orders as it may 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 herein. Notwithstanding anything to the contrary contained in Harbinger's 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.

(g) Setoffs and Recoupments Under Harbinger's Plan.

Subject to the limitations provided in section 553 of the Bankruptcy Code, 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 Harbinger's 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 hereunder 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.

(h) Exoneration and Reliance Under Harbinger's Plan.

Article 11.7 of Harbinger's 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 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, Harbinger's Plan or the other Plan Documents, including, without limitation, the marketing of the Plan Assets, the Plan Sponsor selection process, the selection of the Plan Sponsor, and the sale of the Plan Assets to the Plan Sponsor;
- any action taken in connection with either the enforcement of the rights of any Debtor against any Entities or the defense of Claims 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 Harbinger's Plan, other Plan Documents, or related agreements, instruments, or other documents;
- the administration of Harbinger's Plan or the assets and property to be distributed pursuant to Harbinger's 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 the Article 11.7 of Harbinger's Plan shall prevent the enforcement of the terms of Harbinger's Plan.

If any holder of a Claim or Interest or if any Entity other than a Governmental Unit brings an action, suit, or proceeding against any ASARCO Protected Party (or any property or interest in property of any ASARCO Protected Party) by reason of any action or inaction described in Article 11.7 of Harbinger's 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 Harbinger's Plan or the Asbestos Claims Liquidation Trust Agreement), and does not prevail in any such action, suit, or proceeding, such holder of a Claim or Interest, or other Entity shall be liable for and must pay the reasonable attorneys' fees and costs of such ASARCO Protected Party, and as a condition to going forward with such action, suit, or proceeding, such holder of a Claim or Interest, or other Entity shall, at the outset, be required to provide appropriate proof and assurances of his, her, or its capacity to make such payment of reasonable attorneys' fees and costs in the event the holder or other Entity fails to prevail. In order for a holder of a Claim 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 11.8 of Harbinger's 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 or Interest or other Entity prevails in an action, suit, or proceeding that is filed against such ASARCO Protected Party.

10.13 Additional Releases Under Harbinger's Plan.

Harbinger understands that the Parent believes that exculpation provisions in the Debtors' Plan that are substantially similar to exculpation provisions contained in Harbinger's Plan, renders the Debtors' Plan patently unconfirmable because such exculpation provisions 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. Harbinger understands that the Debtors disagree with the Parent's contentions. Harbinger expects that the Parent will raise similar contentions with respect to Harbinger's Plan.

Article 11.9 of Harbinger's 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 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 based on or arising out of facts or circumstances that existed as of or prior to Confirmation of Harbinger's Plan in any of the Reorganization Cases, including, without limitation, Claims 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 11.9 of Harbinger's Plan shall impair or otherwise affect the rights of Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy. No ASARCO Protected Party shall be responsible for any obligations of any of the Debtors except those expressly assumed by those parties in Harbinger's Plan (and only to the extent so assumed). The releases provided for in Article 11.9 of Harbinger's Plan shall not extend to any claims by any Governmental Unit with respect to criminal liability, willful misconduct, gross negligence, bad faith, or *ultra vires* acts.

10.14 Exculpation Injunction Under Harbinger's Plan.

Article 11.10(a) of Harbinger's Plan provides that, except as provided in Section 11.3 of Harbinger's Plan, 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 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 of or legal bases therefore were known or existed prior to the Effective Date) that are released under Article

11.7, 11.9, or 11.11 of Harbinger's Plan; *provided, however*, that such 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 11.10 of Harbinger's Plan shall prevent the enforcement of the terms of Harbinger's Plan.

10.15 Indemnities Under Harbinger's Plan.

Article 11.10(b) of Harbinger's 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, Unknown Asbestos Claim 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 11.10 of Harbinger's 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 11.10 of Harbinger's 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 services 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.

10.16 Consensual Releases by Holders of Claims, Demands, and Interests Under Harbinger's 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 Harbinger's Plan 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, 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, or the Plan, including, without limitation, Claims 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 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 or Interest; (d) the business or contractual arrangements between any Debtor and any ASARCO Protected Party; (e) the restructuring of Claims and Interests prior to or in any of the Reorganization Case; (f) the negotiation, formulation, or preparation of Harbinger's Plan, the 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 Harbinger's 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 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 11.11 of Harbinger's Plan shall impair or otherwise affect the right of Reorganized ASARCO to prosecute any Asbestos Insurance Action, to pursue any Asbestos Insurance Recovery, or to assert any claim, debt, obligation, cause of action, or liability for payment against an Asbestos Insurance Company based on or arising from an Asbestos Insurance Policy.

10.17 Release of Fraudulent Transfer Claims Against Settling Asbestos Insurance Companies Under Harbinger's Plan.

Pursuant to Article 11.12 of Harbinger's Plan and except as otherwise provided in this Article 11.12, all fraudulent transfer claims against any Settling Asbestos Insurance Company arising under sections 544(b), 548, or 550 of the Bankruptcy Code or otherwise with respect to the Claims, rights, or interests released under the Asbestos Insurance Settlement Agreement shall be released, and Reorganized ASARCO shall have no authority to bring any fraudulent transfer actions arising under any applicable state or other non-bankruptcy law against any Settling Asbestos Insurance Company with respect to the Claims, rights, and interests released under the Asbestos Insurance Settlement Agreement. This Article 11.12 does not apply to any of the existing Avoidance Actions against certain Asbestos Insurance Companies that entered into prepetition settlement agreements, as listed on Exhibit 14-A to Harbinger's Plan.

10.18 Limitations Regarding Governmental Units and the U.S. Trustee Under Harbinger's Plan.

The releases, discharges, satisfactions, exonerations, exculpations, and injunctions provided under Harbinger's 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 Harbinger's Plan for the benefit of the creditors, the assets or funds being held by the entities administering Harbinger's 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 Harbinger's 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 Harbinger's 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 Harbinger's 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.

10.19 Limitation Regarding Flow Through Bonds Under Harbinger's Plan.

In accordance with the SPT Settlement Agreement, and except as otherwise provided in Article 8.9 of Harbinger's 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 Harbinger's Plan or upon ASARCO's emergence from the Reorganization Cases.

10.20 No Liability for Tax Claims Under Harbinger's Plan.

Pursuant to Article 12.2 of Harbinger's 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 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.

10.21 Certain Matters Incident to Confirmation of Harbinger's Plan.

(a) No Successor Liability Under Harbinger's Plan.

Article 12.3(a) of Harbinger's Plan provides that, except as otherwise expressly provided in Harbinger's Plan, including Article 12.3 thereof, with regard to claims existing as of the Confirmation Date, 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 shall be responsible for any successor or transferee liability of any kind or character except to the extent that Reorganized ASARCO is the successor or successor in interest to ASARCO solely with regard to the Asbestos Insurance Policies, the Asbestos Insurance Settlement Agreements, the Asbestos In-Place Coverage, the Asbestos Insurance Actions, or the Asbestos Insurance Recoveries. Article 12.3(b) of Harbinger's Plan provides that, except as otherwise expressly provided in Harbinger's Plan, no ASARCO Protected Party shall have any obligations to perform, pay, indemnify creditors for, or otherwise have any responsibilities for any liabilities or obligations of any of the Debtors or the Reorganized Debtors, whether arising before, on, or after the Confirmation Date. The Asbestos Claimants' Committee and the FCR strongly contest the enforceability of this "No Successor Liability" clause outside the confines of section 524(g) of the Bankruptcy Code.

(b) Revesting of Assets Under Harbinger's Plan.

Revesting of assets in Reorganized ASARCO is addressed in Article 10.19 of Harbinger's 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 Harbinger's Plan or the Plan Documents, on the Effective Date, the ASARCO Residual Assets, including, without limitation, the Plan Sales Proceeds, the Distributable Cash, the Asbestos Insurance Policies, the Asbestos Insurance Recoveries, the Asbestos In-Place Insurance Coverage, the Asbestos Insurance Actions, and the Vested Causes of Action, shall vest in Reorganized ASARCO, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court. The rights, title, and interests of the Asbestos Subsidiary Debtors in the Asbestos Insurance Policies, the Asbestos Insurance Recoveries, the Asbestos In-Place Insurance Coverage, and the Asbestos Insurance Actions shall vest in Reorganized ASARCO, and the Asbestos Subsidiary Debtors shall have no remaining interests therein.

The Covington Residual Assets, including, without limitation, the Madera Property, shall vest in Reorganized Covington, which may operate free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court.

(c) Vesting and Enforcement of Causes of Action Under Harbinger's Plan.

The Vested Causes of Action (as listed in **Exhibit 14-A** to Harbinger's Plan), including, without limitation, the Debtors' respective rights, title, and interests in and to the Asbestos Insurance Actions, shall vest in Reorganized ASARCO. The Plan Administrator (after consultation with and approval by the Plan Administration Committee) shall be authorized to prosecute, compromise and settle, abandon, release, or dismiss the Vested Causes of Action, without need for approval by the Bankruptcy Court. After the Effective Date, the Plan Administrator may, in the Plan Administrator's discretion, file a notice of discharge with a copy of the Confirmation Order in any lawsuits in which ASARCO or any other Debtor was named as a defendant prior to the Effective Date.

The Debtors' respective rights, title, and interests in and to the Liquidation Trust Claims, including the Sterlite Litigation claims (as listed in Exhibit 14-B to Harbinger's Plan) shall vest in the Liquidation Trustee. 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 Harbinger's 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 Asbestos Subsidiary Debtors' respective rights, title, and interests in and to the causes of action listed in Exhibit 14-D of Harbinger's Plan shall vest in Reorganized Covington. Reorganized Covington may prosecute, compromise and settle, abandon, release, or dismiss such causes of action, without need for approval by the Bankruptcy Court.

(d) Dismissal of Certain Litigation Under Harbinger's 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.

The Trade Creditor Preference Claims (as listed in Exhibit 14-E of 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.

(e) Settlement of Certain Causes of Action Under Harbinger's Plan.

Article 10.27 of Harbinger's Plan provides that Confirmation of Harbinger's Plan 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) Assumption and Rejection of Unexpired Leases and Executory Contracts Under Harbinger's Plan.

Under Article 8.1 of Harbinger's Plan, on the Effective Date, except as otherwise provided in Harbinger's 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 thereto (as such list may be amended, supplemented, or modified by the Plan Sponsor 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 (1) such rejections, and (2)(A) the assumption by ASARCO and assignment to the Plan Sponsor of the executory contracts and unexpired leases listed in Exhibit 2-A thereto; (B) the assumption by ASARCO and assignment to an Environmental Custodial Trust of the executory contracts and unexpired leases listed in Exhibit 2-B thereto; and (C) 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 thereto (as each such list may be amended, supplemented, or modified by the Plan Sponsor 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.

Article 8.2 of Harbinger's 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 Harbinger's Plan) of the executory contracts and unexpired leases assumed, or assumed and assigned, pursuant to Article 8.1 of Harbinger's 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 Harbinger's 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 Harbinger's Plan.

In accordance with Article 8.3 of Harbinger's Plan, unless otherwise specified in **Exhibit 2** thereto, 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 Harbinger's Plan, to the extent 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 the assumption and assignment (except as otherwise provided in Article 8.6(b) of Harbinger's Plan).

Article 8.6(b) of Harbinger's Plan provides that, pursuant to section 3.5(d) of the 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 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 Plan Sponsor PSA.

Article 8.5 of Harbinger's Plan provides that if the rejection by a Debtor, pursuant to Article 8.1 of Harbinger's 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 Harbinger's 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 Harbinger's Plan.

Pursuant to Article 8.4 of Harbinger's 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.

(g) 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 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). Also, on February 5, 1996, ARSB and Silver Bell entered into a "Management Services Agreement" concerning Silver Bell. Harbinger has not taken a formal position with respect to the treatment of the agreements discussed in this Section and Harbinger specifically reserves all rights and remedies that the Debtors 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.

(h) Contracts and Leases Previously Assumed or Entered into After the Petition Date Under Harbinger's Plan.

Unless otherwise provided in Article 8.7(b) and (c), 8.8, or 8.9 of Harbinger's Plan, each Contract that is a "Pre-Petition Contract" (as such term is defined in section 3.1(e)(A) of the Plan Sponsor PSA) or is entered into by ASARCO after the Petition Date as described in section 3.1(e)(B) of the Plan Sponsor PSA shall be assigned to, and such Debtor's obligations thereunder assumed by, the Plan Sponsor in accordance with the Plan Sponsor PSA; *provided, however*, that any such Contract entered into after the date of the 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 Harbinger's 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** thereto.

Each contract or lease entered into by any Debtor after the Petition Date that is identified in **Exhibit 2-E** to Harbinger's 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 assumed by, Reorganized ASARCO or Reorganized Covington, as specified in **Exhibit 2-E** thereto.

(i) Employee Benefits Plans, Retiree Benefits, and Other Benefits Under Harbinger's Plan.

Article 8.8(a) of Harbinger's 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 by Title IV of ERISA. Article 8.8(a) of Harbinger's 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 Harbinger's 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 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 PBGC, if any, will not be affected by any provision of Harbinger's Plan or by Confirmation of Harbinger's Plan.

Article 8.8(c) of Harbinger's 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 any 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 Harbinger's Plan, with respect to each Transferred Employee (as such term is defined in the 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 Harbinger's 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 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 Harbinger's 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.

The following pension and benefit liabilities of the Debtors will not be 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.

Harbinger has had a favorable relationship with the USW throughout these proceedings and expects that the Plan Sponsor under Harbinger's Plan and the USW will be able to agree on the terms of a collective bargaining agreement between the USW and the Plan Sponsor under Harbinger's Plan prior to the Closing Date.

(j) Bonds and Assurances Under Harbinger's Plan.

Article 8.9 of Harbinger's Plan provides that, pursuant to section 8.9 of the 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 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 revert in Reorganized ASARCO on the Effective Date.

(k) Post-Effective Date Status of the Committees and the FCR Under Harbinger's Plan.

Article 15.4 of Harbinger's Plan provides that the Committees and the position of the 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 Claims Liquidation 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.

(l) Effectuating Documents and Further Transactions Under Harbinger's Plan.

Under Article 10.23 of Harbinger's 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 Harbinger's 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.

(m) Corporate Action Under Harbinger's Plan.

All matters provided for under Harbinger's 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 Harbinger's 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.

(n) Harbinger's Right to Modify Harbinger's Plan.

As provided in Article 15.5 of Harbinger's Plan, Harbinger may alter, amend, or modify its Plan under section 1127(a) of the Bankruptcy Code at any time prior to the Confirmation Date and expressly reserves its rights to amend its Plan and any Plan Documents as necessary in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code. After the Confirmation Date, Harbinger may, under section 1127(b) of the Bankruptcy Code, seek Bankruptcy Court approval to remedy any defects or omissions or reconcile any inconsistencies in its Plan or the Confirmation Order in such manner as may be necessary to carry out the purposes and intent of its Plan, so long as the proposed alteration, amendment, or modification does not adversely affect the treatment of Claims or Interests under its Plan and would not reasonably be expected to have a material adverse effect on the Plan Sponsor, the Guarantors, or on the ability to consummate the transactions contemplated by the Plan Sponsor PSA.

(o) Harbinger's Right to Revoke or Withdraw Harbinger's Plan.

As provided in Article 15.6 of Harbinger's Plan, Harbinger reserves the right to revoke, amend, or withdraw its Plan prior to the Confirmation Hearing and to file subsequent plans of reorganization. If Harbinger revokes or withdraws its Plan, or if Confirmation or Consummation does not occur, then (1) Harbinger's Plan shall be null and void in all respects; (2) any settlement or compromise embodied in Harbinger's Plan, assumption or rejection of executory contracts or unexpired leases under Harbinger's Plan, and any document or agreement executed pursuant to Harbinger's Plan, shall be deemed null and void; and (3) nothing contained in Harbinger's 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.

(p) Rules Governing Conflicts Between Documents Under Harbinger's Plan.

In the event of a conflict between the terms or provisions of Harbinger's Plan and Harbinger's Plan Documents, the terms of Harbinger's Plan shall control over Harbinger's Plan Documents. In the event of a conflict between the terms of Harbinger's Plan or Harbinger's 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 the Disclosure Statement and Harbinger's Plan or any other Harbinger Plan Document, Harbinger's Plan or other Harbinger Plan Document (as the case may be) shall control.

(q) Governing Law Under Harbinger's Plan.

Article 15.14 of Harbinger's Plan provides that, except to the extent that federal law (including, without limitation, the Bankruptcy Code and the Bankruptcy Rules) is applicable or Harbinger's Plan provides otherwise, the rights and obligations arising under Harbinger's 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.

(r) Retention and Disposal of Retained Books and Records (Other than Asbestos Books) Under Harbinger's Plan.

Article 15.21 of Harbinger's 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 regarding Asbestos Books are set forth in Article 7.13 of Harbinger's Plan.

10.22 Retention of Jurisdiction Under Harbinger's Plan.(a) Jurisdiction Under Harbinger's Plan.

Article 15.1 of Harbinger's Plan provides that until the Reorganization Cases are closed, the Bankruptcy Court shall retain the fullest and most extensive jurisdiction permissible, including, without limitation, that necessary:

- to ensure that the purposes and intent of Harbinger's Plan are carried out;
- to enforce and interpret the terms and conditions of Harbinger's 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 Harbinger's 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 Harbinger's Plan shall prevent Reorganized ASARCO, the Plan Administrator, the Asbestos Claims Liquidation 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 Harbinger's Plan.

Article 15.2 of Harbinger's Plan provides that the Asbestos Claims Liquidation 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 Harbinger's Plan, Article 15.3 of Harbinger's Plan provides for the Bankruptcy Court to retain jurisdiction after Confirmation to:

- (1) modify Harbinger's Plan after entry of the Confirmation Order, pursuant to the provisions of Harbinger's 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 Harbinger's Plan, Harbinger's Plan Documents, or the Confirmation Order as may be necessary to carry out the purposes and intent of Harbinger's 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 Harbinger's Plan, Harbinger's Plan Documents, and the transactions contemplated thereunder;
- (4) hear and determine disputes arising in connection with the execution, interpretation, implementation, Consummation, or enforcement of Harbinger's Plan, including, without limitation, Harbinger's Plan Documents, and to enforce, including by specific performance, the provisions of Harbinger's Plan and Harbinger's 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 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 Harbinger's Plan, including, without limitation, to issue, administer, and enforce injunctions, releases, assignments, transfers of property or property rights, or other obligations contained in Harbinger's 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 Harbinger's Plan and other Harbinger 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 Harbinger's 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 are accomplished as provided herein;

- (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 Harbinger 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 Harbinger 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 Harbinger's 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; hear and determine any questions and disputes regarding title to the assets of any of the Debtors, their respective Estates, or the Trusts;
- (23) hear and determine any other matters related hereto, including the implementation and enforcement of all orders entered by the Bankruptcy Court in these Reorganization Cases;
- (24) hear and determine any applications brought by the Asbestos Claims Liquidation Trustees to amend, modify, alter, or repeal any provision of the Asbestos Claims Liquidation Trust Agreement pursuant to the Asbestos Claims Liquidation Trust Agreement and to declare or resolve all issues or disputes contemplated by the Asbestos Claims Liquidation Trust Agreement;
- (25) enter such orders as are necessary to implement and enforce the Injunctions; and
- (26) 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 Harbinger's Plan.

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 any 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 11
THE LIQUIDATION TRUST AND THE SCC LITIGATION TRUST
UNDER HARBINGER'S PLAN

11.1 The Liquidation Trust Under Harbinger's Plan.

(a) Creation of the Liquidation Trust Under Harbinger's Plan.

On the Effective Date, the Liquidation Trust shall be created, as provided in the Liquidation Trust Agreement. 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 Harbinger's 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 Harbinger's Plan.

The Liquidation Trust Board shall consist of five 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); (3) one selected by the Asbestos Claimants' Committee; (4) one selected by the Plan Administrator; and (5) one selected by the other four members of the Liquidation Trust Board.

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; (3) in the case of the member originally selected by the Asbestos Claimants' Committee, by the Asbestos Claims Liquidation Trustees; (4) in the case of the member originally selected by the Plan Administrator, by the Plan Administrator; and (5) in the case of the other member of the Liquidation Trust Board, by the then-current other three members of the Liquidation Trust Board; *provided, however*, that any holder of Liquidation Trust Interests who is a party adverse to ASARCO in any Liquidation Trust Claim, or is an Affiliate of any party adverse to ASARCO in any Liquidation Trust Claim, shall not be entitled to the foregoing selection rights.

Notwithstanding the foregoing, Harbinger may, prior to the Effective Date, amend the Liquidation Trust Agreement to do any of the following: increase or decrease the number of members of the Liquidation Trust Board, change the method by which such members are designated, or change the number of such members whose approval should be required for actions or omissions to be taken by the Liquidation Trustee in respect of the Liquidation Trust Claims.

(d) Purpose of the Liquidation Trust Under Harbinger's 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 Harbinger's 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 to the Liquidation Trustee Under Harbinger's Plan.

On the Effective Date (or with respect to clause (4), 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) the Liquidation Trust Expense Fund; and (4) such other assets as deemed appropriate by Reorganized ASARCO in accordance with the Plan. As soon as practicable after the Effective Date, the 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 Harbinger's Plan.

The Liquidation Trust Agreement, substantially in the form of **Exhibit 4** to Harbinger's 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 Article 6.1(e) of Harbinger's Plan 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, 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 Harbinger's 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 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 Harbinger's 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.

The Liquidation Trust shall be deemed a “successor to the debtor” for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters Under Harbinger’s 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, Harbinger intends 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 Harbinger’s Plan and the 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 23 of the Disclosure Statement, “Certain Tax Consequences of Harbinger’s Plan,” for further information.

(h) Liquidation Trust Interests Under Harbinger’s Plan.

(1) Issuance of Liquidation Trust Interests.

On the Initial Distribution Date, Liquidation Trust Interests shall be issued to (A) the Asbestos Claims Liquidation Trust (for the benefit of Unsecured Asbestos Personal Injury Claimants and Unknown Asbestos Claims); (B) the Non-Environmental Unsecured Claimants; and (C) the Governmental Environmental Claimants, in each case, pro rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non-Environmental Unsecured Claimants and Governmental Environmental Claimants and, in the case of the issuance of Liquidation Trust Interests to the Asbestos Claims Liquidation Trust, based on the Class 4 Claims Estimate.

The Liquidation Trust Documents shall provide for the issuance of residual interests to the holders of claims in Class 6 and Class 7 on a Pro Rata basis for distributions to be made in accordance with the Trust Interest Priorities.

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 Non-Environmental 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 Claims Liquidation Trust for the benefit of Unsecured Asbestos Personal Injury Claimants 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. To the extent that the holder of a Liquidation Trust Interest has received distributions from the Liquidation Trust in an amount equal to the full amount of such holder's Claim (including postpetition interest), such holder's Liquidation Trust Interest shall be cancelled.

Promptly following notice from the Plan Administrator that the Disputed Claim of a Non-Environmental Unsecured Claimant or Governmental Environmental Claimant has become an Allowed Claim, such Claimant shall be issued Liquidation Trust Interests in such amount that upon issuance the ratio of the number of such Liquidation Trust Interests so issued to the total number of Liquidation Trust Interests, including such Liquidation Trust Interests, is equal to the ratio of such Claimant's Allowed Amount with respect to such Disputed Claim to all Allowed Amounts of Claims held by all Class A, Class B, and Class C Liquidation Trust Beneficiaries (immediately prior to their receipt of their Liquidation Trust Interests), including such Claimant, with respect to which such Liquidation Trust Beneficiaries received Liquidation Trust Interests. For purposes of the calculation contained in the preceding sentence, if a Liquidation Trust Beneficiary has transferred his Liquidation Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used (and if less than all of such Liquidation Trust Beneficiary's Liquidation Trust Interests have been so transferred, the portion of the Allowed Claim corresponding to the portion of Liquidation Trust Interests so transferred shall be used).

To the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims actually allowed against the Asbestos Claims Liquidation Trust exceed the Class 4 Claims Estimate, additional Class C Liquidation Trust Interests shall be issued to the Asbestos Claims Liquidation Trust such that the Asbestos Claims Liquidation Trust will have received its pro rata share based on the actual amounts of such Allowed Claims. In addition, to the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims allowed under the Asbestos Claims Liquidation Trust Agreement exceed the Class 4 Claims Estimate, after the Liquidation Trust has begun making cash distributions on account of such interests, those Allowed Claims in excess of the Class 4 Claims Estimate shall be entitled to receive additional distributions from the Liquidation Trust (to be paid through the Asbestos Claims Liquidation Trust) until the holder of such claim receives payment on account of such claim proportionate in value to that received by all other Allowed Claim holders of Liquidation Trust Interests. For the avoidance of doubt, it is the intent of the Proponent that the holders of Claims in Class 4 and the holders of Unknown Asbestos Claims should receive a distribution on account of such claims that is generally proportionate to that received by the holders of Class 3 Claims.

Promptly following notice from the Plan Administrator that the Disputed Claim of a Class 6 or Class 7 Claimant becomes an Allowed Claim, such Claimant shall be issued residual Liquidation Trust Interests in accordance with the principles set forth in the preceding paragraph.

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 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.

For purposes of distributions on account of interests in the Liquidation Trust and SCC Litigation Trust, the phrase "Trust Interest Priorities" shall mean the following priority of payment on all Classes of Claims that are receiving interests in the Liquidation Trust:

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;

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

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 non-default contract rate and the federal judgment rate in accordance with section 1961 of title 28 of the United States Code or at such rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims, on a Pro Rata basis, until such claims are paid in full;

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

Fifth, on account of post-petition interest on any Allowed Amounts of any Class 7 Claims calculated at the higher of the non-default contract rate and the federal judgment rate in accordance with section 1961 of title 28 of the United States Code or at such rate as the Bankruptcy Court determines as to any particular Claim or any group of Claims, on a Pro Rata basis, until such claims are paid in full.

(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 as such (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.

Ownership of a Liquidation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by book entry in the 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 Harbinger's 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 Harbinger's 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, to ensure that the Liquidation Trust is not subject to registration or reporting requirements of the Exchange Act.

Harbinger anticipates 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. Harbinger has 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 Harbinger’s 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 Harbinger’s 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;

second, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be delivered for the purposes of satisfying the Disputed Claims Reserve; and

third, to pay the Liquidation Trust Beneficiaries pro rata based on their Liquidation Trust Interest holdings in accordance with the Trust Interest Priorities and as set forth herein. Such proceeds shall first be paid to holders of Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis until such claims are paid in full. Proceeds paid on account of Allowed Amounts of Class 4 Claims shall be paid to the Asbestos Claims Liquidation Trust and thereafter distributed in accordance with the Asbestos Claims Liquidation Trust Documents. After all Class 3 Disputed Claims are resolved and if all holders of Class A, Class B, and Class C Liquidation Trust Interests have received the full amount of their Allowed Claims, then the Liquidation Trustee shall pay such remaining proceeds in accordance with the Trust Interest Priorities as follows: (1) first to the holders of Allowed Class 6 Claims, on a Pro Rata basis, until such claims are paid in full; (2) second on account of post-petition interest on any Allowed Amounts of Class 3, Class 4 (such Class 4 amounts being distributed to the Asbestos Claims Liquidation Trust), and Class 6 Claims; (3) third on account of Class 7 Claims, on a pro rata basis, until such claims are paid in full; and (4) on account of post-petition interest on any Allowed Amounts of Class 7 Claims; and

fourth, if (1) after all Class 6 and Class 7 Disputed Claims are resolved and (2) all amounts set forth above have been paid in full, then all such remaining proceeds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

If, upon termination of the Liquidation Trust, the Liquidation 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 Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(j) Termination of the Liquidation Trust Under Harbinger’s 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 Harbinger’s 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 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 to the holders of the Liquidation Trust Interests in accordance with the terms of Harbinger's Plan as soon as practicable.

11.2 The SCC Litigation Trust Under Harbinger's Plan.

(a) Creation of the SCC Litigation Trust Under Harbinger's Plan.

On the Effective Date, the SCC Litigation Trust shall be created as provided in the SCC Litigation Trust Agreement. Prior to the Effective Date, the SCC Litigation Trust Agreement may be amended to include new or different terms in order to comply with the requirements of the Bankruptcy Code, including, without limitation, section 1129(a) and (b) of the Bankruptcy Code.

Notwithstanding the foregoing, the Debtors reserve the right, subject to the consent of Harbinger, to seek to auction interests in the SCC Litigation in anticipation of Confirmation. If the Debtors determine that pursuit of such an auction is in the best interest of their Estates, and have obtained the required consent of Harbinger, 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 Harbinger's Plan). If the Debtors decide, as a result of the auction and subject to the consent of Harbinger, 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 herewith. If the Debtors decide, subject to the consent of Harbinger, that no interests in the SCC Litigation Trust shall be sold at the auction or otherwise, then the SCC Litigation Trust will not be created and the SCC Litigation will be contributed to the Liquidation Trust.

(b) Appointment of Trustees Under Harbinger's 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 Harbinger's Plan.

The SCC Litigation Trust Board shall consist of the same five members as the Liquidation Trust Board.

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; (3) in the case of the member originally selected by the Asbestos Claimants' Committee, by the Asbestos Claims Liquidation Trustees; (4) in the case of the member originally

selected by the Plan Administrator, by the Plan Administrator; and (5) in the case of the other member of the SCC Litigation Trust Board, by the then-current other three members of the SCC Litigation Trust Board; *provided, however*, that any holder of Class A SCC Litigation Trust Interests, Class B SCC Litigation Trust Interests, or Class C SCC Litigation Trust Interests who is a party adverse to ASARCO in the SCC Litigation, or is an Affiliate of any party adverse to ASARCO in the SCC Litigation, shall not be entitled to the foregoing selection rights.

Notwithstanding this section (c), Harbinger may, prior to the Effective Date, amend the SCC Litigation Trust Agreement to do any of the following: increase or decrease the number of members of the SCC Litigation Trust Board, change the method by which such members are designated, or change the number of such members whose approval should be required for actions or omissions to be taken by the SCC Litigation Trustee in respect of the SCC Litigation Trust Claims.

(d) Purpose of the SCC Litigation Trust Under Harbinger's 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 Harbinger's 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 Harbinger's Plan.

The SCC Litigation Trust Agreement, substantially in the form of Exhibit 5 to Harbinger's 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 Harbinger's 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 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 Harbinger's Plan, including, without limitation, the liquidation and distribution of SCC Litigation Trust Claims.

In the event that ASARCO obtains approval, pursuant to Bankruptcy Rule 9019, of a settlement of the SCC Litigation 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.

The SCC Litigation Trust shall be deemed a "successor to the debtor" for purposes of section 1145 of the Bankruptcy Code and not necessarily for any other purpose.

(g) Tax Matters Under Harbinger's 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 Proponent intends 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 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 Harbinger's Plan and Harbinger's 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 23 of the Disclosure Statement, "Certain Tax Consequences of Harbinger's Plan," for further information.

(h) SCC Litigation Trust Interests Under Harbinger's Plan.(1) Issuance of SCC Litigation Trust Interests.

On the Initial Distribution Date, SCC Litigation Trust Interests shall be issued to (A) the SCC Purchasers, (B) the Asbestos Claims Liquidation Trust (for the benefit of Unsecured Asbestos Personal Injury Claimants and Unknown Asbestos Claimants), (C) the Non-Environmental Unsecured Claimants, and (D) the Governmental Environmental Claimants 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 (A) the Asbestos Claims Liquidation Trust (for the benefit of Unsecured Asbestos Personal Injury Claimants and Unknown Asbestos Claimants); (B) the Non-Environmental Unsecured Claimants; and (C) the Governmental Environmental Claimants, in each case, pro rata based on the respective Allowed Amounts of Claims held by each such Claimant as a percentage of all Allowed Amounts of Claims held by all Non-Environmental Unsecured Claimants and Governmental Environmental Claimants and, in the case of the issuance of SCC Litigation Trust Interests to the Asbestos Claims Liquidation Trust, based on the Class 4 Claims Estimate. All SCC Litigation Trust Interests issued to Non-Environmental 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 Claims Liquidation Trust shall be designated "Class C SCC Litigation Trust Interests."

The SCC Litigation Trust Documents shall provide for the issuance of residual interests to the holders of claims in Class 6 and Class 7 for distributions to be made in accordance with the Trust Interest Priorities.

Promptly following notice from the Plan Administrator that the Disputed Claim of a Non-Environmental Unsecured Claimant or Governmental Environmental Claimant has become an Allowed Claim, such Claimant shall be issued SCC Litigation Trust Interests in such amount that upon issuance the ratio of the number of such SCC Litigation Trust Interests so issued to the total number of SCC Litigation Trust Interests, including such SCC Litigation Trust Interests, is equal to the ratio of such Claimant's Allowed Amount with respect to such Disputed Claim to all Allowed Amounts of Claims held by all Class A, Class B, and Class C SCC Litigation Trust Beneficiaries (immediately prior to their receipt of their SCC Litigation Trust Interests), including such Claimant, with respect to which such SCC Litigation Trust Beneficiaries received SCC Litigation Trust Interests. For purposes of the calculation contained in the preceding sentence, if an SCC Litigation Trust Beneficiary has transferred his SCC Litigation Trust Interests to a third party, the Allowed Claim held by the initial holder of such interests shall be used (and if less than all of such SCC Litigation Trust Beneficiary's SCC Litigation Trust Interests have been so transferred, the portion of the Allowed Claim corresponding to the portion of such SCC Litigation Trust Interests so transferred shall be used).

The additional issuance of Class A, Class B, or Class C SCC Litigation Trust Interests shall not affect or change in any way the SCC Purchaser Percentage. To the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims actually allowed against the Asbestos Claims Liquidation Trust exceed the Class 4 Claims Estimate, additional Class C SCC Litigation Trust Interests shall be issued to the Asbestos Claims Liquidation Trust such that the Asbestos Claims Liquidation Trust will have received its pro rata share based on the actual amounts of such Allowed Claims. In addition, to the extent that the Allowed Claims in Class 4 and Unknown Asbestos Claims allowed under the Asbestos Claims Liquidation Trust Agreement exceed the Class 4 Claims Estimate after the SCC Litigation Trust has begun making cash distributions on account of such interests, those Allowed Claims in excess of the Class 4 Claims Estimate shall be entitled to receive additional distributions from the SCC Litigation Trust (to be paid through the Asbestos Claims Liquidation Trust) until the holder of such claim receives payment on account of such claim proportionate in value to that received by all other Allowed Claim holders of Class A and Class B SCC Litigation Trust Interests. For the avoidance of doubt, it is the intent of the Proponent that the holders of Claims in Class 4 and the holders of Unknown Asbestos Claims should receive a distribution on account of such claims that is generally proportionate to that received by the holders of Class 3 Claims.

Promptly filing notice from the Plan Administrator that the Disputed Claim of a Class 6 or Class 7 Claimant becomes an Allowed Claim, such Claimant shall be issued residual SCC Litigation Trust Interests in accordance with the principles set forth in the preceding paragraph.

To the extent that the holder of an SCC Litigation Trust Interest has received distributions from the SCC Litigation Trust in an amount equal to the full amount of such holder's Claim (including post-petition interest), such holder's SCC Litigation Trust Interest shall be cancelled.

The SCC Litigation Trust Beneficiaries may convey, assign, sell, or otherwise transfer an SCC Litigation Trust Interest subject to the limitations contained in the SCC Litigation Trust Agreement; provided, that the Debtors (prior to the Effective Date) or the SCC Litigation Trustee (after the Effective Date) may at any time cause the SCC Litigation Trust Interests to be non-transferable to achieve desired treatment under tax or securities laws.

(2) Interests Beneficial Only.

The ownership of an SCC Litigation Trust Interest shall not entitle any SCC Litigation Trust Beneficiary to (A) any title in or to the assets of the SCC Litigation Trust as such (which title shall be vested in the SCC Litigation Trustee) or to any right to call for a partition or division of the assets of the SCC Litigation Trust or to require an accounting; or (B) any voting rights with respect to the administration of the SCC Litigation Trust (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.

Ownership of an SCC Litigation Trust Interest shall not be evidenced by any certificate, security, or receipt or in any form or manner, other than by book entry in the SCC Litigation Trust Register.

(5) Securities Laws Matters.

To the extent the SCC Litigation Trust Interests are deemed to be "securities," the issuance of SCC Litigation Trust Interests under Harbinger's Plan are exempt, pursuant to section 1145 of the Bankruptcy Code, from registration under the Securities Act of 1933, as amended, and any applicable state and local laws requiring registration of securities. If the SCC Litigation Trustee determines, with the advice of counsel, that the SCC Litigation Trust is required to comply with registration and reporting requirements of the Exchange Act, then the SCC Litigation Trustee shall take any and all actions deemed necessary or appropriate by the SCC Litigation Trustee to comply with such registration and reporting requirements, if any, and to file periodic reports with the SEC. Notwithstanding the foregoing procedure, nothing in Harbinger's 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.

Harbinger anticipates 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. Harbinger has 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 Harbinger’s 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 Harbinger’s Plan or the SCC Litigation Trust Agreement, to hold such amounts in reserve as the SCC Litigation Trustee deems reasonably necessary to meet future expenses and contingent liabilities, to maintain the value of the SCC Litigation Trust Assets (including the SCC Litigation Trust Expense Fund), and to pay the Plan Administrator such amounts as the Plan Administrator designates from time to time for the purpose of paying, or indemnifying Reorganized ASARCO for, any taxes incurred or expected to be incurred by Reorganized ASARCO in connection with the SCC Litigation Trust as a result of the allocation of tax items by the SCC Litigation Trustee or the allowance or disallowance of Disputed Claims;
- (2) second, to distribute to the SCC Litigation Trust Beneficiaries holding Class D SCC Litigation Trust Interests pro rata based on their respective Class D SCC Litigation Trust Interest holdings such percentage of the remaining amount equal to the SCC Purchaser Percentage;
- (3) third, to pay the Plan Administrator such percentage of all remaining amounts as the Plan Administrator designates from time to time to be delivered to the Disputed Claims Reserve for the purpose of satisfying Disputed Claims;
- (4) fourth, to pay the SCC Litigation Trust Beneficiaries pro rata based on their SCC Litigation Trust Interest holdings in accordance with the Trust Interest Priorities and as set forth herein. Such proceeds shall first be paid to holders of Allowed Amounts of Claims in Class 3 and Class 4, on a Pro Rata basis until such claims are paid in full. Proceeds paid on account of Allowed Amounts of Class 4 Claims shall be paid to the Asbestos Claims Liquidation Trust and thereafter distributed in accordance with the Asbestos Claims Liquidation Trust Documents. After all Class 3 Disputed Claims are resolved and if all holders of Class A, Class B, Class C, and Class D SCC Litigation Trust Interests have received the full amount of their Allowed Claims, then the SCC Litigation Trustee shall pay such remaining proceeds in accordance with the Trust Interest Priorities as follows: (A) first to the holders of Allowed Class 6 Claims, on a Pro Rata basis, until such claims are paid in full, (B) second on account of post-petition interest on any Allowed Amounts of Class 3, Class 4 (such Class 4 amounts being distributed to the Asbestos Claims Liquidation Trust), and Class 6 Claims, (C) third on account of Class 7 Claims, on a pro rata basis, until such claims are paid in full and (iv) on account of post-petition interest on any Allowed Amounts of Class 7 Claims; and
- (5) fifth, if (A) after all Class 6 and Class 7 Disputed Claims are resolved and (B) all amounts set forth above have been paid in full, then all such remaining proceeds shall be paid to the Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

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 Asbestos Claims Liquidation Trust to be used in accordance with the Asbestos Claims Liquidation Trust Documents.

(j) Termination of the SCC Litigation Trust Under Harbinger's 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 Harbinger's 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 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 SCC Litigation Trust Interests in accordance with the terms of Harbinger's Plan as soon as practicable.

SECTION 12 THE ASBESTOS CLAIMS LIQUIDATION TRUST UNDER HARBINGER'S PLAN

12.1 Creation of the Asbestos Claims Liquidation Trust Under Harbinger's Plan.

On the Effective Date or such earlier date as Harbinger deems appropriate, the Asbestos Claims Liquidation Trust shall be created as provided in the Asbestos Claims Liquidation Trust Agreement.

12.2 Appointment of Asbestos Claims Liquidation Trustees Under Harbinger's Plan.

Upon approval by the Bankruptcy Court in the Confirmation Order, the Asbestos Claims Liquidation Trustees shall be appointed.

Harbinger (if prior to the Effective Date) or the Asbestos Claims Liquidation Trustees (if after the Effective Date) shall designate the Person who shall initially serve as the Delaware Trustee for the Asbestos Claims Liquidation Trust.

The Asbestos Claims Liquidation Trustees and the Delaware Trustee shall each have and perform all of the rights, powers, and duties set forth in the Asbestos Claims Liquidation Trust Agreement.

12.3 The FCR Under Harbinger's 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 Claims Liquidation Trust Documents.

12.4 Asbestos Claims Liquidation Trust Board Under Harbinger's Plan.

The initial members of the Asbestos Claims Liquidation Trust Board shall consist of five members initially selected as follows: (a) one selected by the Asbestos Claimants' Committee; (b) one selected by the FCR; (c) two selected by the Parent; and (d) one selected by the Plan Sponsor. They shall consult with and advise the Asbestos Claims Liquidation Trustees regarding the administration of the Asbestos Claims Liquidation Trust and the liquidation and resolution of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims in accordance with the provisions of Harbinger's Plan and the Asbestos Claims Liquidation Trust Documents.

12.5 Purpose of the Asbestos Claims Liquidation Trust Under Harbinger's Plan.

The purposes of the Asbestos Claims Liquidation Trust shall be to permit the Asbestos Claims Liquidation Trustee to, among other things, (a) contest, defend, liquidate, resolve, settle, pay, and/or satisfy all Asbestos Claims in accordance with the provisions of Harbinger's Plan, the Asbestos Claims Liquidation Trust Agreement, and the Confirmation Order; (b) enforce its rights under Harbinger's Plan, including (without limitation), its rights as a beneficiary of the Liquidation Trust and the SCC Litigation Trust; (c) receive, preserve, hold, manage, invest and reinvest, and maximize the Asbestos Claims Liquidation Trust Assets for the benefit of Asbestos Claims Liquidation Trust Beneficiaries; (d) take other actions deemed by the Asbestos Claims Liquidation Trustees to be in the best interests of the Asbestos Liquidation Trust Beneficiaries; and (e) ensure that claims are paid in an amount that is no more than is legally justified, protecting the interests of all of the Asbestos Liquidation Trust Beneficiaries, including those of the Parent, the residual beneficiary of the Asbestos Claims Liquidation Trust. For the avoidance of doubt, the Asbestos Claims Liquidation Trust shall be constituted, maintained, and administered, and its assets disposed of, in a manner that is intended to ensure that claims against the Asbestos Claims Liquidation Trust are appropriately contested, defended, settled, and resolved in accordance with and based upon the legal merits of such claims.

12.6 Transfers, Assignments, and Payments to the Asbestos Claims Liquidation Trust Under Harbinger's Plan.

On the Effective Date, the Debtors shall transfer, assign, and pay, without limitation, to the Asbestos Claims Liquidation Trust for the benefit of the Asbestos Claims Liquidation Trust Beneficiaries all of the Debtors' rights, title, and interest in: (a) the Asbestos Claims Liquidation Trust Assets, as provided in Article 10.6 of Harbinger's Plan; (b) the Asbestos Personal Injury Claims and Unknown Asbestos Claims; and (c) the Debtors' Privileges associated with the Asbestos Personal Injury Claims and Unknown Asbestos Claims except to the extent that Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall concurrently retain all Privileges in connection with Asbestos Books that remain in their possession and Reorganized ASARCO shall concurrently retain all Privileges in connection with its pursuit of the Asbestos Insurance Recoveries.

12.7 Asbestos Claims Liquidation Trust Agreement Under Harbinger's Plan.

The Asbestos Claims Liquidation Trust Agreement, substantially in the form of **Exhibit 6** to Harbinger's Plan, contains provisions customary to documents utilized in comparable circumstances.

12.8 Assumption of Liabilities by the Asbestos Claims Liquidation Trust Under Harbinger's Plan.

Upon the occurrence of the Effective Date, in exchange for funding in accordance with Article 10.6 of Harbinger's Plan, the Asbestos Claims Liquidation Trust shall be deemed, without need for further action, to have assumed responsibility and liability for all Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and the Asbestos Claims Liquidation Trustees shall be responsible for ensuring that the Asbestos Claims Liquidation Trust is administered in accordance with the Asbestos Claims Liquidation Trust Agreement.

12.9 Tax Treatment of the Asbestos Claims Liquidation Trust Under Harbinger's Plan.

The Asbestos Claims Liquidation Trust shall be treated as a "qualified settlement fund" within the meaning of Treasury Regulation section 1.468B-1, the Asbestos Claims Liquidation Trustees shall be the "administrators" of the Asbestos Claims Liquidation Trust pursuant to Treasury Regulation section 1.468B-2(k)(3) and no provision in Harbinger's Plan or the Asbestos Claims Liquidation Trust Agreement shall be construed or implemented in a manner that would cause the Asbestos Claims Liquidation Trust to fail to qualify as a "qualified settlement fund." No election shall be made to treat the Asbestos Claims Liquidation Trust as a grantor trust for U.S. federal income tax purposes. Accordingly, the Asbestos Claims Liquidation Trust shall be treated as a taxable entity for federal income tax purposes. The Asbestos Claims Liquidation Trustees shall cause all taxes imposed on the Asbestos Claims Liquidation Trust to be paid using assets of the Asbestos Claims Liquidation 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 Claims Liquidation Trust to a Claimant or other payee shall be treated as having been paid to, and received by, such payee for purposes of Harbinger's Plan and Harbinger's Plan Documents.

12.10 Asbestos Claims Liquidation Trust Expenses Under Harbinger's Plan.

The Asbestos Claims Liquidation Trust shall pay all Asbestos Claims Liquidation Trust Expenses (including applicable taxes) from the assets of the Asbestos Claims Liquidation Trust. Except for the Asbestos Claims Liquidation Trust's Allowed Administrative Claim provided for in Article 2.1 of Harbinger's Plan, neither the Debtors nor the Reorganized Debtors shall have any obligation to pay or reimburse any Asbestos Claims Liquidation Trust Expenses.

12.11 Asbestos Books Under Harbinger's Plan.

(a) Inspection and Copying of Asbestos Books.

Subject to the conditions set forth in Harbinger's Plan, the Asbestos Claims Liquidation Trust, through its duly authorized representatives, shall have the right, upon reasonable prior written notice to Reorganized ASARCO, to inspect and, at the sole expense of the Asbestos Claims Liquidation 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 Claims Liquidation Trust shall enter into a confidentiality agreement satisfactory in form and substance to Reorganized ASARCO.

(b) Costs and Expenses.

All costs and expenses associated with the storage of and access to the Asbestos Books shall be the responsibility of, and paid by, the Plan Administrator for any Asbestos Books that remain in Reorganized ASARCO's possession or that are transferred to the Plan Sponsor.

(c) Access to Asbestos Books and Personnel.

Reorganized ASARCO, the Plan Administrator, and the Plan Sponsor shall cooperate with the Asbestos Claims Liquidation Trust in providing access to the Asbestos Books in their current condition and shall also provide reasonable access to necessary or appropriate personnel and the Asbestos Books as contemplated herein; provided that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor regarding access to the Asbestos Books or access to the Plan Sponsor's personnel shall be made through Reorganized ASARCO or its representatives. Subject to the conditions set forth herein, the Asbestos Claims Liquidation 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 Claims Liquidation Trust with advance notice of any proposed disposition of any of the Asbestos Books and a reasonable opportunity for the Asbestos Claims Liquidation Trust to segregate and remove, at the expense of the Asbestos Claims Liquidation Trust, such Asbestos Books as the Asbestos Claims Liquidation Trust may select.

(e) Privileged Documents or Communications.

If the Asbestos Claims Liquidation Trust obtains from Reorganized ASARCO or its representatives any documents or communications (whether electronic, written, or oral) to which any Privilege attaches, the Asbestos Claims Liquidation Trust shall be deemed the Privilege holder for purposes of fulfilling the Asbestos Claims Liquidation 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 Claims Liquidation 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 Claims Liquidation 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 Claims Liquidation Trustees may seek protection from a court of competent jurisdiction. References in Article 7.13 of Harbinger's Plan to Reorganized ASARCO shall also include its successors in interest.

12.12 Cooperation with Respect to Insurance Matters Under Harbinger's Plan.

The Plan Sponsor and the Asbestos Claims Liquidation Trust shall cooperate with Reorganized ASARCO and use commercially reasonable efforts to take or cause to be taken all appropriate actions and to do or cause to be done all things necessary or appropriate to effectuate the meaningful retention by Reorganized ASARCO of the proceeds of any Asbestos Insurance Policy, Asbestos Insurance Recovery or Recoveries, Asbestos Insurance Action, or Asbestos In-Place Insurance Coverage; *provided, however*, that the Plan Sponsor's cooperation in that regard shall be subject to the terms and conditions of the Transition Services Agreement or the Plan Sponsor PSA, as applicable, and any requests made to the Plan Sponsor under Article 7.14 of Harbinger's Plan shall be made through Reorganized ASARCO or its representatives. The Asbestos Claims Liquidation Trust shall (a) provide Reorganized ASARCO with all information regarding insurance matters reasonably requested, including, without limitation, (1) information regarding the status of the resolution of Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims and (2) information necessary or helpful in connection with its efforts to obtain recoveries from an Asbestos Insurance Company including, without limitation, recoveries of extracontractual damages and (b) execute reasonably requested documentation to facilitate Reorganized ASARCO's pursuit of claims or other action necessary for Reorganized ASARCO to realize recoveries from an Asbestos Insurance Company, including, without limitation, recoveries of extracontractual damages. Reorganized ASARCO shall be obligated to compensate the Asbestos Claims Liquidation Trust for all costs and expenses reasonably incurred in connection with providing assistance to Reorganized ASARCO under Article 7.14 of Harbinger's Plan, including, without limitation, out-of-pocket costs and expenses, consultant fees, and attorneys' fees.

12.13 Termination of the Asbestos Claims Liquidation Trust Under Harbinger's Plan.

The Asbestos Claims Liquidation Trust shall terminate automatically on the date that is 90 days after the first to occur of the following events:

- (a) the later to occur of (1) the 51st anniversary of the Effective Date and (2) the date on which the Asbestos Claims Liquidation Trustees determine to terminate the Asbestos Claims Liquidation Trust because (A) they deem it unlikely that new asbestos claims will be filed against the Asbestos Claims Liquidation Trust; (B) all Unsecured Asbestos Personal Injury Claims and Unknown Asbestos Claims duly filed with the Asbestos Claims Liquidation Trust have been liquidated and paid to the extent provided in the Asbestos Claims Liquidation Trust Agreement or have been disallowed by a Final Order, to the extent possible based upon the funds available through Harbinger's Plan; and (C) 12 consecutive months have elapsed during which no new asbestos claim has been filed with the Asbestos Claims Liquidation Trust; or
- (b) to the extent that any rule against perpetuities shall be deemed applicable to the Asbestos Claims Liquidation 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.

Provided, however, that in no circumstances shall the Asbestos Claims Liquidation Trust dissolve prior to the dissolution of the Liquidation Trust and/or the SCC Litigation Trust.

12.14 Termination of the Asbestos Claims Liquidation Trustees and the Delaware Trustee Under Harbinger's Plan.

The duties, responsibilities, rights, and obligations of the Asbestos Claims Liquidation Trustees and the Delaware Trustee for the Asbestos Claims Liquidation Trust shall terminate in accordance with the terms of the Asbestos Claims Liquidation Trust Agreement.

SECTION 13 ESTIMATION OF CLAIMS AND VALUATION OF DISTRIBUTABLE ASSETS

The text of Section 13.1(a) and 13.2(a) was provided by the Debtors and uses defined terms from the Debtors' Glossary, and the Debtors have sole responsibility for those provisions. The text of Section 13.1(b) and 13.2(b) was provided by the Parent and AMC and uses defined terms from the Parent's Glossary, and the Parent and AMC have sole responsibility for those provisions. The text of Section 13.1(c) and 13.2(c) was prepared by Harbinger and uses defined terms from Harbinger's Glossary, and Harbinger has the sole responsibility for those provisions.

13.1 Estimated Claims and Estimated Recoveries by Class.

(a) The Debtors' Plan.

The Debtors and their professionals have expended considerable time and effort to ensure the accuracy of the estimates set forth in the charts beginning on page 9 above; however, no representation can be made that such information is without inaccuracy. Moreover, the estimated percentage recovery for Classes 3 and 4 is subject to changes in copper prices, the uncertainties of litigation with respect to many of the Claims, and other factors that may not be resolved in the Debtors' favor. Therefore, no assurance can be given that the estimated Claims are exact or that the estimated recoveries shall be achieved.

Sources of payments to be made to Claimants pursuant to the Debtors' Plan include the Debtors' Cash, which could total as much as \$1.4 billion, and the Available Plan Sales Proceeds, which are expected to total \$1.1 billion. This cash estimate may change materially if actual results are less than projected results. Claimants in Class 3 and the Asbestos Trust shall also receive Liquidation Trust Interests and SCC Litigation Trust Interests.

(b) The Parent's Plan.

The Debtors' Estimated Aggregate Amounts of Claims, detailed in the charts beginning on page 21 above, are based on estimates provided by the Debtors; no representation can be made that such information is without inaccuracy.

The Estimated Percentage Recoveries Under the Parent's Plan, detailed in the charts beginning on page 21 above, apply to holders of Allowed Claims, and are subject to uncertainties in the estimation or litigation of Claims. Therefore, no assurance can be given that the estimated Claims are exact or that the estimated recoveries shall be achieved.

(c) Harbinger's Plan.

Harbinger's Estimated Aggregate Amounts of Claims, detailed in the charts beginning on page 38 above, are based on estimates provided by the Debtors; no representation can be made that such information is without inaccuracy.

The Estimated Percentage Recoveries Under Harbinger's Plan, detailed in the charts beginning on page 38 above, apply to holders of Allowed Claims, and are subject to uncertainties in the estimation or litigation of Claims. Therefore, no assurance can be given that the estimated Claims are exact or that the estimated recoveries shall be achieved.

13.2 The Trusts' Estimated Administrative Costs.

(a) The Debtors' Plan.

The Debtors' estimates of the cost of administering each of the Trusts after the Effective Date are set forth in **Exhibit F-1** to this Disclosure Statement. These costs shall be borne by the respective Trust. Upon the Debtors' funding of the Trusts on the Effective Date, neither the Debtors, their Estates, the Plan Administrator, the Plan Sponsor, nor the other ASARCO Protected Parties (with the exception of the Trusts) shall have any further liability for such Trusts' administrative costs.

The estimated fees, expenses, and other costs of the Plan Administrator to administer, resolve, and make distributions to Claimants is also set forth in **Exhibit F-1**. These costs shall be paid out of the Plan Administration Reserve.

(b) The Parent's Plan.

The Parent's and AMC's estimates of the cost of administering each of the Trusts after the Effective Date and the estimated fees, expenses, and other costs of the Parent's Plan Administrator are set forth in **Exhibit F-2** to this Disclosure Statement.

(c) Harbinger's Plan.

Harbinger has adopted the Debtors' estimates of the cost of administering each of the Trusts after the Effective Date as set forth in **Exhibit F-1** to this Disclosure Statement. In addition, as with the Debtors' Plan, these costs shall be borne by the respective Trust. Upon the Debtors' funding of the Trusts on the Effective Date, neither the Debtors, their Estates, the Plan Administrator, Harbinger, nor the other ASARCO Protected Parties (with the exception of the Trusts) shall have any further liability for such Trusts' administrative costs.

SECTION 14 RISKS OF THE DEBTORS' PLAN

The text of this section 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 this section 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.

14.1 General.

The following provides a summary of various risks associated with the Debtors' Plan. However, it is not exhaustive and should be supplemented by careful analysis and evaluation of the Debtors' Plan and this Disclosure Statement as a whole by each holder of a Claim or an Interest with that holder's own advisors.

14.2 Confirmation and Consummation Risks Under the Debtors' Plan.

In order for a plan of reorganization to be confirmed, the Bankruptcy Code generally requires that impaired Classes vote to accept the Debtors' Plan. This requires that voting creditors in each Class approve the Debtors' Plan by:

- over one-half in number of creditors (50 percent + 1); and
- at least two-thirds in dollar amount.

In addition, to obtain a section 524(g) injunction relating to Unsecured Asbestos Personal Injury Claims and Demands, at least 75 percent of those Claimants in Class 4 who vote must vote to accept the Debtors' Plan. There is no guarantee that these thresholds will be reached or that the Bankruptcy Court will concur with the vote tally.

Any objection to the Debtors' Plan also could prevent Confirmation of the Debtors' Plan or delay such Confirmation for a significant period of time.

Even if all impaired Classes entitled to vote in fact vote in favor of the Debtors' Plan and, with respect to any impaired Class deemed to have rejected the Debtors' Plan, the requirements for "cramdown" are met, the Bankruptcy Court, which as a court of equity may exercise substantial discretion, may choose not to confirm the Debtors' Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that Confirmation of the Debtors' Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, and that the value of distributions to dissenting holders of Claims and Interests may not be less than the value that such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. See Section 17.2 of this Disclosure Statement. Although the Debtors believe that the Debtors' Plan satisfies all requirements necessary for Confirmation, there is no assurance that the Bankruptcy Court and the District Court will reach the same conclusion, or that the Confirmation, if challenged on appeal, will be affirmed.

Moreover, Article 9.1 of the Debtors' Plan sets forth a number of conditions precedent to the effectiveness of the Debtors' Plan. There can be no assurance that any or all of these conditions will be satisfied (or waived), or that supervening factors will not prevent the Debtors' Plan from being consummated. Accordingly, even if the Bankruptcy Court confirms the Debtors' Plan, there can be no assurance that the Debtors' Plan will be consummated. If a liquidation or protracted reorganization were to occur, there is a substantial risk that the value of the Debtors' enterprise would be substantially eroded to the detriment of all stakeholders.

14.3 Risk Factors Related to Estimates and Assumptions Under the Debtors' Plan.

As with any plan of reorganization or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated, some events will develop in ways that were not foreseen, and many or all of the assumptions that have been used in connection with this Disclosure Statement and the Debtors' Plan may not be realized exactly as assumed. Some or all of such variations may be material, notwithstanding the effort made to ensure assumptions are in each case reasonable. Accordingly, there can be no assurance that subsequent events will bear out the analyses set forth in this Disclosure Statement. Holders of Claims and Interests should be aware of some of the principal risks associated with the contemplated reorganization:

- There is a risk that one or more of the required conditions or obligations under the Debtors' Plan will not occur, be satisfied, or waived, as the case may be, resulting in the inability to confirm the Debtors' Plan.
- The total amount of Allowed Claims may ultimately be materially in excess of the estimated amounts of such Claims assumed in the development of the Debtors' Plan and in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions ultimately received by any particular holder of an Allowed Claim in a particular Class may be materially and adversely affected should the estimates be exceeded as to any Class.

14.4 Risks Relating to the Sale Process or a Failure to Consummate the New Plan Sponsor PSA Under the Debtors' Plan.

The Debtors currently expect that the sale of the Sold Assets will culminate in a sale to the Plan Sponsor or an alternative purchaser with a higher or better offer. The Debtors will incur considerable costs and expenses in connection with the sale process and may ultimately be obligated to pay a \$26 million break-up fee. There are many factors outside of the Debtors' control that may affect the Debtors' ability to consummate a sales transaction, including the ability of the Plan Sponsor or alternative purchaser to finance the transaction (although the Debtors understand that the Plan Sponsor presently has the funds necessary to finance the cash component of the Purchase Price). Moreover, it is possible that the Debtors may not be able to meet various closing conditions and, as a result, the Plan Sponsor or an alternative purchaser may elect to cancel the asset purchase agreement as a result of these failures; in such a circumstance, there can be no assurance that an alternative buyer would be willing to provide terms as favorable as those that have been offered by the Plan Sponsor. Furthermore, subject to the limitations set forth therein, the Plan Sponsor may terminate the New Plan Sponsor PSA if the following deadlines are not met:

- The Sterlite Agreed Order must be entered by April 22, 2009, which order was entered by the Bankruptcy Court on April 22, 2009;³⁷
- An order approving the Disclosure Statement must be entered by May 31, 2009 (which date may be extended until July 1, 2009 with the Plan Sponsor's consent);³⁸
- The Confirmation Order must be entered by August 31, 2009 (which date may be extended until September 30, 2009 with the Plan Sponsor's consent); and
- The Closing must occur by November 30, 2009 (which date may be extended until December 31, 2009 with the Plan Sponsor's consent; provided that if the Plan Confirmation Order has been entered by the Bankruptcy Court (rather than the United States District Court having

³⁷ 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. This deadline was met when the Sterlite 9019 Order was entered on April 22, 2009.

³⁸ This deadline was met when the Fifth Amended Disclosure Statement was approved by order entered on May 12, 2009.

jurisdiction over the Bankruptcy Cases), such date shall automatically be extended to December 31, 2009).

The Debtors can provide no assurance that they will be successful in consummating a sale of the Sold Assets. If the Debtors are unable to successfully complete such a sale, it could have a material adverse effect on the business, financial condition, and results of operations of the Debtors and the value of the Debtors' Estates. Additionally, the Debtors may be obligated to pay a break-up fee regardless of whether a sale transaction is consummated, and such expenses could be significant.

The Parent has requested that the Debtors include the following paragraph regarding the risks to the Debtors' Plan associated with the New Plan Sponsor PSA.

"The Debtors can provide no assurance that the Plan Sponsor will not breach the New Plan Sponsor PSA. As described in Section 2.28(b), the Plan Sponsor repudiated the Original Plan Sponsor PSA without any contractual or legal justification and refused to close under the \$2.6 billion Original Plan Sponsor PSA shortly before confirmation, citing market conditions. The Debtors can provide no assurance that the Plan Sponsor will not breach its obligation a second time. Under the Debtors' Plan, Sterlite only risks a \$125 million deposit in the form of letters of credit with considerable draw conditions that make it questionable that the deposit would ever be collected. There are no safeguards to creditors under the Debtors' Plan in the event a second breach occurs."

The Debtors can provide no assurance with respect to the outcome of the Reorganization Cases if the transactions contemplated by the New Plan Sponsor PSA are not approved and consummated in a timely manner. Transactional alternatives to the New Plan Sponsor PSA, assuming any such alternatives are available in light of present market volatility, could provide for substantially less favorable: (a) consideration; (b) tax treatment; or (c) certainty of closing.

14.5 Intentionally Omitted.

14.6 Risk Under the Debtors' Plan that the Liquidation Trust and the SCC Litigation Trust May Not Realize Any Recovery or May Realize a Capped Recovery.

Although certain assets will be transferred to the Liquidation Trust and the SCC Litigation Trust, including the Liquidation Trust Claims and the SCC Litigation Trust Claims respectively, there is no guarantee that any recovery will be realized on the Liquidation Trust Claims or the SCC Litigation Trust Claims. The Liquidation Trust Claims are contingent and unliquidated, and the prosecution of the Liquidation Trust Claims may be vigorously defended. The SCC Litigation Trust Agreement provides that, to the extent necessary, it shall be amended to conform to any decisions by the Bankruptcy Court. A further risk is that a favorable ruling is obtained but the Liquidation Trust or SCC Litigation Trust is unable to collect on a judgment because of the financial condition of the defendant.

Although the District Court has now entered the SCC Final Judgment in the SCC Litigation, awarding the Debtors substantial damages, AMC has filed a notice of appeal of the SCC Final Judgment and all adverse orders, rulings, decrees, opinions, and judgments leading up to, and included within, the SCC Final Judgment. It is possible that the SCC Final Judgment could be modified or reversed on appeal or that the appellate court could impose a cap on the damages awarded. Thus, if you vote to accept the Debtors' Plan, you assume the risk that the SCC Litigation Trust Agreement could possibly be amended to comply with any subsequent rulings, including any ruling imposing a cap on the SCC Litigation Proceeds distributed to the SCC Litigation Trust Beneficiaries. Moreover, the SCC Final Judgment may be reversed on appeal. The Debtors do not believe that any such limitations or restrictions on recovery would be appropriate or that reversal of the SCC Final Judgment in favor of ASARCO and SPHC is justified, but these risks should nonetheless be considered.

If you vote in favor of the Debtors' Plan, you assume the risk that the SCC Final Judgment in the SCC Litigation may be reversed, the outcome in the Liquidation Trust Claims may be unfavorable, and that the worst case scenario – that no amounts are ultimately recovered on any of the Liquidation Trust Claims or the SCC Litigation Trust Claims, despite the expenditure of funds by the Liquidation Trustee and the SCC Litigation Trustee in prosecuting such actions – may occur.

14.7 Risk Under the Debtors' Plan that the Debtors May Not Be Substantively Consolidated or Voluntarily Consolidated.

As set forth below in Section 17.3, the Debtors seek to substantively consolidate the Estates of the Subsidiary Debtors (other than Covington) with and into ASARCO, with the surviving entity being ASARCO. The Debtors believe that the facts and the governing law support this proposal. However, no assurance can be given that the Bankruptcy Court will grant the Debtors' request for substantive consolidation. Consequently, the Debtors reserve the right to voluntarily consolidate the Subsidiary Debtors (other than Covington) into ASARCO, pursuant to section 1123(a)(5)(C) of the Bankruptcy Code. As a third alternative, the Debtors reserve the right to proceed with the Debtors' Plan as to only ASARCO, Covington, ASARCO Master, SPHC, AR Sacaton, and the Asbestos Subsidiary Debtors. Thereafter, the Subsidiary Debtors not included in the Debtors' Plan with ASARCO would either file a proposed plan under chapter 11 of the Bankruptcy Code or convert their cases to liquidation cases under chapter 7 of the Bankruptcy Code. Under any of these alternatives, ASARCO would be able to obtain Confirmation of the Debtors' Plan, and thereby complete the sale of the Sold Assets and obtain the relief needed under section 524(g) of the Bankruptcy Code.

If you vote to accept the Debtors' Plan, you accept the risk that the Debtors may not be able to proceed with substantive consolidation or effectuate a voluntary consolidation as provided in Article 10.11 of the Debtors' Plan, in which event, the Debtors will be forced to seek confirmation of the Debtors' Plan as to only certain of the Debtors.

The Parent believes that the Debtors' Plan is patently unconfirmable because it depends on a "voluntary consolidation" not supportable under section 1123(a)(5)(C) of the Bankruptcy Code even if the Bankruptcy Court does not permit substantive consolidation. The Debtors disagree with this contention.

14.8 Distributions to Holders of Unsecured Asbestos Personal Injury Claims and Demands Under the Debtors' Plan.

The Asbestos Trust Documents require the Asbestos Trustees to adopt mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Unsecured Asbestos Personal Injury Claims and Demands, or other comparable mechanisms that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, Unsecured Asbestos Personal Injury Claims and Demands that involve similar Claims in substantially the same manner. Accordingly, the payment that will be made to holders of unliquidated Unsecured Asbestos Personal Injury Claims and Demands will equal the liquidated value for each claim multiplied by the then-applicable payment percentage. Estimation of the payment percentage likely to be used in the early years of the operation of the Asbestos Trust for qualified present Unsecured Asbestos Personal Injury Claimants involves data analysis or forecasting of (a) the number of compensable Unsecured Asbestos Personal Injury Claims; (b) the total value of Asbestos Trust Assets available to pay holders of Unsecured Asbestos Personal Injury Claims and Demands; and (c) the probable average values of payments under the Debtors' Plan.

The amount of the Unsecured Asbestos Personal Injury Claims and Demands may be significantly higher than expected at Confirmation once they are liquidated pursuant to the Asbestos TDP.

Similarly, the non-Cash Asbestos Trust Assets are contingent and may not generate any material value for the Asbestos Trust. Likewise, the amount of anticipated Asbestos Trust Expenses could be higher than expected. See **Exhibit F-1** of this Disclosure Statement. Further, while the Asbestos Trustees can be expected to use efficient and cost-effective procedures for claims resolution, it is difficult to predict how successful their efforts will be, particularly since the Asbestos Trust is expected to continue to operate for many years into the future.

14.9 Appointment of Different Trustees Under the Debtors' Plan.

The Debtors shall request that the Bankruptcy Court appoint as trustees for the Liquidation Trust, the SCC Litigation Trust, and the Asbestos Trust those Persons it designates not less than 10 days prior to the commencement of the Confirmation Hearing. However, the Bankruptcy Court may decline the Debtors' request and appoint one or more different trustees for such trusts. If different trustees are appointed, it could materially impact the administration of such trusts.

14.10 Appointment of a Different Plan Administrator Under the Debtors' Plan.

The Debtors shall request that the Bankruptcy Court appoint as Plan Administrator the Entity they designate not less than 10 days prior to the commencement of the Confirmation Hearing. However, the Bankruptcy Court

may decline the Debtors' request and appoint a different Plan Administrator. If a different Plan Administrator is appointed, it could materially impact the administration of Reorganized ASARCO.

14.11 Contentions of FFIC, Century Indemnity Company, and American Home Assurance Company Regarding Risk of No Insurance Coverage Under the Debtors' Plan.

FFIC, Century Indemnity Company, and American Home Assurance Company contend, for a number of reasons, that there will be no insurance coverage for certain asbestos Claims. See **Exhibit Q** attached hereto, which was provided by FFIC. Century Indemnity Company and American Home Assurance Company contend as follows:

"Under the Asbestos TDP, the Asbestos Trust must handle Asbestos Premises Liability Claims in accordance with the Asbestos In-Place Insurance Coverage agreements between the Debtors and their insurers. Century Indemnity Company and American Home Assurance Company contend that, to the extent the Asbestos TDP purports to alter the parties' respective rights and obligations under any Asbestos In-Place Insurance Coverage agreements to which Century Indemnity Company or American Home Assurance Company may be parties or applicable policies issued by Century Indemnity Company or American Home Assurance Company, any coverage otherwise available under any such policies or Asbestos In-Place Coverage agreements may be vitiated."

14.12 Risk Factors Related to Tax Under the Debtors' Plan.

If a Claimant receives non-Cash property pursuant to the Debtors' Plan, and the Claimant's tax basis in its Claim is less than the fair market value of such non-Cash property, then there may be a risk that the Claimant will not receive Cash under the Debtors' Plan in an amount sufficient to pay the taxes incurred by the Claimant as a result of its distribution under the Debtors' Plan. Moreover, there may be a risk that non-Cash property received by a Claimant could generate income taxable to the Claimant in particular taxable years that exceeds the cash flow generated from such property for such taxable years.

The Debtors intend to take the position that the Liquidation Trust and the SCC Litigation Trust are properly treated as grantor trusts, rather than as "qualified settlement funds," for U.S. federal income tax purposes. This position is based on the Debtors' belief that the trusts do not meet the requirements contained in the Treasury Regulations for qualified settlement fund treatment. However, apart from the Treasury Regulations, there is little guidance on this issue, and the Debtors have not sought, and do not intend to seek, a ruling from the IRS or an opinion of counsel regarding the proper tax treatment of the Liquidation Trust or the SCC Litigation Trust. Accordingly, it is possible that the IRS could assert that the Liquidation Trust or the SCC Litigation Trust should be treated as a "qualified settlement fund." If either the Liquidation Trust or the SCC Litigation Trust is so treated, entity level taxes may be imposed on the earnings of such Trust, which would reduce amounts available for distribution from such Trust.

SECTION 15 RISKS OF THE PARENT'S PLAN

The text of this section of the Disclosure Statement 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 each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

15.1 General.

The following provides a summary of various risks associated with the Parent's Plan. However, it is not exhaustive and should be supplemented by careful analysis and evaluation of the Parent's Plan and this Disclosure Statement as a whole by each holder of a Claim, Demand, or an Interest with that holder's own advisors.

15.2 Confirmation Risks Under the Parent's Plan.

In order for the Parent's Plan to be confirmed, the Bankruptcy Code generally requires that Impaired Classes vote to accept the Parent's Plan, and voting creditors in each Class approve the Parent's Plan by:

- over one-half in number of creditors (50 percent + 1); and

- at least two-thirds in dollar amount.

However, if at least one voting Impaired Class votes to accept the Parent's Plan, then the Parent's Plan may be "crammed down" on non-voting Impaired Classes which are deemed to have rejected the Parent's Plan and voting Impaired Classes which have rejected to the Parent's Plan, if certain requirements for cramdown are met and the Bankruptcy Court approves such cramdown. In addition, to obtain a section 524(g) injunction relating to Asbestos Personal Injury Claims and Demands, the Bankruptcy Code requires that Parent's Plan be accepted by at least 75 percent of holders of Asbestos Personal Injury Claims who vote to accept or reject the Parent's Plan, and by the FCR.

There is no guarantee that the voting thresholds with respect to Impaired Classes under the Parent's Plan and/or the Section 524(g) Trust will be reached, and there is no guarantee that the Bankruptcy Court will approve a cramdown with respect to the Parent's Plan. The United States has asserted that it would vote to reject the Parent's Plan, as filed; the United States and any or all other holders of Claims in voting Impaired Classes under the Parent's Plan may vote to reject the Parent's Plan. In addition, the Bankruptcy Court may determine that the requirements for cramdown are not met by the Parent's Plan or may otherwise deny cramdown with respect to the Parent's Plan. Any objection to the Parent's Plan also could prevent Confirmation of the Parent's Plan or delay such Confirmation for a significant period of time.

The Parent believes that the voting requirements necessary to confirm the Parent's Plan will be met, that the Parent's Plan will be accepted by the requisite numbers of holders of Claims in at least one Impaired Class, that the Section 524(g) Trust will be accepted by the requisite number of holders of Asbestos Personal Injury Claims and by the FCR, and that the Bankruptcy Court will approve a cramdown of Classes that have rejected the Parent's Plan. In addition, the Parent believes that the Amended Agreement in Principle is enforceable, but that parties-in-interest and their counsel should review the Amended Agreement in Principle to independently assess its enforceability.

Even if all impaired Classes entitled to vote in fact vote in favor of the Parent's Plan and, with respect to any impaired Class deemed to have rejected the Parent's Plan, the requirements for "cramdown" are met, the Bankruptcy Court may deny confirmation of the Parent's Plan if it determines that confirmation requirements of section 1129 of the Bankruptcy Code have not been met. In addition, the Bankruptcy Court, as a court of equity may exercise substantial discretion and choose not to confirm the Parent's Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that Confirmation of the Parent's Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, and that the value of distributions to dissenting holders of Claims and Interests may not be less than the value that such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

There is no assurance that the Bankruptcy Court and the District Court will conclude that the Parent's Plan satisfies all non-voting requirements necessary for Confirmation, or that the Confirmation, if challenged on appeal, will be affirmed. The Debtors, the ASARCO Committee, the United States, and certain other parties-in-interest contend that the Parent's Plan may be unconfirmable. The Debtors further contend that the Parent may not be able to meet the "good faith" or "best interests" requirements of section 1129 of the Bankruptcy Code. The United States contends that the absolute priority rule is violated by allowing the Parent to continue to be an equity owner of the Debtors even though environmental creditors are impaired and the value provided by the Parent is less than the savings realized by the Parent from the proposed release of judgment against it. Further, the United States contends that the Parent's Plan may not be confirmable under section 1129(a)(3) if the reserve for Custodial Trust Sites is not segregated from remainder of the Disputed Claims Reserve. The Debtors assert that the Parent's Plan does not satisfy the "new value" exception to the "absolute priority" rule and that if the SCC Final Judgment is affirmed on appeal, the Parent's waiver of claims against the Debtors is worthless as ASARCO could easily offset these claims by the SCC Final Judgment.

The Parent believes that the Parent's Plan meets all non-voting requirements of section 1129 of the Bankruptcy Code. The Parent's Plan meets both the good faith and best interests requirements of section 1129 of the Bankruptcy Code because, among other things, the SCC Final Judgment is subject to compelling challenges on appeal such that the present value of the SCC Final Judgment cannot be determined (which is consistent with the approach taken by the Debtors in their liquidation analysis). Further, the Parent's Plan provides substantial consideration in exchange for release of the SCC Final Judgment, and the total consideration provided by the Parent's Plan exceeds the liquidation value of the Debtors' assets including the SCC Final Judgment, avoids extensive, costly, and time-consuming litigation, and make proceeds available for immediate distribution to holders of Allowed Claims. Finally, as discussed in Section 6.5, the Parent believes the Parent's Plan satisfies the "new value" exception to the "absolute priority" rule but the Court may disagree with this position.

The United States and the Debtors contend that the Parent's Plan may not be confirmable because it may discriminate against environmental creditors and against other unsecured creditors by paying asbestos creditors a higher or more certain percentage of their claims than that paid to other unsecured creditors. The Parent believes that the Parent's Plan does not raise issues of unfair discrimination because its Plan pays holders of Asbestos Claims and Demands 75 percent of their aggregate Allowed Claim of \$1.0 billion, while holders of Claims in Class 3 are anticipated (under the Parent's calculations) to receive 100 percent of such Claims.

The United States further contends that the Parent may not pursue an objection or estimation of the claims underlying the environmental settlements while any appeal by Parent is pending and that the Parent's Plan is not confirmable if it provides otherwise, and that the Parent's Plan improperly provides that Reorganized ASARCO will not be responsible for successor liability with respect to Designated Properties. The Texas Commission on Environmental Quality contends that the Parent's Plan is unconfirmable if it does not abide by court approved environmental settlements. The Parent does not intend to pursue estimation while an appeal is pending; rather, if an appeal of an order such as an order granting approval of the Environmental 9019 Motion results in such order being reversed in whole or in part, then the Parent would pursue estimation or alternative means of resolving the remaining disputed claims that were otherwise the subject of the Environmental 9019 Motion.

The Debtors and Harbinger contend that the Parent's Plan will be unconfirmable if the Parent elects to reinstate certain Bondholder Claims but does not reinstate certain non-economic terms of the applicable indentures. The Parent disagrees that the alleged non-monetary defaults are a bar to reinstatement of Bondholder Claims.

Harbinger refers to section 2.32(d) of this Disclosure Statement, entitled "Harbinger's Position Regarding the Parent's Plan," for an enumeration of some of the reasons Harbinger believes that the Parent's Plan is patently unconfirmable.

Article 10.1 of the Parent's Plan sets forth a number of conditions precedent to the effectiveness of the Parent's Plan. There can be no assurance that these conditions will be satisfied. It is possible that one or more of the various conditions precedent will fail to be met, and that the Parent will elect not to consummate the Parent's Plan as a result of such failure. Furthermore, the Parent may elect not to consummate the Parent's Plan if the Confirmation Date has not occurred by August 31, 2009, except as may be otherwise agreed upon by the Parent and the Asbestos Representatives. If a condition precedent to the effectiveness of the Parent's Plan is not met and the Parent elects not to consummate the Parent's Plan, there can be no assurance that the Debtors will be able to locate an alternative plan sponsor who will provide terms as favorable to creditors as those provided by the Parent under the Parent's Plan.

The Debtors contend that, even if all conditions precedent are met, there can be no assurance that the Parent will fund the Parent Contribution. After Sterlite terminated the original APA and the Debtors withdrew their plan (but prior to any confirmation hearing), the Parent also withdrew the Parent's plan to evaluate the Parent's options and the circumstances surrounding Sterlite's breach. However, if the Parent's Plan is confirmed and all conditions precedent are met, the Parent asserts that the risk that the Parent will not fund the Parent Contribution is minimal. As explained above, the Parent has provided a \$125 million good faith deposit in Cash to demonstrate and support its intention and ability to fully and timely consummate the Parent's Plan. The Deposit shall be forfeited to Debtors' Estate if one of the following conditions apply: (i) prior to the date upon which any plan of reorganization for the Debtors is Confirmed, the Parent withdraws the Parent's Plan without the written consent of the ASARCO Committee, (ii) from and after the Confirmation Date, the Parent withdraws the Parent's Plan without the written consent of the ASARCO Committee; or (iii) the Parent's Plan is not Consummated by the date that is 30 days after the Confirmation Order becomes a Final Order; *provided, however*, that the Deposit shall be released to the Parent and shall not be forfeited if the Parent terminates and withdraws the Parent's Plan (a) with the consent of the ASARCO Committee; (b) after the Bankruptcy Court enters an order Confirming a plan of reorganization other than the Parent's Plan, or (c) the Effective Date does not occur by October 31, 2009 and the failure to Consummate the Parent's Plan by that date is not primarily due to the failure by the Parent to fulfill any obligation under the Parent's Plan (it being understood that the failure of the Parent to reach agreement with the USW on a consensual CBA shall not constitute cause for the Parent to fail to Consummate the Parent's Plan). The posting of the Deposit is a strong enforcement mechanism providing assurance that the Parent will fund the Parent Contribution. In addition, the risks the Parent will face if it fails to fund the Parent Contribution will act as a further enforcement mechanism.

The ASARCO Committee contends that the deemed consolidation under the Parent's Plan violates the *Owens Corning* line of cases and may be an impediment to confirmation.

15.3 Risk Factors Related to Estimates and Assumptions Under the Parent's Plan.

As with any plan of reorganization or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated, some events will develop in ways that were not foreseen, and many or all of the assumptions that have been used in connection with this Disclosure Statement and the Parent's Plan will not be realized exactly as assumed. Some or all of such variations may be material. While efforts have been made to be reasonable in this regard, there can be no assurance that subsequent events will bear out the analyses set forth in this Disclosure Statement. Holders of Claims and Interests should be aware of some of the principal risks associated with the contemplated reorganization:

- There is a risk that one or more of the required conditions or obligations under the Parent's Plan will not occur, be satisfied or waived, as the case may be, resulting in the inability to confirm the Parent's Plan.
- The total amount of Allowed Claims may ultimately be materially in excess of the estimated amounts of such Claims assumed in the development of the Parent's Plan and in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement.
- The financial information contained in this Disclosure Statement has been prepared by the Debtors and their advisors. As a result, the Parent is unable to warrant or represent that the financial information contained herein and attached hereto is without inaccuracies.
- The timing of projected recoveries by and distributions from the Litigation Trust (including recoveries on the claims against Sterlite) are uncertain, which could delay a portion of creditor recoveries.
- The ASARCO Note is subject to an upward adjustment, for the benefit of Asbestos Trust only, if the Bankruptcy Court determines, upon a challenge brought by a party other than any of the Parties to the ASARCO Note, that the aggregate increase in consideration provided there under does not satisfy the "Fiduciary Out" set forth in the Sterlite Term Sheet. It is understood that, due to the economics of the Parent's offer, any increase in the amount of the promissory note above \$280 million shall be treated as an Allowed Administrative Claim, which will not necessarily reduce the total recovery to holders of Allowed General Unsecured Claims, but which will reduce the Available Parent's Plan Funds available for distribution to holders of Allowed General Unsecured Claims so that such holders must rely upon the Distributed Litigation Trust Interests to collect a correspondingly greater portion of their recovery. For the avoidance of doubt, the ASARCO Note will only reduce the Available Parent's Plan Funds to the extent the amount of the ASARCO Note exceeds \$280 million.
- The Debtors contend that there is a risk that the Disputed Claims Reserve will be underfunded. The Parent believes that such risk is no greater under the Parent's Plan than under the Debtor's Plan, as the Parent anticipates that the Parent's Plan Administrator will carefully disburse proper funding to the Disputed Claims Reserve with respect to Disputed Claims when making claims distributions. Moreover, the Parent expects that, as with every large chapter 11 case, a certain amount of disputed claims will be successfully challenged and disallowed, thus freeing up the funds disbursed to the Disputed Claims Reserve with respect to such claims. Thus, the Parent believes that there is a greater possibility that the Disputed Claims Reserve will be overfunded. If, for some unanticipated reason, the Disputed Claims Reserve is underfunded, the holders of Disputed Claims may receive less distributions than they would otherwise anticipate receiving under the Parent's Plan.

15.4 Risk Factors That Could Negatively Affect the Debtors' Business Under the Parent's Plan.

The continued operation of Reorganized ASARCO's business as contemplated by the Parent's Plan is subject to a number of risks. Continued mining or metal production operations by Reorganized ASARCO, projected quantities of future metal production, anticipated production rates, operating efficiencies, costs and expenditures as well as projected demand or supply for the products of Reorganized ASARCO are subject to factors including the risks and

uncertainties relating to general U.S. and international economic and political conditions, competition, the cyclical and volatile prices of copper, other commodities and supplies, including fuel and electricity, availability of materials, insurance coverage, equipment, required permits or approvals and financing, the occurrence of unusual weather or operating conditions, lower than expected ore grades, water and geological problems, the failure of equipment or processes to operate in accordance with specifications, failure to obtain financial assurance to meet closure and remediation obligations, labor relations, litigation, and environmental risks. The results of operations of Reorganized ASARCO will be directly affected by metals prices on commodity exchanges, which can be volatile.

15.5 Reorganized ASARCO May Not Be Able to Achieve Projected Financial Results Under the Parent's Plan.

Reorganized ASARCO may not be able to meet its projected financial results or achieve projected revenues and cash flows that have been assumed in projecting future business prospects. To the extent Reorganized ASARCO does not meet its projected financial results or achieve projected revenues and cash flows, Reorganized ASARCO may lack sufficient liquidity to continue operating as planned after the Effective Date, may be unable to service its debt obligations as they come due or may not be able to meet its operational needs. Any one of these failures may preclude Reorganized ASARCO from, among other things: (a) enhancing its current customer offerings; (b) taking advantage of future opportunities; (c) growing its business; or (d) responding to competitive pressures. Further, a failure of Reorganized ASARCO to meet its projected financial results or achieve projected revenues and cash flows could lead to cash flow and working capital constraints, which constraints may require Reorganized ASARCO to seek additional working capital. Reorganized ASARCO may not be able to obtain such working capital when required or may only be able to obtain additional working capital on unreasonable terms.

The Debtors and the United States contend that a setoff right asserted by the DOJ with respect to the Tax Refund could delay or eliminate the use of the Tax Refund as a source of working capital for Reorganized ASARCO, and that such setoff right is available to the DOJ. Further, the United States contends that subject to Court approval, the United States may elect to offset the Tax Refund against any allowed claim of the United States that is subject to offset under applicable law. The United States therefore disputes that Parent can require that the Tax Refund be offset against Custodial Trust Claims. The Parent believes that such setoff right is not available but under Article 10.7 the issue is moot because, to the extent the DOJ or other governmental agency continues to assert a setoff right, the Parent's Plan contemplates that the Tax Refund will be used towards the United States' portion of the Environmental Trust Claims, freeing up other Cash for distribution to creditors. There is a risk that the Tax Refund will be delayed or claimed by the Internal Revenue Service; if that happens, it will impact distributions to creditors under not only the Parent's Plan but also the Debtors' Plan and Harbinger's Plan.

The Debtors contend that the Parent's Plan contemplates substantial payments in the future from the operations of Reorganized ASARCO, and that the Parent fails to provide forecasts of projected operations for Reorganized ASARCO and solely relies on the Debtor's projections. The Parent asserts that it will demonstrate the feasibility of the Parent's Plan at the Confirmation Hearing, and notes that the Debtor and Harbinger fail to provide such information in this Disclosure Statement with respect to Sterlite's and Harbinger's abilities to satisfy reinstated obligations, including environmental, labor, and pension obligations or how Sterlite will fund its note as it comes due.

The Debtors contend that the Parent fails to demonstrate how Reorganized ASARCO will fund the ASARCO Note on its maturity date. The ASARCO Note will be guaranteed by AMC and shall be secured by (a) a first lien on the assets of Reorganized ASARCO and (b) a pledge by the Parent of 51 percent of the equity in Reorganized ASARCO. While the Parent believes that Reorganized ASARCO will have sufficient cash on hand to pay the ASARCO Note upon Maturity, any difference between Reorganized ASARCO's cash on hand on the maturity date and the outstanding principal amount of the ASARCO Note shall be provided by AMC, as Guarantor. The Parent believes that AMC's assets will be more than sufficient to fund such difference many times over. However, to the extent AMC is unable to fund such difference on the maturity date, the ASARCO Note is secured by a pledge of 51 percent of the equity in Reorganized ASARCO and by all of Reorganized ASARCO's assets, the value of which the Parent believes would be more than sufficient to provide any such difference. In light of Reorganized ASARCO's cash on hand on the maturity date of the ASARCO Note, the AMC guarantee, and the pledge of 51 percent of Reorganized ASARCO's equity, the Parent believes that there is little risk that the AMC Note will not be fully funded.

AMC owns approximately 80 percent of the shares of Southern Copper Corporation ("SCC"). SCC stock is publicly traded on the New York Stock Exchange under the ticker symbol PCU. As of market close on June 26, 2009, SCC had a market capitalization of approximately \$17.6 billion. Accordingly, the total value of SCC stock held by AMC has a market value as of June 26, 2009, in excess of approximately \$14 billion. Currently, AMC has no financing

outstanding other than a \$25 million note issued to an environmental trust and is not otherwise limited in any way (e.g., it is not a party to any negative pledge agreement) in entering into a financing transaction, other than the bonding requirements outlined in the District Court's Memorandum Opinion and Order, dated June 2, 2009, partially granting and partially denying the Stay Motion, as summarized in Section 2.24(c) above. Because confirmation of the Parent's Plan would result in a release of the SCC Final Judgment on the Effective Date, lenders will not view such a negative pledge as an obstacle to financing the same Parent's Plan.

The corporate owner of the Parent, Grupo México, has approximately \$962 million in cash which could be transferred to the Parent to meet the Parent's obligations under the Parent's Plan, although Grupo México is under no legal obligation to do so.³⁹ Additional funding for the Parent's Plan would come from a borrowing facility or facilities, or the sale of SCC stock prior to the Effective Date. Grupo México and SCC are each currently rated BBB- by Standard and Poor's Rating Services. Additionally, Standard and Poor's last rating of AMC was BBB- on July 12, 2005. Based upon these ratings, AMC is an investment grade borrower. Being an investment grade company facilitates the Parent's ability to obtain financing.

The Parent has been in active negotiations with lenders, who have assured the Parent that raising the cash necessary to fund the Parent's Plan will be easy because of AMC's investment grade and its available assets. The Parent has chosen not to obtain a firm commitment to provide the financing yet, however, because such a commitment would be very expensive, and the expense is not warranted until closer to the time of a confirmation hearing.

15.6 Financial Projections and Other Forward Looking Statements Are Not Assured.

The Parent is not in control of the Debtors' books and records. The Parent has evaluated the Debtors' 5-Year Plan (2009-2012) Financial Overview (the "5-Year Plan"), attached hereto as **Exhibit L**, with respect to the future financial results of the Debtors' operations as prepared by the Debtors. The Debtors have updated their budget for 2009-2013 but not in the same usable format. Accordingly, the Parent can provide no assurances regarding the accuracy of the Debtors' 5-Year Plan. In connection with Confirmation of the Parent's Plan, however, the Parent will demonstrate that the Parent's Plan is feasible and Confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of Reorganized ASARCO.

15.7 Risk that the Debtors' Plan or Harbinger Plan may be Confirmed Instead of the Parent's Plan.

If the Debtors' Plan and/or Harbinger's Plan complies with all of the requirements of the Bankruptcy Code, the Bankruptcy Court may confirm the Debtors' Plan or Harbinger's Plan instead of the Parent's Plan. However, the Parent believes that Harbinger's Plan fails to comply with applicable requirements of the Bankruptcy Code as, among other objectionable provisions, it seeks to impose an injunction on holders of Asbestos Personal Injury Claims and Demands that the Parent asserts does not comply with section 524(g) of the Bankruptcy Code and applicable law if such holders vote to reject Harbinger's Plan. The Parent believes that this novel structure is not permitted by the Bankruptcy Code and that, in addition, Harbinger's Plan cannot be confirmed without the acceptance by the FCR and the affirmative vote of at least 75 percent of the holders of Asbestos Personal Injury Claims. Harbinger disagrees. In addition, the Parent believes that both the Debtors' Plan and Harbinger's Plan would provide significantly lesser recoveries to holders of Claims against the Debtors than does the Parent's Plan, and therefore are unlikely to be confirmed by the Court over the Parent's Plan. The Debtors and Harbinger disagree. The Debtors contend that the Debtors' Plan provides greater recoveries to creditors, will be accepted and preferred by the majority of creditors, and will be confirmed.

15.8 Risk Under the Parent's Plan Relating to the Collective Bargaining Agreement with the USW and Other Unions.

The Parent has not reached a collective bargaining agreement with the USW and other unions, thereby creating a risk that the Parent's Plan will not meet the applicable requirements of the special successorship clause of the Debtors' New CBA as currently in place. The USW takes the position that the Parent's Plan cannot be confirmed because of the failure of the Plan Sponsors to meet the requirements of the special successorship clause. It is possible that significant litigation could ensue in the Bankruptcy Court or other court between the Plan Sponsors and the USW and other parties over this clause. The USW takes the position that it would have the right to strike in the event the New CBA was terminated by the Court pursuant to the Second Stipulation and Order Regarding Modification to Collective Bargaining Agreement (*see* Section 2.16, *supra*), and the Debtors and the USW also take the position that the potential of

³⁹ Grupo México has a consolidated cash position of approximately \$961.97 as reported in its quarterly earnings report for the first quarter of 2009.

any such strike would need to be considered in determining whether the Parent Plan is feasible, and that a strike might negatively impact distributions to Claim holders. The Parent disagrees with the USW's position and takes the position that the Bankruptcy Court may terminate the special successorship clause without terminating the New CBA, which would preclude the USW from engaging in a strike, and even if the current New CBA is terminated, there are other legal impediments to the USW's right to strike. The USW disagrees with the Plan Sponsors' positions in these regards. If the Parent is wrong and a strike ensues, Reorganized ASARCO may not be able to generate sufficient cash to fund its ongoing business.

15.9 Appointment of Different Asbestos Claims Trustees Under the Parent's Plan.

Not less than 10 days prior to the commencement of the Confirmation Hearing, the Parent will designate the Persons who shall initially serve as the Section 524(g) Trustees. However, the Bankruptcy Court may decline the Parent's request and appoint one or more different Section 524(g) Trustees. If different Section 524(g) Trustees are appointed, it could materially impact the administration of the Section 524(g) Trust.

15.10 Appointment of Different Plan Administrator Under the Parent's Plan.

Not less than 10 days prior to commencement of the Confirmation Hearing, the Parent shall designate the Entity that shall initially serve as the Plan Administrator. However, the Bankruptcy Court may decline the Parent's request and appoint a different Plan Administrator. If a different Plan Administrator is appointed, it could materially impact the administration of the Parent's Plan.

15.11 Risk Factors Related to Tax Under the Parent's Plan.

If a Claimant receives non-cash property pursuant to the Parent's Plan, and the Claimant's tax basis in its Claim is less than the fair market value of such non-cash property, then there may be a risk that the Claimant will not receive Cash under the Parent's Plan in an amount sufficient to pay the taxes incurred by the Claimant as a result of its distribution under the Parent's Plan. Moreover, there may be a risk that non-cash property received by a Claimant could generate income taxable to the Claimant in particular taxable years that exceeds the cash flow generated from such property for such taxable years. In addition, if the IRS were to assert successfully that the Litigation Trust is not a liquidating trust or that the Disputed Claims Reserve is not a disputed ownership fund for U.S. federal income tax purposes, such Trust or such Disputed Claims Reserve, as the case may be, is likely to be treated as a qualified settlement fund, which ordinarily is subject to tax as an entity. Accordingly, Reorganized ASARCO will make a protective election to treat the Litigation Trust and the Disputed Claims Reserve, respectively, as grantor trusts if they were so treated. Because Reorganized ASARCO would be taxable on income derived from the assets of the Litigation Trust or the Disputed Claims Reserve if they were so treated as grantor trusts, the Litigation Trust Agreement and the Plan Administrative Agreement will provide that Reorganized ASARCO would be entitled to receive distributions from the Litigation Trust and the Disputed Claims Reserve, respectively, on account of such taxes.

SECTION 16 RISKS OF HARBINGER'S PLAN

The text of this section of the Disclosure Statement has been prepared by Harbinger with reference to Harbinger's Plan and using defined terms from Harbinger's Glossary. All statements and representations in this section 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.

16.1 General.

The following provides a summary of various risks associated with Harbinger's Plan. However, it is not exhaustive and should be supplemented by careful analysis and evaluation of Harbinger's Plan and this Disclosure Statement as a whole by each holder of a Claim or an Interest with that holder's own advisors.

16.2 Confirmation and Consummation Risks Under Harbinger's Plan.

In order for a plan of reorganization to be confirmed, the Bankruptcy Code generally requires that impaired Classes vote to accept the plan. This requires that voting creditors in each Class approve Harbinger's Plan by:

- over one-half in number of creditors (50 percent + 1); and
- at least two-thirds in dollar amount.

There is no guarantee that the voting thresholds in regards to the impaired Classes under Harbinger's Plan will be reached or that the Bankruptcy Court will concur with the tally.

Any objection to Harbinger's Plan also could prevent Confirmation of the Plan or delay such Confirmation for a significant period of time.

Even if all impaired Classes entitled to vote in fact vote in favor of Harbinger's Plan and, with respect to any impaired Class deemed to have rejected Harbinger's Plan, the requirements for "cramdown" are met, the Bankruptcy Court, which as a court of equity may exercise substantial discretion, may choose not to confirm Harbinger's Plan. Section 1129 of the Bankruptcy Code requires, among other things, a showing that Confirmation of Harbinger's Plan will not be followed by liquidation or the need for further financial reorganization of the Debtors, and that the value of distributions to dissenting holders of Claims and Interests may not be less than the value that such holders would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. *See* Section 17.2 of this Disclosure Statement. Although Harbinger believes that Harbinger's Plan satisfies all requirements necessary for Confirmation, there is no assurance that the Bankruptcy Court will reach the same conclusion, or that the Confirmation, if challenged on appeal, will be affirmed.

Moreover, Article 9 of Harbinger's Plan sets forth a number of conditions precedent to the confirmation and effectiveness of Harbinger's Plan. There can be no assurance that any or all of these conditions will be satisfied (or waived), or that supervening factors will not prevent Harbinger's Plan from being consummated. Accordingly, even if the Bankruptcy Court confirms Harbinger's Plan, there can be no assurance that such Plan will be consummated. If a liquidation or protracted reorganization were to occur, there is a substantial risk that the value of the Debtors' enterprise would be substantially eroded to the detriment of all stakeholders.

Furthermore, the Asbestos Claimants' Committee asserts that Harbinger's Plan relies on novel legal theories in an attempt to fashion an asbestos trust and channel all asbestos Claimants, both current and future, to that trust outside the statutory confines of section 524(g). The Asbestos Claimants' Committee and the FCR strongly contest the confirmability and legality of Harbinger's Plan, which is novel, unprecedented, and not in the best interests of the Debtors' Estates. There is a substantial risk that Harbinger's so-called "no successor liability" clause will prove ineffectual, with the result that one or more of the ASARCO Protected Parties may be subject to substantial asbestos-related liability under Harbinger's Plan. There is also significant risk that the Court will refuse to accept Harbinger's \$500 million bid, given the strong consensus among parties in interest that this represents less than the fair market value of ASARCO's assets. A sale of ASARCO's assets to Harbinger or anyone else for less than fair consideration would not be in the best interests of the Debtors' creditors. As detailed elsewhere, Harbinger disagrees and believes that there is ample legal support for the limited channeling injunction contemplated under Harbinger's Plan.

16.3 Risk Factors Related to Estimates and Assumptions Under Harbinger's Plan.

As with any plan of reorganization or other financial transaction, there are certain risk factors that must be considered. All risk factors cannot be anticipated, some events will develop in ways that were not foreseen, and many or all of the assumptions that have been used in connection with this Disclosure Statement and Harbinger's Plan may not be realized exactly as assumed. Some or all of such variations may be material, notwithstanding the effort made to ensure assumptions are in each case reasonable. Accordingly, there can be no assurance that subsequent events will bear out the analyses set forth in this Disclosure Statement. Holders of Claims and Interests should be aware of some of the principal risks associated with the contemplated reorganization:

- There is a risk that one or more of the required conditions or obligations under Harbinger's Plan will not occur, be satisfied, or waived, as the case may be, resulting in the inability to confirm Harbinger's Plan.
- The total amount of Allowed Claims may ultimately be materially in excess of the estimated amounts of such Claims assumed in the development of Harbinger's Plan and in the valuation estimates provided above. The actual amount of all Allowed Claims in any Class may differ significantly from the estimates provided in this Disclosure Statement. Accordingly, the amount and timing of the distributions ultimately received by any particular

holder of an Allowed Claim in a particular Class may be materially and adversely affected should the estimates be exceeded as to any Class.

16.4 Risks Relating to the Sale Process or a Failure to Consummate the Plan Sponsor PSA Under Harbinger's Plan.

Harbinger currently expects that the sale of the Sold Assets will culminate in a sale to the Plan Sponsor or an alternative purchaser with a higher or better offer. There are many factors outside of Harbinger's control that may affect Harbinger's ability to consummate a sales transaction. Moreover, it is possible that the Debtors may not be able to meet various closing conditions and, as a result, the Plan Sponsor or an alternative purchaser may elect to cancel the asset purchase agreement as a result of these failures; in such a circumstance, there can be no assurance that an alternative buyer would be willing to provide terms as favorable as those that have been offered by the Plan Sponsor. Furthermore, subject to the limitations set forth therein, the Plan Sponsor may terminate the Plan Sponsor PSA if, among other things, the Closing thereunder has not occurred by November 30, 2009 (or such further date as may be extended by the Plan Sponsor) or if a Seller Material Adverse Effect shall have occurred and shall be continuing.

Harbinger can provide no assurance that the Debtors will be successful in consummating a sale of the Sold Assets. If the Debtors are unable to successfully complete such a sale, it could have a material adverse effect on the business, financial condition, and results of operations of the Debtors and the value of the Debtors' Estates.

Harbinger can provide no assurance with respect to the outcome of the Reorganization Cases, if the transactions contemplated by the Plan Sponsor PSA are not approved and consummated in a timely manner. Transactional alternatives to the Plan Sponsor PSA, assuming any such alternatives are available in light of present market volatility, could provide for substantially less favorable: (a) consideration; (b) tax treatment; or (c) certainty of closing.

Notwithstanding confirmation of Harbinger's Plan, in the event that all conditions precedent to the obligations of all parties in the Plan Sponsor PSA have been satisfied and the Plan Sponsor fails to close the transactions contemplated by the Plan Sponsor PSA after the Confirmation Order has been entered (where the Plan Sponsor's failure to close shall not be the result of any material breach of and covenant or obligation under the Plan Sponsor PSA required to be performed by the Sellers or the inaccuracy of any representation or warranty of the Sellers made under the Plan Sponsor PSA), the Sellers may have recourse up to \$125,000,000 against Harbinger and Citigroup Global Markets, Inc. under the Guaranty/Commitment Letter Agreement attached to the Plan Sponsor PSA as Exhibit L.

16.5 Intentionally Omitted.

16.6 Risk Under Harbinger's Plan that the Liquidation Trust and the SCC Litigation Trust May Not Realize Any Recovery or May Realize a Capped Recovery.

Although certain assets will be transferred to the Liquidation Trust and the SCC Litigation Trust, including the Liquidation Trust Claims and the SCC Litigation Trust Claims respectively, there is no guarantee that any recovery will be realized on the Liquidation Trust Claims or the SCC Litigation Trust Claims. The Liquidation Trust Claims are contingent and unliquidated, and the prosecution of the Liquidation Trust Claims may be vigorously defended. The SCC Litigation Trust Agreement provides that, to the extent necessary, it shall be amended to conform to any decisions by the Bankruptcy Court. A further risk is that a favorable ruling is obtained but the Liquidation Trust or SCC Litigation Trust is unable to collect on a judgment because of the financial condition of the defendant.

Although the District Court has now entered the SCC Final Judgment in the SCC Litigation, awarding the Debtors substantial damages, AMC has filed a notice of appeal of the SCC Final Judgment and all adverse orders, rulings, decrees, opinions, and judgments leading up to and included within the SCC Final Judgment. It is possible that the SCC Final Judgment could be modified or reversed on appeal or that the appellate court could impose a cap on the damages awarded. Thus, if you vote to accept the Plan, you assume the risk that the SCC Litigation Trust Agreement could possibly be amended to comply with any subsequent rulings, including any ruling imposing a cap on the SCC Litigation Proceeds distributed to the SCC Litigation Trust Beneficiaries. Moreover, the SCC Final Judgment may be reversed on appeal. The Debtors do not believe that any such limitations or restrictions on recovery would be appropriate or that reversal of the SCC Final Judgment in favor of ASARCO and SPHC is justified, but these risks should nonetheless be considered.

If you vote in favor of Harbinger's Plan, you assume the risk that the SCC Final Judgment in the SCC Litigation may be reversed, the outcome in the Liquidation Trust Claims may be unfavorable, and that the worst case

scenario – that no amounts are ultimately recovered on any of the Liquidation Trust Claims or the SCC Litigation Trust Claims, despite the expenditure of funds by the Liquidation Trustee and the SCC Litigation Trustee in prosecuting such actions – may occur.

16.7 Risk Under Harbinger's Plan that the Debtors May Not Be Substantively Consolidated or Voluntarily Consolidated.

The risks under Harbinger's Plan with respect to these issues are materially similar to those under the Debtors' Plan. Please refer to section 14.7 above.

16.8 Risks Under Harbinger's Plan Relating to the Collective Bargaining Agreement with the USW and Other Unions.

While Harbinger expects that the Plan Sponsor will reach an agreement on the terms of a collective bargaining agreement with the USW and other unions prior to confirmation, no such agreement has been reached as of the date hereof. The obligations of the Plan Sponsor under the Plan Sponsor PSA are conditioned upon, among other things, the Plan Sponsor and the USW executing an agreement that amends and modifies the Debtors' existing collective bargaining agreement with the USW. If no such agreement is reached, the Plan Sponsor PSA will not close and Harbinger's Plan cannot go effective.

16.9 Appointment of Different Trustees Under Harbinger's Plan.

Harbinger shall request that the Bankruptcy Court appoint as trustees for the Liquidation Trust, the SCC Litigation Trust, and the Asbestos Claims Liquidation Trust those Persons it designates not less than 10 days prior to the commencement of the Confirmation Hearing. However, the Bankruptcy Court may decline Harbinger's request and appoint one or more different trustees for such trusts. If different trustees are appointed, it could materially impact the administration of such trusts.

16.10 Appointment of a Different Plan Administrator Under Harbinger's Plan.

Harbinger shall request that the Bankruptcy Court appoint as Plan Administrator the Entity it designates not less than 10 days prior to the commencement of the Confirmation Hearing. However, the Bankruptcy Court may decline Harbinger's request and appoint a different Plan Administrator. If a different Plan Administrator is appointed, it could materially impact the administration of Reorganized ASARCO.

16.11 Claimants May Incur Taxes in Excess of Cash Received Under Harbinger's Plan.

If a Claimant receives non-cash property pursuant to Harbinger's Plan, and the Claimant's tax basis in its Claim is less than the fair market value of such non-cash property, then there may be a risk that the Claimant will not receive Cash under Harbinger's Plan in an amount sufficient to pay the taxes incurred by the Claimant as a result of its distribution under Harbinger's Plan. Moreover, there may be a risk that non-cash property received by a Claimant could generate income taxable to the Claimant in particular taxable years that exceeds the cash flow generated from such property for such taxable years.

The Parent disagrees with the statement made by Harbinger in Section 16.11 above insofar as it does not address the risk of the IRS successfully asserting that the Liquidation Trust or the SCC Litigation Trust should be treated as qualified settlement funds, in which case entity level taxes may be imposed that will reduce amounts available for distribution.

SECTION 17 ALTERNATIVES TO THE COMPETING PLANS

The Debtors, the Parent and AMC, and Harbinger have each proposed their own plan of reorganization for some or all of the other Debtors. Only one plan can be confirmed. If each of the Plans meets all of the requirements for confirmation, the Bankruptcy Court will consider the preferences of holders of Claims and Interests in determining which plan of reorganization to confirm. On the other hand, if none of the competing Plans is confirmed and consummated, alternatives to the Plans include an alternative plan of reorganization or liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

17.1 Alternative Plan of Reorganization.

If none of the competing Plans are confirmed and consummated, the Debtors, the Parent and AMC, or Harbinger could attempt to formulate a different plan of reorganization. Alternatives for a plan could include a stand-alone plan of reorganization, a sale of ASARCO at a later point through an auction process, or an initial public offering of ASARCO concurrent with or subsequent to emergence from bankruptcy. The ability of ASARCO to obtain value and liquidity through any alternative sufficient to provide an attractive plan for creditors would be a function of general economic conditions, the state of the financial markets, the operating performance of ASARCO, and existing and future copper prices. Risks to such alternatives include deteriorating copper prices, such as the market has experienced in recent months, difficulty in retaining and attracting management critical to ASARCO's operations should the Debtors remain in bankruptcy for an extended period of time, and weaknesses in equity and debt markets precluding the generation of Cash sufficient to fund an exit plan. Alternatively, copper prices could rise and remain at high levels for an extended period of time, and in such an event, an alternative plan of reorganization could potentially bring more value to creditors than the current Plan.

A party in interest could ask the Bankruptcy Court to terminate exclusivity so that an alternative plan of reorganization could be filed.

The Debtors and their advisors, the Parent and AMC and their advisors, and Harbinger and its advisors have explored various alternative scenarios. They each believe that their respective Plan enables the holders of Claims to realize the maximum recovery under the circumstances. The Debtors, the Parent and AMC, and Harbinger each believe that their respective Plan, and the transactions upon which such Plan is predicated, is the best plan of reorganization that can be proposed and that it serves the best interests of the Debtors and other parties in interest.

17.2 Liquidation under Chapter 7.

If none of the competing Plans are confirmed, the Debtors' Reorganization Cases may be converted to cases under chapter 7 of the Bankruptcy Code, pursuant to which a trustee or trustees would be appointed to liquidate the assets of the Debtors for distribution in accordance with the priorities established by the Bankruptcy Code.

The Liquidation Analysis prepared by the Debtors is attached to this Disclosure Statement as **Exhibit E**. As indicated in the assumptions listed in the Liquidation Analysis, the analysis assumes the liquidation of the Debtors through orderly sales of their primary operating assets as separate going concerns. Because the Permanent Channeling Injunction would not be available in a chapter 7 liquidation, the values realized from the orderly sale of the assets would in all likelihood be reduced as a result of buyers' concerns regarding the risk of asbestos liability in the acquisition of assets. Further, the lack of a Permanent Channeling Injunction may preclude the orderly sale of the assets as separate going concerns, in which case a liquidation of the component assets would be required. The Debtors believe that the value of their operating assets as going concerns exceeds the value of the component assets. If a liquidation of the assets occurred, values realized would be further reduced and Claims against the Estates increased.

In a chapter 7 liquidation, the proceeds of the Debtors' claims against Sterlite and the Guarantor arising from the breach of the Original Plan Sponsor PSA, that the Parent has asserted could be as high as \$3 billion, would be available to the creditors. In addition, the \$7.48 billion SCC Final Judgment would also be available to satisfy creditors' claims in a liquidation. If affirmed and collected, the SCC Judgment would provide sufficient proceeds for creditors' claims to be Paid in Full. The SCC Final Judgment is RELEASED under the Parent's Plan, but is preserved for the benefit of creditors under the Debtors' Plan and under Harbinger's Plan.

Because of the difficulty of collecting any judgment against Sterlite and its affiliates, the Debtors believe that the value realized on account of the claims against Sterlite in a liquidation scenario would be highly speculative and would most likely be substantially lower than the amounts attributable to the release of these claims under the New Plan Sponsor PSA (estimated at the hearing on the Sterlite 9019 Motion at \$400 million) and would certainly be lower than the amounts asserted by the Parent, which amounts the Debtors believe fail to take into account mitigation principles and other arguments or defenses that would most likely apply. For a discussion on risks and difficulties associated with collecting a judgment against Sterlite and its parent, Sterlite Industries (India) Ltd., please see the Sterlite 9019 Motion [Docket No. 10526] and the Proffer of Jay L. Westbrook in Support of the Sterlite 9019 Motion [Docket No. 10806]. The claims against Sterlite are RELEASED under the Debtors' Plan, but are preserved under the Parent's Plan and under Harbinger's Plan.

The net proceeds resulting from the disposition of the Debtors' assets and available Cash would be available first to pay the costs and expenses of liquidation and to satisfy any additional Administrative and Priority Claims that might arise from the Debtors' liquidation under chapter 7. The Debtors' costs of liquidation under chapter 7 would include fees payable to a chapter 7 trustee and other professionals retained by the trustee including attorneys, financial advisors, and accountants, asset disposition expenses, litigation costs related to the resolution of asbestos and other Claims, other expenses incurred in the chapter 11 cases Allowed in the chapter 7 case, and Claims arising from operations of the Debtors during the chapter 11 cases. The remaining proceeds would be allocated to creditors in strict priority pursuant to the Bankruptcy Code and thereafter would be available to Interest holders.

The Plans propose to resolve complex and contentious issues between the Debtors and holders of Unsecured Asbestos Personal Injury Claims and Demands by creating differing trusts under each plan and funding the trust in the estimated or agreed upon amount of such Claims and Demands. Without such a resolution, a hypothetical chapter 7 trustee would need to address these issues through protracted and costly litigation or negotiated settlements with all of these parties as well as additional future Claimants, resulting in significant delay and a significantly greater chapter 7 administrative expense burden on the Estates, and further reducing net proceeds available for distribution.

After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, the Debtors believe that Confirmation of the Debtors' Plan will provide each holder of an impaired Claim that has not accepted the Debtors' Plan with an amount that is not less than such holder would receive pursuant to a liquidation under chapter 7 of the Bankruptcy Code.

The Liquidation Analysis is based upon a number of estimates and assumptions which, while considered reasonable, are inherently beyond the control of the Debtors or any chapter 7 trustee. There can be no assurances that the values reflected in the Liquidation Analysis would be realized if the Debtors were to undergo such liquidation. Instead, actual results could vary materially from those shown in the Liquidation Analysis. In addition, any liquidation necessarily would take place in the future under circumstances that presently cannot be predicted. Accordingly, if the Debtors' Estates were liquidated, the actual liquidation proceeds could be materially lower or higher than the amounts set forth in **Exhibit E**, and no representation or warranty can be made with respect to the actual proceeds that could be received in chapter 7 liquidation proceedings.

The Parent disagrees with certain elements of the Debtors' Liquidation Analysis, but believes that the ultimate conclusion of the Liquidation Analysis is reasonably correct. After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors, the Parent believes that Confirmation of the Parent's Plan will provide each holder of an impaired Claim that has not accepted the Parent's Plan with an amount that is not less than such holder would receive pursuant to a liquidation under chapter 7 of the Bankruptcy Code.

Harbinger agrees and adopts the Debtors' Liquidation Analysis set forth in **Exhibit E**, and believes that it demonstrates the superiority of Harbinger's Plan to a liquidation under chapter 7. In this regard, Harbinger notes that the assets that would be acquired by the Plan Sponsor under Harbinger's Plan are a subset of the assets identified on **Exhibit E** as (a) "Trade Account Receivables;" (b) "Other Receivables;" (c) "Inventory and Supplies;" and (d) "Property, Plant and Equipment, Net." These items also encompass Excluded Assets (for example, the El Paso smelter) under the Plan Sponsor PSA, and therefore overstate the value of the assets to be acquired. The Debtors estimate that this overinclusive set of assets has a liquidation value of \$478.5 and \$580.7 million. The Plan Sponsor PSA would pay \$500 million for a subset of these assets, and would also assume various liabilities that would otherwise have to be satisfied from the assets of the estate under a chapter 7 liquidation. Most notably, the Plan Sponsor PSA provides for the assumption of the Pension Plans, which are currently significantly underfunded. As reflected on **Exhibit E**, the Debtors estimate that in a liquidation scenario the PBGC would terminate the Pension Plans, resulting in claims against the estate of between \$127.7 and \$171.4 million. Under the most conservative assumptions, therefore, Harbinger's Plan provides \$500 million in exchange for assets with a liquidation value of no more than (and probably significantly less than) \$580.7 million while relieving the estate of well over \$127.7 million in liabilities. Moreover, Harbinger observes that conversion to a chapter 7 liquidation would require a new bar date and claims process, which would prolong these bankruptcy proceedings and significantly delay any creditor recoveries. After consideration of the effects that a chapter 7 liquidation would have on the ultimate proceeds available for distribution to creditors and the timing of such distribution, Harbinger believes that Confirmation of Harbinger's Plan will provide each holder of an impaired Claim that has not accepted Harbinger's Plan with an amount that is not less than such holder would receive pursuant to a liquidation under chapter 7 of the Bankruptcy Code.

SECTION 18
CORPORATE GOVERNANCE AND POST-CONFIRMATION MANAGEMENT
UNDER THE DEBTORS' PLAN

The text of this section 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 this section 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.

18.1 Cancellation of Existing Interests Under the Debtors' Plan.

Pursuant to Article 10.10 of the Debtors' Plan, unless otherwise agreed to by the Debtors, and except to the extent otherwise provided in the Debtors' Plan, on the Effective Date, immediately after distribution hereunder has been made to or for the benefit of holders of Claims, all instruments, certificates, and other documents evidencing the Interests in the Debtors shall be cancelled and the obligations of the Debtors or the Reorganized Debtors in any way related thereto (except any obligations provided for under the Debtors' Plan) shall be discharged.

18.2 Operations Between the Confirmation Date and the Effective Date Under the Debtors' Plan.

Except as set forth in the Debtors' Plan with respect to the appointment of the Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

18.3 Substantive Consolidation and Alternatives Thereto Under the Debtors' Plan.

(a) Substantive Consolidation.

On the Effective Date, the Estates of the Subsidiary Debtors (other than Covington) shall be substantively consolidated with and into ASARCO, with the surviving entity being ASARCO. The disclosures in this Section 18.3(a) are being made solely for purposes of confirmation of the Debtors' Plan and shall not be taken as an admission or as evidence of any described fact or event.

As a result of the substantive consolidation of the Debtors' Estates as set forth above, (1) all Intercompany Claims (other than between ASARCO and Covington) not otherwise resolved or disposed of pursuant to the Debtors' Plan are eliminated; (2) all assets and liabilities, including any obligations or guarantees of the Subsidiary Debtors (other than Covington) become the assets and liabilities of ASARCO; and (3) each Proof of Claim filed against any of the Subsidiary Debtors (other than Covington) is deemed filed against, and an obligation of, ASARCO.

The Debtors believe that substantive consolidation as proposed in the Debtors' Plan is appropriate for a number of reasons. The Debtors believe that, generally, creditors dealt with the Debtors as a single economic unit and did not rely on their separate identities, and that the affairs of the Debtors are so entangled that consolidation will benefit all creditors. Many of the Subsidiary Debtors sought to be consolidated have no or *de minimis* assets, and no liabilities, and so consolidation will have no effect except to save administrative expenses. In many of the instances where the Subsidiary Debtors have liabilities, ASARCO already shares those liabilities, so consolidation will not result in an increased burden on ASARCO's other creditors. The Debtors' beliefs regarding the benefits of substantive consolidation arise from the additional facts discussed below.

(1) Background of the Asbestos Subsidiary Debtors.

The Asbestos Subsidiary Committee and the FCR (in his capacity as FCR for the Asbestos Subsidiary Debtors) have conducted extensive discovery in the asbestos alter ego estimation proceeding (see Section 2.19(b) above) regarding the corporate history and operations of the Asbestos Subsidiary Debtors. Based on this discovery, the Asbestos Subsidiary Committee and the FCR have alleged that the Asbestos Subsidiary Debtors' corporate separateness may have been compromised and that ASARCO is liable for the claims against the Asbestos Subsidiary Debtors. In connection with the asbestos alter ego estimation proceeding, ASARCO, the ASARCO Committee, and the Parent opposed the Asbestos Subsidiary Committee and the FCR's attempts to impose liability on ASARCO for asbestos-related claims against the

Asbestos Subsidiary Debtors. Nonetheless, some of the evidence gathered in connection with the alter ego estimation proceeding supports the corporate interrelatedness that justifies substantive consolidation: (A) ASARCO began the asbestos mining enterprise in Canada before LAQ was formed; (B) during LAQ's early history, ASARCO guaranteed LAQ's performance and provided the funds for the business; (C) ASARCO's mining department, engineers, and legal department were involved in LAQ's operations; (D) LAQ's asbestos fiber was listed as part of ASARCO's product line and LAQ was, on occasion, described as the "ASARCO asbestos mine and mill"; (E) ASARCO personnel were involved in LAQ's marketing, product labeling and branding, research, and sales activities; (F) ASARCO formed CAPCO, in part, as a potential market for LAQ's asbestos; (G) ASARCO provided centralized functions to both CAPCO and LAQ, including medical, legal, research, traffic, collections, and credit approval; (H) ASARCO referred to CAPCO and LAQ as divisions rather than as subsidiaries; (I) ASARCO once claimed to operate the CAPCO cement asbestos plants in documents submitted to the federal government; (J) ASARCO guaranteed a number of Asbestos Subsidiary Debtors' asbestos-related settlements; and (K) ASARCO compromised insurance coverage for asbestos-related claims and, at times, used the proceeds to fund operations and cash shortfalls.

The ASARCO Committee has been an active participant in the asbestos alter ego proceeding and has asked that the following information be included in this Disclosure Statement: (A) despite allegations from various creditors of the Asbestos Subsidiary Debtors, no court ever entered a judgment determining ASARCO to be the alter ego of the Asbestos Subsidiary Debtors; (B) the Asbestos Subsidiary Debtors had their own employees, customers, payroll, manufacturing facilities, or plants; (C) the Asbestos Subsidiary Debtors had their own officers and directors and held board of directors meetings; and (D) ASARCO referred to the Asbestos Subsidiary Debtors as separate subsidiary entities.

Corporate records from the early 1970s show that there was an overlap of officers and directors among ASARCO and the Asbestos Subsidiary Debtors, and commingling of funds at various times during their history. Corporate formalities may have been suspended for periods of time. There were periods of time during which LAQ and CAPCO's board of directors did not meet. At times, ASARCO exercised direct approval rights over aspects of CAPCO and LAQ's business decisions, ranging from capital expenditures to petty cash allowances to employee salaries. The Asbestos Subsidiary Debtors did not have active boards of directors for years leading up the bankruptcy filings. In order to obtain the requisite authority to file bankruptcy, these entities, like the Other Subsidiary Debtors, had to amend their bylaws and reconstitute their boards of directors. While not controlling on state law alter ego theories, these facts support the corporate interrelatedness that justifies substantive consolidation.

The only significant asset of the Asbestos Subsidiary Debtors at the time of the filing, claims against a limited number of unsettled carriers for insurance coverage, was shared with and jointly prosecuted by ASARCO. CAPCO owns two parcels of real property, one appraised at \$319,000 and the other estimated to be worth approximately \$50,000. As for liabilities, a substantial number of asbestos Claims arising from exposure to the Asbestos Subsidiary Debtors' products were either asserted jointly against ASARCO and the Asbestos Subsidiary Debtors or against only ASARCO. While not controlling on state law alter ego theories, the filing of Proofs of Claims asserting joint liability against both ASARCO and the Asbestos Subsidiary Debtors further supports substantive consolidation.

In addition to the Claims filed against the Asbestos Subsidiary Debtors and one indemnification Claim filed by Armstrong World Industries, Inc. against each of the Debtors, asbestos-related Claims have been filed against American Smelting and Refining Company and ASARCO Master.

Originally, ASARCO was known as American Smelting and Refining Company, a New Jersey corporation. In 1975, it changed its name to ASARCO Inc. and, in order to preserve the historical name, it created a new subsidiary, a shell company incorporated in New Jersey and known as American Smelting and Refining Company. This company, which had no operations or other purpose, is the subsidiary that filed for bankruptcy in 2005. Similarly, Federated Metals Corporation., a New York corporation formed in 1924 to combine the operations of three large industrial groups covering the East, Middle West, and Pacific Coast, was acquired by ASARCO in 1934. Thereafter, Federated Metals Corporation continued to operate as a division of ASARCO. It ceased operations in the 1980s and was merged into ASARCO Master, Inc. in 2005.

(2) Background of the Other Subsidiary Debtors.(A) Corporate and Accounting Practices.

For the most part, the Other Subsidiary Debtors maintained no corporate governance or separate business records in the years leading up to the bankruptcy filings, and each needed to reconstitute their boards and amend their corporate governance documents in order to have the requisite authority to act and to file for chapter 11 protection.

Pre- and post-bankruptcy, the Debtors prepared consolidated financial statements, had an integrated cash management system, and shared accounting, tax, legal, and other administrative functions. Although ASARCO maintained a set of intercompany accounts, in many instances, the amounts reflected in those accounts represent debt that pre-dates Grupo México's acquisition of ASARCO, and ASARCO has been unable to determine the origin of these amounts and whether they represent actual intercompany debt or capital investment. In some cases the prepetition consolidated intercompany accounting did not include separate accounting districts or bank accounts for certain of the ASARCO subsidiaries. As disclosed in the Schedules and other pleadings, the intercompany records show large intercompany balances, the origin of which is not fully understood, including a \$32 million intercompany balance due to ASARCO by ASARCO Oil and Gas Company, an \$11.2 million intercompany balance owed by ASARCO Exploration Company, and a \$5.2 million intercompany balance due to ASARCO Consulting, Inc. owed by ASARCO.

The Debtors have attempted to correct identified deficiencies. New accounting districts and bank accounts have been opened since the bankruptcy filings. ASARCO also has sought to formalize relations by entering into Bankruptcy Court-approved intercompany contracts. For example, ASARCO entered into a property management agreement with Bridgeview Management Company, Inc. for management of ASARCO's leasehold interests in New Jersey and a storage and administrative services agreement with AR Sacaton for storage services in one or more warehouses in Arizona.

(B) Assets and Liabilities.

None of the Other Subsidiary Debtors had any operations for years prior to their respective bankruptcy filings, and most have no assets or liabilities, except *de minimis* assets or liabilities, litigation assets shared with ASARCO, and common liabilities such as statutory joint and several contingent liability to the PBGC, joint liability under the Coal Act, and shared environmental liabilities. For example, ASARCO (and its predecessors) entered various environmental agreements with state and federal authorities under which it agreed to perform environmental work or guarantee environmental compliance on behalf of, or in addition to, various of the Other Subsidiary Debtors in order to resolve ASARCO's shared or independent environmental responsibilities. In addition, several creditors have filed Proofs of Claim against all or most of the Debtors or have failed to identify a Debtor, which indicates that creditors view them as a single economic unit.⁴⁰

Certain of the Other Subsidiary Debtors are co-plaintiffs with ASARCO that was in pending fraudulent transfer actions to recover valuable assets for the benefit of all creditors. Recovery of the property transferred fraudulently and in disregard of the rights and claims of creditors while insolvent will be transferred to the Liquidation Trust for the benefit of creditors under the Debtors' Plan. Further, MRI, the defendant in the lawsuit to recover ASARCO's partnership interest in the Montana Resources copper and molybdenum mine (as discussed in Section 2.24(e) above), has filed Proofs of Claim (each in the amount of approximately \$87 million) against both ASARCO Master and ASARCO for the same alleged debt and expressly stated that ASARCO is the alter ego of ASARCO Master and responsible for payment of its Proof of Claim. ASARCO has admitted this allegation in the lawsuit.

In addition to the litigation shared with ASARCO, the only other asset of ASARCO Master is real property previously owned by either Federated Metals Corporation or Domestic Realty Company, Inc. (both of which were merged into ASARCO Master in 2005). Other than *de minimis* claims and claims also asserted against ASARCO, all

⁴⁰ AIG, FFIC, Armstrong World Industries, Deutsche Bank Company, Missouri Department of Natural Resources, the State of New Mexico, and the UMWA Plans have filed Claims against each of the Debtors. Additionally, Pierce Duanne and Joe Ricker (former ASARCO Inc. employees), Kansas Department of Health and the Environment, and Washington State Department of Ecology also have filed Claims against many of the Debtors. Furthermore, out of the total 991 non-ASARCO, general Proofs of Claim filed to date, 471 failed to identify the Debtor against which the Claim is being asserted.

other Claims filed against ASARCO Master relate to the operations of AR Montana, Domestic Realty Company, Federated Metals Corporation, and Midland Coal Company. The AR Montana claims relate to the MRI lawsuit described in the preceding paragraph. The Domestic Realty Claims relate solely to the East Helena and Everett sites, both of which historically were owned and operated by ASARCO and transferred to Domestic Realty for holding and resale purposes after operations at those sites had ceased. Finally, the remaining Claims relate to the historical operations of Federated Metals Corporation and the Midland Coal division of ASARCO. In the case of Federated Metals Corporation, which operated and was marketed as a division of ASARCO, the Claims assert asbestos-related and environmental liabilities in connection with the San Francisco, Houston, and Gulf Metals sites. In the case of the Midland Coal Company, a predecessor to ASARCO Master, which was created to hold the liabilities related to the operations of the Midland Coal division of ASARCO, the only Claim that facially relates to Midland Coal is a Claim filed by SAFECO Inc., which is a Claim under an undrawn surety bond that is subject to a pending claim objection under section 502(e)(1)(b) of the Bankruptcy Code. The schedule attached to the SAFECO surety bond Claim identifies the Midland Coal division of ASARCO as the principal for the bond such that this alleged liability may be a direct obligation of ASARCO.

As it relates to AR Sacaton, other than Claims filed against all Debtors and a Claim by the State of Arizona also filed against ASARCO and asserting liabilities related to ASARCO's current active operations, the only other two Claims filed against this subsidiary are a \$45 million Claim filed by the ADEQ related to the Sacaton mine and a \$262,163 Claim filed by AMC relating to property quitclaimed to AMC in 2004 to raise quick cash for ASARCO to pay past due operating expenses. The Claim by the ADEQ relates to remediation obligations in connection with the Sacaton mine, which was owned and operated by ASARCO until the early 1980s. The property remained as an asset of ASARCO until it was transferred to AR Sacaton, a company created for the purpose of holding this land, in 1998. In 2004, as mentioned above, AR Sacaton transferred a portion of the Sacaton property to AMC, which in turn sold most of it to a third party that year. In exchange for the transfer ASARCO (not Sacaton) was paid approximately \$5 million by AMC. These transfers are the subject of the fraudulent transfer action discussed above in Section 2.24(g). Also in 2004, AMC quitclaimed to AR Sacaton the 34 acres that it did not sell. The fraudulent transfer action and the remaining portion of the Sacaton property represent AR Sacaton's only assets.

Encycle, Inc., a non-operating holding company, is the direct parent of Encycle/Texas, Inc. (the debtor in a related chapter 7 case) and ASARCO Consulting, Inc. The interests in these entities represent Encycle's sole assets. Other than the Claims filed against every Debtor, a couple of trade Claims totaling less than \$10,000, and a handful of pension-related Claims to which the Debtors have objected, the only other Claims filed against Encycle are environmental Claims related to the Encycle/Texas sites, which also were asserted against ASARCO and have been settled. Similarly, other than a historical \$5 million intercompany Claim against ASARCO, the assets of ASARCO Consulting, Inc. total less than \$50,000 (including stale employee receivables). ASARCO Consulting, Inc. has no liabilities other than the common Claims, a couple of pension Claims to which the Debtors have objected, *de minimis* trade and tax Claims totaling less than \$20,000, and two environmental Claims related to sites in Montana and Oklahoma, which also were asserted against ASARCO and the Other Subsidiary Debtors. ASARCO Consulting, Inc. and its predecessor Hydrometrics, Inc. were environmental engineering firms that, historically, derived 70 to 100 percent of their business from ASARCO projects. ASARCO Consulting, Inc.'s role, if any, in connection with the Montana and Oklahoma sites would have been in its capacity of environmental contractor and consultant to ASARCO and its affiliates.

Bridgeview Management Company, Inc. was created to manage the commercial real property leaseholds established in the Perth Amboy property, which used to house a secondary smelter and a copper refinery that was operated by ASARCO prior to its shutdown in the 1970s. Bridgeview Management Company, Inc.'s exclusive business is the management of properties owned by ASARCO and CAPCO. Other than the common Claims against all Debtors, the only Claim filed against Bridgeview Management Company, Inc. is a remediation Claim by a lessee who also asserted a Claim against ASARCO as owner and former operator of the Perth Amboy site.

ASARCO Oil and Gas Company has assets in the form of oil and gas leases that post-petition have generated annual royalties anywhere between \$200,000 and \$500,000, and no liabilities. ASARCO Exploration Company, Inc., another wholly-owned subsidiary of ASARCO, owns 5 million shares of Elekra Mines Ltd. and a right to a contingent payment of almost \$1 million, and has no liabilities other than approximately \$50,000 in trade debt and, as mentioned earlier, a large historical intercompany payable due to ASARCO.

The 2008 Subsidiary Debtors have *de minimis* real estate assets worth less than \$200,000 in the aggregate, less than \$1,000 in potential tax-related liability, and no other liability except for liabilities shared with ASARCO.

No other Claims have been asserted against the remaining Other Subsidiary Debtors, except for Claims filed against SPHC that have been withdrawn as satisfied, Claims against Government Gulch Company asserting environmental liabilities related to the Coeur d'Alene site for which ASARCO is jointly and severally liable, and less than 100 environmental, asbestos, toxic-torts, and employee-related Claims filed against American Smelting and Refining Company, the non-operating company formed to preserve ASARCO's historical name.

(b) Voluntary Consolidation Pursuant to Section 1123(a)(5)(C) of the Bankruptcy Code Under the Debtors' Plan.

Pursuant to section 1123(a)(5)(C) of the Bankruptcy Code, "[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall provide adequate means for the plan's implementation such as . . . merger or consolidation of the debtor with one or more persons" 11 U.S.C. § 1123(a)(5)(C). Holders of Claims in impaired Classes shall vote on the Debtors' Plan on a Debtor-by-Debtor basis so that their votes may be counted in this fashion, should the Debtors elect voluntary consolidation rather than substantive consolidation.

As an alternative to substantive consolidation, the Debtors reserve the right, pursuant to section 1123(a)(5)(C), to consolidate the Subsidiary Debtors (other than Covington) into ASARCO on the Effective Date.

The Parent contends that section 1123(a)(5)(C) of the Bankruptcy Code merely allows affiliated debtors, as one of the means of implementation of a joint plan of reorganization, to emerge from bankruptcy as a single entity (provided their creditors vote to approve the plan providing for such result), and that section 1123(a)(5)(C) was never meant to allow debtors to merge their estates for distribution purposes. Had section 1123(a)(5)(C) been available to achieve that result, according to the Parent, there would have been no need for the "substantive consolidation" remedy or vigorous legal debate surrounding its appropriateness.

The Debtors disagree.

(c) Separate Plans under Chapter 11 or Conversion to Chapter 7 Cases for Certain of the Subsidiary Debtors.

As another alternative, the Debtors reserve the right to proceed with the Debtors' Plan as to only ASARCO, Covington, ASARCO Master, SPHC, AR Sacaton, and the Asbestos Subsidiary Debtors. Thereafter, the Subsidiary Debtors not included in the Debtors' Plan with ASARCO would either file a proposed plan under chapter 11 of the Bankruptcy Code or convert their cases to liquidation cases under chapter 7 of the Bankruptcy Code.

In this event, the assets of ASARCO Master, SPHC, and AR Sacaton would vest in reorganized ASARCO Master, reorganized SPHC, and reorganized AR Sacaton, respectively, and the assets of the Asbestos Subsidiary Debtors would vest in the reorganized Asbestos Subsidiary Debtors. The Plan Administrator would hold the interests in Reorganized ASARCO, which would in turn own the interests in reorganized ASARCO Master, reorganized SPHC, and reorganized AR Sacaton. Reorganized ASARCO would continue to own the interests in the Other Subsidiary Debtors.

The rights, powers, and duties of the directors and officers of reorganized ASARCO Master, reorganized SPHC, and reorganized AR Sacaton would vest in the Plan Administrator, and the Plan Administrator or his, her, or its designee would be the presiding officer and sole director of Reorganized ASARCO, reorganized ASARCO Master, reorganized SPHC, and reorganized AR Sacaton (unless and until the appointment of additional officers and directors for any of them). The Asbestos Trust would hold the interests in Reorganized Covington. The Asbestos Trust would create an intervening trust that would hold the interests in the reorganized Asbestos Subsidiary Debtors and would appoint the persons to serve as officers and directors of each such entity.

Reorganized ASARCO, Reorganized Covington, reorganized ASARCO Master, reorganized SPHC, reorganized AR Sacaton, and the reorganized Asbestos Subsidiary Debtors would continue their existences as separate entities after the Effective Date.

(d) Effect of Voting in Favor of the Debtors' Plan.

A vote in favor of the Debtors' Plan constitutes a vote in favor of voluntary consolidation pursuant to Section 18.3(b) above and a vote in favor of the separate plans proposed pursuant to Section 18.3(c) above.

18.4 Issuance of Interests in Reorganized ASARCO Under the Debtors' Plan.

On or after the Effective Date, Reorganized ASARCO shall issue interests in Reorganized ASARCO for distribution in accordance with the terms of the Debtors' Plan, which shall represent all of the equity interests in Reorganized ASARCO as of the Effective Date. They shall be held by the Plan Administrator for the benefit of holders of Class 3 and Class 4 Claims. The issuance of interests in Reorganized ASARCO under the Debtors' Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized ASARCO's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in the Debtors' Plan.

18.5 Issuance of Interests in Reorganized Covington Under the Debtors' Plan.

On or after the Effective Date, Reorganized Covington shall issue interests in Reorganized Covington for distribution in accordance with the terms of the Debtors' Plan, which shall represent all of the equity interests in Reorganized Covington as of the Effective Date. The Asbestos Trust shall own 100 percent of the interests in Reorganized Covington and shall be entitled to periodic dividends and other distributions from Reorganized Covington. The issuance of interests in Reorganized Covington pursuant to distributions under the Debtors' Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized Covington's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in the Debtors' Plan.

18.6 Charter Documents Under the Debtors' Plan.

The charter documents of each of the Reorganized Debtors shall be amended, as of the Effective Date, to prohibit the issuance of nonvoting equity securities. The forms of these documents are attached to the Debtors' Plan as Exhibit 13.

18.7 Management of the Reorganized Debtors Under the Debtors' Plan.

On the Effective Date, (a) the current directors and officers of ASARCO and the Subsidiary Debtors shall be removed (without the necessity of further action) and shall have no further obligations; (b) to the fullest extent permitted by applicable law, the rights, powers, and duties of the directors and officers of Reorganized ASARCO shall vest in the Plan Administrator, and the Plan Administrator or the Plan Administrator's designee shall be the presiding officer and the sole director of Reorganized ASARCO (unless and until additional officers or directors are appointed pursuant to the Plan Administration Agreement); and (c) the Asbestos Trustees shall appoint the persons to serve as officers and directors of Reorganized Covington. The compensation for service as officer and director of each of the Reorganized Debtors, and biographical data regarding the proposed Plan Administrator shall be filed with the Bankruptcy Court at least 10 days prior to the commencement of the Confirmation Hearing.

18.8 Reorganized Debtors' Name Changes Under the Debtors' Plan.

On the Effective Date, Reorganized ASARCO shall change its name to ASARCO Administration Company, LLC, and Reorganized Covington shall change its name to The Covington Company, LLC.

18.9 Continued Corporate Existence and Business Operations of the Reorganized Debtors Under the Debtors' Plan.

Except as otherwise provided in Article X of the Debtors' Plan, the Reorganized Debtors shall continue their existences as separate entities after the Effective Date for the purposes of operating their businesses and satisfying their obligations under the Debtors' Plan, in accordance with applicable law and pursuant to their applicable organizational documents. The Plan Administrator shall, in accordance with the Plan Administration Agreement, operate the business of Reorganized ASARCO, and the officers and directors of Reorganized Covington shall, in accordance with the charter documents of Reorganized Covington, operate the business of Reorganized Covington. On or after the Effective Date, the Plan Administrator and the officers and directors of Reorganized Covington, as applicable, may take such action as permitted by applicable law and each of the Reorganized Debtors' organizational documents, as they may determine is reasonable and appropriate, including to cause (a) each Reorganized Debtor's legal name to be changed; (b) the closure of the Reorganized Debtors' bankruptcy cases (upon consultation with Liquidation Trustee, the SCC Litigation Trustee, and the Asbestos Trustees); or (c) the Reorganized Debtors to be engaged in such businesses or activities as are appropriate to their respective corporate purposes.

18.10 Director and Executive Compensation Under the Debtors' Plan.

A schedule of the annual compensation to be paid to persons serving as executives, officers, and directors of the Reorganized Debtors as of the Effective Date shall be filed with the Bankruptcy Court no later than 10 days before the commencement of the Confirmation Hearing.

SECTION 19
CORPORATE GOVERNANCE, POST-CONFIRMATION MANAGEMENT, EMPLOYMENT-RELATED
AGREEMENTS, AND CONTINUATION OF EMPLOYEE BENEFITS PLANS
UNDER THE PARENT'S PLAN

The text of this section of the Disclosure Statement 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 each expressly reserve their respective rights to contest any such statements or representations, if appropriate.

19.1 Retention of Existing Interests Under the Parent's Plan.

On the Effective Date, the Parent will directly or indirectly own 100 percent of the outstanding New Equity Interests in Reorganized ASARCO. As set forth in detail in Section 6.5, the Parent's Plan is a "new value plan" and the Parent believes that it has satisfied the requirements for such a plan to be confirmed.

The Debtors disagree.

19.2 Operations Between the Confirmation Date and the Effective Date Under the Parent's Plan.

Except as set forth herein with respect to the appointment of the Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors-in-possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

19.3 Limited Liability Company Agreement, Certificate of Incorporation, and Bylaws Under the Parent's Plan.

The amended LLC Agreement and bylaws of Reorganized ASARCO shall be filed as soon as reasonably practicable after the date on which the Parent's Plan is confirmed.

19.4 Management of Reorganized ASARCO Under the Parent's Plan.

Pursuant to section 1129(a)(5) of the Bankruptcy Code, the Parent shall file, on or prior to the Confirmation Date, a document disclosing the identity and affiliations of any person proposed to serve on the initial board of directors of Reorganized ASARCO or as an officer of Reorganized ASARCO. To the extent any such person is an insider, the nature of any compensation payable to such person shall be disclosed at such time. Reorganized ASARCO shall have a five-person board of directors, each of them nominated by the Parent. Each director and officer shall serve from and after the Effective Date pursuant to the terms of the amended LLC Agreement, and applicable law.

19.5 Director and Executive Compensation Under the Parent's Plan.

Not less than 10 days prior to the commencement of the Confirmation Hearing, the Parent shall file with the Bankruptcy Court a schedule of the identities, affiliations, and annual compensation of persons proposed to serve as executives, officers, and directors of Reorganized ASARCO as of the Effective Date.

SECTION 20
CORPORATE GOVERNANCE AND POST-CONFIRMATION MANAGEMENT UNDER HARBINGER'S PLAN

The text of this section of the Disclosure Statement 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.

20.1 Cancellation of Existing Interests Under Harbinger's Plan.

Pursuant to Article 10.10 of Harbinger's Plan, unless otherwise agreed to by Harbinger, and except to the extent otherwise provided in Harbinger's Plan, on the Effective Date, immediately after distributions under Harbinger's Plan have been made to or for the benefit of holders of Claims, all instruments, certificates, and other documents evidencing the Interests in the Debtors shall be cancelled and the obligations of the Debtors or the Reorganized Debtors in any way related thereto (except any obligations provided for under Harbinger's Plan) shall be discharged.

20.2 Operations Between the Confirmation Date and the Effective Date Under Harbinger's Plan.

Except as set forth in Harbinger's Plan with respect to the appointment of the Plan Administrator, during the period from the Confirmation Date through and until the Effective Date, the Debtors shall continue to operate as debtors in possession, subject to the oversight of the Bankruptcy Court as provided in the Bankruptcy Code, the Bankruptcy Rules, and all orders of the Bankruptcy Court that are then in full force and effect.

20.3 Substantive Consolidation and Alternatives Thereto Under Harbinger's Plan.

Harbinger's Plan contains substantially identical provisions as does the Debtors' Plan regarding substantive consolidation. Please refer to section 18.3 of this Disclosure Statement.

20.4 Issuance of Interests in Reorganized ASARCO Under Harbinger's Plan.

On or after the Effective Date, Reorganized ASARCO shall issue interests in Reorganized ASARCO for distribution in accordance with the terms of Harbinger's Plan, which shall represent all of the equity interests in Reorganized ASARCO as of the Effective Date. They shall be held by the Plan Administrator. The issuance of interests in Reorganized ASARCO under Harbinger's Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized ASARCO's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in the Plan.

20.5 Issuance of Interests in Reorganized Covington Under Harbinger's Plan.

On or after the Effective Date, Reorganized Covington shall issue interests in Reorganized Covington for distribution in accordance with the terms of Harbinger's Plan, which shall represent all of the equity interests in Reorganized Covington as of the Effective Date. The Asbestos Claims Liquidation Trust shall own 100 percent of the interests in Reorganized Covington and shall be entitled to periodic dividends and other distributions from Reorganized Covington. The issuance of interests in Reorganized Covington pursuant to distributions under the Plan shall be authorized under section 1145 of the Bankruptcy Code as of the Effective Date without further act or action by any Person, except as may be required by Reorganized Covington's organizational documents or applicable law, regulation, order, or rule; and all documents evidencing such issuance shall be executed and delivered as provided for in the Plan.

20.6 Charter Documents Under Harbinger's Plan.

The charter documents of each of the Reorganized Debtors shall be amended, as of the Effective Date, to prohibit the issuance of nonvoting equity securities. The forms of these documents are attached to the Debtors' Plan as **Exhibit 13**.

20.7 Management of the Reorganized Debtors Under Harbinger's Plan.

On the Effective Date, (a) the current directors and officers of ASARCO and the Subsidiary Debtors shall be removed (without the necessity of further action) and shall have no further obligations; (b) to the fullest extent permitted by applicable law, the rights, powers, and duties of the directors and officers of Reorganized ASARCO shall vest in the Plan Administrator, and the Plan Administrator or the Plan Administrator's designee shall be the presiding

officer and the sole director of Reorganized ASARCO (unless and until additional officers or directors are appointed pursuant to the Plan Administration Agreement); and (c) the Asbestos Claims Liquidation Trustees shall appoint the persons to serve as officers and directors of Reorganized Covington. The compensation for service as officer and director of each of the Reorganized Debtors, and biographical data regarding the proposed Plan Administrator shall be filed with the Bankruptcy Court at least 10 days prior to the commencement of the Confirmation Hearing.

20.8 Reorganized Debtors' Name Changes Under Harbinger's Plan.

On the Effective Date, Reorganized ASARCO shall change its name to ASARCO Administration Company, LLC, and Reorganized Covington shall change its name to The Covington Company, LLC.

20.9 Continued Corporate Existence and Business Operations of the Reorganized Debtors Under Harbinger's Plan.

Except as otherwise provided in Article X of Harbinger's Plan, the Reorganized Debtors shall continue their existences as separate entities after the Effective Date for the purposes of operating their businesses and satisfying their obligations under the Plan, in accordance with applicable law and pursuant to their applicable organizational documents. The Plan Administrator shall, in accordance with the Plan Administration Agreement, operate the business of Reorganized ASARCO, and the officers and directors of Reorganized Covington shall, in accordance with the charter documents of Reorganized Covington, operate the business of Reorganized Covington. On or after the Effective Date, the Plan Administrator and the officers and directors of Reorganized Covington, as applicable, may take such action as permitted by applicable law and each of the Reorganized Debtors' organizational documents, as they may determine is reasonable and appropriate, including to cause (a) each Reorganized Debtor's legal name to be changed; (b) the closure of the Reorganized Debtors' bankruptcy cases (upon consultation with Liquidation Trustee, the SCC Litigation Trustee, and the Asbestos Claims Liquidation Trustees); or (c) the Reorganized Debtors to be engaged in such businesses or activities as are appropriate to their respective corporate purposes.

20.10 Director and Executive Compensation Under Harbinger's Plan.

A schedule of the annual compensation to be paid to persons serving as executives, officers, and directors of the Reorganized Debtors as of the Effective Date shall be filed with the Bankruptcy Court no later than 10 days before the commencement of the Confirmation Hearing.

SECTION 21 CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE DEBTORS' PLAN

The text of this section 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 this section 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.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, holders of Claims are hereby notified that: (a) any discussion of United States federal tax issues in this document is not intended or written to be relied upon, and cannot be relied upon, by holders of Claims, for the purpose of avoiding penalties that may be imposed on such holders of Claims under the Internal Revenue Code; (b) such discussion is written in connection with the promotion or marketing of the transactions or matters addressed herein; and (c) holders of Claims should seek advice based on their particular circumstances from an independent tax advisor.

21.1 General.

Set forth below is a summary of certain federal income tax consequences of the consummation of the Debtors' Plan. The summary is based on the Internal Revenue Code, final, temporary, and proposed Treasury Regulations promulgated thereunder, administrative pronouncements or practices, and judicial decisions, all as of the date hereof. Future legislative, judicial, or administrative modifications, revocations, or interpretations, which may or may not be retroactive, may result in federal income tax consequences significantly different from those discussed herein. This summary is not binding on the IRS or United States courts, and no assurance can be given that the conclusions reached in this summary will not be challenged by the IRS or will be sustained by a United States court if so challenged. In addition,

the Debtors have not requested, and do not intend to request, a ruling from the IRS regarding any of the federal income tax consequences of the implementation of the Debtors' Plan.

This summary does not address the federal income tax consequences to certain categories of holders of Claims subject to special rules, including, without limitation, holders of Claims that are (a) banks, financial institutions, or insurance companies; (b) real estate investment trusts, cooperatives, regulated investment companies, mutual funds, or small business investment companies; (c) brokers or dealers in securities; (d) tax-exempt organizations; (e) investors in pass-through entities and such entities themselves; and (f) foreign taxpayers. Furthermore, this summary is limited to United States federal income tax consequences and does not discuss state, local, or foreign tax consequences or federal estate or gift tax consequences.

This summary is for general information purposes only and does not purport to be a complete analysis or listing of all potential federal income tax consequences that may apply to holders of Claims as a result of the implementation of the Debtors' Plan. In addition, this summary does not take into account the individual facts and circumstances of particular holders of Claims that may affect the federal income tax consequences of the implementation of the Debtors' Plan to such holders. Accordingly, this summary is not intended to be, and should not be construed as, legal or federal income tax advice. Holders of Claims should consult their own tax advisors regarding the federal, state, local, and foreign tax consequences of the Debtors' Plan.

21.2 Federal Income Tax Classification of Trusts, Disputed Claims Reserve, and Disputed Secured Claims Reserves Under the Debtors' Plan.

The federal income tax consequences of the Debtors' Plan to the Debtors and Claimants will depend to a large degree on the federal income tax classification of the Asbestos Trust, the Environmental Custodial Trusts, the Liquidation Trust, the SCC Litigation Trust, the Disputed Claims Reserve, and the Disputed Secured Claims Reserves.

(a) Classification of Asbestos Trust and Environmental Custodial Trusts Under the Debtors' Plan.

The Treasury regulations promulgated under section 468B of the Internal Revenue Code provide that a fund, account, or trust will be a qualified settlement fund if three conditions are met. First, the fund, account, or trust must be established pursuant to an order of, or be approved by, a government authority, including a court, and must be subject to the continuing jurisdiction of that government authority. Second, the fund, account, or trust must be established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event or related series of events that has occurred and that has given rise to at least one claim asserting liability arising out of, among other things, a tort, violation of law, or CERCLA claim. Third, the fund, account, or trust must be a trust under applicable state law or have its assets physically segregated from the other assets of the transferor and persons related to the transferor.

The Asbestos Trust and the Environmental Custodial Trusts have been structured so as to comply with the foregoing requirements to the maximum extent possible. However, the Debtors have not sought, and do not intend to seek, a ruling from the IRS or an opinion of counsel regarding the status of the Asbestos Trust and the Environmental Custodial Trusts as qualified settlement funds. Accordingly, there can be no assurance that the IRS will not take a contrary position. Except as otherwise specified, the remainder of the tax considerations discussion assumes that the Asbestos Trust and the Environmental Custodial Trusts will be treated as qualified settlement funds.

Assuming that the Asbestos Trust and the Environmental Custodial Trusts qualify for qualified settlement fund treatment, the Asbestos Trust and the Environmental Custodial Trusts will be treated as separate taxable entities and the Asbestos Trust and the Environmental Custodial Trusts (to the extent such Environmental Custodial Trusts are not treated for tax purposes as beneficially owned by the United States pursuant to section 468B(g)(2) of the Internal Revenue Code) will generally be subject to federal income tax on their modified taxable income at the maximum rate applicable to trusts, which is currently 35 percent. In determining the modified taxable income of the Asbestos Trust and each Environmental Custodial Trust, (1) amounts transferred by the Debtors to such trust (other than payments in compensation for late or delayed transfers, dividends on stock of a Debtor or related person, or interest on the debt of a Debtor or related person) pursuant to the Debtors' Plan will generally be excluded from the trust's income; (2) any sale, exchange, or distribution of property by such trust will generally be treated as a sale and result in the recognition of gain or loss in an amount equal to the difference between the fair market value of the property on the date of such disposition and the adjusted tax basis of the trust in such property; and (3) administrative costs (including state and local taxes) incurred by such trust that would be deductible in determining the taxable income of a corporation will generally be deductible by the trust. The adjusted tax basis of the Asbestos Trust and the Environmental Custodial Trusts in property received from

the Debtors (or from an insurer on behalf of the Debtors) pursuant to the Debtors' Plan will generally be the fair market value of such property at the time of such transfer.

(b) Classification of Liquidation Trust and SCC Litigation Trust Under the Debtors' Plan.

It is intended that the Liquidation Trust and the SCC Litigation Trust each will be treated for federal income tax purposes as a grantor trust owned by the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners, respectively. This position is based, in part, on the Debtors' belief that the trusts do not meet the requirements contained in the Treasury Regulations for qualified settlement fund treatment, as described above. However, there is little guidance on this issue, and the Debtors have not sought, and do not intend to seek, a ruling from the IRS or an opinion of counsel regarding the proper tax treatment of the Liquidation Trust or the SCC Litigation Trust. Accordingly, there can be no assurance that the IRS will not take a contrary position.

Assuming that the Liquidation Trust and the SCC Litigation Trust are treated as grantor trusts owned by the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners, respectively, no entity-level tax will be imposed on any of the income or gain derived by the Liquidation Trust and the SCC Litigation Trust. Instead, the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners will be treated as the owners of the Liquidation Trust's assets and the SCC Litigation Trust's assets, respectively, for federal income tax purposes and will be required to include in their computation of taxable income their allocable share of income and gain generated by the Liquidation Trust and the SCC Litigation Trust. If either the Liquidation Trust or the SCC Litigation Trust is treated as a qualified settlement fund, entity level taxes may be imposed on the earnings of such Trust, as described above. Except as otherwise specified, the remainder of the tax considerations discussion assumes that the Liquidation Trust and the SCC Litigation Trust each will be treated for federal income tax purposes as a grantor trust owned by the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners, respectively.

(c) Classification of Disputed Claims Reserve and Disputed Secured Claims Reserves Under the Debtors' Plan.

The Treasury regulations promulgated under section 468B of the Internal Revenue Code provide that a fund, escrow account, or trust will be a disputed ownership fund if four conditions are met. First, the fund, escrow account, or trust must be established to hold money or property subject to conflicting claims of ownership. Second, the fund, escrow account, or trust must be subject to the continuing jurisdiction of a court. Third, the fund, escrow account, or trust is required to obtain the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor claimant. Finally, the fund, escrow account, or trust must not be a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, a qualified settlement fund, or a liquidating trust (except for certain liquidating trusts established pursuant to a confirmed bankruptcy plan).

It is unclear as to whether the Disputed Claims Reserve or a Disputed Secured Claims Reserve qualifies as a disputed ownership fund under the foregoing rules since it is not clear that the third condition is satisfied. It is also unclear as to whether the Disputed Claims Reserve or any Disputed Secured Claims Reserve qualifies as a qualified settlement fund. If the Disputed Claims Reserve or a Disputed Secured Claims Reserve qualifies as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1) or as a qualified settlement fund, it would be subject to entity level federal income taxation on its income, and such entity level taxes imposed on such reserve would be paid out of such reserve. If the Disputed Claims Reserve or a Disputed Secured Claims Reserve does not qualify as a disputed ownership fund within the meaning of Treasury Regulations section 1.468B-9(b)(1) or as a qualified settlement fund, then it will not be treated as a separate taxable entity subject to entity level taxation, and the person that is deemed to "own" the reserve for U.S. federal income tax purposes will be required to pay federal income taxes on its earnings.

The Plan Administrator intends to take the position that the Disputed Claims Reserve and the Disputed Secured Claims Reserves do not qualify as disputed ownership funds within the meaning of Treasury Regulations section 1.468B-9(b)(1) or as qualified settlement funds. The Plan Administrator shall comply with all tax-reporting requirements as though the Disputed Claims Reserve and any Disputed Secured Claims Reserves are grantor trusts deemed owned by Reorganized ASARCO, and shall cause taxes attributable to the earnings of the Disputed Claims Reserve or a Disputed Secured Claims Reserve (as well as any taxes directly imposed on the Disputed Claims Reserve or a Disputed Secured Claims Reserve) to be paid out of the assets of the Disputed Claims Reserve or the Disputed Secured Claims Reserve, respectively.

21.3 Federal Income Tax Consequences to Debtors Under the Debtors' Plan.

(a) Cancellation of Indebtedness.

Under the Internal Revenue Code, a taxpayer generally must include in gross income the amount of any COD Income realized during the taxable year. Subject to the exception described in the next sentence, the Debtors will generally realize COD Income upon the satisfaction of a Claim pursuant to the Debtors' Plan to the extent that the liquidated amount of the Claim (or, in the case of the Bonds, the "adjusted issue price" of the Bonds) exceeds the sum of the amount of cash and the fair market value of property paid in satisfaction of such Claim. Section 108 of the Internal Revenue Code provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to an income tax deduction. Pursuant to this exception, it is expected that the satisfaction of all or substantially all of the Toxic Tort Claims and Unsecured Asbestos Personal Injury Claims, and the satisfaction of most of the environmental Claims, will not result in COD Income to the Debtors. Section 108 of the Internal Revenue Code provides further that COD Income may be excluded from gross income to the extent that the taxpayer is insolvent or is in bankruptcy, but such excluded amount must be applied to reduce certain tax attributes of the taxpayer. Because ASARCO is a disregarded entity for tax purposes and its owner is not in bankruptcy, it is unlikely that this bankruptcy exception will be applicable.

(b) Sale of Sold Assets to Plan Sponsor.

The sale of the Sold Assets to the Plan Sponsor will be a taxable event, resulting in taxable gain to the Debtors in an amount equal to the difference between (1) the amount of cash received by the Debtors, the "issue price" of the noncontingent portion of the Plan Sponsor Promissory Note, and the fair market value of any other property received by the Debtors (including, without limitation, the contingent portion of the Plan Sponsor Promissory Note) and (2) the Debtors' adjusted tax basis of the Sold Assets. This taxable gain is expected to be substantial. However, tax deductions generated as a result of the satisfaction of certain of the Claims (as more particularly described below) are expected to offset such taxable gain.

(c) Transfers of Assets other than Cash to Trusts.

Assuming that the Liquidation Trust and the SCC Litigation Trust qualify as grantor trusts owned by their respective tax owners, and that the Asbestos Trust and the Environmental Custodial Trusts qualify as qualified settlement funds (as discussed above), the Debtors will be treated as having made a taxable disposition of the assets transferred to the Liquidation Trust (except to the extent the Debtors are Liquidation Trust Tax Owners), the SCC Litigation Trust (except to the extent the Debtors are SCC Litigation Trust Tax Owners), the Asbestos Trust, and the Environmental Custodial Trusts. As a result, the Debtors will generally recognize gain or loss on the transfer of any such assets other than cash in an amount equal to the difference between (1) the fair market value of such transferred assets and (2) the Debtors' adjusted tax basis in such transferred assets.

(d) Deductibility of Amounts Transferred in Satisfaction of Asbestos, Toxic Tort, and Certain Environmental Claims.

The Debtors should be entitled to a deduction for all or substantially all of the amount of cash and the fair market value of other assets paid in satisfaction of the Unsecured Asbestos Personal Injury Claims and Toxic Tort Claims, and for a substantial portion of the amounts paid in satisfaction of the environmental Claims, once the usual requirements imposed on accrual basis taxpayers with respect to the satisfaction of liabilities are met. Assuming that the Liquidation Trust and the SCC Litigation Trust qualify as grantor trusts owned by their respective tax owners, and that the Asbestos Trust and the Environmental Custodial Trusts qualify as qualified settlement funds (as discussed above), these requirements should generally be met at the time Cash or assets are transferred to the Liquidation Trust, the SCC Litigation Trust, the Asbestos Trust, and the Environmental Custodial Trusts.

The Debtors will not be allowed a deduction for payments to the Trusts to the extent that such payments represent insurance proceeds received by the Debtors. In such case, payments of amounts representing insurance proceeds should not cause recognition of income to the Debtors. Alternatively, if the Debtors' transfer of amounts representing insurance proceeds were to cause recognition of income by the Debtors, the Debtors should be entitled to a corresponding deduction for the payment of such amounts to the Trusts.

Similarly, the Debtors will not be allowed a deduction for payments to the Trusts to the extent the Debtors have a right to reimbursement (with a positive fair market value) with respect to such payments from any third party.

Any deductions for payments made to the Trusts first would reduce or eliminate the Debtors' federal taxable income for the taxable year in which the payments are made. To the extent these deductions created a taxable loss for such year, the loss would constitute a net operating loss.

21.4 Federal Income Tax Consequences to Holders of Claims Under the Debtors' Plan.

(a) General.

The tax consequences of the Debtors' Plan to a holder of a Claim will depend, in part, on the type of consideration the holder receives in exchange for the Claim, whether the holder reports income on the accrual or cash-basis method, and whether the holder receives distributions under the Debtors' Plan in more than one taxable year.

In general, subject to the discussions below with respect to Unsecured Asbestos Personal Injury Claims and payments to Claimants on account of personal physical injury or sickness, a holder of a Claim that receives cash or property in satisfaction of its Claim will recognize (1) ordinary interest income to the extent such payments are attributable to interest that has accrued but has not been previously taken into income by the holder with respect to the Claim and (2) gain or loss in an amount equal to the difference between (A) the amount of cash and the fair market value of other property received (or deemed to be received) by such holder in satisfaction of such Claim (other than amounts attributable to accrued interest, which is taxed as described above) and (B) the holder's adjusted tax basis in such Claim. For federal income tax purposes, the transfer of assets to the Liquidation Trust and the SCC Litigation Trust will be treated as a deemed transfer of property to the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners (as of the Initial Distribution Date), respectively, followed by a deemed transfer by such tax owners to their respective trusts. The fair market value of the assets that are so treated as having been transferred to a tax owner, and the fair market value of the portion of the Liquidation Trust or SCC Litigation Trust assets that is treated for federal income tax purposes as having been transferred to any tax owner as a result of the allowance or disallowance of a Disputed Claim, shall be determined by the Liquidation Trustee or SCC Litigation Trustee, as applicable, and all parties (including, without limitation, the Liquidation Trustee, the SCC Litigation Trustee, the Liquidation Trust Tax Owners, the SCC Litigation Trust Tax Owners, and the transferors, for tax purposes, of any assets transferred to the Liquidation Trust or the SCC Litigation Trust) are required to utilize such fair market values determined by the Liquidation Trustee and the SCC Litigation Trustee for all federal income tax purposes.

Unsecured Asbestos Personal Injury Claims will be channeled to the Asbestos Trust. As a result, the Asbestos Trust will be the recipient of the Asbestos Trust Assets under the Debtors' Plan. The holders of the Unsecured Asbestos Personal Injury Claims will not be taxed at the time of such transfer to the Asbestos Trust. Instead, holders of such Claims shall be treated as receiving cash or property when they receive distributions from the Asbestos Trust.

All distributions to holders of Claims will be subject to any applicable withholding and backup withholding.

Payments under the Debtors' Plan to Claimants with respect to damages on account of personal physical injuries or physical sickness will not be includable in such Claimants' gross income pursuant to section 104 of the Internal Revenue Code. However, to the extent payments under the Debtors' Plan to Claimants are attributable to medical expense deductions allowed under section 213 of the Internal Revenue Code for a prior taxable year, such payments will be taxable as ordinary income to the recipient. Payments under the Debtors' Plan to Claimants representing punitive damages or interest will generally be taxable as ordinary income to the recipient. Payments under the Debtors' Plan to a Claimant attributable to attorneys' fees of such Claimant may be taxable as ordinary income to the Claimant depending upon the unique circumstances of such Claimant. If taxable, such a Claimant may also be entitled to deduct such payments as an expense (subject to certain limitations). Some portion of the amounts received by holders of Unsecured Asbestos Personal Injury Claims and certain Toxic Tort Claims may qualify for the treatment described in this paragraph.

Under the Debtors' Plan, each Allowed Class 2 Secured Claim, at the option of the Debtors, shall be Reinstated. In the event that (1) a Secured Claim is treated as debt for tax purposes; (2) such Secured Claim is Reinstated; (3) such Reinstatement constitutes a "significant modification" of the Secured Claim for tax purposes; and (4) such Reinstatement does not constitute a tax-free recapitalization, the holder of such Secured Claim would generally have

taxable gain or loss to the extent that the “issue price” of the reinstated Secured Claim is greater than or less than, respectively, the holder’s tax basis in the Secured Claim. If the Reinstatement of a Secured Claim does not constitute a significant modification, or constitutes a tax-free recapitalization, the holder of the Secured Claim would generally not recognize gain or loss as a result of such Reinstatement, except with respect to payments for accrued interest, fees, expenses, charges, or principal (to the extent that the holder previously took a bad debt deduction with respect to such principal) received by the holder in connection with the Reinstatement. Whether the Reinstatement of a Secured Claim would constitute a significant modification that is not a tax-free recapitalization depends on the specific facts and circumstances. Holders of Secured Claims should consult their own tax advisors to determine the tax consequences of Reinstatement.

Where gain or loss is recognized by a holder of Claims under the foregoing rules, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was acquired at a market discount, and whether and to what extent the holder had previously claimed a bad debt deduction.

Holders of Claims are strongly urged to consult their tax advisors with respect to the tax treatment under the Debtors’ Plan of their particular Claims.

(b) Ownership of Liquidation Trust Interests and SCC Litigation Trust Interests.

All income and gain of the Liquidation Trust and the SCC Litigation Trust that is earned after the deemed transfer described above will be taxed to the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners, respectively, on a current basis, regardless of when such income may be distributed. Any items of income, gain, deduction, credit, or loss of the Liquidation Trust and the SCC Litigation Trust shall be allocated for federal income tax purposes among current or former Liquidation Trust Tax Owners and SCC Litigation Trust Tax Owners, respectively, by the Liquidation Trustee and the SCC Litigation Trustee, as applicable. Such allocation shall be binding on all parties for all federal, state, local, and foreign income tax purposes, and such current or former Liquidation Trust Tax Owners and 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.

Claimants are urged to consult their tax advisors regarding the potential tax consequences of receiving, holding, and disposing of Liquidation Trust Interests and SCC Litigation Trust Interests.

(c) Distributions After the Effective Date.

If a holder of an Allowed Claim receives distributions pursuant to the Debtors’ Plan subsequent to the Effective Date, a portion of such distributions may be treated as imputed interest under the imputed interest provisions of the Internal Revenue Code. Such imputed interest may accrue over time, in which case a holder may be required to include such imputed interest in income prior to the actual distributions. Any loss and a portion of any gain realized by such holder may be subject to deferral. Furthermore, the “installment sale” rules of the Internal Revenue Code may apply to gain recognized by such holder. Special rules apply to installment sales in which the total amount to be realized is contingent and some of these rules may, in certain circumstances, provide for disadvantageous recovery of a holder’s basis.

All holders of Claims are urged to consult their tax advisors regarding the possible application of (and ability to elect out of) the installment method of reporting gain and the possible application of the imputed interest rules.

21.5 Information Reporting; Backup Withholding Tax Under the Debtors’ Plan.

Payments made pursuant to the Debtors’ Plan will generally be subject to applicable federal income tax information reporting and withholding requirements. The Internal Revenue Code imposes backup withholding tax on certain payments, including payments of interest, if a taxpayer (a) fails to furnish its correct taxpayer identification number (generally on IRS Form W-9); (b) furnishes an incorrect taxpayer identification number; (c) is notified by the IRS that it has previously failed to report properly items subject to backup withholding tax; or (d) fails to certify, under penalty of perjury, that such taxpayer has furnished its correct taxpayer identification number and that the IRS has not notified such taxpayer that it is subject to backup withholding tax. However, taxpayers that are corporations generally are excluded

from these information reporting and backup withholding tax rules provided that evidence of such corporate status is furnished to the payor. Backup withholding is not an additional federal income tax. Any amounts withheld under the backup withholding tax rules will be allowed as a credit against a taxpayer's federal income tax liability, if any, or will be refunded to the extent the amounts withheld exceed the taxpayer's actual tax liability, if such taxpayer furnishes required information to the IRS. A taxpayer that does not provide a correct taxpayer identification number may be subject to penalties imposed by the IRS. Each taxpayer should consult its own tax advisor regarding the information reporting and backup withholding tax rules as they relate to distributions under the Debtors' Plan.

21.6 Importance of Obtaining Professional Tax Assistance.

The foregoing discussion is intended only as a summary of certain federal income tax consequences of the Debtors' Plan, and is not a substitute for careful tax planning with a tax professional. The tax consequences are in many cases uncertain and may vary depending on the individual circumstances of a holder of a Claim. **Accordingly, holders of Claims are urged to consult with their tax advisors about the federal, state, local, and foreign tax consequences of the Debtors' Plan.**

SECTION 22 CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PARENT'S PLAN

The text of this section of the Disclosure Statement has been prepared by the Parent 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. The Debtors 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.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, holders of Claims are hereby notified that: (a) any discussion of United States federal tax issues in this document is not intended or written to be relied upon, and cannot be relied upon, by holders of Claims, for the purpose of avoiding penalties that may be imposed on such holders of Claims under the Internal Revenue Code; (b) such discussion is written in connection with the promotion or marketing of the transactions or matters addressed herein; and (c) holders of Claims should seek advice based on their particular circumstances from an independent tax advisor.

22.1 General.

Set forth below is a summary of certain U.S. federal income tax consequences of the consummation of the Parent's Plan as provided below. The summary is based on the Internal Revenue Code, final, temporary and proposed Treasury Regulations promulgated thereunder, administrative pronouncements or practices, and judicial decisions, all as of the date of the Parent's Plan. Future legislative, judicial, or administrative modifications, revocations, or interpretations, which may or may not be retroactive, may result in U.S. federal income tax consequences significantly different from those discussed herein. This summary is not binding on the IRS or United States courts, and no assurance can be given that the conclusions reached in this summary will not be challenged by the IRS or will be sustained by a United States court if so challenged. In addition, the Parent has not requested, and does not intend to request, a ruling from the IRS regarding any of the U.S. federal income tax consequences of the implementation of the Parent's Plan.

This summary does not address the U.S. federal income tax consequences to certain categories of holders of Claims subject to special rules, including holders of Claims that are (a) banks, financial institutions, or insurance companies; (b) real estate investment trusts, cooperatives, regulated investment companies, mutual funds, or small business investment companies; (c) brokers or dealers in securities; (d) tax-exempt organizations; (e) investors in pass-through entities and such entities themselves; and (f) foreign taxpayers. Furthermore, this summary is limited to U.S. federal income tax consequences and does not discuss state, local, or foreign tax consequences or federal estate or gift tax consequences.

This summary is for general information purposes only and does not purport to be a complete analysis or listing of all potential U.S. federal income tax consequences that may apply to holders of Claims as a result of the implementation of the Parent's Plan. In addition, this summary does not take into account the individual facts and circumstances of particular holders of Claims that may affect the U.S. federal income tax consequences of the implementation of the Parent's Plan to such holders. Accordingly, this summary is not intended to be, and should not be

construed as, legal or U.S. federal income tax advice. Holders of Claims should consult their own tax advisors regarding the federal, state, local, and foreign tax consequences of the Parent's Plan.

22.2 Federal Income Tax Classification of Trusts and Disputed Claims Reserve Under the Parent's Plan.

The U.S. federal income tax consequences of the Parent's Plan to the Debtors and Claimants will depend to a large degree on the treatment of any trusts formed in connection with the resolution of Asbestos Personal Injury Claims and Demands and Environmental Trust Claims, as well as the Litigation Trust and Disputed Claims Reserve.

(a) Classification of the Section 524(g) Trust and the Environmental Custodial Trusts Under the Parent's Plan.

The Treasury regulations promulgated under section 468B of the Internal Revenue Code provide that a fund, account, or trust will be a qualified settlement fund if three conditions are met. First, the fund, account, or trust must be established pursuant to an order of, or be approved by, a government authority, including a court, and must be subject to the continuing jurisdiction of that government authority. Second, the fund, account, or trust must be established to resolve or satisfy one or more contested or uncontested claims that have resulted or may result from an event or related series of events that has occurred and that has given rise to at least one claim asserting liability arising out of, among other things, a tort, violation of law, or CERCLA claim. Third, the fund, account, or trust must be a trust under applicable state law or have its assets physically segregated from the other assets of the transferor and persons related to the transferor.

The Section 524(g) Trust and Environmental Custodial Trusts have been structured so as to comply with the foregoing requirements to the maximum extent possible. However, the Debtors have not, and do not intend to, seek a ruling from the IRS or an opinion of counsel regarding the status of the Section 524(g) Trust or the Environmental Custodial Trusts as qualified settlement funds. Accordingly, there can be no assurance that the IRS will not take a contrary position. Except as otherwise specified, the remainder of the tax considerations discussion assumes that the Section 524(g) Trust and the Environmental Custodial Trusts will be treated as qualified settlement funds.

Assuming that the Section 524(g) Trust and the Environmental Custodial Trusts qualify for qualified settlement fund treatment, the Trusts will be treated as separate taxable entities and will generally be subject to U.S. federal income tax on their modified taxable income at the maximum rate applicable to trusts, which is currently 35 percent. In determining the modified taxable income of the Section 524(g) Trust and the Environmental Custodial Trusts, respectively, (1) amounts transferred by the Debtors to such trust (other than payments in compensation for late or delayed transfers, dividends on stock of a Debtor or related person or interest on the debt of a Debtor or related person) pursuant to the Parent's Plan will generally be excluded from the trust's income; (2) any sale, exchange, or distribution of property by such trust will generally be treated as a sale and result in the recognition of gain or loss in an amount equal to the difference between the fair market value of the property on the date of such disposition and the adjusted tax basis of the trust in such property; and (3) administrative costs (including state and local taxes) incurred by such trust that would be deductible in determining the taxable income of a corporation will generally be deductible by the trust. The adjusted tax basis of the Section 524(g) Trust and the Environmental Custodial Trusts in property received from the Debtors (or from an insurer on behalf of the Debtors) pursuant to the Parent's Plan will generally be the fair market value of such property at the time of such transfer.

(b) Classification of the Litigation Trust Under the Parent's Plan.

Revenue Procedure 94-45 provides conditions under which the IRS will generally issue a ruling that an entity created pursuant to a bankruptcy plan under chapter 11 of the Bankruptcy Code qualifies as a liquidating trust. The Litigation Trust has been structured so as to comply with these conditions to the maximum extent possible, and the Parent's Plan Administrator will treat the Litigation Trust as a liquidating trust within the meaning of Treasury Regulation section 301.7701-4(d). However, the Debtors have not, and do not intend to, seek a ruling from the IRS or an opinion of counsel regarding the status of the Litigation Trust as a liquidating trust. Accordingly, there can be no assurance that the IRS will not take a contrary position and in particular assert that the Litigation Trust is a qualified settlement fund with the consequences described above. Accordingly, the Debtors will make a protective election to treat the Litigation Trust as a "grantor trust" for U.S. federal income tax purposes in the event that the Litigation Trust is treated as a qualified settlement fund, so no entity level tax would be imposed. In the event the Litigation Trust is so treated, Reorganized ASARCO would be entitled to distributions to pay or be reimbursed for taxes imposed on income derived from the Litigation Trust's assets.

Except as otherwise specified, the remainder of the tax considerations discussion assumes that the Litigation Trust will be treated as a liquidating trust within the meaning of Treasury Regulations section 301.7701-4(d). Assuming that the Litigation Trust qualifies for liquidating trust treatment, no entity-level tax will be imposed on any of the income or gain derived by the Litigation Trust. The Litigation Trust Beneficiaries will be treated as the owners of the Litigation Trust's assets for federal income tax purposes and will be required to include in their computation of taxable income their allocable share of income and gain generated by the Litigation Trust as determined by the Litigation Trust Trustee.

(c) Classification of Disputed Claims Reserve Under the Parent's Plan.

Treasury regulations promulgated under section 468B of the Internal Revenue Code provide that an escrow account, trust, or fund is a disputed ownership fund if four (4) conditions are met. First, the escrow account, trust, or fund is established to hold money or property subject to conflicting claims of ownership. Second, the escrow account, trust, or fund is subject to the continuing jurisdiction of a court. Third, the escrow account, trust, or fund requires the approval of the court to pay or distribute money or property to, or on behalf of, a claimant, transferor, or transferor-claimant. Fourth, the escrow account, trust, or fund is not a qualified settlement fund, a bankruptcy estate (or part thereof) resulting from the commencement of a case under title 11 of the United States Code, or subject to certain exceptions, a liquidating trust.

The Disputed Claims Reserve has been structured so as comply with the foregoing requirements to the maximum extent possible, and the Parent's Plan Administrator will treat the Disputed Claims Reserve as a disputed ownership fund within the meaning of Treasury Regulation section 1.468B-9(b)(1). However, the Debtors have not, and do not intend to, seek a ruling from the IRS or an opinion of counsel regarding the status of the Disputed Claims Reserve as a disputed ownership fund. Accordingly, there can be no assurance that the IRS will not take a contrary position and in particular assert that the Disputed Claims Reserve is a qualified settlement fund with the consequences described above. Accordingly, the Debtors will make a protective election to treat the Disputed Claims Reserve as a "grantor trust" for U.S. federal income tax purposes in the event that the Disputed Claims Reserve is treated as a qualified settlement fund, so no entity level tax would be imposed in any event. In the event the Disputed Claims Reserve is so treated, Reorganized ASARCO would be entitled to distributions to pay or be reimbursed for taxes imposed on income derived from the assets of the Disputed Claims Reserve.

Assuming that the Disputed Claims Reserve qualifies for disputed ownership fund treatment, the Disputed Claims Reserve will be subject to U.S. federal income tax as if it were a qualified settlement fund, provided that all the assets transferred to the Disputed Claims Reserve are passive investment assets, such as cash or cash equivalents, stock, and debt obligations. If the Disputed Claims Reserve is not taxable as a qualified settlement fund, it will be subject to U.S. federal income tax as a corporation.

22.3 Federal Income Tax Consequences to Debtors Under the Parent's Plan.

(a) Cancellation of Indebtedness.

Under the Internal Revenue Code, a taxpayer generally must include in gross income the amount of any cancellation of indebtedness income realized during the taxable year. Section 108 of the Internal Revenue Code provides that a taxpayer does not realize COD Income from cancellation of indebtedness to the extent that payment of such indebtedness would have given rise to an income tax deduction. Section 108 of the Internal Revenue Code provides further that COD Income may be excluded from gross income to the extent that the taxpayer is insolvent or is in bankruptcy, but such excluded amount must be applied to reduce certain tax attributes of the taxpayer.

It is expected that the satisfaction of many of the Claims pursuant to the Parent's Plan will not result in significant COD Income to the Debtors because either (1) such Claims are being Paid in Full or (2) payment of such Claims would have given rise to a deduction for the Debtors. However, the Debtors may recognize COD Income with respect to Bondholder Claims.

(b) Transfers of Assets other than Cash to Trusts and the Disputed Claims Reserve.

Assuming that the Litigation Trust qualifies as a liquidating trust and that the Section 524(g) Trust and Environmental Custodial Trusts qualify as qualified settlement funds, the Debtors will be treated as having made a taxable disposition of the assets transferred to each such Trust. As a result, the Debtors will generally recognize gain or loss on

the transfer of any such assets other than cash in an amount equal to the difference between (1) the fair market value of the assets transferred and (2) the adjusted tax basis in the transferred assets.

Assuming that the Disputed Claims Reserve qualifies as a disputed ownership fund, the Debtors will be treated as having made a taxable disposition of the assets transferred to the Disputed Claims Reserve. As a result, the Debtors will generally recognize gain or loss on the transfer of any such assets other than cash in an amount equal to the difference between (1) the fair market value of the assets transferred and (2) the adjusted tax basis in the transferred assets.

(c) Deductibility of Amounts Transferred in Satisfaction of Asbestos and Certain Environmental Claims.

The Debtors should be entitled to a deduction for all or substantially all of the amount of cash and the fair market value of other assets paid in satisfaction of the Class 4 Asbestos Personal Injury Claims, and for a substantial portion of the amounts paid in satisfaction of the environmental claims in Classes 3 and 6, once the usual requirements imposed on accrual basis taxpayers with respect to the satisfaction of liabilities are met. Assuming that the Section 524(g) Trust and Environmental Custodial Trusts qualify as qualified settlement funds, these requirements should generally be met at the time cash and/or assets (other than certain obligations of Reorganized ASARCO or related parties) are transferred to the Section 524(g) Trust and Environmental Custodial Trusts. Assuming that the Disputed Claims Reserve qualifies as a disputed ownership fund the usual requirements imposed on accrual basis taxpayers with respect to the satisfaction of liabilities should generally be met at the time cash and/or assets (other than certain obligations of Reorganized ASARCO or related parties) are transferred to the Disputed Claims Reserve. The Debtors should also be entitled to a deduction for all or substantially all amounts of cash and the fair market value of other assets paid in satisfaction of Environmental Unsecured Claims and to holders of General Unsecured Claims, once the usual requirements imposed on accrual basis taxpayers with respect to the satisfaction of liabilities are met. Assuming that Litigation Trust qualifies as a liquidating trust, these requirements should generally be met at the time cash and/or assets are transferred to the Litigation Trust.

The Debtors should also be entitled to a deduction for all or substantially all amounts of cash and the fair market value of other assets paid in satisfaction of Environmental Unsecured Claims and to holders of General Unsecured Claims, once the usual requirements imposed on accrual basis taxpayers with respect to the satisfaction of liabilities are met. Assuming that Litigation Trust qualifies as a liquidating trust, these requirements should generally be met at the time cash and/or assets are transferred to the Litigation Trust.

The Debtors will not be allowed a deduction for payments to the Trusts to the extent that such payments represent insurance proceeds received by the Debtors. In such case, payments of amounts representing insurance proceeds should not cause recognition of income to the Debtors. Alternatively, if the Debtors' transfer of amounts representing insurance proceeds were to cause recognition of income by the Debtors, the Debtors should be entitled to a corresponding deduction for the payment of such amounts to the trusts.

Similarly, the Debtors will not be allowed a deduction for payments to the Trusts to the extent the Debtors have a right to reimbursement (with a positive fair market value) with respect to such payments from any third party.

Any deductions for payments made to the Trusts first would reduce or eliminate the Debtors' federal taxable income for the taxable year in which the payments are made. To the extent these deductions created a taxable loss for such year, the loss would constitute a net operating loss.

(d) Payment of Tax.

Reorganized ASARCO will pay post-Effective Date income tax liability attributable to its income pursuant to the terms of a tax sharing agreement that Reorganized ASARCO will enter into with Parent.

22.4 Federal Income Tax Consequences to Holders of Claims Under the Parent's Plan.

The tax consequences of the Parent's Plan to a holder of a Claim will depend, in part, on the type of consideration the holder received in exchange for the Claim, whether the holder reports income on the accrual or cash-basis method, and whether the holder receives distributions under the Parent's Plan in more than one taxable year.

In general, a holder of a Claim that receives cash or property in satisfaction of its Claim in a single taxable year will recognize (a) ordinary interest income to the extent such payments are attributable to interest that has accrued but has not been previously taken into income by the holder with respect to the Claim and (b) gain or loss in an amount equal to the difference between (1) the amount of cash and the fair market value of other property received by such holder in satisfaction of such Claim (other than amounts attributable to accrued interest, which is taxed as described above) and (2) the holder's adjusted tax basis in such Claim. This treatment is expected to apply to holders of Claims in all Classes (subject to the discussions below on Reinstatement and tax treatment of recoveries on personal injury Claims).

Holders of Class 4 Asbestos Personal Injury Claims and Demands will receive interests in the Section 524(g) Trust. Holders of Class 4 Asbestos Personal Injury Claims and Demands shall not be treated as receiving property as a result of their receipt of interests in the Section 524(g) Trust. Instead, such holders shall be treated as receiving cash or property when they receive distributions from either such trust. All distributions to holders of Claims will be subject to any applicable withholding and backup withholding.

Payments under the Parent's Plan to Claimants with respect to damages on account of personal physical injuries or physical sickness, including payments received from a trust pursuant to the Parent's Plan, will not be includable in such Claimants' gross income pursuant to section 104 of the Internal Revenue Code. However, to the extent payments under the Parent's Plan to Claimants are attributable to medical expense deductions allowed under section 213 of the Internal Revenue Code for a prior taxable year, such payments will be taxable as ordinary income to the recipient. Payments under the Parent's Plan to Claimants representing punitive damages or interest will generally be taxable as ordinary income to the recipient. Payments under the Parent's Plan to a Claimant attributable to attorneys' fees of such Claimant may be taxable as ordinary income to the Claimant depending upon the unique circumstances of such Claimant. If taxable, such a Claimant may also be entitled to deduct such payments as an expense (subject to certain limitations). Some portion of the amounts received by holders of Class 4 Asbestos Personal Injury Claims and Demands may qualify for the treatment described in this paragraph.

Under the Parent's Plan, some or all Class 2 Secured Claims may be Reinstated. In the event that a holder of a Secured Claim is Reinstated, and such Secured Claim is treated as debt for U.S. federal income tax purposes, the Reinstatement could constitute a "significant modification" for U.S. federal income tax purposes. If Reinstatement of Secured Claims results in a significant modification of those Claims and such Reinstatement does not constitute a tax-free recapitalization, the holders of such Claims could have currently taxable gain to the extent that the "issue price" of the Reinstated Secured Claim exceeds the holder's tax basis in the Secured Claim. Whether the Reinstatement of a Secured Claim would constitute a significant modification that is not a tax-free recapitalization depends on the specific facts and circumstances.

Where gain or loss is recognized by a holder of Claims under the foregoing rules, the character of such gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss will be determined by a number of factors, including the tax status of the holder, whether the Claim constitutes a capital asset in the hands of the holder and how long it has been held, whether the Claim was acquired at a market discount, and whether and to what extent the holder had previously claimed a bad debt deduction.

Holders of Claims are strongly advised to consult their tax advisors with respect to the tax treatment under the Parent's Plan of their particular Claim.

22.5 Information Reporting; Backup Withholding Tax Under the Parent's Plan.

Payments made pursuant to the Parent's Plan will generally be subject to applicable U.S. federal income tax information reporting and withholding requirements. The Internal Revenue Code imposes backup withholding tax on certain payments, including payments of interest, if a taxpayer (a) fails to furnish its correct taxpayer identification number (generally on IRS Form W-9), (b) furnishes an incorrect taxpayer identification number, (c) is notified by the IRS that it has previously failed to report properly items subject to backup withholding tax, or (d) fails to certify, under penalty of perjury, that such taxpayer has furnished its correct taxpayer identification number and that the IRS has not notified such taxpayer that it is subject to backup withholding tax. However, taxpayers that are corporations generally are excluded from these information reporting and backup withholding tax rules provided that evidence of such corporate status is furnished to the payor. Backup withholding is not an additional U.S. federal income tax. Any amounts withheld under the backup withholding tax rules will be allowed as a credit against a taxpayer's U.S. federal income tax liability, if any, or will be refunded to the extent the amounts withheld exceed the taxpayer's actual tax liability, if such taxpayer furnishes required information to the IRS. A taxpayer that does not provide a correct taxpayer identification number may

be subject to penalties imposed by the IRS. Each taxpayer should consult its own tax advisor regarding the information reporting and backup withholding tax rules.

22.6 Importance of Obtaining Professional Tax Assistance.

The foregoing discussion is intended only as a summary of certain U.S. federal income tax consequences of the Parent's Plan, and is not a substitute for careful tax planning with a tax professional. The tax consequences are in many cases uncertain and may vary depending on the individual circumstances of a holder of Claims. Accordingly, holders of Claims and Demands are urged to consult with their tax advisors about the federal, state, local, and foreign tax consequences of the Parent's Plan.

SECTION 23 CERTAIN TAX CONSEQUENCES OF HARBINGER'S PLAN

The text of this section of the Disclosure Statement 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.

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, holders of Claims are hereby notified that: (a) any discussion of United States federal tax issues in this document is not intended or written to be relied upon, and cannot be relied upon, by holders of Claims, for the purpose of avoiding penalties that may be imposed on such holders of Claims under the Internal Revenue Code; (b) such discussion is written in connection with the promotion or marketing of the transactions or matters addressed herein; and (c) holders of Claims should seek advice based on their particular circumstances from an independent tax advisor.

The federal income tax consequences of the consummation of Harbinger's Plan are generally the same as under the Debtors' Plan, described in Section 21 above, with the following modifications:

- (a) References in Section 21 to the Debtors' Plan refer to Harbinger's Plan.
- (b) References to the Plan Sponsor Promissory Note are not applicable.
- (c) Harbinger takes no responsibility for, and has conducted no diligence with respect to, statements of fact in Section 21 uniquely within the knowledge of the Debtors, such as the amount of gain and deductions expected as a result of the transfer of Sold Assets to the Plan Sponsor and/or the satisfaction of Claims.
- (d) The Plan Administrator may timely elect to treat the Disputed Claims Reserve and the Disputed Secured Claims Reserve as disputed ownership funds for federal income tax purposes.
- (e) The Liquidation Trust and the SCC Litigation Trust may be treated by the IRS as partnerships, rather than as liquidating trusts, for federal income tax purposes. While in that event the Liquidation Trust Tax Owners and the SCC Litigation Trust Tax Owners will not be treated as the owners of the assets of the Liquidation Trust and the SCC Litigation Trust, respectively, as in the Debtors' Plan (but subject to paragraph (5) above) such Tax Owners will be required to include in their computation of taxable income their allocable share of income and gain generated by the Liquidation Trust and the SCC Litigation Trust.

The foregoing discussion is intended only as a summary of certain federal income tax consequences of Harbinger's Plan, and is not a substitute for careful tax planning with a tax professional. The tax consequences are in many cases uncertain and may vary depending on the individual circumstances of a holder of Claims. Accordingly, holders of Claims are urged to consult with their tax advisors about the federal, state, local, and foreign tax consequences of Harbinger's Plan.

The Parent disagrees with the statements made by Harbinger in Section 23(f) above insofar as the IRS may successfully assert that the Liquidation Trust or the SCC Litigation Trust should be treated as qualified settlement funds, which are subject to tax on their income at the entity level.

SECTION 24 FINANCIAL INFORMATION

24.1 General.

An analysis of the Debtors' financial condition appears in the historic unaudited financial information for the fiscal years 2005, 2006, 2007, and 2008, and through March 31, 2009, attached to this Disclosure Statement as **Exhibit D**. This information is provided by the Debtors to permit holders of Claims and Interests to better understand the Debtors' financial condition.

The Debtors are required to file monthly operating reports with the Bankruptcy Court. Such financial information is on file with the clerk of the Bankruptcy Court and publicly available for review on the Bankruptcy Court's public website: www.ecf.txsb.uscourts.gov, or at the Debtors' restructuring website: www.asarcocoreorg.com.

24.2 Funding for Plan Administration Expenses under the Debtors' Plan.

Under the Debtors' Plan, the Plan Administrator shall establish the Plan Administration Reserve with funds set aside to cover various contingencies that may arise after the Effective Date, including \$5 million in the Unpaid Cure Claims Reserve, \$12.5 million in the Prepetition ASARCO Environmental Trust Escrow, \$20 million in the Indemnification Escrow, \$10 million in the Liquidation Trust Reserve, and \$15 million in the SCC Litigation Trust Reserve. The Plan Administrator shall also establish and fund various other bank accounts pursuant to Article 10.2(c) of the Debtors' Plan to address Reorganized ASARCO's administrative expenses.

24.3 Reorganized Debtors' Business Operations under the Debtors' Plan.

Under the Debtors' Plan, the ASARCO Residual Assets, including, without limitation, the Plan Administrative Reserve, the Vested Causes of Action (as listed in **Exhibit 14-A** to the Debtors' Plan), stock in Freeport McMoRan Copper & Gold Inc., Ag-Land FS, Gateway Co-op, and Revett Minerals, the coal royalty noted in Section 2.11(a) above, and various insurance policies, shall vest in Reorganized ASARCO on the Effective Date. Notwithstanding the foregoing, ASARCO reserves the right to contribute one or more of the ASARCO Residual Assets to Reorganized Covington, in ASARCO's sole discretion, as it shall deem appropriate in order to obtain Confirmation of the Debtors' Plan.

ASARCO owns approximately 20 acres of real property in Madera Canyon, located in Santa Cruz County, Arizona. The land is valued at \$1 million, and was purchased as part of a planned land exchange with the United States Forest Service that was never effectuated. Six cabins, five of which are habitable, are on the property. The Madera Property is leased to Mr. and Mrs. Richard J. Lansky, and generates rental income of \$500 per month. Pursuant to the Debtors' Plan, the Madera Property shall be transferred to Reorganized Covington, and ASARCO shall assume the lease with the Lanskys and assign it to Reorganized Covington. To the best of the Debtors' knowledge, Covington presently has no assets or liabilities.

24.4 Funding of the Parent's Plan.

The Parent's Plan will be funded primarily by the Parent Contribution and the Distributable Cash. In addition, the Parent will cause the Tax Refund to be transferred to Reorganized ASARCO, the Parent will provide for distributions for holders of Asbestos Personal Injury Claims and Demands in the form a \$280 million ASARCO Note 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, the Parent will cause Reorganized ASARCO to retain the Debtors' liabilities with respect to any Reinstated Claims, and the Parent will cause Reorganized ASARCO to assume the Debtors' environmental liabilities with respect to the Owned Strategic Properties and other Real Property. While the Parent believes that Reorganized ASARCO will have sufficient cash on hand to pay the ASARCO Note upon Maturity, any difference between Reorganized ASARCO's cash on hand on the maturity date and the outstanding principal amount of the ASARCO Note shall be provided by AMC, as Guarantor. As detailed in Section 15.5, the Parent believes that AMC's assets will be more than sufficient to fund such difference many times over.

24.5 Working Capital under the Parent's Plan.

The Parent's Plan provides that working capital for Reorganized ASARCO will be funded by a \$200 million Working Capital Facility and the Tax Refund. In addition, the Parent believes that the operations of Reorganized ASARCO will generate sufficient cash to, in conjunction with the Working Capital Facility and Tax Refund amount, meet the working capital needs of Reorganized ASARCO. The Parent's Plan does not impose any limitations on Reorganized ASARCO's ability to incur debt.

24.6 Funding of Harbinger's Plan.

Under Harbinger's Plan, the Plan Administrator shall establish the Plan Administration Reserve with funds set aside to cover various contingencies that may arise after the Effective Date, including \$5 million in the Unpaid Cure Claims Reserve, \$12.5 million in the Prepetition ASARCO Environmental Trust Escrow, \$20 million in the Indemnification Escrow, \$10 million in the Liquidation Trust Reserve, and \$15 million in the SCC Litigation Trust Reserve. The Plan Administrator shall also establish and fund various other bank accounts pursuant to Article 10.2(c) of the Plan to address Reorganized ASARCO's administrative expenses.

24.7 Reorganized Debtors' Business Operations under Harbinger's Plan.

See Section 24.3 above.

SECTION 25 SOURCES OF INFORMATION PROVIDED AND THE ACCOUNTING METHOD USED

25.1 Sources of Information.

The information set forth in this Disclosure Statement and the attached exhibits was provided by the Debtors, the Committees, the FCR, the Plan Sponsor, the Parent and AMC, Harbinger, and their respective advisors. The financial information in **Exhibit D** to this Disclosure Statement was provided by the Debtors.

25.2 Accounting Method.

The Debtors represent that their books and records (a) present fairly in all material respects the consolidated financial position of ASARCO as of the respective dates thereof, and the consolidated results of operations of ASARCO for the periods covered thereby and (b) have been prepared in all material respects in accordance with generally accepted accounting principles applied on a basis consistent with the past practices of ASARCO during the pendency of the Reorganization Cases, in each case, subject to (1) the absence of footnotes thereto; (2) in the case of interim financial statements, the absence of normal year-end adjustments; and (3) audit adjustments resulting from the independent accountants' audit, review, and finalization of the ASARCO's financial statements for the years ended on December 31, 2005, 2006, 2007, and 2008.

SECTION 26 REQUIREMENTS FOR CONFIRMATION OF ONE OF THE PLANS AND VOTING PROCEDURES

26.1 Acceptance or Rejection of the Plans.

Under the Bankruptcy Code, only classes of claims and interests that are impaired under a plan of reorganization can vote to accept or reject that plan. Under section 1124 of the Bankruptcy Code, a class of claims or interests is impaired under a plan unless, with respect to each claim or interest in that class, that plan:

- leaves unaltered the legal, equitable, and contractual rights to which that claim or interest entitles its holder; or
- notwithstanding any contractual provision or applicable law that entitles the holder of that claim or interest to demand or receive accelerated payment of that claim or interest after the occurrence of a default:

- cures that default, if other than a default of a kind specified in section 365(b)(2) of the Bankruptcy Code;
- reinstates the maturity of that claim or interest as it existed prior to that default;
- compensates the holder of that claim or interest for any damages incurred as a result of that holder's reasonable reliance on that contractual provision or applicable law; and
- does not otherwise alter the legal, equitable, or contractual rights to which that claim or interest entitles its holder.

(a) The Debtors' Plan.

Under the Debtors' Plan, Class 1 and Class 5 are unimpaired; therefore, the holders of Claims in such Classes are conclusively presumed under section 1126(f) of the Bankruptcy Code to have accepted the Debtors' Plan. The Debtors shall solicit the votes of all holders of Secured Claims in Class 2, but if the Debtors elect to Reinstate certain sub-Classes of Class 2, the Reinstated Claims are unimpaired, and therefore the votes of the Secured Claimant in those sub-Classes shall not be counted.

Classes 6 through 10 shall not receive or retain any property on account of their Claims or Interests; therefore, the holders of Claims and Interests in such Classes are conclusively presumed under section 1126(g) of the Bankruptcy Code to have rejected the Debtors' Plan.

Classes 3 and 4 and the Secured Claims in any sub-Classes of Class 2 as to which the Debtors make the Cash payment election are impaired under the Debtors' Plan; therefore, the holders of Claims in such Classes are entitled to vote to accept or reject the Debtors' Plan. As noted above, the Debtors shall solicit the votes of all holders of Secured Claims in Class 2, but only the votes of the Secured Claimants in sub-Classes as to which the Debtors make the Cash payment election will be counted.

(b) The Parent's Plan.

Under the Parent's Plan, Claims in Classes 2 (as to any Claimants receiving the cash payment option), 3, 4, 5, and 6 are impaired, 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, 7, and 8 and, as previously noted, any Class 2 Secured Claims 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 9 and 10 and Interests in Class 11 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.

(c) 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 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 Harbinger's Plan.

Any Class of Claims or Interests under any of the Plans that does not have a holder of an Allowed Claim or Interest or a Claim or Interest temporarily allowed by the Bankruptcy Court as of the date of the Confirmation Hearing shall be deemed eliminated from the Plans for purposes of voting to accept or reject the Plans and for purposes of determining acceptance or rejection of the Plans by such Class pursuant to section 1129(a)(8) of the Bankruptcy Code.

26.2 Confirmation Hearing.

Section 1128(a) of the Bankruptcy Code requires the court, after notice, to hold a hearing on confirmation of a proposed plan. The Confirmation Hearing has been scheduled to commence on **August 10, 2009 at 9:00 a.m.** before the Honorable Richard S. Schmidt, United States Bankruptcy Judge for the Southern District of Texas, in his courtroom located at 1133 N. Shoreline Blvd., Second Floor, Corpus Christi, Texas. In order to obtain the protections of section 524(g) of the Bankruptcy Code, the Confirmation Order must be issued or affirmed by the District Court. Thus, the Bankruptcy Court and the District Court may jointly conduct the Confirmation Hearing. Alternatively, if solely the Bankruptcy Court conducts the Confirmation Hearing and enters the Confirmation Order, the Debtors shall ask the District Court to affirm the Confirmation Order. The Confirmation Hearing may be adjourned from time to time without further notice except for an announcement of the adjourned date made at the Confirmation Hearing or any subsequent adjourned Confirmation Hearing.

Section 1128(b) of the Bankruptcy Code provides that any party in interest may object to confirmation of a plan. Unless otherwise directed or permitted by the Bankruptcy Court, any objection to Confirmation of any of the Plans must (a) be in writing; (b) conform to the Bankruptcy Rules; (c) set forth the name of the objecting party; (d) identify the nature of Claims or Interests held or asserted by the objector against the Debtors' Estates or property; (e) state the basis for the objection and the specific grounds therefor; and (f) be filed with the clerk of the Bankruptcy Court, together with proof of service, and served upon each of the following so as to be received in the offices of each such Persons no later than **July 29, 2009 at 4:00 p.m., Prevailing Central Time:** (1) Jack L. Kinzie, Judith Ross, James R. Prince, Baker Botts L.L.P., 2001 Ross Avenue, Dallas, Texas 75201-2980; (2) Tony M. Davis, Mary Millwood Gregory, Baker Botts L.L.P., One Shell Plaza, 910 Louisiana, Houston, Texas 77002-4995; (3) Shelby A. Jordan, Jordan, Hyden, Womble, Culbreth & Holzer, P.C., Suite 900, Bank of America, 500 North Shoreline, Corpus Christi, Texas 78471; (4) Robert E. Winter, Milbank, Tweed, Hadley & McCloy LLP, 1850 K. Street, 11th Floor, Washington, D.C. 20006; (5) Robert Jay Moore, Milbank, Tweed, Hadley & McCloy LLP, 601 South Figueroa Street, 30th Floor, Los Angeles, California 90017; (6) Charles A. Beckham, Jr., Trey Monsour, Haynes and Boone LLP, 1 Houston Center, 1221 McKinney, Suite 2100, Houston, Texas 77010; (7) James C. McCarroll, Reed Smith LLP, 599 Lexington Avenue, 29th Floor, New York, NY 10022; (8) Paul M. Singer, Reed Smith LLP, 435 Sixth Avenue, Pittsburgh, PA 15219; (9) Derek J. Baker, Reed Smith LLP, 2500 One Liberty Place, Philadelphia, PA 19103; (10) Sander L. Esserman, Jacob Newton, Stutzman, Bromberg, Esserman & Plifka, 2323 Bryan Street, Suite 2200, Dallas, Texas 75201; (11) John H. Tate, II, Raymond W. Battaglia, Debra L. Innocenti, Oppenheimer, Blend, Harrison & Tate, Inc., 711 Navarro, Sixth Floor, San Antonio, Texas 78205; (12) David L. Dain and Alan S. Tenenbaum, United States Department of Justice, Environmental Enforcement Section, 601 D Street NW, Washington, DC 20004 (overnight mail only); (13) Douglas P. Bartner, Randy Martin, Shearman & Sterling LLP, 599 Lexington Avenue, New York, New York 10022; (14) Richard M. Seltzer, Cohen, Weiss and Simon LLP, 330 West 42nd Street, New York, NY 10025; (15) United States Trustee, Attn: Charles R. Sterbach, 606 N. Carancahua St., Ste. 1107, Corpus Christi, TX 78476; (16) Thomas Moers Mayer and Gregory A. Horowitz, Kramer Levin Naftalis and Frankel LLP, 1177 Avenue of the Americas, New York, New York 10036; and (17) Phillip L. Lamberson and J. Frasher Murphy, Winstead PC, 5400 Renaissance Tower, 1201 Elm Street, Dallas, Texas 75270.

26.3 Requirements for Confirmation.

(a) Consensual Confirmation Under Section 1129(a) of the Bankruptcy Code.

At the Confirmation Hearing, the Bankruptcy Court shall be asked to determine whether the requirements of section 1129(a) of the Bankruptcy Code have been satisfied. These requirements include, among others, judicial findings that:

- the plan complies with the applicable provisions of the Bankruptcy Code;
- the proponents of the plan have complied with the applicable provisions of the Bankruptcy Code;

- the plan has been proposed in good faith and not by any means forbidden by law;
- any payment made or to be made by proponents of the plan, by the Debtors, or by any Person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the Reorganization Cases, or in connection with the plan and incident to the Reorganization Cases, has been approved by, or is subject to the approval of, the Bankruptcy Court as reasonable;
- the proponents of the plan have disclosed the identity and affiliations of any individual proposed to serve as a director, officer, or voting trustee of the Reorganized Debtors after confirmation of the plan and that the appointment to, or continuance in, such office by such individual is consistent with the interests of holders of Claims and Interests and with public policy;
- the proponents of the plan have disclosed the identity of any insider that shall be employed or retained by the Reorganized Debtors, and the nature of any compensation for such insider;
- the plan is in the best interests of the holders of Claims and Interests; that is, each holder of a Claim or Interest in an impaired Class either has accepted the plan or shall receive or retain under the plan, on account of such Claim or Interest, property with a value, as of the Effective Date, that is not less than the amount that the holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code on the Effective Date;
- except to the extent the plan meets the “Nonconsensual Confirmation” standards discussed below, each Class of Claims or Interests has either accepted the plan or is not impaired under the plan;
- except to the extent that the holder of a particular Claim has agreed to a different treatment of such Claim, the plan provides that Administrative Claims and Priority Claims shall be paid in full on the Effective Date and that Priority Tax Claims shall be either paid in full on the Effective Date or shall receive on account of such Claims deferred cash payments, over a period not exceeding six years after the date of assessment of such Claims, of a value, as of the Effective Date, equal to the Allowed Amount of such Claims;
- at least one impaired and non-insider Class of Claims has accepted the plan;
- that the plan is feasible; that is, confirmation is not likely to be followed by the liquidation or the need for further financial reorganization of the Reorganized Debtors, unless such liquidation or reorganization is proposed in the plan;
- all fees payable under section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the confirmation hearing, have been paid or the plan provides for the payment of all such fees on the Effective Date; and
- the plan provides for the continuation after the Effective Date of payment of all retiree benefits, as that term is defined in section 1114 of the Bankruptcy Code, at the level established pursuant to section 1114(e)(1)(B) or (g) of the Bankruptcy Code, at any time prior to confirmation of the plan, for the duration of the period the Debtors have obligated themselves to provide such benefits.

The Debtors believe that the Debtors’ Plan satisfies all applicable requirements of section 1129(a) of the Bankruptcy Code.

The Parent and AMC believe that the Parent’s Plan satisfies all applicable requirements of section 1129(a) of the Bankruptcy Code.

Harbinger believes that Harbinger's Plan satisfies all applicable requirements of section 1129(a) of the Bankruptcy Code.

Best Interests Test. Under the best interests test, a plan of reorganization is confirmable if, with respect to each impaired Class of Claims or Interests, each holder of a Claim or Interest in that Class either:

- has accepted the plan; or
- shall receive or retain under the plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code.

To determine what the holders in each Class of Claims or Interests would receive if the Debtors were liquidated, the Bankruptcy Court must estimate the dollar amount the Debtors' assets and properties would generate if liquidated by a chapter 7 trustee. The Cash amount that would be available for satisfaction of the Allowed Claims and Interests of the Debtors would consist of the proceeds resulting from the disposition of the assets of the Debtors, augmented by the Cash held by the Debtors at the time of the commencement of the chapter 7 cases. That Cash amount would be reduced by the costs and expenses of the liquidation and by any additional Administrative Claims and Priority Claims that would result from the termination of the Debtors' businesses and the use of chapter 7 proceedings for the purposes of liquidation.

The Liquidation Analysis prepared by the Debtors is attached as Exhibit E to this Disclosure Statement. Based upon the analysis set forth in Exhibit E, the Debtors firmly believe that the distributions that would be made in a chapter 7 case would be substantially smaller than the distributions contemplated by the Debtors' Plan. The Debtors therefore believe that the Debtors' Plan is in the best interests of all holders of Claims and Interests. The Parent disagrees.

The Parent believes that, under the Parent's Plan, each holder of a Claim or Interest will receive or retain under the Parent's Plan, on account of such Claim or Interest, property of a value, as of the Effective Date, that is not less than the amount that holder would receive or retain if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. The Debtors and Harbinger disagree.

Harbinger has relied in primary part on the Liquidation Analysis prepared by the Debtors, attached as Exhibit E to this Disclosure Statement. Based upon the analysis set forth in Exhibit E, Harbinger firmly believes that the distributions that would be made in a chapter 7 case would be substantially smaller than the distributions contemplated by Harbinger's Plan. Harbinger, therefore believes that Harbinger's Plan is in the best interests of all holders of Claims and Interests. The Debtors and the Parent disagree.

(b) Feasibility of the Plan.

In order for the plan to be confirmed, the Bankruptcy Court also must determine that the plan is feasible – that is, that the need for further reorganization or a subsequent liquidation of the Debtors is not likely to result following Confirmation of the plan. In determining whether a plan of reorganization is feasible, a court shall consider:

- the adequacy of the proposed capital structure of the reorganized entity;
- the earning power of that entity;
- the overall economic conditions in which that entity shall operate;
- the capability of its management;
- the continuity of its management; and
- any other factors the court deems relevant to the successful operation of the reorganized entity in performing the provisions of the plan of reorganization.

(c) Acceptance by an Impaired Class.

Because each of the Plans impairs (adversely affects) Claims in certain Classes (i.e., Classes 2 (assuming that the Debtors make the Cash payment election in regards to some sub-Classes of the Class 2 Secured Claims), 3, and 4 and under the Debtors' Plan; Classes 2 (as to Claimants receiving the cash payment option), 3, 4, 5, and 6 under the Parent's Plan; and Classes 2 (as to Claimants receiving the cash payment option), 3, and 4 under Harbinger's Plan), section 1129(a)(10) of the Bankruptcy Code requires that for a plan to be confirmed, at least one impaired Class must accept the plan by the requisite vote. An impaired Class of Claims shall have accepted the plan if and only if at least two-thirds in amount and more than one-half in number of the Allowed Claims in such Class that vote have voted to accept the plan.

(d) Nonconsensual Confirmation under Section 1129(b) of the Bankruptcy Code.

Although section 1129(a)(8) of the Bankruptcy Code requires that a plan be accepted by each class that is impaired by such plan, section 1129(b) of the Bankruptcy Code provides that the Bankruptcy Court may still confirm a plan at the request of the proponents if all requirements of section 1129(a) except section 1129(a)(8) are met and if, with respect to each Class of Claims or Interests that is impaired under a plan and has not voted to accept the plan, the plan "does not discriminate unfairly" and is "fair and equitable." A plan confirmed on the basis of this provision is commonly referred to as a "cramdown" plan.

In the event an impaired Class of Claims or Interests does not accept the Debtors' Plan, the Debtors may seek cramdown confirmation of the Debtors' Plan with respect to any such non-accepting Class. **The Debtors believe that, with respect to such Classes, the Debtors' Plan meets the requirements of section 1129(b) of the Bankruptcy Code.**

In the event an impaired Class of Claims or Interests does not accept the Parent's Plan, the Parent may seek cramdown confirmation of the Plan with respect to any such non-accepting Class. **The Parent believes that, with respect to such Classes, the Parent's Plan meets the requirements of section 1129(b) of the Bankruptcy Code.**

In the event an impaired Class of Claims or Interests does not accept Harbinger's Plan, Harbinger may seek cramdown confirmation of Harbinger's Plan with respect to any such non-accepting Class. **Harbinger believes that, with respect to such Classes, Harbinger's Plan meets the requirements of section 1129(b) of the Bankruptcy Code.**

- Unfair Discrimination. A plan of reorganization does not discriminate unfairly if a dissenting class is treated substantially equally to other similarly situated classes and no class receives more than it is legally entitled to receive for its claims or equity interests. **The Debtors believe that the Debtors' Plan meets this requirement. The Parent believes that the Parent's Plan meets this requirement. Harbinger believes that Harbinger's Plan meets this requirement.**
- Fair and Equitable Test. "Fair and equitable" has different meanings for Secured Claims, Unsecured Claims, and Interests.

With respect to a Secured Claim, "fair and equitable" means that the plan provides either (1) that the holder of a Secured Claim in an impaired Class retains the Liens securing such Claim, whether the property subject to such Liens is retained by the Debtor or transferred to another Entity, to the extent of the amount of such Allowed Claim, and that the holder of such Claim receives on account of such Claim deferred cash payments totaling at least the amount of such Allowed Claim, of a value, as of the Effective Date, of at least the value of such holder's interest in the Estate's interest in such property; (2) for the sale, subject to section 363(k) of the Bankruptcy Code, of any property that is subject to the Liens securing such Claim, free and clear of such Liens, with such Liens to attach to the proceeds of such sale, and the treatment of such Liens on proceeds under subsections (1) or (3) hereof; or (3) the realization by such holder of the "indubitable equivalent" of such Claim.

With respect to an Unsecured Claim, "fair and equitable" means either the plan provides that each holder of a Claim of such Class receive or retain on account of such Claim property of a value, as of the Effective Date of the plan, equal to the amount of such Allowed Claim; or the holder of any Claim or Interest that is junior to the Claims of such Class shall not receive or retain any property under the plan on account of such junior Claim or Interest.

With respect to an Interest, “fair and equitable” means either each holder of an Interest in an impaired Class receives or retains property of a value, as of the Effective Date of the plan, equal to the greatest of the allowed amount of any fixed liquidation preference to which such holder is entitled, any fixed redemption price to which such holder is entitled, or the value of such Interest; or the holder of any Interest that is junior to the Interests of such Class shall not receive or retain any property under the plan on account of such junior Interest.

The “absolute priority” rule requires that where there is a dissenting class of Interests, they are treated in a fair and equitable manner. Under the absolute priority rule, secured creditors are paid on their Claims before unsecured creditors, who in turn must be paid in full before equity holders can receive a distribution under a plan of reorganization. Each of the proponents believe that their respective plan complies with the absolute priority rule as to all Classes, including the Classes of Interests.

At the Confirmation Hearing, the Debtors will seek to establish that the value of all of the consideration to be distributed to the holders of Class 3 and Class 4 Claims on the date of the hearing is less than any reasonable estimated amount of these Claims. If the Bankruptcy Court determines otherwise, Article 4.3 of the Debtors’ Plan will become applicable. The Debtors believe that the Debtors’ Plan thus complies with the absolute priority rule.

The Debtors believe that the Debtors’ Plan will meet the fair and equitable test in the event that an impaired Class of Claims or Interests does not accept the Debtors’ Plan, and that the Debtors’ Plan meets the fair and equitable test with regard to Classes 6 through 10, which are deemed to reject the Debtors’ Plan, and that the Debtors’ Plan does not discriminate unfairly with respect to any Class of Claims and Interests. The Parent disagrees.

The Parent believes that the Parent’s Plan will meet the fair and equitable test in the event that an impaired Class of Claims or Interests does not accept the Parent’s Plan, and that the Parent’s Plan meets the fair and equitable test with regard to Classes 6, 7, and 9, which are deemed to reject the Plan, and that the Plan does not discriminate unfairly with respect to any Class of Claims and Interests. The Debtors and Harbinger disagree.

Harbinger believes that its Plan will meet the fair and equitable test in the event that an impaired Class of Claims or Interests does not accept the Plan, and that the Plan meets the fair and equitable test with regard to Classes 6 through 10, which are deemed to reject the Plan, and that the Plan does not discriminate unfairly with respect to any Class of Claims and Interests. The Parent disagrees.

(e) Requirements for Injunction Under Section 524(g) of the Bankruptcy Code.

Section 524(g) of the Bankruptcy Code authorizes the court to enjoin Entities from taking action to collect, recover, or receive payment or recovery with respect to any Unsecured Asbestos Personal Injury Claim that is to be paid in whole or in part by a trust created by a plan of reorganization that satisfies the requirements of the Bankruptcy Code. The injunction also may bar any action based on such Claims or Demands against the Debtors that are directed at third parties.

To obtain the injunction, a trust must be established that:

- assumes the Debtors’ asbestos-related liabilities;
- is funded in whole or in part by securities of one or more of the Debtors and with an obligation by the Debtors to make future payments;
- owns or is entitled to own a majority of the voting shares of the Debtors, each Debtor’s parent corporation, or subsidiaries that are also Debtors; and
- uses its assets or income to satisfy Claims and Demands.

As a requirement before issuing an injunction under section 524(g) of the Bankruptcy Code, the court must determine that:

- the Debtors are likely to be subject to substantial Demands for payments arising out of the same or similar conduct or events that give rise to the Unsecured Asbestos Personal Injury Claims that are addressed by the injunction;
- the actual amounts, numbers, and timing of such Demands cannot be determined;
- pursuit of such Demands outside the procedures prescribed by the plan is likely to threaten the Plan's purpose to deal equitably with Claims and Demands; and
- the Asbestos Trust shall operate through mechanisms such as structural, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of Claims and Demands, or other comparable mechanisms that provide reasonable assurance that the Asbestos Trust will value, and be in a financial position to pay, Claims and Demands that involve similar Claims in substantially the same manner.

The court also must ensure that the terms of any proposed section 524(g) injunction are set out in the plan and disclosure statement and that 75 percent of the holders of Unsecured Asbestos Personal Injury Claims who vote on the plan vote to approve it.

The Injunctions will be valid and enforceable as to Demands made after the plan is confirmed only if a legal representative is appointed to protect the rights of Persons that might subsequently assert Demands and if the court determines that applying the Injunctions to future claimants in favor of the beneficiaries of the Injunction is fair and equitable with respect to the Persons that might subsequently assert such Demands, in light of the benefits provided, or to be provided, to the trust on behalf of the Debtors or another beneficiary of the Injunctions.

The confirmation order must be issued or affirmed by the District Court that has jurisdiction over the Reorganization Cases. After the expiration of the time for appeal of the order, the Injunctions become valid and enforceable.

The Debtors believe that they shall be able to satisfy all the requirements of section 524(g), so long as the requisite number of holders of Unsecured Asbestos Personal Injury Claims vote in favor of the Debtors' Plan.

The Parent and AMC will seek a section 524(g) injunction to the extent that the Section 524(g) Treatment (as such term is defined in the Parent's Glossary) is elected by 75 percent of the holders of Asbestos Personal Injury Claims that vote and the FCR.

Harbinger's Plan does not seek a 524(g) injunction, and accordingly, the provisions of section 524(g) are inapplicable to Harbinger's Plan. The Asbestos Claimants' Committee and the FCR, however, do not believe that the proposed treatment of the asbestos Claims under Harbinger's Plan, without satisfying the requirements of 524(g), is permissible under the Bankruptcy Code. Harbinger disagrees.

26.4 Conditions to Effectiveness.

(a) The Debtors' Plan.

In addition to the requirements for confirmation of the Debtors' Plan, the terms of the Debtors' Plan provide that the Debtors' Plan may not become effective unless, among other things, (1) the Bankruptcy Court has approved the Disclosure Statement; (2) the Confirmation Order is not stayed pursuant to an order issued by a court of competent jurisdiction; (3) the Plan Documents necessary or appropriate to implement the Debtors' Plan have been executed, delivered, and filed where applicable; (4) the Trusts have been funded as provided in Article 9.1(f) of the Debtors' Plan; (5) the Confirmation Order approves the sale of the Sold Assets to the Plan Sponsor on the Closing Date; and (6) the District Court has made or affirmed the findings of fact and conclusions of law set forth in Article 9.1(b) of the Debtors' Plan. See Article 9.1 of the Debtors' Plan for a more complete discussion of the conditions to effectiveness of the Debtors' Plan.

The Debtors, in their sole discretion, may waive any of the conditions 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:

- (1) 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;
- (2) 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
- (3) 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 described in clauses (1), (2), and (3) above, such consent shall not be unreasonably withheld, delayed, or conditioned.

(b) The Parent's Plan.

In addition to the requirements for confirmation of the Parent's Plan, the terms of the Parent's Plan provide that the Parent's Plan may not become effective unless, among other things, (1) the Bankruptcy Court has approved the Disclosure Statement, (2) the Confirmation Order has become a Final Order, (3) the Plan Documents necessary or appropriate to implement the Parent's Plan have been executed, delivered, and filed where applicable, and (4) the Confirmation Order contains the findings of fact and conclusions of law set forth in Article 9.1(b) of the Parent's Plan. *See* Article 9.1 of the Parent's Plan for a more complete discussion of the conditions to effectiveness of the Parent's Plan.

The Parent, in its sole discretion, may waive any condition to effectiveness in Article 9.1 of the Parent's 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 U.S. Trustee, the Debtors, the Committees, the FCR, and the DOJ; *provided, however*, that the Parent may not waive any condition to effectiveness in Articles 9.1(c)(1), 9.1(c)(3), or 9.1(f) without the consent of the Asbestos Representatives.

(c) Harbinger's Plan.

In addition to the requirements for confirmation of Harbinger's Plan, the terms of Harbinger's Plan provide that such Plan may not become effective unless, among other things, (1) the Confirmation Order, which makes certain specific findings of fact and conclusions of law, is not stayed pursuant to an order issued by a court of competent jurisdiction; (2) the Plan Documents necessary or appropriate to implement the Plan have been executed, delivered, and filed where applicable; (3) the Trusts have been funded as provided in Articles 10.5 to 10.7 of Harbinger's Plan; and (4) the Confirmation Order approves the sale of the Sold Assets to the Plan Sponsor on the Closing Date. *See* Article 9.3 of Harbinger's Plan for a more complete discussion of the conditions to effectiveness of the Plan.

Harbinger, in its sole discretion, may waive any condition to effectiveness in Article 9.3 of Harbinger's 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 Debtors, the U.S. Trustee, the Committees, the FCR, and the DOJ; *provided, however*, that:

- the DOJ and any affected state must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(f), (g), (j), (k), and (m);
- the Asbestos Claimants' Committee and the FCR must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(g); and
- the Plan Sponsor must consent to any waiver of any of the conditions to effectiveness set forth in Article 9.3(c), (d), (g), (i), and (l);

and *provided further* that in each instance described above, such consent shall not be unreasonably withheld, delayed, or conditioned.

26.5 Effect of Confirmation and Effectiveness of One of the Plans.

If the Debtors' Plan is confirmed and becomes effective, the Debtors' Plan shall be binding upon the Debtors, all holders of Claims and Interests, and all other parties in interest, regardless of whether they have accepted or rejected the Debtors' Plan.

If the Parent's Plan is confirmed and becomes effective, the Parent's Plan will be binding upon the Reorganizing Debtors, all holders of Claims and Interests, and all other parties in interest, regardless of whether they have accepted or rejected the Parent's Plan.

If Harbinger's Plan is confirmed and becomes effective, Harbinger's Plan shall be binding upon the Debtors, all holders of Claims and Interests, and all other parties in interest, regardless of whether they have accepted or rejected Harbinger's Plan.

26.6 Notice of Effective Date.

Reorganized ASARCO shall give notice of the Effective Date within five Business Days after its occurrence.

26.7 Non-Occurrence of Effective Date.

In the event that the Effective Date does not occur, all parties shall be returned to the position they would have held had the Confirmation Order not been entered, and nothing in the Plans, the Disclosure Statement, any Plan Documents relating to the Plans, or any pleading or statement in court shall be deemed to constitute an admission or waiver of any sort or in any way to limit, impair, or alter the rights of any Entity.

THE DEBTORS' RECOMMENDATION AND CONCLUSION

The Debtors strongly recommend that all holders of impaired Claims in Classes 2, 3, and 4 vote to accept the Debtors' Plan, that each holder of a Claim against or Interest in the Debtors indicate a preference for the Debtors' Plan, and that all such holders return their ballots in the enclosed envelope to the Balloting Agent *so that they are received* on or before **4:00 p.m., Prevailing Central Time, on August 5, 2009.**

In the view of the Debtors, the Debtors' Plan provides the best available alternative for providing equitable and expeditious distributions to holders of Claims and Interests out of the Debtors' Estates. Your support of the Debtors' Plan will enable it to be implemented and help ensure its success.

THE PARENT'S RECOMMENDATION AND CONCLUSION

The Parent strongly recommends that each holder of an impaired Claims in Classes 2, 3, and 4 vote to accept the Parent's Plan, that each holder of Claim against or Interest in the Debtors indicate a preference for the Parent's Plan, and that all such holders return their ballots in the enclosed envelope to the Balloting Agent *so that they are received*, on or before **4:00 p.m., Prevailing Central Time, on August 5, 2009.**

In the view of the Parent, the Parent's Plan provides the best available alternative for providing equitable and expeditious distributions to holders of Claims and Interests out of the Debtors' Estates. Your support of the Parent's Plan will enable it to be implemented and help ensure its success.

HARBINGER'S RECOMMENDATION AND CONCLUSION

Harbinger strongly recommends that all holders of impaired Claims in Classes 2 and 3 and holders of Claims in Class 4 vote to accept Harbinger's Plan and return their ballots in the enclosed envelope to the Balloting Agent so that they are received on or before **4:00 p.m., Prevailing Central Time, on August 5, 2009.**

In Harbinger's view, Harbinger's Plan provides the best available alternative for providing equitable and expeditious distributions to holders of Claims and Interests out of the Debtors' Estates. Your support of Harbinger's Plan will enable it to be implemented and help ensure its success.

For the reasons set forth above, Harbinger is convinced that the Parent's Plan is not confirmable, and moreover is adverse to the interests of all creditors other than the Asbestos Personal Injury Claimants who would stand to receive a windfall, and would unjustifiably release the valuable SCC Final Judgment for unreasonably low value. Harbinger takes no position as to the Debtors' Plan. Harbinger believes that the failure to confirm any plan of reorganization at this time could have adverse consequences for all creditors. In the event you prefer one of the other proposed Plans, Harbinger nonetheless urges you to vote in favor of Harbinger's Plan as well while indicating your preference as provided on the ballot.

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The undersigned have executed this Disclosure Statement as of the 6th day of July, 2009.

Respectfully submitted,

For the Debtors' Plan:

ASARCO LLC, a Delaware limited liability company

By: /s/ Joseph F. Lapinsky
Joseph F. Lapinsky
Chief Executive Officer and President

ASARCO EXPLORATION COMPANY, INC., a New York corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

ALC, INC., a Tennessee corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President

ASARCO MASTER, INC., a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

ALTA MINING AND DEVELOPMENT COMPANY, a Utah corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

ASARCO OIL AND GAS COMPANY, INC., a New York corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

AMERICAN SMELTING AND REFINING COMPANY, a New Jersey corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

BLACKHAWK MINING AND DEVELOPMENT COMPANY, LIMITED, an Idaho corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

AR MEXICAN EXPLORATIONS, INC., a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

BRIDGEVIEW MANAGEMENT COMPANY, INC., a New Jersey corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

AR SACATON, LLC, a Delaware limited liability company

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

CAPCO PIPE COMPANY, INC., an Alabama corporation

By: /s/ William Perrell
William Perrell
President and Secretary

ASARCO CONSULTING, INC., a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

CEMENT ASBESTOS PRODUCTS COMPANY, an Alabama corporation

By: /s/ William Perrell
William Perrell
President and Secretary

COVINGTON LAND COMPANY, a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

PERU MINING EXPLORATION AND DEVELOPMENT COMPANY, a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

ENCYCLE, INC., a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

SOUTHERN PERU HOLDINGS, LLC, a Delaware limited liability company

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

GOVERNMENT GULCH MINING COMPANY LIMITED, an Idaho corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

TULIPAN COMPANY, INC., a Delaware corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

GREEN HILL CLEVELAND MINING COMPANY, a Nevada corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

WYOMING MINING AND MILLING COMPANY, an Idaho corporation

By: /s/ Douglas E. McAllister
Douglas E. McAllister
President and Secretary

LAC D'AMIANTE DU QUÉBEC LTÉE, a Delaware corporation

By: /s/ William Perrell
William Perrell
President and Secretary

LAKE ASBESTOS OF QUEBEC, LTD., a Delaware corporation

By: /s/ William Perrell
William Perrell
President and Secretary

LAQ CANADA, LTD., a Delaware corporation

By: /s/ William Perrell
William Perrell
President and Secretary

For the Parent's Plan:

ASARCO INCORPORATED, a Delaware AMERICAS MINING CORPORATION, a
corporation Delaware corporation

By: /s/ Jaime F. Collazo Gonzalez
Jaime F. Collazo Gonzalez
CEO and President

By: /s/ Alberto de la Parra Zavala
Alberto de la Parra Zavala
General Counsel

By: /s/ Jorge Lazalde Psihas
Jorge Lazalde Psihas
Vice President and General Counsel

By: /s/ Jorge Lazalde Psihas
Jorge Lazalde Psihas
Assistant Secretary

For Harbinger's Plan:

HARBINGER CAPITAL PARTNERS
MASTER FUND I, LTD.

By: /s/ Lawrence M. Clark, Jr.
Lawrence M. Clark, Jr.
Vice President

**EXHIBIT A-1
TO THE DISCLOSURE STATEMENT**

Debtors' Glossary

DISCLOSURE STATEMENT EXHIBIT A-1

Glossary of Defined Terms for the Debtors' Plan Documents

Unless the context otherwise requires or a Plan Document otherwise provides, the following terms, when used in initially capitalized form in the Disclosure Statement, related exhibits, and Plan Documents, shall have the following meanings. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term by the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the event of a conflict or ambiguity). If the Glossary adopts the meaning assigned to a term in the New Plan Sponsor PSA, the New Plan Sponsor PSA's definition of that term shall control in the event of a conflict between that definition and the definition set forth in this Glossary for informational purposes. The rules of construction set forth herein and in section 102 of the Bankruptcy Code shall apply. All references to the "Plan" shall be construed, where applicable, to include references to the Plan and all its exhibits, appendices, schedules, and annexes (and any amendments made in accordance with their terms or applicable law).

Glossary of Terms

1. "2005 Subsidiary Debtors" means the Subsidiary Debtors (other than the Asbestos Subsidiary Debtors) that filed bankruptcy cases in 2005, including, without limitation, ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; and Government Gulch Mining Company, Limited.
2. "2006 Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases in 2006, including, without limitation, Southern Peru Holdings, LLC; AR Sacaton, LLC; and ASARCO Exploration Company, Inc.
3. "2008 Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases in 2008, including, without limitation, Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.
4. "Acquisition Proposal" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any proposal or offer for a merger, recapitalization, share exchange, debt-for-equity exchange, distribution of securities for the benefit of the stakeholders of ASARCO, consolidation, or similar transaction involving a sale or purchase (directly or through a proposed investment in equity securities, debt securities, or claims of creditors) of all or substantially all of the Sold Assets, or all or substantially all of the equity securities of ASARCO or of the Non-Debtor Sellers, other than the transactions contemplated by the terms of the New Plan

Sponsor PSA. For the avoidance of doubt, an Acquisition Proposal does not include a proposal or offer for a Stand-Alone Plan.

5. "ADEQ" means the Arizona Department of Environmental Quality.
6. "Adjustment Amount" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, as of the date that a binding determination of the Closing Accounts Amount (as such term is defined in Exhibit E to the New Plan Sponsor PSA) has been made in accordance with section 4.4 of the New Plan Sponsor PSA, the product of (a) 1.6 multiplied by (b) Agreed Working Capital minus Closing Accounts Amount. In all cases, the Adjustment Amount shall be expressed as a positive number.
7. "Administrative Claim" means any Claim for the payment of an Administrative Expense.
8. "Administrative Expense" means (a) any cost or expense of administration of the Reorganization Cases incurred before the Effective Date and allowable under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(1) of the Bankruptcy Code including, without limitation, (i) any actual and necessary postpetition cost or expense of preserving the Estates or operating the businesses of the Debtors, (ii) any payment required to cure a default on an assumed executory contract or unexpired lease, (iii) any postpetition cost, indebtedness, or contractual obligation duly and validly incurred or assumed by a Debtor in the ordinary course of its business, and (iv) compensation or reimbursement of expenses of professionals to the extent allowed by the Bankruptcy Court under sections 330(a) or 331 of the Bankruptcy Code; (b) any fee or charge assessed against the Estates under 28 U.S.C. § 1930; and (c) the Pre-524(g) Indemnity (as defined in the Asbestos Insurance Settlement Agreement), which shall constitute an Allowed Administrative Claim in accordance with the terms and conditions of such agreement.
9. "Affiliate" (and, with a correlative meaning, "affiliated") shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, with respect to any Person (as such term is defined in the New Plan Sponsor PSA), (a) any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person or (b) any Subsidiary of such Person. As used in this definition, "control" (including with correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).
10. "Agreed Working Capital" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means an amount equal to \$328 million.
11. "AIG" means American International Group, Inc.
12. "Allowed" means a Claim that is not a Disputed Claim and, with respect to any other Claim (other than an Unsecured Asbestos Personal Injury Claim) or Interest, (a) any

Claim or Interest, proof of which was timely filed with the Bankruptcy Court or the Claims Agent, or, by order of the Bankruptcy Court, was not required to be filed, (b) any Claim or Interest that has been, or hereafter is, listed in the Schedules as liquidated in amount and not disputed or contingent, provided that any discrepancy between the Claim as listed in the Schedules and a Proof of Claim filed in connection with such Claim shall be resolved pursuant to the procedures set forth in Article XIV of the Plan, and, in (a) and (b) above, as to which (i) during the period prior to the deadline for filing objections to Proofs of Claim as set forth in Article 14.2 of the Plan, the Claim or Interest has been allowed by a Final Order or in a settlement approved by the Confirmation Order (but only to the extent so allowed), or (ii) after the deadline for filing objections to Proofs of Claim, either no objection to the allowance thereof was filed prior to the Claims objection deadline or the Claim or Interest has been allowed by a Final Order or in a settlement approved by the Confirmation Order (but only to the extent so allowed). "Allowed" means, with respect to any Demand or Unsecured Asbestos Personal Injury Claim, any Demand or Unsecured Asbestos Personal Injury Claim that is liquidated and allowed pursuant to the Asbestos TDP. "Allowed" also includes (a) all Claims allowed by the Bankruptcy Court by approval of: (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, (v) the Mission Mine Settlement Agreement, and (vi) the Environmental Custodial Trust Settlement Agreements; and (b) all Previously Settled Environmental Claims.

13. "Allowed Amount" of any Claim means the amount at which that Claim is Allowed (excluding any post-petition interest).
14. "Alter Ego Theories" means theories asserting that a Debtor should be held liable for the Claims and Demands against one or more other Debtors on the ground that it was their alter ego, including, without limitation, denuding-the-corporation, single-business-enterprise, corporate trust funds, breach of fiduciary duty or conspiracy, theories that a Debtor was the mere instrumentality, agent, or alter ego of another Debtor, or that the corporate veil should be pierced, or that as a result of domination and control over any of the Debtors, directly or indirectly, another Debtor should be liable for Asbestos Personal Injury Claims and Demands or any other Claims and Demands that have origins in acts or omissions of any of the other Debtors, or any other theories of direct or indirect liability for the conduct of, Claims against, or Demands on, any of the other Debtors to the extent that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code.
15. "AMC" means Americas Mining Corporation, a Delaware corporation.
16. "AMC Consolidated Group" means the affiliated group of corporations having AMC as the common parent and including ASARCO NJ Subgroup and the ASARCO LLC Subgroup.
17. "Amended Asbestos/AMC/Parent Agreement in Principle" means the Amended Agreement in Principle Regarding Summary Terms of Parent's Fifth Amended Plan of Reorganization for ASARCO LLC and Subsidiaries Under Chapter 11 of the United

States Bankruptcy Code among the Asbestos Claimants' Committee, the FCR, AMC, and the Parent.

18. "Ancillary Agreements" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the Assignment and Assumption Agreement, the Bill of Sale, the Transition Services Agreement, the Patent Assignment, the Trademark Assignment, the Deeds, the Leasehold Deeds, the Mortgages, the Security Agreement and the other documents to be delivered in connection therewith, Plan Sponsor Promissory Note, and the Assignment and Assumption of Ground Lease Agreement (as each such term is defined in the New Plan Sponsor PSA).
19. "Applicable Law" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, with respect to any Person (as such term is defined in the New Plan Sponsor PSA), any Law applicable to such Person or its business, properties, or assets.
20. "AR Sacaton" means AR Sacaton, LLC, a Delaware limited liability company.
21. "Arizona NRD Settlement Agreement" means the Settlement Agreement Regarding Natural Resource Damage Claims for Mineral Creek, the Gila River, and the San Pedro River, Arizona, by and among the United States, the State of Arizona, and ASARCO, which resolves all Claims against ASARCO related to natural resource damages for the sites addressed therein, referenced in the motion for approval thereof filed on March 30, 2009 [Docket No. 10657] and approved by order entered on April 23, 2009 [Docket No. 10949].
22. "ARSB" means AR Silver Bell, Inc., a Delaware corporation.
23. "ASARCO" means ASARCO LLC, a Delaware limited liability company.
24. "ASARCO Committee" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in ASARCO's bankruptcy case pursuant to section 1102 of the Bankruptcy Code.
25. "ASARCO LLC Subgroup" means ASARCO LLC and its subsidiaries.
26. "ASARCO Master" means ASARCO Master, Inc. (f/k/a Asarco (Delaware), Inc.), a Delaware corporation and one of the Debtors herein. A number of entities were merged into ASARCO Master prior to the Petition Date, including, without limitation, AR Montana Corporation; Asarco Arizona, Inc.; Asarco Exploration Holdings Company, Inc.; Asarco Aginskoe, Inc.; Asarco de Mexico (Delaware) Inc.; Asarco Mexicana (Delaware) Inc.; Asarco Peruvian Exploration Company; GH Holdings Inc.; GHH, LLC; Northern Peru Mining Corporation; NPMC, Incorporated; Domestic Realty Company, Inc.; Midland Coal Company Incorporated; Biotrace Laboratories, Incorporated; Federated Metals Corporation; and LSLC Corp.
27. "ASARCO NJ" means the former ASARCO Incorporated, a New Jersey corporation, a predecessor of ASARCO LLC.

28. "ASARCO NJ Consolidated Group" means the affiliated group of corporations consisting of ASARCO NJ and its subsidiaries for years before 1999.
29. "ASARCO NJ Subgroup" means ASARCO NJ and its subsidiaries.
30. "ASARCO Protected Non-Debtor Affiliate" means an entity listed in **Exhibit 1** to the Plan as such list may be amended or supplemented from time to time.
31. "ASARCO Protected Parties" (each one, an "ASARCO Protected Party") means (a) the Debtors and their predecessors; (b) the Reorganized Debtors; (c) the ASARCO Protected Non-Debtor Affiliates and their predecessors; (d) the Plan Sponsor and the Guarantor (and any of their respective Affiliates); (e) the Settling Asbestos Insurance Companies; (f) the Trusts (except to the extent that the Asbestos Trust Agreement, the Asbestos TDP, or both expressly permit litigation against the Asbestos Trust); (g) the Trustees; (h) the Asbestos TAC; (i) the FCR; (j) the Committees, including their members in their member capacities and counsel for such members solely in connection with such representation; (k) the Plan Administrator; (l) the Examiner; (m) employee benefit plan "fiduciaries" (within the meaning of section 3(21) of ERISA) who are directors or employees of a Debtor; (n) the Indenture Trustees; and (o) 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 (x) the non-Debtor named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation or (y) Grupo México and its Affiliates other than ASARCO and ASARCO's direct and indirect subsidiaries.
32. "ASARCO Residual Assets" means all assets of ASARCO and the Other Subsidiary Debtors (including, without limitation, the Property of the Estate of such debtors) other than the Sold Assets, the Asbestos Trust Assets, the Liquidation Trust Assets, the SCC Litigation Trust Assets, the Environmental Custodial Trust Assets, and the Covington Residual Assets.
33. "Asbestos/AMC/Parent Agreement in Principle" means the Agreement in Principle Regarding Summary Terms of Chapter 11 Plan for ASARCO LLC and Subsidiaries among the Asbestos Claimants' Committee, the FCR, AMC, and the Parent.
34. "Asbestos Books" means all of the books and records of each of the Debtors and Reorganized ASARCO, wherever located, to the extent that such books and records directly relate to (a) Asbestos Trust Assets; (b) Asbestos Insurance Policies including all historical information relating to (i) such Asbestos Insurance Policies; (ii) the settlement of any such Asbestos Insurance Policies; or (iii) the coverage of Asbestos Personal Injury Claims or Demands under or pursuant to any such Asbestos Insurance Policies; or (c) any Unsecured Asbestos Personal Injury Claims or Demands, including all historical information relating to (i) Asbestos Personal Injury Claims or Demands, (ii) the settlement of any such Claims or Demands, or (iii) relevant sales, purchases,

distributions, marketing, advertising, or shipping of asbestos or asbestos-containing products.

35. "Asbestos Claimants' Committee" means the Official Committee of Asbestos Claimants appointed by the U.S. Trustee in the Reorganization Cases pursuant to section 1102 of the Bankruptcy Code and the August 26, 2008 order entered by the Bankruptcy Court.
36. "Asbestos In-Place Insurance Coverage" means any insurance coverage, not reduced to Cash proceeds, that is or may be available as of the Effective Date to address asbestos-related Claims, remedies, liabilities, and Demands, including Asbestos Trust Expenses, under any Asbestos Insurance Policy as a result of or in accordance with an Asbestos Insurance Settlement Agreement or a prepetition settlement agreement with an Asbestos Insurance Company.
37. "Asbestos Insurance Action" means (a) any Avoidance Action against any Asbestos Insurance Company; (b) any claim, cause of action, or right of a Debtor or a Reorganized Debtor against any Asbestos Insurance Company concerning insurance coverage for asbestos-related Claims, remedies, liabilities, and Demands or enforcement of prepetition settlement agreements or extracontractual or statutory remedies and relief, including, without limitation, litigation, arbitration, mediation, and informal negotiations, whether past, pending, or not yet initiated; and (c) any claim, cause of action, or right of a Debtor or a Reorganized Debtor to pursue insurance recovery through available administrative or other means from any Asbestos Insurance Company that is insolvent, or has been liquidated, or is otherwise subject to statutory or legal protections against litigation.
38. "Asbestos Insurance Company" means any insurance company, reinsurance company, syndicate, insurance broker, syndicate insurance broker, guaranty association, or any other Entity with demonstrated or potential liability to a Debtor or a Reorganized Debtor for coverage under an Asbestos Insurance Policy arising from or related to asbestos-related Claims, remedies, liabilities, or Demands, including, without limitation, any such Entity that entered into a prepetition settlement agreement with a Debtor that is currently the subject of an Avoidance Action.
39. "Asbestos Insurance Company Injunction" means the injunction set forth in Article 11.3(b) of the Plan in favor of the Settling Asbestos Insurance Companies.
40. "Asbestos Insurance Policy" means any insurance policy that provides or may provide coverage for claims arising from or related to asbestos-related Claims, remedies, liabilities, or Demands, whether products or premises, and that are or may become available to provide such coverage as a result of the resolution of any Avoidance Actions against any Asbestos Insurance Company, including those policies listed in **Exhibit 8** to the Plan, as such exhibit may be amended or supplemented from time to time.
41. "Asbestos Insurance Recovery or Recoveries" means (a) the right to pursue and receive the benefits and proceeds of Asbestos In-Place Insurance Coverage, including, without limitation, the benefits and proceeds from certain Asbestos Insurance Policies that are subject to prepetition settlement agreements regarding Asbestos Premises Liability

Claims; (b) the right to pursue and receive the benefits and proceeds of any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement; (c) the right to pursue and receive recovery from or as a result of any Asbestos Insurance Action, including, without limitation, consequential, contractual, extracontractual, and statutory damages, or other proceeds, distributions, awards, or benefits; and (d) the right to pursue and receive any other recovery from an Asbestos Insurance Company, in its capacity as such.

42. "Asbestos Insurance Settlement Agreement" means any post-petition settlement agreement, set forth in Exhibit 7 to the Plan, with a Settling Asbestos Insurance Company as such exhibit may be amended or supplemented from time to time as permitted under the Plan.
43. "Asbestos Personal Injury Claim(s)" means any unpaid Claim, remedy or liability, including all related claims, debts, obligations or liabilities, whenever and wherever arising or asserted, whether arising or accruing before or after the Petition Date, whether under a direct or indirect theory of liability, whether domestic or foreign, whether now existing or hereafter arising, whether or not such Claim, remedy, or liability is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, bonded, secured, or unsecured, whether or not the facts or legal bases therefore are known or unknown, whether or not known, unknown, or knowable before Confirmation of the Plan or the close of the Reorganization Cases, whether based on premises or products liability, alleging, arising out of, or in any way relating to physical, emotional, economic, or any other damage or injury for which any Debtor is alleged to be liable, whether direct or indirect and whether alleged or asserted against ASARCO or any other Debtor directly or on account of any Alter Ego Theory, arising out of or in any way relating to asbestos or any products or materials containing asbestos. Asbestos Personal Injury Claims include all such Claims, remedies, and liabilities whether in tort, contract, warranty, restitution, conspiracy, contribution, indemnity, guarantee, subrogation, joint and several liability, reimbursement, or any other theory of law, equity, admiralty, or otherwise, whether seeking compensatory, special, economic and non-economic, punitive, exemplary, administrative, proximate, or any other costs or damages; or whether seeking any legal, equitable, or other relief of any kind whatsoever, whether under common law or by statute, including any Claim by an employee that is not otherwise compensated by applicable law such as workers' compensation laws, but excluding claims covered by applicable workers' compensation laws.
44. "Asbestos Personal Injury Claimant" means the holder of an Asbestos Personal Injury Claim.
45. "Asbestos Premises Liability Claim(s)" means any and all Unsecured Asbestos Personal Injury Claims against ASARCO that result from exposure to asbestos or asbestos-containing material at premises owned, leased, rented, occupied, or controlled by ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products and operations ASARCO allegedly has liability or is otherwise liable), including but not limited to claims that are covered under the terms and conditions of the Asbestos Insurance Policies, and specifically including, without limitation, such policies

that are subject to prepetition settlement agreements for premises claims, to the extent of the coverage thereunder.

46. "Asbestos Ratable Portion" means the ratio of \$750 million to the sum of (a) the aggregate Allowed Claims in Class 3 and Disputed Claims in Class 3 and (b) \$750 million.
47. "Asbestos Settlement" means the compromise and settlement agreement among the Debtors, the Plan Sponsor, the Asbestos Subsidiary Committee, the Asbestos Claimants' Committee, and the FCR regarding the Debtors' asbestos-related liabilities, as set forth in the Sterlite Plan Agreement in Principle Term Sheet.
48. "Asbestos Subsidiary Cases" means the bankruptcy cases of the Asbestos Subsidiary Debtors.
49. "Asbestos Subsidiary Committee" means the Official Committee of Unsecured Creditors appointed by the U.S. Trustee in the Asbestos Subsidiary Cases, pursuant to section 1102 of the Bankruptcy Code.
50. "Asbestos Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases on April 11, 2005, including, without limitation, Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; and Cement Asbestos Products Company.
51. "Asbestos TAC" means the Asbestos Trust Advisory Committee created pursuant to the Plan and the Asbestos Trust Agreement, as may be reconstituted from time to time in accordance with the terms thereof.
52. "Asbestos TDP" means the trust distribution procedures, substantially in the form attached as Exhibit 1 to the Asbestos Trust Agreement, as such procedures may be modified from time to time in accordance with the terms thereof, the Asbestos Trust Agreement, or the Plan.
53. "Asbestos Trust" means the tax-qualified settlement trust to be established pursuant to the Asbestos Trust Agreement.
54. "Asbestos Trust Agreement" means the Asbestos Trust Agreement, effective as of the Effective Date, substantially in the form attached as **Exhibit 6** to the Plan, as it may be modified from time to time in accordance with the terms thereof.
55. "Asbestos Trust Assets" means (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 Cash for purposes of Asbestos Trust Expenses.
56. "Asbestos Trust Beneficiaries" means the holders of Unsecured Asbestos Personal Injury Claims and Demands.

57. "Asbestos Trust Bylaws" means the Asbestos Trust Bylaws, effective as of the Effective Date, as such bylaws may be modified from time to time in accordance with the terms of the Asbestos Trust Agreement.
58. "Asbestos Trust Documents" means each of the Asbestos Trust Agreement, the Asbestos Trust Bylaws, the Asbestos TDP, and the other agreements, instruments, and documents governing the establishment, administration, and operation of the Asbestos Trust, as they may be amended or modified from time to time in accordance with the Plan or the terms of such documents.
59. "Asbestos Trust Expenses" means any costs or expenses of, or imposed upon, assumed by, or in respect of, the Asbestos Trust, including loss expenses or legal expenses, except for payments to holders of Unsecured Asbestos Personal Injury Claims or Demands on account of such Unsecured Asbestos Personal Injury Claims or Demands.
60. "Asbestos Trustees" means the individuals or Entities, which may include Reorganized ASARCO or a representative thereof, appointed as trustees of the Asbestos Trust under the Asbestos Trust Agreement and any successor thereto chosen in accordance with the Asbestos Trust Agreement.
61. "Assumed Liabilities" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means those Liabilities described in section 3.3(a) through (g) of the New Plan Sponsor PSA that the Plan Sponsor shall assume, pay, perform, and discharge when due.
62. "Augusta Defendants" means Augusta Resource (Arizona) Corporation and Augusta Resource Corporation.
63. "Available Plan Funds" means the funds remaining from the Available Plan Sales Proceeds and the Distributable Cash after the Plan Administrator has (a) fully funded the Plan Administration Reserve, the Environmental Custodial Trust Administration Funding, the Environmental Custodial Trust Funding, the Liquidation Trust Expense Fund, the SCC Litigation Trust Expense Fund, and (b) paid \$27.5 million in Cash for purposes of Asbestos Trust Expenses.
64. "Available Plan Sales Proceeds" means the Plan Sales Proceeds and any interest earned thereon.
65. "Avoidance Action" means causes of action arising under chapter 5 of the Bankruptcy Code, or under related state or federal statutes and common law, including, without limitation, fraudulent transfer and fraudulent conveyance laws, whether or not litigation has commenced to prosecute such causes of actions.
66. "Back-Up Bid Agreement" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means a definitive purchase and sale agreement executed by the Plan Sponsor and the Guarantor in the form of the New Plan Sponsor PSA (including Article II thereof) with only such modifications as are described in section 8.10(f) of the New Plan Sponsor PSA.

- 67. "Back-Up Bid Option" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the Plan Sponsor's right, under certain circumstances, 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, pursuant to section 8.10(f) thereof.
- 68. "Ballot" means the form or forms distributed to holders of impaired Claims on which is to be indicated the acceptance or rejection of the Plan.
- 69. "Balloting Agent" means AlixPartners, LLP.
- 70. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. § 101, *et seq.*, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made, to the extent applicable to the Reorganization Cases.
- 71. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division.
- 72. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Reorganization Cases.
- 73. "Bar Date" means the date(s) by which all Entities asserting certain Claims against the Debtors must have filed a Proof of Claim or be forever barred from asserting such Claims against the Debtors or their Estates, as established by any order(s) of the Bankruptcy Court or the Plan.
- 74. "Bar Date Order" means the order(s) entered by the Bankruptcy Court authorizing the respective Bar Date(s), including the Confirmation Order.
- 75. "Barclays Capital" means Barclays Capital Inc.
- 76. "Bid Procedures Order" means the interim order approving the Plan Sponsor procedures, entered by the Bankruptcy Court on March 25, 2008.
- 77. "Bid Protections Order" means the Final Order Granting Motion of ASARCO LLC for an Order Approving (1) Bid Procedures in Connection with Selecting a Chapter 11 Plan Sponsor and Exit Transaction under a Chapter 11 Plan and (2) Bid Protections to Sterlite (USA), Inc. in Connection Therewith, entered by the Bankruptcy Court on July 1, 2008.
- 78. "Bondholder" means an Entity that holds one or more of the Bonds or the Indentures, other than any Indenture Trustee Fee Claim.
- 79. "Bondholders' Claim" means any Claim arising under one or more of the Bonds.
- 80. "Bonds" means ASARCO's unsecured long-term bond debt, consisting of the following:

<u>Bond</u>	<u>Maturity</u>	<u>Face Value</u>
CSFB JP Morgan Sec Debentures at 7.875%	April 2013	\$100.00m
Nueces River Env Bond (IRB) Series 1998 A 5.60%	April 2018	\$22.20m
CSFB Corporate Debentures at 8.50%	May 2025	\$150.00m
Gila County – Installment Bond 5.55%	January 2027	\$71.90m
Lewis & Clark County Env Bond (IRB) 5.60%	January 2027	\$33.16m
Nueces River Env Bond (IRB) 5.60%	January 2027	\$27.74m
Lewis & Clark County Env Bond (IRB) 5.85%	October 2033	\$34.80m

81. “Burns Litigation” means the claims and causes of action of the Debtors in the action pending 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, but not including the Debtors’ claims and causes of action that have been removed and transferred to the District Court and are now pending as Civil Action No. 07-00203 as the Grupo Litigation.
82. “Business” shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the business of mining, smelting, and refining of copper and other metals as conducted by the Sellers on the date of the New Plan Sponsor PSA.
83. “Business Day” means any day other than a Saturday, Sunday, or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)).
84. “CAPCO” means CAPCO Pipe Company, Inc. and Cement Asbestos Products Company.
85. “Cash” means cash, cash equivalents, and other readily marketable securities or instruments, including, without limitation, direct obligations of the United States and certificates of deposit issued by federally insured banks.
86. “CBA” means the collective bargaining agreement between ASARCO and the USW on behalf of itself and the other labor organizations representing the bargaining unit employees of ASARCO.
87. “CBRI” means Copper Basin Railway, Inc., a Delaware corporation.
88. “CDA Trust” means the trust created pursuant to the Residual Environmental Settlement Agreement for the Coeur d’Alene, Idaho site and properties owned by the Debtors in Shoshone County and Kootenai County, Idaho.
89. “CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. § 9601, *et seq.*
90. “Certificate” means an instrument evidencing an Allowed Bondholders’ Claim.
91. “Charging Lien” means any lien that an Indenture Trustee is entitled to exercise under the terms of its Indenture against, or any other priority in payment to which such Indenture

Trustee is entitled under the terms of its Indenture with respect to, any distribution to be made under such Indenture or on account of any debts of the Debtors owed to holders of obligations under such Indenture.

- 92. “Chase” means JPMorgan Chase Bank, N.A., the issuer of the Credit Facility described in Section 2.15(b) of the Disclosure Statement.
- 93. “Claim” shall have the meaning assigned to such term by section 101(5) of the Bankruptcy Code.
- 94. “Claim Objection Deadline” shall have the meaning assigned to such term in Article 14.2(a) of the Plan.
- 95. “Claimant” means the holder of a Claim.
- 96. “Claims Agent” means AlixPartners, LLP.
- 97. “Class” means a category of Claims or Interests as defined in Article III of the Plan.
- 98. “Class 3 Claimant’s Ratable Portion” means the ratio of the amount of a particular Class 3 Claim to the sum of (a) the aggregate Allowed Claims in Class 3 and Disputed Claims in Class 3 and (b) \$750 million.
- 99. “Class A Liquidation Trust Interests” means the Liquidation Trust Interests issued to holders of Class 3 General Unsecured Claims other than Governmental Authorities with environmental claims.
- 100. “Class A SCC Litigation Trust Beneficiaries” means the holders of Class A SCC Litigation Trust Interests.
- 101. “Class A SCC Litigation Trust Interests” means the SCC Litigation Trust Interests issued to holders of Class 3 General Unsecured Claims other than Governmental Authorities with environmental claims.
- 102. “Class B Liquidation Trust Interests” means the Liquidation Trust Interests issued to holders of Class 3 General Unsecured Claims that are Governmental Authorities with environmental Claims.
- 103. “Class B SCC Litigation Trust Beneficiaries” means the holders of Class B SCC Litigation Trust Interests.
- 104. “Class B SCC Litigation Trust Interests” means the SCC Litigation Trust Interests issued to holders of Class 3 General Unsecured Claims that are Governmental Authorities with environmental Claims.
- 105. “Class C Liquidation Trust Interests” means the Liquidation Trust Interests issued to the Asbestos Trust.

106. "Class C SCC Litigation Trust Beneficiaries" means the holders of Class C SCC Litigation Trust Interests.
107. "Class C SCC Litigation Trust Interests" means the SCC Litigation Trust Interests issued to the Asbestos Trust.
108. "Class D SCC Litigation Trust Interests" means the SCC Litigation Trust Interests issued to the SCC Purchasers, if any.
109. "Closing" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the closing of the sale and purchase of the Sold Assets and the assumption of the Assumed Liabilities pursuant to the New Plan Sponsor PSA.
110. "Closing Date" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the date on which the Closing occurs.
111. "Coal Act" means the Coal Industry Retiree Health Benefit Act of 1992, as amended.
112. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act.
113. "COD Income" means cancellation of indebtedness income.
114. "Committees" means the ASARCO Committee, the Asbestos Subsidiary Committee, and the Asbestos Claimants' Committee.
115. "Confidentiality Agreement" means the confidentiality agreement dated July 6, 2007, between the Guarantor and ASARCO.
116. "Confirmation," "Confirmation of the Debtors' Plan," or "Confirmation of this Plan" means the approval of the Plan by the Bankruptcy Court at the Confirmation Hearing.
117. "Confirmation Date" means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.
118. "Confirmation Hearing" means the hearing(s) that will be held before the Bankruptcy Court in which the Debtors will seek Confirmation of the Plan.
119. "Confirmation Order" means the order of the Bankruptcy Court confirming the Plan pursuant to section 1129 and other applicable sections of the Bankruptcy Code.
120. "Consummation" means the occurrence of the Effective Date.
121. "Contract" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any written contract, indenture, note, bond, loan, instrument, lease, commitment, or other agreement.
122. "Convenience Claim" means any Allowed Unsecured Claim, excluding Asbestos Personal Injury Claims and Bondholders' Claims, otherwise entitled to treatment as a

General Unsecured Claim, which is \$1,000 or less when aggregated with the other Unsecured Claims of such holder, or, in the alternative, is reduced by election of such holder on such holder's Ballot, together with all other Unsecured Claims of such holder, to an aggregate Unsecured Claim of \$1,000.

123. "Corporate Governance Stipulation" means the Stipulation and Order Regarding Corporate Governance, entered by the Bankruptcy Court on December 15, 2005.
124. "Covington" means Covington Land Company, a Delaware corporation.
125. "Covington Residual Assets" means assets of Covington including, without limitation, the Property of the Estate of Covington.
126. "Credit Facility" means the \$5 million senior secured twelve-month credit facility issued by Chase, as discussed in Section 2.15(b) of the Disclosure Statement.
127. "Creditor Constituents" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the ASARCO Committee, the Asbestos Subsidiary Committee, the FCR, the DOJ, the United Steel Workers Union, and the States of Washington, Montana, Missouri, Arizona, and Texas.
128. "Cure Amount Claim" means the amount due to the non-Debtor contracting party based upon a Debtor's defaults under an executory contract or unexpired lease at the time such contract or lease is assumed pursuant to section 365 of the Bankruptcy Code.
129. "Custodial Trust Administrative Accounts" means the trust accounts established pursuant to the various Environmental Custodial Trust Agreements into which Environmental Custodial Trust Administration Funding shall be deposited.
130. "Custodial Trust Environmental Cost Accounts" means the trust accounts established pursuant to the various Environmental Custodial Trust Agreements into which the Environmental Custodial Trust Funding shall be deposited.
131. "Debtor" means one of the Debtors.
132. "Debtors" means the debtors in the Reorganization Cases, including, without limitation, Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; Cement Asbestos Products Company; ASARCO LLC; ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations, Inc.; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; Southern Peru Holdings, LLC; AR Sacaton, LLC; ASARCO Exploration Company, Inc.; Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

133. "Debtors' Glossary" as such term is used in the Disclosure Statement means this Glossary of Defined Terms for the Debtors' Plan Documents, as such document may be further amended, supplemented, or modified from time to time.
134. "Debtors' Plan" as such term is used in the Disclosure Statement means the Sixth Amended Joint Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code, As Modified, filed by the Debtors, and all exhibits attached thereto or referenced therein, as the same may be amended, modified, or supplemented.
135. "Debtors' Plan Documents" as such term is used in the Disclosure Statement means the Debtors' Plan, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Debtors' Plan or the Disclosure Statement that aid in effectuating the Debtors' Plan, including, without limitation, the Asbestos Trust Documents, as the same may be amended, modified, or supplemented, in accordance with their terms.
136. "Deemed Value" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, in respect of the Purchase Price or a Superior Proposal, the aggregate dollar value to the Sellers of all cash and non-cash (as applicable) consideration comprising the Purchase Price or Superior Proposal, as applicable, as determined by the board of directors of ASARCO after consultation with its financial and legal advisors, the Creditor Constituents, and such other advisors as the board of directors of ASARCO chooses, in its sole discretion, to consult.
137. "Definitive Agreement" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means a binding definitive written agreement, enforceable against the parties thereto, that effects the consummation of a Superior Proposal. A Definitive Agreement does not include an executed letter of intent or any other preliminary written agreement, nor does it include any oral or written agreement in principle or acceptance of an offer or bid by any Person.
138. "Delaware Trustee" means the Entity or Entities appointed under the Asbestos Trust Agreement, the Liquidation Trust Agreement, and the SCC Litigation Trust Agreement to fulfill the requirement of section 3807 of the Delaware Statutory Trust Act, 12 DEL. CODE ANN. § 3807.
139. "Demand" means a demand, to the fullest extent such term is used or defined in section 524(g)(5) of the Bankruptcy Code, for payment, present or future, that (a) was not a Claim during the proceedings before the Bankruptcy Court leading to Confirmation of the Plan in the Reorganization Cases; (b) arises out of the same or similar conduct or events that gave rise to an Asbestos Personal Injury Claim; and (c) pursuant to the Plan is to be paid by the Asbestos Trust.
140. "Deposit" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the funds in the aggregate amount of \$125 million that the Plan Sponsor shall make available to ASARCO pursuant to section 4.2 of the New Plan Sponsor PSA.

141. "Derivative Asbestos Claims" means Asbestos Personal Injury Claims against the Asbestos Subsidiary Debtors for which ASARCO is alleged to be liable under any of the various Alter Ego Theories.
142. "Derivative D&O Litigation" means the claims and causes of action of the Debtors asserted derivatively by the ASARCO Committee in Adversary No. 07-02077, pending in the Bankruptcy Court.
143. "Designated Properties" means each parcel of real property generally identified in **Exhibit 10** to the Plan under the heading Designated Properties.
144. "DIP Agent" means The CIT Group/Business Credit, Inc., the Entity that provided the DIP Facility to ASARCO.
145. "DIP Facility" means the debtor-in-possession credit facility provided by the DIP Agent to ASARCO.
146. "Discharge Injunction" means the permanent injunction set forth in Article 11.2 of the Plan.
147. "Disclosure Order" means the order entered by the Bankruptcy Court on July 2, 2009, approving the Disclosure Statement, a copy of which is attached to the Disclosure Statement as **Exhibit C**.
148. "Disclosure Schedule" shall have the meaning assigned to the term "Seller Disclosure Schedule" in the New Plan Sponsor PSA, which for reference purposes only means the disclosure schedule delivered to the Plan Sponsor pursuant to the New Plan Sponsor PSA.
149. "Disclosure Statement" means the 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., including all exhibits attached thereto, pursuant to section 1125 of the Bankruptcy Code and approved by the Bankruptcy Court, as such Disclosure Statement may be further amended, supplemented, or modified from time to time.
150. "Disclosure Statement Approval Date" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the date on which the Disclosure Statement (as such term is defined in the New Plan Sponsor PSA) shall have been approved by the Bankruptcy Court.
151. "Disputed Claim" means a Claim (other than an Asbestos Personal Injury Claim) that is not an Allowed Claim, including a Claim, in whole or in part: (a) that is listed on the Schedules as, or proof of which is filed as, unliquidated, disputed, or contingent; (b) as to which a Proof of Claim designating such Claim as liquidated in amount and not contingent was not timely and properly filed; (c) as to which a Debtor, Reorganized ASARCO, the Plan Administrator, the Asbestos Trustees, or other party in interest has filed a timely objection or request for estimation in accordance with the Bankruptcy Code

and Bankruptcy Rules; or (d) that is otherwise disputed by a Debtor, Reorganized ASARCO, the Plan Administrator, the Asbestos Trustees, or other party in interest in accordance with applicable law, which objection, request for estimation, or dispute has not been withdrawn or determined by a Final Order.

- 152. "Disputed Claims Reserve" means a reserve for any distributions to be set aside by the Plan Administrator pursuant to Article 13.8 of the Plan on account of Disputed Claims.
- 153. "Disputed Secured Claims Reserve" means the escrow account(s) established by the Plan Administrator pursuant to Article 13.8 of the Plan on account of allegedly Secured Claims that are Disputed Claims.
- 154. "Distributable Cash" means unrestricted Cash on hand with the Debtors on the Effective Date, plus interest earned thereon, if any.
- 155. "Distribution Record Date" means the close of business on the Confirmation Date.
- 156. "District Court" means the United States District Court for the Southern District of Texas.
- 157. "DOJ" means the United States Department of Justice, Environment & Natural Resources Division.
- 158. "DTC" means the Depository Trust Company.
- 159. "East Helena Soils Settlement Agreement" means the Settlement Agreement Regarding Response Costs at the East Helena Superfund Site referenced in the motion for approval thereof filed on September 19, 2008 [Docket No. 9231] and approved by order entered on February 6, 2009 [Docket No. 10392].
- 160. "Effective Date" means, and shall occur on, the first Business Day upon which all of the conditions to occurrence of the Effective Date contained in Article 9.1 of the Plan have been satisfied, or waived pursuant to Article 9.2 of the Plan.
- 161. "Effective Order" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means a Plan Confirmation Order entered by the Bankruptcy Court or the United States District Court that has jurisdiction over the Bankruptcy Cases (as such term is defined in the New Plan Sponsor PSA): (a) which the time to appeal or seek certiorari, review, reargument, stay, or rehearing has expired or has been waived; or (b) as to which an appeal, petition for certiorari, review, reargument, stay, or rehearing has been filed, but no stay of the Plan Confirmation Order has been granted or is in effect (and no request for such stay is pending); provided, that no order or judgment shall fail to be an "Effective Order" solely because of the possibility that a motion pursuant to section 502(j) or 1144 of the Bankruptcy Code, Rule 59 or 60 of the Federal Rules of Civil Procedure, or Rule 9024 of the Bankruptcy Rules may be filed with respect to such order or judgment.

162. "El Paso Paving SEP Claim" means the City of El Paso's claim related to the paving supplemental environmental project.
163. "El Paso Stipulation" means the Stipulation Relating to Proofs of Claim for El Paso County Metals Survey Site and Dona Ana Metal Site and Modification of Case Management Order referenced in the motion for approval thereof filed on September 12, 2007 [Docket No. 5775], and approved by the Bankruptcy Court by orders entered on October 5, 2007 [Docket No. 6019] and on December 4, 2007 [Docket No. 6434].
164. "ELT/ES" means ELT Houston, LLC and EnergySolutions, LLC.
165. "Employee Benefit Plan" shall have the meaning assigned to the term "Seller Employee Benefit Plan" in the New Plan Sponsor PSA, which for reference purposes only means each "employee pension benefit plan" (as defined in section 3(2) of ERISA), "employee welfare benefit plan" (as defined in section 3(1) of ERISA), stock option, stock purchase, stock appreciation right, incentive, deferred compensation plan or arrangement, and other employee fringe benefit plan or arrangement maintained, contributed to, or required to be maintained or contributed to by the Sellers or with respect to which any of the Sellers or their Affiliates have any obligation or liability.
166. "Entity" shall have the meaning assigned to such term by section 101(15) of the Bankruptcy Code.
167. "Environmental 9019 Motion" means the Debtors' Motion under Bankruptcy Rule 9019 for Order Approving Settlement of Environmental Claims, filed on March 12, 2009 [Docket No. 10534].
168. "Environmental Agencies" means Governmental Units whose responsibilities include enforcement and oversight of Environmental Law.
169. "Environmental Custodial Trust(s)" means the custodial trusts to be established pursuant to the various Environmental Custodial Trust Agreements.
170. "Environmental Custodial Trust Accounts" means the Custodial Trust Environmental Cost Accounts and the Custodial Trust Administrative Accounts.
171. "Environmental Custodial Trust Administration Funding" means the Cash that ASARCO shall allocate and disburse to the various Environmental Custodial Trusts for administration of the Designated Properties, as set forth in **Exhibit F-1** to the Disclosure Statement.
172. "Environmental Custodial Trust Agreements" means the agreements governing the operation of the Environmental Custodial Trusts, as well as any other ancillary agreements or related documents.
173. "Environmental Custodial Trust Assets" means the Designated Properties and related contracts, fixtures, and personalty to be transferred to the Environmental Custodial Trusts in accordance with the Environmental Custodial Trust Settlement Agreements, the

Environmental Custodial Trust Administration Funding, and the Environmental Custodial Trust Funding.

174. "Environmental Custodial Trust Documents" means the Environmental Custodial Trust Agreements and the other agreements, instruments, and documents governing the establishment, administration, and operation of the Environmental Custodial Trusts, as they may be amended or modified from time to time in accordance with the terms of such documents.
175. "Environmental Custodial Trust Funding" means Cash in the total aggregate amount of approximately \$261.3 million that ASARCO shall allocate and disburse to the various Environmental Custodial Trusts for remediation and restoration of, and other environmental costs related to, the Designated Properties, as further described in the Environmental Custodial Trust Settlement Agreements.
176. "Environmental Custodial Trust Settlement Agreements" means the settlement agreements with EPA or other Environmental Agencies relating to the Designated Properties.
177. "Environmental Custodial Trustees" means the Entities appointed as Environmental Custodial Trustees under the various Environmental Custodial Trust Agreements and any successors thereto chosen in accordance with such Environmental Custodial Trust Agreements.
178. "Environmental Law" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any Law pertaining to health, industrial hygiene, public safety, occupational safety, mining, mine reclamation, natural or cultural resources, fish, wildlife or other protected species, or the environment, including without limitation, CERCLA; RCRA; the Toxic Substances Control Act (15 U.S.C. § 2601, *et seq.*); the Clean Water Act (33 U.S.C. § 1251, *et seq.*); the Oil Pollution Act of 1990 (33 U.S.C. § 2701, *et seq.*); the Clean Air Act (42 U.S.C. § 7401, *et seq.*); the Atomic Energy Act (42 U.S.C. § 2011, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. § 5101, *et seq.*); the Emergency Planning and Community Right-To-Know Act (42 U.S.C. 11001, *et seq.*); the Endangered Species Act of 1973 (16 U.S.C. § 1531, *et seq.*); the Federal Land Policy and Management Act of 1976 (43 U.S.C. § 1701, *et seq.*); the Lead-Based Paint Exposure Reduction Act (15 U.S.C. § 2681, *et seq.*); the Safe Water Drinking Act Amendments of 1996 (42 U.S.C. § 300); the National Historic Preservation Act of 1966; the Mine Safety and Health Act (30 U.S.C. § 801, *et seq.*); the Surface Mining Control and Reclamation Act (30 U.S.C. § 1201, *et seq.*); and state and local counterparts of each of the foregoing.
179. "EPA" means the United States Environmental Protection Agency.
180. "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.
181. "Estate" means a Debtor's bankruptcy estate created pursuant to section 541 of the Bankruptcy Code on its Petition Date.

182. "Examiner" means Michael Denis Warner in his capacity as examiner of the Debtors.
183. "Exchange Act" means the Securities Exchange Act of 1934, as amended, together with the rules and regulations promulgated thereunder.
184. "Excluded Assets" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the properties, assets, and rights of any Seller described in section 3.2 of the New Plan Sponsor PSA that are expressly excluded from the transactions contemplated by the New Plan Sponsor PSA and are not included in the Sold Assets.
185. "FCR" means Judge Robert C. Pate, who was appointed by the Bankruptcy Court pursuant to section 524(g) of the Bankruptcy Code to represent future asbestos-related claimants and any and all Persons that may assert Demands against any of the Debtors but have not presently done so, and who shall continue to serve after the Effective Date on behalf of holders of Demands in order to exercise the functions, rights, duties, powers, and privileges set forth in the Asbestos Trust Documents.
186. "Federal Rules" means the Federal Rules of Civil Procedure, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Reorganization Cases.
187. "FFIC" means Fireman's Fund Insurance Company.
188. "Fifth Amended Disclosure Statement" means the Disclosure Statement in Support of the Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code, filed by the Debtors on May 11, 2009.
189. "Fifth Amended Plan" means the Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code, filed by the Debtors on May 11, 2009.
190. "Final Order" means an order of a court: (a) as to which the time to appeal, petition for writ of certiorari, or otherwise seek appellate review or to move for reargument, rehearing, or reconsideration has expired and as to which no appeal, petition for writ of certiorari, or other appellate review, or proceedings for reargument, rehearing, or reconsideration shall then be pending; (b) as to which any right to appeal, petition for certiorari, or move for reargument, rehearing, or reconsideration shall have been waived in writing by the party with such right; or (c) in the event that an appeal, writ of certiorari, or other appellate review or reargument, rehearing, or reconsideration thereof has been sought, which shall have been affirmed by the highest court to which such order was appealed, from which writ of certiorari or other appellate review or reargument, rehearing, or reconsideration was sought, and as to which the time to take any further appeal, to petition for writ of certiorari, to otherwise seek appellate review, and to move for reargument, rehearing, or reconsideration shall have expired; *provided, however*, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure or under section 1144 of the Bankruptcy Code, or any analogous rule under the Bankruptcy

Rules, may be filed with respect to such order shall not cause such order not to be a Final Order.

191. "First L/C" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the letter of credit issued in favor of ASARCO by ABN AMRO Bank N.V., Chicago in the amount of \$50 million, pursuant to section 4.2(a) of the New Plan Sponsor PSA.
192. "Flow Through Bonds" means the surety bonds numbered 403998, 394729, 133771, 142706, and 403855 issued by Seaboard on behalf of ASARCO, as principal, to bond ASARCO's obligations to various Entities.
193. "Forfeited Distributions" means funds in the Undeliverable and Unclaimed Distribution Reserve that remain unclaimed or otherwise undeliverable to the Claimant entitled thereto.
194. "General Unsecured Claim" means an Unsecured Claim that is not an Unsecured Asbestos Personal Injury Claim, a Convenience Claim, a Late-Filed Claim, or a Subordinated Claim.
195. "Glencore" means Glencore Ltd. and its partners.
196. "Glencore Acquisition Co." means the newly created acquisition entity that Glencore proposed to create to acquire ASARCO's operating assets under the revised Non-Binding Indicative Offer Termsheet for ASARCO's Operating Assets.
197. "Glossary" as such term is used in the Plan Documents other than the Disclosure Statement means this Glossary of Defined Terms for the Debtors' Plan Documents, as such Glossary may be further amended, supplemented, or modified from time to time.
198. "Governmental Authority" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any entity exercising executive, legislative, judicial, regulatory, or administrative functions of or pertaining to government, foreign or domestic, including any governmental authority, agency, department, board, commission, or instrumentality of the United States or other country, any state, province, tribal authority, or any political subdivision of any of the foregoing, and any tribunal, court, arbitrator(s), or other private adjudicator whose decisions are binding of competent jurisdiction, and shall include the Bankruptcy Court.
199. "Governmental Environmental Claimants" means the Governmental Authorities that hold (a) environmental Claims relating to the sites listed in **Exhibit 12** to the Plan or (b) the Residual Environmental Claims.
200. "Governmental Unit" shall have the meaning assigned to such term by section 101(27) of the Bankruptcy Code.
201. "Grupo Litigation" means the claims and causes of action of the Debtors against Grupo México that are pending in the District Court as Civil Action No. 07-00203.

202. "Grupo México" means Grupo México S.A.B. de C.V., ASARCO's ultimate parent company.
203. "Guarantor" means Sterlite Industries (India) Ltd., an Indian limited liability company.
204. "Harbinger" means Harbinger Capital Partners Master Fund I, Ltd.
205. "Harbinger's Glossary" means the Glossary of Defined Terms for Harbinger's Plan Documents prepared by Harbinger and attached to the Disclosure Statement as **Exhibit A-3**, as such document may be amended, supplemented, or modified from time to time.
206. "Harbinger's Plan" means the Second Amended Chapter 11 Plan Filed by Harbinger Capital Partners Master Fund I, Ltd., and all exhibits attached thereto or referenced therein, as the same may be amended, modified, or supplemented.
207. "Harbinger's Plan Documents" means Harbinger's Plan, the Disclosure Statement, and all documents, attachments, and exhibits attached to Harbinger's Plan or the Disclosure Statement that aid in effectuating Harbinger's Plan, as the same may be amended, modified, or supplemented.
208. "Hayden Past Cost Settlement Agreement" means the Settlement Agreement Regarding the ASARCO Hayden Plant Site by and among the EPA and ASARCO, which resolves the United States' Claims for past response costs incurred at the Hayden smelter and associated facilities on or before May 27, 2008.
209. "Hayden Settlement Agreement" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the Administrative Settlement Agreement and Order on Consent for Removal Action, U.S. EPA Region IX, CERCLA Docket No. 2008-09, and the Administrative Settlement Agreement and Order on Consent for Removal Action, U.S. EPA Region IX, CERCLA Docket No. 2008-13, by and among the EPA, the ADEQ, and ASARCO.
210. "Hazardous Materials" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any substance, material, pollutant, contaminant, waste, or special waste, whether solid, liquid, or gaseous, that is infectious, toxic, hazardous, explosive, corrosive, flammable, or radioactive or which is defined, designated, listed, regulated, or included in any Environmental Law, including asbestos or asbestos-containing material, petroleum or petroleum additive substances, polychlorinated biphenyls, or sewage.
211. "Hourly Plan" means the Retirement Income Plan for Hourly-Rated Employees of ASARCO LLC.
212. "Hourly and Salaried Plans" means the Hourly Plan and the Salaried Plan.
213. "HSR Act" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

214. “Indemnification Escrow” means the escrow account in the amount of \$20 million to address Reorganized ASARCO’s anticipated indemnification obligations, pursuant to Article 11.8(b) of the Plan.
215. “Indenture Trustee Fee Claim” means, individually and collectively, any claim against the Debtors for any compensation, disbursements, fees, expenses, and indemnification pursuant to an Indenture, including any claim under such Indenture for the reasonable fees and expenses of an Indenture Trustee, its counsel, and any other professionals of the Indenture Trustee payable thereunder, any unpaid prepetition fees and costs of the Indenture Trustee (including its counsel and other professionals) payable thereunder, and any claim for unpaid fees and expenses of any predecessor Indenture Trustee payable thereunder.
216. “Indenture Trustees” means Wilmington Trust Company, Deutsche Bank Trust Company Americas, and Wells Fargo Bank, National Association, each in their respective capacity as a trustee under the Indentures.
217. “Indentures” means, collectively, the (a) Indenture, dated as of October 1, 1994, as supplemented by the First Supplemental Indenture, dated as of February 16, 2005, by and between ASARCO LLC, successor to ASARCO Incorporated, as issuer, JPMorgan Chase Bank (formerly known as Chemical Bank), as Indenture Trustee, pursuant to which ASARCO LLC issued its 8.5% Corporate Debentures Due 2025; (b) Indenture dated as of October 1, 1998 between Lewis and Clark County, Montana and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Lewis and Clark County, Montana issued the Lewis and Clark County, Montana Environmental Facilities Revenue Bonds (ASARCO Incorporated Project) Series 1998 due 2033; (c) Indenture dated as of January 1, 1998 between Lewis and Clark County, Montana and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Lewis and Clark County, Montana issued the Lewis and Clark County, Montana Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 due 2027; (d) Indenture dated as of October 1, 1998 between Nueces River Authority and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Nueces River Authority issued the Nueces River Authority Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998A due 2018; (e) Indenture dated as of January 1, 1998 between Nueces River Authority and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which Nueces River Authority issued the Nueces River Authority Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 due 2027; (f) Indenture dated as of January 1, 1998 between The Industrial Development Authority of the County of Gila, Arizona and Deutsche Bank Trust Company Americas (formerly known as Bankers Trust Company) pursuant to which The Industrial Development Authority of the County of Gila, Arizona issued The Industrial Development Authority of the County of Gila, Arizona Environmental Revenue Refunding Bonds (ASARCO Incorporated Project) Series 1998 due 2027; and (g) Indenture dated as of February 1, 1993 by and between ASARCO LLC, successor to ASARCO Incorporated, as Issuer and Bankers Trust Company, as Trustee, pursuant to which ASARCO LLC issued its 7½% Debentures due 2013.

218. "Initial Administrative Claims Bar Date" means September 19, 2008, the date established by the Bankruptcy Court for filing Administrative Claims that arose after the Petition Date but prior to the Initial Administrative Claims Bar Date.
219. "Initial Distribution Date" means the date on which ASARCO makes the Initial Distributions under the Plan, which shall be the Effective Date.
220. "Initial Distributions" means the distributions to be made by Reorganized ASARCO, including those to holders of Allowed Claims and to the Trusts, on the Initial Distribution Date.
221. "Injunctions" means the Discharge Injunction, the Permanent Channeling Injunction, and the Asbestos Insurance Company Injunction issued by the Bankruptcy Court, the District Court, or both in the Reorganization Cases.
222. "Insurance Neutrality Order" means the Bankruptcy Court's May 29, 2008 Order Extending Scope of Insurance Neutrality Addendum Attached to Order Approving Compromise and Settlement Regarding Resolution of Derivative Asbestos Claims.
223. "Intercompany Claims" means any Claims held by one Debtor, CBRI, or Silver Bell against another Debtor, CBRI, or Silver Bell.
224. "Interest" means the rights of the holders of the equity securities of a Debtor and the rights of any Entity to purchase or demand the issuance of any equity security of such Debtor, including (a) redemption, conversion, exchange, voting, participation, and dividend rights, (b) liquidation preferences, and (c) stock options and warrants.
225. "Interior" means the United States Department of the Interior.
226. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended.
227. "Inventory" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the inventories of raw materials, in-process and finished products of the Business, including, supplies, materials, and spare parts but excluding, to the extent owned by a Seller, materials provided to a Seller pursuant to Tolling Arrangements or Exchange Arrangements (as such term is defined in Exhibit E to the New Plan Sponsor PSA).
228. "Investment Company Act" means the Investment Company Act of 1940, as amended, together with the rules and regulations promulgated thereunder.
229. "IRS" means the Internal Revenue Service.
230. "LAQ" means Lac d'Amiante du Québec Ltée., Lake Asbestos of Quebec, Ltd., and LAQ Canada, Ltd.
231. "Late-Filed Claims" means those Class 6 Unsecured Claims (a) evidenced by Proofs of Claim filed after the applicable Bar Date but on or prior to the Voting Record Date and

(b) that have not been determined as of the Confirmation Date to satisfy the excusable neglect standard under Bankruptcy Rule 9006. "Late-Filed Claims" does not include (a) Unsecured Asbestos Personal Injury Claims (or Demands) that are filed after the applicable Bar Date, which shall be dealt with exclusively pursuant to the Asbestos TDP and (b) the Allowed Claim for the Terrible Mine Site under the Miscellaneous Federal and State Environmental Settlement Agreement.

- 232. "Law" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any federal, tribal, state, or local or provincial law (including common law), statute, code, ordinance, rule, regulation, executive order, Order, administrative or judicial decision, judgment, or decree, or other requirement enacted, promulgated, issued, or entered by a Governmental Authority.
- 233. "Leasehold Property" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means all leases, subleases, licenses, or other agreements relating to the occupancy of real property identified in section 3.1(e)(i) of the Disclosure Schedule, together with all of the Sellers' right, title, and interest in and to all fixtures and improvements located thereon and all appurtenances, rights, easements, rights-of-way, and other interests incidental thereto, leased, subleased, licensed, or occupied by the Sellers and used or held for use in the Business.
- 234. "Legal Proceeding" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any action, claim, suit, arbitration, inquiry, proceeding, or investigation by or before any Governmental Authority of any nature, civil, criminal, regulatory, or otherwise, in law or in equity.
- 235. "Lehman Brothers" means Lehman Brothers Inc.
- 236. "Letters of Credit" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, collectively, the First L/C, the Second L/C, and the Third L/C.
- 237. "Liabilities" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any and all debts, losses, liabilities, claims (including claims as defined in the Bankruptcy Code), damages, demands under section 524(g) of the Bankruptcy Code, expenses, fines, costs, royalties, proceedings, deficiencies, or obligations (including those arising out of any Legal Proceeding, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, absolute, accrued, contingent, or otherwise, and whether due or to become due, and whether or not resulting from third party claims, and any reasonable out-of-pocket costs and expenses (including reasonable legal counsels', accountants', or other fees and expenses incurred in defending any Legal Proceeding or in investigating any of the same or in asserting any rights under the New Plan Sponsor PSA).
- 238. "LIBOR" means London interbank offered rate of interest.

239. “Lien” shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any lien, pledge, mortgage, deed of trust, security interest, attachment, levy, or other encumbrance affecting title.
240. “Liquidation Analysis” means the liquidation analysis attached as **Exhibit E** to the Disclosure Statement.
241. “Liquidation Trust” means that certain liquidation trust to be formed on the Effective Date pursuant to the Liquidation Trust Agreement.
242. “Liquidation Trust Agreement” means the form of trust agreement, effective as of the Effective Date, substantially in the form attached as **Exhibit 4** to the Plan, as it may be modified from time to time in accordance with the terms thereof or Article 6.1 of the Plan.
243. “Liquidation Trust Beneficiaries” means the holders of Liquidation Trust Interests.
244. “Liquidation Trust Board” means the group of three Persons selected in accordance with the provisions of the Liquidation Trust Agreement.
245. “Liquidation Trust Claims” means those certain Litigation Claims that are transferred to the Liquidation Trust pursuant to the Plan, as listed in **Exhibit 14-B** to the Plan.
246. “Liquidation Trust Expense Fund” means the Cash in the amount of \$5 million to be transferred to the Liquidation Trustee by the Debtors on the Effective Date, together with all additions thereto in accordance with the Liquidation Trust Agreement, in order to fund the operations of the Liquidation Trust.
247. “Liquidation Trust Interests” means the beneficial interests in the Liquidation Trust.
248. “Liquidation Trust Proceeds” means all proceeds recovered by the Liquidation Trustee from the assets of the Liquidation Trust, including, without limitation, proceeds from the Plan Sponsor Promissory Note and all proceeds from the prosecution, compromise, and settlement of the Liquidation Trust Claims, all of which shall be assets of the Liquidation Trust and held as a part thereof.
249. “Liquidation Trust Register” means the register maintained by the Liquidation Trustee with the names, addresses, and number of Liquidation Trust Interests of the Liquidation Trust Beneficiaries.
250. “Liquidation Trust Registrar” means the Entity appointed by the Liquidation Trustee for the purpose of recording ownership of the Liquidation Trust Interests.
251. “Liquidation Trust Reserve” means the reserve established and administered by the Plan Administrator to provide additional funding, as needed from time to time, to the Liquidation Trust Expense Fund.

252. "Liquidation Trust Tax Owners" means the Liquidation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the Liquidation Trust for federal income tax purposes).
253. "Liquidation Trustee" means the Person appointed as trustee of the Liquidation Trust under the Liquidation Trust Agreement and any successor thereto chosen in accordance with such agreement.
254. "Litigation Claims" means any of the Debtors' causes of action, including, without limitation, the Burns Litigation, the Derivative D&O Litigation, the MRI Litigation, the SCC Litigation, and any other Avoidance Actions.
255. "LLC Agreement" means the Amended and Restated Limited Liability Company Agreement of ASARCO LLC approved by the Bankruptcy Court on December 15, 2005, as may be subsequently amended, modified, or supplemented.
256. "Madera Property" means the real property owned by ASARCO in Madera Canyon, Santa Cruz County, Arizona, which shall vest in Reorganized Covington pursuant to the Plan.
257. "Manipulative Breach" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means an intentional and willful material breach by ASARCO of its obligations under sections 8.2(d) (but only as it relates to Sold Assets other than Inventory or Included Receivables (as such term is defined in Exhibit E to the New Plan Sponsor PSA)), 8.7(a), (b), and (d), or 8.10(b) and (d) of the New Plan Sponsor PSA that gives rise to a termination right pursuant to section 13.1(j) thereof and such act or omission giving rise to such breach was performed with the intent to materially breach the New Plan Sponsor PSA and to prevent the Closing thereunder, as determined by the Bankruptcy Court, after notice and opportunity to be heard, which may be on an expedited basis.
258. "Master Ballot" means the Ballot prepared for submission by an attorney on behalf of Unsecured Asbestos Personal Injury Claimants, or by a Nominee on behalf of Bondholders.
259. "MDEQ" means the State of Montana *ex rel.* the Montana Department of Environmental Quality.
260. "Miscellaneous Federal and State Environmental Claims" means those Claims filed by a federal or state government in the Reorganization Cases and addressed by the Miscellaneous Federal and State Environmental Settlement Agreement.
261. "Miscellaneous Federal and State Environmental Settlement Agreement" means the settlement agreement between ASARCO and holders of Miscellaneous Federal and State Environmental Claims.
262. "Miscellaneous Plan Administration Accounts" means the Disputed Claims Reserve, the Unpaid Cure Claims Reserve, the Disputed Secured Claims Reserves (if any), the

Prepetition ASARCO Environmental Trust Escrow, the Indemnification Escrow, the Undeliverable and Unclaimed Distribution Reserve, the Vested Causes of Action Escrow, the Liquidation Trust Reserve, and the SCC Litigation Trust Reserve.

- 263. “Mission Mine Leases” means the two mining leases and 21 business leases between ASARCO’s predecessor in interest and the Secretary of the Interior, relating to the Mission Mine.
- 264. “Mission Mine Settlement Agreement” means the settlement agreement among ASARCO, the Nation, the San Xavier District, the San Xavier Allottees Association, and the United States, as amended, attached to the Plan as **Exhibit 15**.
- 265. “Mission Mine Unexpired Agreements” means the agreements that ASARCO assumed in the Mission Mine Settlement Agreement and which are to be assigned to the Plan Sponsor pursuant to the Plan.
- 266. “Missouri Guaranty Corporation” means the Missouri Private Sector Individual Self-Insurers Guaranty Corporation.
- 267. “Mitsui” means Mitsui & Co. (U.S.A.), Inc., a New York corporation.
- 268. “Monetary Award” means the additional shares of SCC Stock in an amount equaling twice the value of \$1,382,307,216.75, that forms part of the SCC Final Judgment.
- 269. “Montana DLI” means the Montana Department of Labor and Industry’s Division of Employee Relations.
- 270. “Montana Guaranty Fund” means the Montana Self-Insurers Guaranty Fund.
- 271. “MRI” means Montana Resources, Inc.
- 272. “MRI Litigation” means the claims and causes of action of the Debtors asserted in Adversary No. 07-02024, pending in the Bankruptcy Court.
- 273. “MR Partnership” means Montana Resources general partnership, a Montana-based, mining-operations partnership in which ASARCO and MRI were partners.
- 274. “Nation” means the Tohono O’odham Nation.
- 275. “New Plan Sponsor PSA” means the Settlement and Purchase and Sale Agreement dated as of March 6, 2009, among ASARCO, ARSB, CBRI, Santa Cruz, the Plan Sponsor, and the Guarantor, and the amendments thereto, attached to the Disclosure Statement as **Exhibit M**.
- 276. “NJDEP” means the New Jersey Department of Environmental Protection.

277. "Nominee" means any broker, dealer, commercial bank, trust company, savings and loan, financial institution, or other party in whose names the Bonds are registered or held of record on behalf of the holder of the beneficial interest therein.
278. "Non-Debtor Sellers" means ARSB, CBRI, and Santa Cruz.
279. "Non-Target Properties" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means all real property that is not (a) a Real Property or (b) a Silver Bell Property.
280. "Nonmonetary Award" means the 260,093,694 shares of SCC Stock that forms part of the SCC Final Judgment.
281. "Order" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any final and non-appealable order, injunction, judgment, stipulation, decree, ruling, writ, assessment, or arbitration award issued by a Governmental Authority or any legally binding and enforceable conciliation or settlement agreement with any Governmental Authority.
282. "Ordinary Course of Business" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the ordinary conduct of business of the Sellers, taken as a whole, relating to the Business, either (a) consistent with past practice during the pendency of and, as applicable, taking into account the Bankruptcy Cases (as such term is defined in the New Plan Sponsor PSA), or (b) consistent with reasonably prudent management of the Business (as determined by the board of directors in its business judgment) in response to economic and industry conditions.
283. "Original Plan Sponsor PSA" means the Purchase and Sale Agreement dated as of May 30, 2008, among ASARCO, ARSB, CBRI, Santa Cruz, the Plan Sponsor, and the Guarantor.
284. "Other Subsidiary Debtors" means the Subsidiary Debtors other than the Asbestos Subsidiary Debtors.
285. "Other Unsecured Claimants" means all holders of Claims in Class 3 other than Governmental Environmental Claimants.
286. "Paid in Full" means paid in Cash (a) the Allowed Amount of the holder's Claim and (b) to the extent that the Bankruptcy Court determines in connection with Confirmation that there is sufficient Plan Consideration, (1) Post-Petition Interest calculated at the Plan Rate (unless the Bankruptcy Court determines as to any particular Claim or any group of Claims that another rate shall apply, in which case interest at such other rate) and (2) attorneys' fees and other costs and expenses as permitted under applicable law with respect to a particular Claim.
287. "Parent" means ASARCO Incorporated, a Delaware corporation.

288. "Parent's Glossary" means the Glossary of Defined Terms for the Parent's Plan Documents prepared by the Parent and AMC and attached to the Disclosure Statement as Exhibit A-2, as such document may be amended, supplemented, or modified from time to time.
289. "Parent's Plan" means 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, and all exhibits attached thereto or referenced therein, as the same may be amended, modified, or supplemented.
290. "Parent's Plan Documents" means the Parent's Plan, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Parent's Plan or the Disclosure Statement that aid in effectuating the Parent's Plan, as the same may be amended, modified, or supplemented.
291. "PBGC" means the Pension Benefit Guaranty Corporation.
292. "Pension Plan" means each Employee Benefit Plan that is an "employee pension benefit plan" within the meaning of section 3(2) of ERISA and is a "defined benefit plan" as defined in section 3(35) of ERISA.
293. "Permanent Channeling Injunction" means the injunction set forth in Article 11.3(a) of the Plan.
294. "Permitted Liens" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means (a) all Liens set forth in section 1.1A of the Disclosure Schedule; (b) statutory Liens for current taxes, assessments, or other governmental charges not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, to the extent that a reserve has been established therefore or such amount has been deposited with the appropriate Governmental Authority or other adjudicating Person (as such term is defined in the New Plan Sponsor PSA); (c) mechanic's, materialman's, warehouseman's, carrier's, and similar liens for labor, materials, or supplies, as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect; (d) purchase money security interests arising in the Ordinary Course of Business; (e) any Lien arising out of a Tolling Arrangement or Exchange Arrangement (as such term is defined in Exhibit E to the New Plan Sponsor PSA), to the extent not arising out of a breach of such Tolling Arrangement or Exchange Arrangement; (f) rights of landlords in respect of any Leasehold Property where the applicable lease is not in default; (g) any Lien that, pursuant to section 363(f) of the Bankruptcy Code, will be released upon entry of the Plan Confirmation Order; and (h) such other Liens as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.
295. "Person" means any person, individual, partnership, corporation, limited liability company, joint venture company, association, or other entity or being of whatever kind, whether or not operating or existing for profit, including, without limitation, any "person" as such term is defined by section 101(41) of the Bankruptcy Code, but excluding any

Governmental Unit. [Note that this definition diverges from the definition set forth in the New Plan Sponsor PSA in that the Glossary, similar to the Bankruptcy Code, excludes Governmental Units.]

- 296. "Petition Date" means, as to each Debtor, the date on which the Debtor's bankruptcy case was commenced by the filing of a voluntary petition for relief under chapter 11 of the Bankruptcy Code.
- 297. "Plan" as used in the Plan Documents other than the Disclosure Statement means the Sixth Amended Joint Plan of Reorganization for the Debtors Under Chapter 11 of the United States Bankruptcy Code, As Modified, filed by the Debtors, and all exhibits attached thereto or referenced therein, as the same may be amended, modified, or supplemented.
- 298. "Plan Administration Account" means the bank account(s) that the Plan Administrator shall establish, other than any general accounts established by the Plan Administrator and the Miscellaneous Plan Administration Accounts.
- 299. "Plan Administration Agreement" means the form of agreement with the Plan Administrator, effective as of the Effective Date, substantially in the form attached as **Exhibit 3** to the Plan, as it may be modified from time to time in accordance with the terms thereof.
- 300. "Plan Administration Committee" means the three-member committee appointed pursuant to the Plan Administration Agreement to consult with and advise the Plan Administrator.
- 301. "Plan Administration Reserve" means the funds placed in the Plan Administration Account (and any subaccounts), the Miscellaneous Plan Administration Accounts, and any general accounts established by the Plan Administrator.
- 302. "Plan Administrator" means the Entity that shall (a) make distributions under the Plan to Claimants (other than the Unsecured Asbestos Personal Injury Claimants) and the Asbestos Trust after the Initial Distribution Date; (b) prosecute, settle, or otherwise resolve (1) any objections to Claims and (2) the Vested Causes of Action; (c) serve as Reorganized ASARCO's sole officer and director; (d) operate the business of Reorganized ASARCO; and (e) perform the other duties assigned to such Entity by the Plan, the Plan Administration Agreement, or the Confirmation Order.
- 303. "Plan Confirmation Order" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means an order of the Bankruptcy Court or the United States District Court that has jurisdiction over the Bankruptcy Cases (as such term is defined in the New Plan Sponsor PSA), that, to the extent the order relates to the New Plan Sponsor PSA, the Plan Sponsor (and the Guarantor), or the transactions contemplated thereunder is reasonably satisfactory to the Plan Sponsor, and in a form acceptable to the Sellers in all respects, approving the New Plan Sponsor PSA and all of the terms and conditions thereof, and approving and authorizing the Sellers to consummate the transactions contemplated thereby, including the transfer of the Sold

Assets to the Plan Sponsor. The Plan Confirmation Order shall find and provide, among other things, that (a) the transfer of the Sold Assets by the Sellers to the Plan Sponsor pursuant to the New Plan Sponsor PSA (1) will be legal, valid, and effective transfers of the Sold Assets; (2) will vest the Plan Sponsor with all right, title, and interest of the Sellers in and to the Sold Assets, 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 any right of setoff, recoupment, netting, or deduction); (3) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and under Applicable Law; and (4) qualifies for exemption under section 1146(c) of the Bankruptcy Code such that Transaction Taxes (as such term is defined in the New Plan Sponsor PSA) will be exempted pursuant to, and to the fullest extent allowed by, section 1146(c) of the Bankruptcy Code; (b) the transactions contemplated by the New Plan Sponsor PSA are undertaken by the Plan Sponsor and ASARCO at arm's length, without collusion, and in good faith within the meaning of section 363(m) of the Bankruptcy Code; (c) ASARCO has complied with the notice requirements of Rules 2002, 6004, 6006, and 9014 of the Bankruptcy Rules and any applicable rules of the Bankruptcy Court with respect to the transactions contemplated by the New Plan Sponsor PSA, the Ancillary Agreements, and by all other agreements, documents, and instruments contemplated in connection with the New Plan Sponsor PSA; (d) ASARCO has satisfied all of the requirements of, and are authorized pursuant to, section 363(b) and (f) of the Bankruptcy Code to enter into the New Plan Sponsor PSA and to consummate the transactions contemplated thereby; and (e) present and future asbestos claims and demands are enjoined from being asserted against ASARCO; ASARCO's officers, directors, and Subsidiaries; the Plan Sponsor, the Guarantor, and the Sold Assets (and against any officer, director, Affiliate, or assets of the Plan Sponsor or Guarantor) pursuant to a channeling injunction issued in compliance with section 524(g) of the Bankruptcy Code.

- 304. "Plan Consideration" means (a) the Available Plan Funds remaining after Allowed Administrative Claims, Priority Tax Claims, and Claims in Classes 1, 2, and 5 have been paid pursuant to the Plan; (b) the Liquidation Trust Interests; and (c) the SCC Litigation Trust Interests.
- 305. "Plan Documents" means the Plan, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Plan or the Disclosure Statement that aid in effectuating the Plan, including, without limitation, the Asbestos Trust Documents, as the same may be amended, modified, or supplemented, in accordance with their terms.
- 306. "Plan Rate" means the rate at which Post-Petition Interest is calculated on the Allowed Amount of a Claim, which under the Plan is the federal judgment rate in accordance with section 1961 of title 28 of the United States Code.
- 307. "Plan Sales Proceeds" means the \$1.1 billion in Cash to be paid by the Plan Sponsor in connection with its purchase of the Sold Assets.
- 308. "Plan Sponsor" means Sterlite (USA), Inc., a Delaware corporation.

309. "Plan Sponsor Promissory Note" shall have the meaning assigned to the term "Purchaser Promissory Note" in the New Plan Sponsor PSA, which for reference purposes only means a promissory note in the principal amount of \$770 million (as may be adjusted pursuant to section 4.3(c) of the New Plan Sponsor PSA and section 2.7 of the Plan Sponsor Promissory Note) issued at Closing by the Plan Sponsor to Reorganized ASARCO (or such other person as ASARCO may designate in accordance with the Plan) in the form of Exhibit D to the New Plan Sponsor PSA.
310. "Plans" means the Debtors' Plan, the Parent's Plan, and Harbinger's Plan.
311. "Post-Petition Interest" means 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 Plan Rate and to the same extent.
312. "Prepetition ASARCO Environmental Trust" means the trust created pursuant to the Consent Decree entered in *United States v. ASARCO Inc., et al.*, Civil Action No. 02-2079, filed in the United States District Court for the District of Arizona.
313. "Prepetition ASARCO Environmental Trust Escrow" means the escrow account established pursuant to Article 10.8(c) of the Plan.
314. "Previously Settled Environmental Claims" means those Claims filed by a federal or state government, an Indian tribe, or a PRP in the Reorganization Cases that are listed on a site-by-site basis in Exhibit 11-A to the Plan.
315. "Previously Settled Environmental Sites" means the sites relating to the Previously Settled Environmental Claims.
316. "Priority Claim" means any Claim (other than an Administrative Claim or a Priority Tax Claim) to the extent such Claim is entitled to a priority in payment under section 507(a) of the Bankruptcy Code.
317. "Priority Tax Claim" means any Claim to the extent that such Claim is entitled to a priority in payment under section 507(a)(8) of the Bankruptcy Code.
318. "Privileges" means any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether electronic, written, or oral).
319. "Professional Persons" means Persons retained or to be compensated under sections 327, 328, 330, 503(b), or 1102 of the Bankruptcy Code.
320. "Proof of Claim" means any proof of claim filed with the Bankruptcy Court or the Claims Agent with respect to a Debtor pursuant to section 501 of the Bankruptcy Code and Bankruptcy Rule 3001 or 3002.

321. "Pro Rata" means the ratio of the amount of a particular Claim to the aggregate amount of Claims in that Claim's Class.
322. "Property of the Estate" means all property in which any of the Debtors holds a legal or equitable interest, including all property described in section 541 of the Bankruptcy Code.
323. "Protected Officers and Directors" means Edward R. Caine, H. Malcolm Lovett, Jr., Carlos Ruiz Sacristán, Joseph F. Lapinsky, Donald B. Mills, Douglas E. McAllister, John B. George, Gary A. Miller, Manuel E. Ramos Rada, Thomas L. Aldrich, John D. Low, Jr., Oscar Gonzalez Barron, Russell A. Smith, William Perrell, Joseph Hitter, and any officers and directors appointed to replace one or more of them (or such replacement officer or director) prior to the Effective Date; *provided, however*, that the term "Protected Officers and Directors" does not include the named defendants in the Derivative D&O Litigation, the Burns Litigation, or the SCC Litigation.
324. "PRP" means a non-governmental Entity that has asserted a Claim against a Debtor for one or more environmental clean-up sites, including any non-governmental Entity that is co-liable with one or more of the Debtors for such a claim.
325. "Purchase Price" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means an amount equal to: (a) \$1.1 billion, plus (b) the Plan Sponsor Promissory Note.
326. "Purchased Real Property" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the real property identified in section 3.1(c) of the Disclosure Schedule, including all mines, dumps, impoundments, leach pads, tailings, buildings, plants, warehouses, railroad tracks, rights of way, easements, facilities, and other improvements and fixtures thereon and appurtenances thereto and all mining rights, mineral rights, mineral claims, riparian rights, water rights, water claims, water allocations, and water delivery contracts associated therewith.
327. "Purchaser Breach" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means a material breach by the Plan Sponsor or the Guarantor of any of their respective representations, warranties, or covenants or other agreements under the New Plan Sponsor PSA.
328. "Put Option" means a definitive agreement to be entered into by Sterlite upon the occurrence of the Effective Date pursuant to which the Asbestos Trust shall be entitled to sell, and the Plan Sponsor shall be obligated to purchase, the Class C SCC Litigation Trust Interests distributed to the Asbestos Trust pursuant to the Plan. The Put Option shall be substantially in the form attached as **Exhibit P** to the Disclosure Statement.
329. "Qualified Bank" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means ABN AMRO Bank N.V., Chicago or any commercial bank with a rating of at least A+ (S&P) and Aa2 (Moody's) (except that if a bank is only rated by either S&P or Moody's and not both, such bank must have the

minimum rating by either S&P or Moody's, as applicable) that is organized or domiciled in the United States of America and that is reasonably satisfactory to the Sellers.

- 330. "RCRA" means the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6901, *et seq.*
- 331. "Real Property" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, collectively, the Leasehold Property and the Purchased Real Property.
- 332. "Reference Order" means the District Court's General Order 2005-6, whereby, with certain exceptions, bankruptcy cases and proceedings arising under the Bankruptcy Code or arising in or related to a bankruptcy case are automatically referred to the bankruptcy judges of the Southern District of Texas.
- 333. "Reinstated" or "Reinstatement" means a Claim or an Interest unimpaired within the meaning of section 1124 of the Bankruptcy Code.
- 334. "Release" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing, and the like into or upon any land or water or air or otherwise entering into the environment.
- 335. "Remedial Action" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means all action to (a) investigate, clean up, remove, treat, or handle in any other way Hazardous Materials in the environment; (b) restore or reclaim the environment or natural resources; (c) prevent the Release of Hazardous Materials so that they do not migrate, endanger, or threaten to endanger public health or the environment; or (d) perform remedial investigations, feasibility studies, corrective actions, closures, and post-remedial or post-closure studies, investigations, operations, maintenance, and monitoring on, about, or in any Real Property.
- 336. "Reorganization Cases" means the proceedings before the Bankruptcy Court leading to the Confirmation of the Plan under chapter 11 of the Bankruptcy Code.
- 337. "Reorganized ASARCO" means ASARCO, on or after the Effective Date, which shall be known as ASARCO Administration Company, LLC.
- 338. "Reorganized Covington" means Covington, on or after the Effective Date, which shall be known as The Covington Company, LLC.
- 339. "Reorganized Debtors" means Reorganized ASARCO and Reorganized Covington.
- 340. "Representatives" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any director, officer, employee, investment banker, financial advisor, attorney, accountant, or other advisor, agent, or representative.

341. "Residual Environmental Claims" means those Claims of the United States and the States of Washington and Nebraska asserting civil liabilities addressed by the Residual Environmental Settlement Agreement.
342. "Residual Environmental Settlement Agreement" means the settlement agreement between ASARCO and holders of Residual Environmental Claims.
343. "Residual Environmental Settlement Sites" means the state and federal sites relating to the Residual Environmental Claims.
344. "Retained Books and Records" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means (a) any Books and Records (as such term is defined in the New Plan Sponsor PSA) to the extent relating to any Excluded Assets or Retained Liabilities; (b) any Books and Records to the extent related or pertaining to asbestos or asbestos-containing materials or products or to asbestos personal injury claims or demands against the Sellers, including claims which have been litigated, settled, or otherwise dealt with by the Sellers or any one of the Sellers; and (c) bids, letters of intent, expressions of interest, or other proposals received in connection with the transactions contemplated by the Original Plan Sponsor PSA, the New Plan Sponsor PSA, or any of the Ancillary Agreements or otherwise and information and analyses relating to such communications.
345. "Retained Liabilities" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means any Liabilities of the Sellers, other than those that are expressly assumed by the Plan Sponsor under the New Plan Sponsor PSA as Assumed Liabilities, including, without limitation, those Liabilities of the Sellers set forth in section 3.4(a) through (h) of the New Plan Sponsor PSA.
346. "RLF" means RLF Perth Amboy Properties, LLC.
347. "Rosemont Ranch Defendants" means Rosemont Ranch, LLC; TWW Investments, LLC; DAS Holdings, LLC; Habibi, LLC; West Santa Rita Land, LLC; and Lazy Y I Ranch, LLC.
348. "Salaried Plan" means the Retirement Benefit Plan for Salaried Employees of ASARCO LLC.
349. "Santa Cruz" means ASARCO Santa Cruz, Inc., a Delaware corporation.
350. "SCC" means Southern Copper Corporation (f/k/a Southern Peru Copper Company).
351. "SCC Final Judgment" means the final judgment entered in the SCC Litigation on April 15, 2009.
352. "SCC Litigation" means the claims and causes of action of the Debtors asserted in Civil Action No. 07-00018, pending in the District Court.

353. "SCC Litigation Proceeds" means the proceeds from the prosecution, compromise, and settlement of the SCC Litigation Trust Claims, which shall be an asset of the SCC Litigation Trust and held as part thereof.
354. "SCC Litigation Purchase Price" means the dollar value (as determined by ASARCO) of the consideration paid by an SCC Purchaser for Class D SCC Litigation Trust Interests.
355. "SCC Litigation Trust" means that certain litigation trust to be formed on the Effective Date pursuant to the SCC Litigation Trust Agreement.
356. "SCC Litigation Trust Agreement" means the form of trust agreement, effective as of the Effective Date, substantially in the form attached as **Exhibit 5** to the Plan, as it may be modified from time to time in accordance with the terms thereof or Article 6.2 of the Plan.
357. "SCC Litigation Trust Beneficiaries" means the holders of SCC Litigation Trust Interests.
358. "SCC Litigation Trust Board" means the group of three Persons selected in accordance with the provisions of the SCC Litigation Trust Agreement.
359. "SCC Litigation Trust Claims" means those certain Litigation Claims that are transferred to the SCC Litigation Trust pursuant to the Plan as listed in **Exhibit 14-C** to the Plan.
360. "SCC Litigation Trust Expense Fund" means the Cash in the amount of \$5 million to be transferred to the SCC Litigation Trustee by the Debtors on the Effective Date, together with all additions thereto in accordance with the SCC Litigation Trust Agreement, in order to fund the operations of the SCC Litigation Trust.
361. "SCC Litigation Trust Interests" means the beneficial interests in the SCC Litigation Trust.
362. "SCC Litigation Trust Register" means the register maintained by the SCC Litigation Trustee with the names, addresses, and number of SCC Litigation Trust Interests of the SCC Litigation Trust Beneficiaries.
363. "SCC Litigation Trust Registrar" means the Entity appointed by the SCC Litigation Trustee for the purpose of recording ownership of the SCC Litigation Trust Interests.
364. "SCC Litigation Trust Reserve" means the reserve established and administered by the Plan Administrator to provide additional funding, as needed from time to time, to the SCC Litigation Trust Expense Fund.
365. "SCC Litigation Trust Tax Owners" means the SCC Litigation Trust Beneficiaries and Reorganized ASARCO (to the extent of its retained interest in the SCC Litigation Trust for federal income tax purposes).

366. "SCC Litigation Trustee" means the Person appointed as trustee of the SCC Litigation Trust under the SCC Litigation Trust Agreement and any successor thereto chosen in accordance with such agreement.
367. "SCC Purchaser Percentage" means the aggregate percentage of SCC Litigation Trust Interests sold to the SCC Purchasers at the auction.
368. "SCC Purchasers" means the purchasers of SCC Litigation Trust Interests pursuant to the auction of such interests which may be held by the Debtors in their sole discretion.
369. "SCC Stock" means all of the stock in any form (including any stock splits or other reformulations) that is traceable to the 54.2 percent of SCC shares owned by ASARCO or SPHC on March 30, 2003.
370. "SCF" means the Arizona State Compensation Fund.
371. "Schedules" means the schedules, statements, and lists filed by the Debtors with the Bankruptcy Court pursuant to Bankruptcy Rule 1007, as may be amended or supplemented from time to time.
372. "Seaboard" means Seaboard Surety Company.
373. "SEC" means the Securities and Exchange Commission.
374. "Second L/C" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the letter of credit issued in favor of ASARCO by ABN AMRO Bank N.V., Chicago in the amount of \$50 million, pursuant to section 4.2(b) of the New Plan Sponsor PSA.
375. "Secured Asbestos Personal Injury Claim" means an Asbestos Personal Injury Claim that is secured by a valid, perfected, and enforceable Lien against proceeds of an Asbestos Insurance Policy.
376. "Secured Claim" means any Claim that is (a) secured in whole or part, as of the Petition Date, by a Lien against property of a Debtor that is valid, perfected, and enforceable under applicable law and is not subject to avoidance under the Bankruptcy Code or applicable nonbankruptcy law or (b) subject to setoff under section 553 of the Bankruptcy Code; *provided, however*, with respect to both (a) and (b) above, a Claim is a Secured Claim only to the extent of the value, net of any Lien senior to the applicable Lien, of the Estate's interest in the assets or property securing any such Claim or the amount subject to setoff, as the case may be.
377. "Secured Intercompany DIP Credit Facility" means the secured debtor-in-possession term loan credit facility of up to \$10 million from ASARCO to the Asbestos Subsidiary Debtors.
378. "Security Document" shall have the meaning assigned to such term in the Plan Sponsor Promissory Note, which for reference purposes only means that certain Pledge and

Security Agreement to be entered into between Reorganized ASARCO, the Plan Sponsor, and certain of the Plan Sponsor's subsidiaries as of the Closing Date and all other instruments and agreements to be executed by the Plan Sponsor that purport to create a lien or security interest to secure the Plan Sponsor Promissory Note.

379. "Seller Material Adverse Effect" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means (a) a material adverse effect on the financial condition of the Business (to the extent related to the Sold Assets and Assumed Liabilities) or the condition of the Sold Assets, taken as a whole, or (b) any change, circumstance, or event that, individually or in the aggregate, would materially hinder or materially and adversely affect the Sellers' ability to consummate the transactions contemplated by the New Plan Sponsor PSA, excluding, in each case, any such effect, change, circumstance, or event attributable to or resulting from (i) the announcement, pendency, or consummation of the New Plan Sponsor PSA, the sale of the Sold Assets, or any other action by the Sellers or their Affiliates required or expressly contemplated by the New Plan Sponsor PSA, (ii) the conversion or dismissal of any Bankruptcy Case (as such term is defined in the New Plan Sponsor PSA) or the filing of additional petitions under chapter 11 of the Bankruptcy Code by or involving any of the Sellers' Affiliates, (iii) any outbreak of hostility, terrorist activities, or war, (iv) any changes in general economic (including changes in the securities markets, commodity prices, or foreign exchange rates), political, or regulatory conditions generally, (v) any changes in economic, political, or regulatory conditions in the mining or smelting industries or other industries in which the Sellers operate, (vi) any change in Applicable Law or accounting regulations or interpretations thereof by any court, accounting regulatory authority, or other Governmental Authority, (vii) any action or omission of any Seller taken in accordance with the terms of the New Plan Sponsor PSA or with the prior written consent of the Plan Sponsor, (viii) any failure by any Seller to meet any projections, budgets, plans, or forecasts (but not excluding the underlying cause of such failure to meet projections, budgets, plans, or forecasts), or (ix) any expenses incurred by any Seller in the Ordinary Course of Business or in connection with the New Plan Sponsor PSA, the Ancillary Agreements, or the transactions contemplated thereby; *provided, however*, that in the case of clauses (iv), (v) and (vi), such changes do not affect the Sellers in a materially disproportionate manner compared to other businesses conducting a business substantially similar to the Business of the Sellers. Any determination as to whether any condition or other matter has a Seller Material Adverse Effect shall be made only after taking into account all proceeds or amounts that are expected to be received by the Plan Sponsor with respect to such condition or matter from insurance policies.
380. "Sellers" means ASARCO and the Non-Debtor Sellers, each of which is, individually, a "Seller."
381. "Settling Asbestos Insurance Company" means any Asbestos Insurance Company that has entered into an Asbestos Insurance Settlement Agreement approved by the Bankruptcy Court as of the Effective Date. The Asbestos Insurance Settlement Agreements are listed in **Exhibit 7** to the Plan, as amended or supplemented.

382. "Silver Bell" means Silver Bell Mining, L.L.C., a Delaware limited liability company.
383. "Silver Bell Interests" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the limited liability company interests of Silver Bell owned by any Seller.
384. "Silver Bell LLC Agreement" means that certain membership interest agreement, dated February 5, 1996, among Ginrei, Inc., MSB Copper Corp., and ARSB, as amended.
385. "Silver Bell Property" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means all real property owned or leased by Silver Bell.
386. "Sold Assets" means the "Purchased Assets" as defined in the New Plan Sponsor PSA and identified in section 3.1 thereof, and are substantially all of the tangible and intangible operating assets of ASARCO and the Non-Debtor Sellers.
387. "SPHC" means Southern Peru Holdings, LLC.
388. "SPT" means Seaboard and St. Paul Fire.
389. "SPT Indemnity Agreement" means the General Agreement of Indemnity dated October 19, 1993, which was executed by ASARCO and delivered to Seaboard and St. Paul Fire.
390. "SPT Settlement Agreement" means the settlement agreement between ASARCO, Seaboard Surety Company, and St. Paul Travelers and Marine Insurance Company.
391. "St. Paul Fire" means St. Paul Fire and Marine Insurance Company.
392. "Stand-Alone Plan" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means a plan of reorganization sponsored by a Person (as such term is defined in the New Plan Sponsor PSA) other than the Plan Sponsor or the Guarantor which the board of directors of ASARCO determines (after consultation with its legal and financial advisors and the Creditor Constituents) in good faith would, if consummated and taking into account all factors deemed relevant by the board of directors of ASARCO, be more favorable to ASARCO and its stakeholders than the transactions contemplated by the New Plan Sponsor PSA; *provided, however*, that, for the purposes of the stand-alone plan proposal only, any costs or benefits of any claims which may be made against the Plan Sponsor or the Guarantor under the Original Plan Sponsor PSA shall be excluded from the analysis of such stand-alone plan.
393. "Sterlite" means Sterlite (USA), Inc., a Delaware corporation, which is the Plan Sponsor.
394. "Sterlite Agreed Order" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the Sterlite 9019 Order.

395. "Sterlite 9019 Motion" means the Debtors' Motion for Order, Pursuant to §§ 363, 105 and Fed. R. Bankr. P. 9019, Approving Settlement and Release and Revised Bid Protections Contained in the New Purchase and Sale Agreement Between ASARCO LLC and Certain of its Subsidiaries and Sterlite (USA), Inc., and for Related Relief, filed on March 11, 2009 [Docket No. 10526].
396. "Sterlite 9019 Order" means the Order Pursuant to §§ 363, 105 and Fed. R. Bankr. P. 9019, Approving Settlement and Release and Revised Bid Protections Contained in the New Purchase and Sale Agreement Between ASARCO LLC and Certain of its Subsidiaries, and Sterlite (USA), Inc., and for Related Relief [Docket No. 10935], entered by the Bankruptcy Court on April 22, 2009.
397. "Sterlite Plan Agreement in Principle Term Sheet" means the term sheet regarding the agreement among the Debtors, the Plan Sponsor, the Asbestos Subsidiary Committee, the Asbestos Claimants' Committee, and the FCR which is attached to the Plan as Exhibit 9.
398. "Subordinated Claims" means those Class 7 Unsecured Claims that are subordinated to all other Unsecured Claims, pursuant to an order or by agreement of the Claimant.
399. "Subsequent Administrative Claims" means any Administrative Claims that arise after the Initial Administrative Claims Bar Date.
400. "Subsequent Administrative Claims Bar Date" means the date established in Article 15.13 of the Plan for the filing of Subsequent Administrative Claims.
401. "Subsidiary" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, with respect to any Person (as such term is defined in the New Plan Sponsor PSA), any corporation, limited liability company, joint venture, or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than 50 percent of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.
402. "Subsidiary Debtors" means ASARCO's subsidiaries with pending chapter 11 bankruptcy cases, including, without limitation, Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; Cement Asbestos Products Company; Encycle, Inc.; ASARCO Consulting, Inc.; ASARCO Master, Inc.; ASARCO Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations, Inc.; Government Gulch Mining Company, Limited; Covington Land Company; Southern Peru Holdings, LLC; AR Sacaton, LLC; ASARCO Exploration Company, Inc.; Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.

403. "Superfund" means the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507.
404. "Superior Proposal" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means a bona fide written Acquisition Proposal that the board of directors of ASARCO determines (after consultation with its legal and financial advisors) in good faith (a) is reasonably likely to be consummated in a timely manner, taking into account all factors deemed relevant by the board of directors of ASARCO (including all legal, financial, and regulatory aspects of the proposal and the Person (as such term is defined in the New Plan Sponsor PSA) making the proposal); (b) if consummated would, taking into account all factors deemed relevant by the board of directors of ASARCO (including the amounts that would be owed to the Plan Sponsor under section 13.2(b)(v) of the New Plan Sponsor PSA (if any) and if, and only to the extent, the New Plan Sponsor PSA has not been terminated prior to the execution of a Definitive Agreement in respect of such Acquisition Proposal, the costs reasonably likely to be incurred in connection with the negotiation of an Acquisition Proposal), result in a transaction more favorable to ASARCO and its stakeholders than the transactions contemplated by the New Plan Sponsor PSA; and (c) provides a Deemed Value to ASARCO and its Estate that exceeds, by the Superior Proposal Threshold, the Deemed Value of the New Plan Sponsor PSA and the transactions contemplated thereby; *provided, however*, that, in the case of each of the foregoing clauses, for purposes of the Acquisition Proposal only, any costs or benefits of any claims which may be made against the Plan Sponsor or the Guarantor under the Original Plan Sponsor PSA shall be excluded from the analysis of such Acquisition Proposal.
405. "Superior Proposal Threshold" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means \$25 million plus the amount that would be owed to the Plan Sponsor under section 13.2(b)(v) (if anything) following termination of the New Plan Sponsor PSA.
406. "Tax Refund" means the tax refund that ASARCO contends (in Adversary Proceeding No. 07-02011 pending before the Bankruptcy Court) is owed to its Estate as a result of the overpayment of federal income taxes.
407. "TCEQ" means the Texas Commission on Environmental Quality.
408. "Third Amended Disclosure Statement" means the Disclosure Statement in Support of the Debtors' Third Amended Joint Plan of Reorganization under Chapter 11 of the United States Bankruptcy Code, filed on March 16, 2009.
409. "Third L/C" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the letter of credit issued in favor of ASARCO by a Qualified Bank in the amount of \$25 million, pursuant to section 4.2(c) of the New Plan Sponsor PSA.
410. "Tolling Arrangements" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means those commercial arrangements

between ASARCO and certain third parties pursuant to which ASARCO agrees to receive raw materials from such third parties for toll conversion and return certain finished products to such third parties.

- 411. "Toxic Tort Claims" means the toxic tort, personal injury, environmental property damage, and related breach-of-settlement Claims asserted against the Debtors, including, without limitation, those resulting from the Debtors' operations of a site in Tar Creek, Oklahoma, the Ray Mine and Hayden Smelter in Ray Complex, Arizona, and the El Paso smelter located in El Paso, Texas. The Toxic Tort Claims do not include any Claims by Governmental Units or Asbestos Personal Injury Claims.
- 412. "Trade Creditor Preference Claim" means the Litigation Claims listed in **Exhibit 14-E** of the Plan.
- 413. "Transition Services Agreement" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means the Transition Services Agreement, dated as of the Closing Date, between the Plan Sponsor and ASARCO, to be negotiated in accordance with section 8.14 of the New Plan Sponsor PSA, which will include, among other things, the services and terms described in Exhibit K to the New Plan Sponsor PSA.
- 414. "TRC" means TRC Companies, Inc.
- 415. "Trust Documents" means the Asbestos Trust Documents, the Liquidation Trust Agreement, the SCC Trust Agreement, and the Environmental Custodial Trust Documents.
- 416. "Trust Indenture Act" means the Trust Indenture Act of 1939, as amended, together with all the rules and regulations promulgated thereunder.
- 417. "Trustees" means the Persons appointed pursuant to the Plan for the purpose of acting as initial trustees of the Asbestos Trust, the Liquidation Trust, the SCC Litigation Trust, and the Environmental Custodial Trusts.
- 418. "Trusts" means the Asbestos Trust, the Liquidation Trust, the SCC Litigation Trust, and the Environmental Custodial Trusts.
- 419. "Undeliverable and Unclaimed Distribution Reserve" means the escrow account established pursuant to Article 13.4(b) of the Plan.
- 420. "Unions" means the labor organizations representing the current employees of ASARCO.
- 421. "Unpaid Cure Claims Amount" shall have the meaning assigned to such term in the New Plan Sponsor PSA, which for reference purposes only means, with respect to any Assumption-Pending Pre-Petition Contract (as such term is defined in section 3.5(a) of the New Plan Sponsor PSA), the aggregate amount of any Cure Claims (as such term is defined in the New Plan Sponsor PSA) that remains unpaid as of the Closing Date for any reason, provided that if such amount remains disputed as of such date, the "Unpaid Cure

Claims Amount” shall be such amount as is asserted by the non-debtor counterparty to such Contract.

- 422. “Unpaid Cure Claims Reserve” means the reserve for any Unpaid Cure Claim Amount that ASARCO may be required to reimburse the Plan Sponsor, in accordance with section 3.5(d) of the New Plan Sponsor PSA.
- 423. “Unsecured Asbestos Personal Injury Claim” means any Asbestos Personal Injury Claim that is an Unsecured Claim.
- 424. “Unsecured Asbestos Personal Injury Claimant” means the holder of an Unsecured Asbestos Personal Injury Claim.
- 425. “Unsecured Claim” means any Claim that is not an Administrative Claim, a Secured Claim, a Priority Claim, or a Priority Tax Claim, including, without limitation, (a) any claim arising from the rejection of an executory contract or unexpired lease under section 365 of the Bankruptcy Code and (b) any portion of a Claim to the extent the value of the holder’s interest in the Estate’s interest in the property securing such Claim is less than the amount of the Claim or, to the extent that the amount of the Claim subject to setoff is less than the amount of the Claim, as determined pursuant to section 506(a) of the Bankruptcy Code.
- 426. “USDA” means the United States Department of Agriculture.
- 427. “U.S. Trustee” means the United States Trustee for the Southern District of Texas.
- 428. “USW” means the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO, CLC.
- 429. “Ventura Warehouse” means ASARCO’s warehouse located at 25 E. Ventura in Tucson, Arizona.
- 430. “Vested Causes of Action” means the Litigation Claims that shall vest in Reorganized ASARCO, as listed in Exhibit 14-A to the Plan.
- 431. “Vested Causes of Action Escrow” means the escrow account established by the Plan Administrator in which the Vested Causes of Action Proceeds shall be placed.
- 432. “Vested Causes of Action Proceeds” means the proceeds from the prosecution, compromise, and settlement of the Vested Causes of Action.
- 433. “Voting Record Date” means July 2, 2009, the record date established by the Bankruptcy Court for purposes of deciding which Claimants are entitled to vote on the Plan.
- 434. “WHM Copper Mountain” means WHM Copper Mountain Investments, LLC.
- 435. “Winterthur Swiss” means Winterthur Swiss Insurance Company.

EXHIBIT A-2
TO THE DISCLOSURE STATEMENT

Parent's Glossary

Glossary of Defined Terms for Parent's Plan Documents

Unless the context otherwise requires, the following terms, when used in initially capitalized form in the Disclosure Statement, the Parent's Plan, the Parent's Plan Documents and related exhibits, shall have the following meanings. Such meanings shall be equally applicable to both the singular and plural forms of such terms. Any term used in capitalized form that is not defined herein but that is defined in the Bankruptcy Code or the Bankruptcy Rules shall have the meaning assigned to such term by the Bankruptcy Code or the Bankruptcy Rules (with the Bankruptcy Code controlling in the event of a conflict or ambiguity). The rules of construction set forth herein and in section 102 of the Bankruptcy Code shall apply. All references to the "Parent's Plan" shall be construed, where applicable, to include references to the Parent's Plan and all its exhibits, appendices, schedules, and annexes (and any amendments made in accordance with their terms or applicable law).

Glossary of Terms

1. "2005 Subsidiary Debtors" means the Subsidiary Debtors (other than the Asbestos Subsidiary Debtors) that filed bankruptcy cases in 2005, including, without limitation, ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations Inc.; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; and Government Gulch Mining Company, Limited.
2. "2006 Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases in 2006, including, without limitation, Southern Peru Holdings, LLC; AR Sacaton, LLC; and ASARCO Exploration Company, Inc.
3. "2008 Subsidiary Debtors" means the Subsidiary Debtors that filed bankruptcy cases in 2008, including, without limitation, Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.
4. "ADEQ" means the Arizona Department of Environmental Quality.
5. "Administrative Claim" means any Claim against any of the Debtors for the payment of an Administrative Expense.
6. "Administrative Expense" means (a) any cost or expense of administration of the Reorganization Cases of any of the Debtors incurred before the Effective Date and allowable under section 503(b) of the Bankruptcy Code and entitled to priority under section 507(a)(1) of the Bankruptcy Code including, without limitation, (i) any actual and necessary postpetition cost or expense of preserving the Estates or operating the businesses of any of the Debtors, (ii) any payment required to cure a default on an assumed executory contract or unexpired lease, (iii) any postpetition cost, indebtedness, or contractual obligation duly and validly incurred or assumed by any of the Debtors in the ordinary course of its business, and (iv) compensation or reimbursement of expenses of professionals to the extent allowed by the Bankruptcy Court under section 330(a) or

331 of the Bankruptcy Code; (b) any fee or charge assessed against the Estates under 28 U.S.C. § 1930; and (c) the Pre-524(g) Indemnity, which shall constitute an Allowed Administrative Claim in accordance with the terms and conditions of such agreement.

7. "ADR" means alternative dispute resolution.
8. "Affiliate" means, with respect to any Person, (a) any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such Person or (b) any Subsidiary of such Person. As used in this definition, "control" (including with correlative meanings, "controlled by" and "under common control with") means possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).
9. "Allowed" means with respect to any Claim or Demand (other than a Disputed Claim or an Asbestos Personal Injury Claim or Demand) or Interest, (a) any Claim or Interest, with respect to which a Proof of Claim was timely filed with the Bankruptcy Court or the Claims Agent, or, by order of the Bankruptcy Court, was not required to be filed, and (b) any Claim or Interest that has been, or hereafter is, listed in the Schedules as liquidated in amount and not disputed or contingent, and, in (a) and (b) above, as to which (A) during the period prior to the deadline for filing objections to Proofs of Claim, the Claim or Interest has been allowed by a Final Order or in a settlement approved by the Confirmation Order (but only to the extent so allowed), (B) after the deadline for filing objections to Proofs of Claim, either no objection to the allowance thereof was filed prior to the Claims objection deadline or the Claim or Interest has been allowed by a Final Order or in a settlement approved by the Confirmation Order (but only to the extent so allowed), or (C) following the Effective Date, the Claim or Interest has, at the option of Reorganized ASARCO in its sole discretion, been deemed allowed in a writing signed by Reorganized ASARCO. With respect to any Asbestos Personal Injury Claim or Demand, "Allowed" means any Asbestos Personal Injury Claim or Demand that is liquidated and allowed pursuant to the Section 524(g) Trust Distribution Procedures. In no event shall the Allowed amount of a Claim exceed 100% of the principal amount of such Claim, or include any amount for interest accruing after the Petition Date.
10. "Allowed Amount" of any Claim means the amount at which that Claim is Allowed (excluding any postpetition interest).
11. "Alter Ego Theories" means theories asserting that a Debtor should be held liable for the Claims and Demands against one or more other Debtors on the ground that it was their alter ego, including, without limitation, denuding-the-corporation, single-business-enterprise, corporate trust funds, breach of fiduciary duty or conspiracy, theories that a Debtor was the mere instrumentality, agent, or alter ego of another Debtor, or that the corporate veil should be pierced, or that as a result of domination and control over any of the Debtors, directly or indirectly, another Debtor should be liable for Asbestos Personal Injury Claims and Demands or any other Claims and Demands that have origins in acts or omissions of any of the other Debtors, or any other theories of direct or indirect liability for the conduct of, Claims against, or Demands on, any of the other Debtors to the extent

that such alleged liability arises by reason of any of the other circumstances enumerated in section 524(g)(4)(A)(ii) of the Bankruptcy Code.

12. "AMC" means Americas Mining Corporation, ASARCO's indirect parent company.
13. "Amended Agreement in Principle" means the Agreement in Principle Regarding Summary Terms of Chapter 11 Plan for ASARCO LLC and Subsidiaries among the Asbestos Subsidiary Committee, the FCR, AMC and the Parent, attached as **Parent's Plan Exhibit 17**.
14. "APA" means the Purchase and Sale Agreement dated as of May 30, 2008, among ASARCO, ARSB, CBRI, Santa Cruz, the Debtors' Plan Sponsor, and the Guarantor.
15. "Applicable Law" means, with respect to any Person, any Law applicable to such Person or its business, properties or assets.
16. "AR Sacaton" means AR Sacaton, LLC, a Delaware limited liability company.
17. "Arizona NRD Settlement Agreement" means the Settlement Agreement Regarding Natural Resource Damage Claims for Mineral Creek, the Gila River, and the San Pedro River, Arizona, by and among the United States, the State of Arizona, and ASARCO, which resolves all Claims against ASARCO related to natural resource damages for the sites addressed therein, referenced in the motion for approval thereof filed on March 30, 2009 [Docket No. 10657] and approved by order entered on April 23, 2009 [Docket No. 10949].
18. "ARSB" means AR Silver Bell, Inc., a Delaware corporation.
19. "ASARCO" means ASARCO LLC.
20. "ASARCO Committee" means the Official Committee of Unsecured Creditors appointed by the United States Trustee in ASARCO's bankruptcy case pursuant to section 1102 of the Bankruptcy Code.
21. "ASARCO Deed of Trust" means, with respect to the Parent's Plan, collectively, the deeds of trust, substantially in the form attached as **Parent's Plan Exhibit 13** to the Parent's Plan, delivered to the Section 524(g) Trust to secure Reorganized ASARCO's performance under the ASARCO Note.
22. "ASARCO Incorporated" or "ASARCO Inc." means the Delaware corporation that owns 100% of the equity interests in ASARCO USA Incorporated.
23. "ASARCO LLC" means a Delaware limited liability company and one of the Debtors herein.
24. "ASARCO LLC Subgroup" means ASARCO LLC and its subsidiaries.

25. "ASARCO Master" means ASARCO Master, Inc. (f/k/a Asarco (Delaware), Inc.), a Delaware corporation and one of the Debtors herein. A number of entities were merged into ASARCO Master prior to the Petition Date, including, without limitation, AR Montana Corporation; Asarco Arizona, Inc.; Asarco Exploration Holdings Company, Inc.; Asarco Aginskoe, Inc.; Asarco de Mexico (Delaware) Inc.; Asarco Mexicana (Delaware) Inc.; Asarco Peruvian Exploration Company; GH Holdings Inc.; GHH, LLC; Northern Peru Mining Corporation; NPMC, Incorporated; Domestic Realty Company, Inc.; Midland Coal Company Incorporated; Biotrace Laboratories, Incorporated; Federated Metals Corporation; and LSLC Corporation.
26. "ASARCO NJ" means the former ASARCO Incorporated, a New Jersey corporation, a predecessor of ASARCO LLC.
27. "ASARCO NJ Consolidated Group" means the affiliated group of corporations consisting of ASARCO NJ and its subsidiaries for years before 1999.
28. "ASARCO NJ Subgroup" means ASARCO NJ and its subsidiaries.
29. "ASARCO Note" means, with respect to the Parent's Plan, a promissory note, substantially in the form attached as **Parent's Plan Exhibit 23** to the Parent's Plan, made payable by Reorganized ASARCO to the Section 524(g) Trust. The original principal amount of the promissory note shall be \$280 million, subject to an upward adjustment, for the benefit of Asbestos Trust only, if the Bankruptcy Court determines, upon a challenge brought by a party other than any of the Parties to the ASARCO Note, that the aggregate increase in consideration provided there under does not satisfy the "Fiduciary Out" set forth in the Sterlite Term Sheet. It is understood that, due to the economics of the Parent's offer, any increase in the amount of the promissory note above \$280 million shall be treated as an Allowed Administrative Claim, which will not necessarily reduce the total recovery to holders of Allowed General Unsecured Claims but which will reduce the Available Parent's Plan Funds available for distribution to holders of Allowed General Unsecured Claims so that such holders must rely upon the Distributed Litigation Trust Interests to collect a correspondingly greater portion of their recovery. The promissory note shall be for a term of one year from the Effective Date, shall bear interest at the rate of 6.0% per annum, shall be guaranteed by AMC and shall be secured by (a) a first lien on the assets of Reorganized ASARCO, and (b) a pledge by the Parent of 51% of the equity in Reorganized ASARCO. The promissory note shall be prepayable at any time, without penalty.
30. "ASARCO Protected Non-Debtor Affiliate" means an entity listed on **Parent's Plan Exhibit 1** to the Parent's Plan as such list may be amended or supplemented from time to time.
31. "ASARCO Protected Parties" (each one, an "ASARCO Protected Party") means (a) the Debtors and their respective predecessors; (b) Reorganized ASARCO; (c) the ASARCO Protected Non-Debtor Affiliates and their respective predecessors; (d) the Parent and its Affiliates and predecessors; (e) Grupo México and its Affiliates and predecessors; (f) the Trusts; (g) the Trustees; (h) the Section 524(g) Trust Advisory Committee; (i) the FCR;

- (j) the Asbestos Claimants' Committee, including its members in their member capacities; (k) the Parent's Plan Administrator; (l) the Examiner; (m) the ASARCO Committee, including its members in their member capacities; (n) the Settling Asbestos Insurance Companies; and (o) 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.
32. "ASARCO Security Agreement" means, with respect to the Parent's Plan, a security agreement, substantially in the form attached as Parent's Plan Exhibit 12 to the Parent's Plan, delivered to the Section 524(g) Trust to secure Reorganized ASARCO's performance under the ASARCO Note.
33. "ASARCO USA Incorporated" means the Delaware Corporation that owns 100% of the equity interests in ASARCO LLC.
34. "Asbestos/AMC/Parent Agreement in Principle" means the Agreement in Principle Regarding Summary Terms of Chapter 11 Plan for ASARCO LLC and Subsidiaries among the Asbestos Claimants' Committee, the FCR, AMC, and the Parent.
35. "Asbestos Books" means all of the books and records of each of the Debtors and Reorganized ASARCO, wherever located, to the extent that such books and records directly relate to (a) Asbestos Trust Assets; (b) Asbestos Insurance Policies including all historical information relating to (i) such Asbestos Insurance Policies; (ii) the settlement of any such Asbestos Insurance Policies; or (iii) the coverage of Asbestos Personal Injury Claims or Demands under or pursuant to any such Asbestos Insurance Policies; or (c) any Unsecured Asbestos Personal Injury Claims or Demands, including all historical information relating to (i) Asbestos Personal Injury Claims or Demands, (ii) the settlement of any such Claims or Demands, or (iii) relevant sales, purchases, distributions, marketing, advertising, or shipping of asbestos or asbestos-containing products.
36. "Asbestos Claimants' Committee" means the Official Committee of Asbestos Claimants appointed by the U.S. Trustee in the Reorganization Cases pursuant to section 1102 of the Bankruptcy Code and the August 26, 2008 order entered by the Bankruptcy Court.
37. "Asbestos In-Place Insurance Coverage" means any insurance coverage, not reduced to Cash proceeds, that is available as of the Effective Date in connection with asbestos-related Claims, remedies, Liabilities and Demands, including Section 524(g) Trust Expenses, under any Asbestos Insurance Policy as a result of or in accordance with an Asbestos Insurance Settlement Agreement or a prepetition settlement agreement with an Asbestos Insurance Company.
38. "Asbestos Insurance Action" means (a) any Avoidance Action against any Asbestos Insurance Company; (b) any claim, cause of action, or right of the Debtors or Reorganized ASARCO against any Asbestos Insurance Company concerning insurance coverage for asbestos-related Claims, remedies, Liabilities and Demands and/or enforcement of prepetition settlement agreements and/or extracontractual or statutory

remedies and relief, including but not limited to litigation, arbitration, mediation and informal negotiations, whether past, pending or not yet initiated; and (c) any claim, cause of action, or right of the Debtors or Reorganized ASARCO to pursue insurance recovery through available administrative or other means from Asbestos Insurance Companies that are insolvent, or have been liquidated, or are otherwise subject to statutory or legal protections against litigation.

39. "Asbestos Insurance Company" means any insurance company, reinsurance company, syndicate, insurance broker, syndicate insurance broker, guaranty association, or any other Entity with demonstrated or potential liability to the Debtors or Reorganized ASARCO for coverage under an Asbestos Insurance Policy arising from or related to asbestos-related Claims, remedies, Liabilities and Demands, including but not limited to any such Entity that entered into a prepetition settlement agreement with the Debtors that is currently the subject of an Avoidance Action.
40. "Asbestos Insurance Company Injunction" means the injunction set forth in Article 11.3(b) of the Parent's Plan in favor of the Settling Asbestos Insurance Companies.
41. "Asbestos Insurance Policy" means any insurance policy that provides or may provide coverage for claims arising from or related to asbestos-related Claims, remedies, Liabilities and Demands, whether products or premises, and that are or may become available to provide such coverage as a result of the resolution of any Avoidance Actions against any Asbestos Insurance Company.
42. "Asbestos Insurance Recovery" means (a) the right to pursue and receive the benefits and/or proceeds of Asbestos In-Place Insurance Coverage, including but not limited to the benefits and/or proceeds from certain Asbestos Insurance Policies that are subject to prepetition settlement agreements regarding Asbestos Premises Liability Claims; (b) the right to pursue and receive the benefits and/or proceeds of any Asbestos Insurance Policy or Asbestos Insurance Settlement Agreement; (c) the right to pursue and receive recovery from or as a result of any Asbestos Insurance Action, including but not limited to consequential, contractual, extracontractual and/or statutory damages, or other proceeds, distributions, awards or benefits; and (d) the right to pursue and receive any other recovery.
43. "Asbestos Insurance Settlement Agreement" means that certain Settlement Agreement approved by the Bankruptcy Court's Order Granting Debtor's Motion To Approve Settlement Agreement and Related Relief, entered September 14, 2006.
44. "Asbestos Personal Injury Claim" means any Claim, remedy or Liability against any of the Debtors, including all related claims, debts, obligations or Liabilities, whenever and wherever arising or asserted, whether under a direct or indirect theory of liability, whether domestic or foreign, whether now existing or hereafter arising, whether or not such Claim, remedy or Liability is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, bonded, secured or unsecured, whether or not the facts or legal bases therefor are known or unknown, whether or not

known, unknown or knowable before Confirmation of the Parent's Plan or the close of the Reorganization Cases, whether based on premises or products liability, alleging, arising out of, or in any way relating to physical, emotional, economic, or any other damage or injury for which any of the Debtors is alleged to be liable, whether direct or indirect and whether alleged or asserted against such Debtor directly or on account of any Alter Ego Theory, arising out of or in any way relating to asbestos or any products or materials containing asbestos. Asbestos Personal Injury Claims include all such Claims, remedies, and Liabilities whether in tort, contract, warranty, restitution, conspiracy, contribution, indemnity, guarantee, subrogation, joint and several liability, reimbursement, or any other theory of law, equity, admiralty or otherwise, whether seeking compensatory, special, economic and non-economic, punitive, exemplary, administrative, proximate, or any other costs or damages; or whether seeking any legal, equitable, or other relief of any kind whatsoever, whether under common law or by statute, including any Claim by an employee that is not otherwise compensated by applicable law such as workers' compensation laws, but excluding claims covered by applicable workers' compensation laws.

- 45. "Asbestos Personal Injury Claimant" means the holder of an Asbestos Personal Injury Claim.
- 46. "Asbestos Premises Liability Claims and Demands" means any and all Unsecured Asbestos Personal Injury Claims against ASARCO that result from exposure to asbestos or asbestos-containing material at premises owned, leased, rented, occupied, or controlled by ASARCO (or any past or present ASARCO Protected Party or Affiliate, or any of the predecessors of ASARCO or any of their past or present Affiliates, or any other Entity for whose products and operations ASARCO allegedly has liability or is otherwise liable), including but not limited to claims that are covered under the terms and conditions of the Asbestos Insurance Policies, and specifically including, without limitation, such policies that are subject to prepetition settlement agreements for premises claims, to the extent of the coverage thereunder.
- 47. "Asbestos Representatives" means the Asbestos Claimants' Committee and the FCR.
- 48. "Asbestos Subsidiary Cases" means the bankruptcy cases of the Asbestos Subsidiary Debtors.
- 49. "Asbestos Subsidiary Committee" means the Official Committee of Unsecured Creditors appointed by the United States Trustee in the Asbestos Subsidiary Debtors' bankruptcy cases, pursuant to section 1102 of the Bankruptcy Code. This committee has been reconstituted and renamed the Asbestos Claimants' Committee.
- 50. "Asbestos Subsidiary Debtors" means Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; and Cement Asbestos Products Company.

51. "Asbestos TAC" means the Asbestos Trust Advisory Committee created pursuant to the Debtors' Plan and the Asbestos Trust Agreement, as may be reconstituted from time to time in accordance with the terms thereof.
52. "Asbestos TDP" has the same meaning as the Section 524(g) Trust Distribution Procedures.
53. "Asbestos Trust" has the same meaning as the Section 524(g) Trust.
54. "Asbestos Trust Agreement" has the same meaning as the Section 524(g) Trust Agreement.
55. "Assumed Environmental Liabilities" means, with respect to the Parent's Plan, all Liabilities of the Debtors relating to any Environmental Laws regarding any of the Real Property (including all Liabilities relating to releases of Hazardous Materials at such properties or that have migrated or in the future migrate off-site from such properties) irrespective of whether such Liabilities relate to actions, omissions or events that occur or exist prior to or after the Effective Date.
56. "Augusta Defendants" means Augusta Resource (Arizona) Corporation and Augusta Resource Corporation.
57. "Available Cash" means, with respect to any Entity, its cash on hand.
58. "Available Parent's Plan Funds" means, with respect to the Parent's Plan, the funds remaining from the Parent's Contribution, the Distributable Cash and the Tax Refund after the Parent's Plan Administrator has (i) made all distributions required under the Parent's Plan on account of Administrative Claims, Priority Claims, Class 1 Claims, and Class 2 Claims and (ii) fully funded the Section 524(g) Trust, the Environmental Custodial Trusts and the Working Capital Reserve.
59. "Available Plan Sales Proceeds" means the Debtors' Plan Sales Proceeds and any interest earned thereon.
60. "Avoidance Action" means causes of action arising under chapter 5 of the Bankruptcy Code, or under related state or federal statutes and common law, including fraudulent transfer and fraudulent conveyance laws, whether or not litigation has commenced to prosecute such causes of actions.
61. "Ballot" means the form or forms distributed to holders of impaired Claims on which is to be indicated the acceptance or rejection of the Debtors' Plan and/or the Parent's Plan, as applicable.
62. "Balloting Agent" means AlixPartners, LLP.
63. "Bankruptcy Code" means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made, to the extent applicable to the Reorganization Cases.

64. "Bankruptcy Court" means the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division.
65. "Bankruptcy Rules" means the Federal Rules of Bankruptcy Procedure and the local rules of the Bankruptcy Court, as in effect on the Petition Date, together with all amendments and modifications thereto subsequently made applicable to the Reorganization Cases.
66. "Bar Date Orders" means the respective orders entered by the Bankruptcy Court establishing the respective Bar Dates, including the Confirmation Order.
67. "Bar Dates" means the respective dates by which all Entities asserting certain Claims against a Debtor must have filed a Proof of Claim or be forever barred from asserting such Claims against such Debtor or its Estate, as established by any orders of the Bankruptcy Court or the Parent's Plan.
68. "Barclays Capital" means Barclays Capital Inc.
69. "Bid Procedures Order" means the interim order approving the Debtors' Plan Sponsor procedures, entered by the Bankruptcy Court on March 25, 2008.
70. "Bid Protections Order" means the Final Order Granting Motion of ASARCO LLC for an Order Approving (1) Bid Procedures in Connection with Selecting a Chapter 11 Plan Sponsor and Exit Transaction under a Chapter 11 Plan and (2) Bid Protections to Sterlite (USA), Inc. in Connection Therewith, entered by the Bankruptcy Court on July 1, 2008.
71. "Bondholder" means an Entity that holds one or more of the Bonds.
72. "Bondholder Claim" means any Claim arising under one or more of the Bonds.
73. "Bonds" means ASARCO's unsecured long-term bond debt.
74. "Bonds Issuance" means each of the following:

<u>Bond</u>	<u>Maturity</u>	<u>Face Value</u>
CSFB JP Morgan Sec Debentures at 7.875%	April 2013	\$100.00m
Nueces River Env Bond (IRB) Series 1998 A 5.60%	April 2018	\$22.20m
CSFB Corporate Debentures at 8.50%	May 2025	\$150.00m
Gila County – Installment Bond 5.55%	January 2027	\$71.90m
Lewis & Clark County Env Bond (IRB) 5.60%	January 2027	\$33.16m
Nueces River Env Bond (IRB) 5.60%	January 2027	\$27.74m
Lewis & Clark County Env Bond (IRB) 5.85%	October 2033	\$34.80m

75. "Burns Litigation" means the claims and causes of action of the Debtors in the action pending 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, but not including the Debtors' claims and causes of action that have been removed and transferred to the

District Court and are now pending as Civil Action Nos. 07-00018 and 07-00203 as part of the SCC Litigation.

76. "Business" means the business of mining, smelting and refining of copper and other metals as conducted by the Debtors.
77. "Business Day" means any day other than a Saturday, Sunday, or legal holiday (as such term is defined in Bankruptcy Rule 9006(a)).
78. "CAPCO" means CAPCO Pipe Company, Inc. (f/k/a Cement Asbestos Products Company), an Alabama corporation, and one of the Asbestos Subsidiary Debtors.
79. "Cash" means cash, cash equivalents, and other readily marketable securities or instruments, including, without limitation, direct obligations of the United States and certificates of deposit issued by federally insured banks.
80. "CBA" means the collective bargaining agreement between ASARCO and the USW on behalf of itself and the other labor organizations representing the bargaining unit employees of ASARCO.
81. "CBRI" means Copper Basin Railway, Inc., a Delaware corporation.
82. "CDA Trust" means the trust created pursuant to the Residual Environmental Settlement Agreement for the Coeur d'Alene, Idaho site and properties owned by the Debtors in Shoshone County and Kootenai County, Idaho.
83. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§ 9601, *et seq.*
84. "Certificate" means an instrument evidencing an Allowed Bondholder Claim.
85. "Challenged Environmental Settlements" means (i) the Residual Environmental Settlement Agreement, and (ii) the Custodial Trust Settlement Agreements.
86. "Charging Lien" means any lien that an Indenture Trustee is entitled to exercise under the terms of its Indenture against, or any other priority in payment to which such Indenture Trustee is entitled under the terms of its Indenture with respect to, any distribution to be made under such Indenture or on account of any debts of the Debtors owed to holders of obligations under such Indenture.
87. "Chase" means JPMorgan Chase Bank, N.A., the issuer under the Credit Facility.
88. "Claim" has the meaning assigned to such term by section 101(5) of the Bankruptcy Code.
89. "Claim Objection Deadline" has the meaning assigned to such term in Article 14.2(a) of the Debtors' Plan.

90. "Claimant" means the holder of a Claim.
91. "Claims Agent" means AlixPartners, LLP. The Trumbull Group, L.L.C. had previously served as claims agent, prior to its withdrawal from the bankruptcy claims administration market.
92. "Class" means a category of Claims or Interests.
93. "Coal Act" means the Coal Industry Retiree Health Benefit Act of 1992, as amended.
94. "COBRA" means the Consolidated Omnibus Budget Reconciliation Act.
95. "COD Income" means cancellation of indebtedness income.
96. "Collateral" means any property or interest in property of any of the Debtors' Estates which is subject to a Lien to secure the payment or performance of a Claim, which Lien is not subject to avoidance or otherwise invalid under the Bankruptcy Code or other applicable law.
97. "Committees" means the ASARCO Committee, the Asbestos Subsidiary Committee, and the Asbestos Claimants' Committee.
98. "Confidentiality Agreement" means the confidentiality agreement dated July 6, 2007, between the Guarantor and ASARCO.
99. "Confirmation" or "Confirmed" means approval of a plan of reorganization by the Bankruptcy Court and/or the District Court at the Confirmation Hearing.
100. "Confirmation Date" means the date on which the Confirmation Order is entered on the docket of the Bankruptcy Court.
101. "Confirmation Hearing" means the hearing(s) that will be held before the Bankruptcy Court and/or the District Court, in which the Parent will seek Confirmation of the Parent's Plan.
102. "Confirmation Order" means the order of the Bankruptcy Court and/or the District Court confirming the Parent's Plan pursuant to section 1129 and other applicable sections of the Bankruptcy Code.
103. "Consummation" or "Consummated" or "Consummate" means the occurrence of the Effective Date.
104. "Convenience Claim" means any Allowed Unsecured Claim, excluding Asbestos Personal Injury Claims and Bondholder Claims, otherwise entitled to treatment as a General Unsecured Claim, which is \$1,000 or less when aggregated with the other Unsecured Claims of such holder, or, in the alternative, is reduced by election of such holder on such holder's Ballot, together with all other Unsecured Claims of such holder, to an aggregate Unsecured Claim of \$1,000.

105. "Corporate Governance Stipulation" means the Stipulation and Order Regarding Corporate Governance, entered by the Bankruptcy Court on December 15, 2005.
106. "Covington" means Covington Land Company, a Delaware corporation.
107. "Covington Residual Assets" means assets of Covington and the Asbestos Subsidiary Debtors, including, without limitation, the Property of the Estate of such debtors.
108. "Credit Facility" means the \$5 million senior secured twelve-month credit facility issued by Chase.
109. "Cure Amount Claim" means a Claim based upon a Debtor's defaults under an executory contract or unexpired lease at the time such contract or lease is assumed and assigned to Reorganized ASARCO pursuant to section 365 of the Bankruptcy Code.
110. "Custodial Trust Administrative Accounts" means the trust accounts established pursuant to the various Environmental Custodial Trust Agreements into which Environmental Custodial Trust Administration Funding shall be deposited.
111. "Custodial Trust Environmental Cost Accounts" means the trust accounts established pursuant to the various Environmental Custodial Trust Agreements into which the Environmental Custodial Trust Funding shall be deposited.
112. "Custodial Trust Settlement Agreements" means the settlement agreements with EPA or other Environmental Agencies relating to the Designated Properties.
113. "Custodial Trust Site" means one of the Designated Properties.
114. "Debtor" means one of the Debtors.
115. "Debtors" means the debtors in the Reorganization Cases, including, without limitation, Lac d'Amiante du Québec Ltée; Lake Asbestos of Quebec, Ltd.; LAQ Canada, Ltd.; CAPCO Pipe Company, Inc.; Cement Asbestos Products Company; ASARCO LLC; ASARCO Consulting, Inc.; Encycle, Inc.; ALC, Inc.; American Smelting and Refining Company; AR Mexican Explorations, Inc.; Asarco Master, Inc.; Asarco Oil and Gas Company, Inc.; Bridgeview Management Company, Inc.; Covington Land Company; Government Gulch Mining Company, Limited; Southern Peru Holdings, LLC; AR Sacaton, LLC; ASARCO Exploration Company, Inc.; Green Hill Cleveland Mining Company; Alta Mining and Development Company; Blackhawk Mining and Development Company, Limited; Peru Mining Exploration and Development Company; Tulipan Company, Inc.; and Wyoming Mining and Milling Company.
116. "Debtors' Plan" means the Debtors' Fifth Amended Joint Plan of Reorganization Under Chapter 11 of the United States Bankruptcy Code, as filed with the Bankruptcy Court on April 27, 2009.

117. "Debtors' Plan Administration Agreement" means the form of agreement with the Debtors' Plan Administrator, effective as of the Effective Date, as it may be modified from time to time in accordance with the terms thereof.
118. "Debtors' Plan Administration Committee" means the three-member committee appointed pursuant to the Debtors' Plan Administration Agreement to consult with and advise the Debtors' Plan Administrator.
119. "Debtors' Plan Administration Reserve" means the funds placed in the Debtors' Plan Administration Account (and any subaccounts), the Miscellaneous Plan Administration Accounts, and any general accounts established by the Debtors' Plan Administrator.
120. "Debtors' Plan Administrator" means the Entity that shall make distributions under the Debtors' Plan to Claimants (other than the Asbestos Personal Injury Claimants), handle any objections to such Claimants' Claims, and perform the other work assigned to such Entity by the Debtors' Plan, the Debtors' Plan Administration Agreement, or the Confirmation Order.
121. "Debtors' Plan Documents" means the Debtors' Plan, the Disclosure Statement, and all documents, attachments, and exhibits attached to the Debtors' Plan or the Disclosure Statement that aid in effectuating the Debtors' Plan, including, without limitation, the Asbestos Trust Documents, as the same may be amended, modified, or supplemented, in accordance with their terms.
122. "Debtors' Plan Sponsor" means Sterlite (USA), Inc., a Delaware corporation.
123. "Delaware Trustee" means the Entity appointed to fulfill the requirement of section 3807 of the Delaware Statutory Trust Act, 12 Del. Code Ann. § 3807.
124. "Demand" means a demand against any of the Debtors, to the fullest extent such term is used or defined in section 524(g)(5) of the Bankruptcy Code, for payment, present or future, that (a) was not a Claim during the proceedings before the Bankruptcy Court leading to Confirmation of a plan of reorganization in the Reorganization Cases; and (b) arises out of the same or similar conduct or events that gave rise to (i) an Asbestos Personal Injury Claim and/or out of property damage allegedly caused by or arising out of asbestos or asbestos-containing products, or (ii) an Asbestos Premises Liability Claim.
125. "Deposit" means that portion of the Escrow Account with a value of \$125 million.
126. "Depository Trust Company" means that limited-purpose trust company organized under New York State banking law that functions as a registered clearing agency with the Securities and Exchange Commission.
127. "Derivative Asbestos Claims" means Asbestos Personal Injury Claims against the Asbestos Subsidiary Debtors for which ASARCO is alleged to be liable under any of the various Alter Ego Theories.